

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MADELINE STONER,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2026-3112
	:	
YORK CITY SCHOOL DISTRICT,	:	
Respondent	:	

FACTUAL BACKGROUND

On June 19, 2026, Madeline Stoner (“Requester”) submitted a request (“Request”) to the York City School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. The posting for the [District High School] head football coach position[.]
2. The hiring timeline and application process[.]
3. The hiring process/timeline and application process of the [District High School] head football coach position[.]
4. Board policies regarding coaching hires[.]
5. Records showing who recommended Bud Kyle[.]
6. Any non-exempt emails or communications regarding the [District High School] head football coaching position.

On July 27, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the District partially granted the Request and provided records responsive to Items 1, 4¹ and 6 of the Request. The District denied Items 2, 3 and a portion of Item 4, claiming responsive records do not exist. Additionally, the District claims records responsive to Items 5² and 6 are exempt records related to prospective employees, 65 P.S. § 67.708(b)(7)(iv), and confidential pursuant to the Sunshine Act, 65 P.S. §§ 701-716.

On July 30, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Specifically, the Requester challenges the District’s search for records responsive to Items 2 and 3 and claims the District has not met its burden to establish that the withheld records are exempt.³ The OOR invited both parties to supplement the record and directed the District to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On August 17, 2026, the Requester submitted a position statement, reiterating the arguments made at the time of the appeal.⁴

On August 18, 2026, the District submitted a position statement, asserting that Items 2, 3, 5 and 6 of the Request are insufficiently specific, 65 P.S. § 67.703. Alternatively, the District

¹ In response to Item 4, the District provided a link to all School Board Policies, <https://www.ycs.k12.pa.us> (last accessed by the OOR on August 20, 2026 via <https://policymain.org/the-school-district-of-the-city-of-york/policies>), and a copy of Board Policy 304.1, Employment of District Staff.

² Specifically, the District asserts records responsive to Item 5 are exempt and confidential to the extent those records exist. The District does not affirm that the District is withholding records responsive to Item 5 of the Request.

³ As the Requester does not challenge the District’s response to Items 1 and 4, these Items and the District’s response thereto will not be further addressed in this Final Determination.

⁴ The Requester also asserts that a District Board meeting occurred “in or around February 2026” regarding the head football coaching position, and as such, the District’s search for responsive records should encompass February 2026. The Requester does not include a timeframe in the Request, nor does the Requester’s original appeal submission include any mention of a February 2026 meeting. The OOR has repeatedly held that a requester may not modify, explain or expand a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Dep’t of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that “where a requestor requests a specific type of record ... the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request”). Thus, the OOR does not find an unverified assertion that a meeting occurring “in or around February 2026” as evidence that the District’s search for responsive records is incomplete.

reiterates that records related to Items 2, 3 and 5 do not exist in the District's possession, custody or control.⁵ Lastly, the District claims that it redacted and withheld records responsive to Item 6 on the basis that the records are "outside the scope of the RTK request"⁶ and contain exempt names and employment information submitted by applicants not selected by the District for employment, 65 P.S. § 67.708(b)(7)(iv), written criticisms of District employees, 65 P.S. § 67.708(b)(7)(vi), and internal, predecisional deliberations of the District, 65 P.S. § 67.708(b)(10). In support of its position, the District submitted eight attestations made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, authored by: Lori Ferrell ("Ferrell Attestation" and "Ferrell Second Attestation"),⁷ the District's Agency Open Records Officer ("AORO"); Robert Bernhard ("Bernhard Attestation" and "Bernhard Second Attestation"),⁸ the District's Director of Human Resources; Dr. Andrea Berry-Brown ("Berry-Brown Attestation" and "Berry-Brown Second Attestation"),⁹ the District's Superintendent; Diane Glover-Brown ("Glover-Brown Attestation"), a member of the District's Board of Directors; and Traci Wright ("Wright Attestation"), a District Human Resource Specialist. The District also submitted copies of the responsive records provided to the Requester and an Exemption Log ("Log"),¹⁰ detailing the redacted and withheld records.¹¹

⁵ While the District asserts "records" do not exist in response to Items 2, 3 and 5 of the Request, the District provides information responsive to these Items within its evidentiary submissions as detailed herein.

⁶ The OOR interprets the District's usage of "outside the scope of the RTK request" to mean records that are unresponsive to Item 6 of the Request.

⁷ The Ferrell Second Attestation outlines the District's basis for withholding the record identified by the District as "Log 14."

⁸ The Bernhard Attestation provides information regarding the District's practice regarding the hiring process and the Bernhard Second Attestation provides responsive information in response to Items 2 and 3 of the Request.

⁹ The Berry-Brown Attestation provides information responsive to Item 5 and the Berry-Brown Second Attestation provides information responsive to Item 3 of the Request.

¹⁰ The contents of the Log are verified to be true and correct. See Ferrell Attestation ¶¶ 9, 10.

¹¹ The OOR extended the evidentiary submission record for both parties through August 18, 2026. See 65 P.S. § 67.1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").

LEGAL ANALYSIS

The District is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the District is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). Likewise, “[t]he burden of proving a record does not exist...is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The appeal as it relates to the information provided during the appeal is moot

During the pendency of the appeal, the District provided information responsive to Items 2, 3 and 5. Specifically, the District explains that: the football coaching position was posted on the District’s website on March 18, 2026; interested applicants were instructed to apply through the District’s website; interviews were conducted for the head football coach on April 23 and April 24, 2026; Dr. Berry-Brown recommended Bud Kyle for the head coaching position; and the District annually appoints and hires an individual to serve as the head football coach. *See* Bernhard Second Attestation ¶ 5; *see also* Berry-Brown Attestation ¶ 5; Berry-Brown Second Attestation ¶ 3.¹² As such, the appeal as to the information provided to the Requester during the pendency of

¹² Under the RTKL, a statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the District acted in bad faith, “the averments

the appeal is dismissed as moot. *See Chester Water Auth. v. Pa. Dep't of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records, and thus, “the controversy has been mooted”).

2. The Request is sufficiently specific

The District argues the remainder of the Request is insufficiently specific because the Request lacks a transaction or activity of the District, a scope and a timeframe. Section 703 of the RTKL states that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703. When determining whether a particular request is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* at 1125 (quoting 65 P.S. § 67.102). Second, “[t]he scope of the request must identify ‘a discrete group of documents, either by type ... or by recipient.’” *Id.* (quoting *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)). Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126 (citing *Carey, supra*). “The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request’s timeframe is narrow enough is generally dependent upon the specificity of the request’s subject matter and scope.” *Id.*

The above factors are intended “to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested.... The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements.” *Pa. Dep't*

in [the attestations] should be accepted as true.” *McGowan v. Pa. Dep't of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2013)).

of Health v. Shepherd, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 *6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022). Finally, we must analyze the entirety of a request, as it is possible that portions of a request are insufficiently specific, while other portions provide sufficient guidance. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting “the valid part of the request was included in a laundry list of requested materials”).

The OOR does not find the District’s argument that the Request is insufficiently specific to be persuasive. The subject matter is well defined—the hiring of a head football coach. While the scope and timeframe may not be included in the Request, the District clearly understood the Request and performed a search for responsive records. In fact, the District was able to provide responsive records and withheld records it claims to be exempt. Thus, the District clearly understands the subject matter, scope and timeframe of the Request. *Easton Area School District v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012) (“[T]he request was obviously sufficiently specific because the School District has already identified potential records included within the request”). As a result, the Request, as a whole, is sufficiently specific.

3. The District has failed to demonstrate a portion of the withheld records are unresponsive to the Request

The District asserts that it withheld email attachments that are not responsive to the Request. Specifically, the District claims the attachments are “outside the scope”¹³ of the Request. Those attachments include notes from a meeting that occurred with student athletes regarding the head football coaching position, agendas for an executive session meeting regarding prospective candidates for the head football coaching position and interview packets for the head football

¹³ Specifically, Log 50-52, 53-61, 62-69, 70-75, 76-85 and 86-96. Additionally, the OOR fails to comprehend how the District claims the Request lacks a “scope” and thereafter, attempts to argue records do not fall within the “scope” the Request apparently lacks.

coaching position. *See* Log pp. 11-14; *see also* Wright Attestation ¶¶ 6-7. As noted, the subject matter of the instant Request clearly revolves around the hiring of a head football coach and the descriptions of the records withheld under this basis all relate in some fashion to the head football coaching position. *Brock v. Bucks Cnty.*, OOR. Dkt. 2023-0249, 2023 PA O.O.R.D. LEXIS 879 (approving of the withholding of nonresponsive records that were produced as a result of a preliminary search where there was evidence that they were irrelevant to the subject matter of the request). As the District has failed presented evidence that the records withheld are unresponsive to the Request, the District may not withhold these records under the assertion that the records are unresponsive or “outside the scope” of the Request.

4. The District appropriately withheld employment applications and redacted the names of candidates not hired by the District

The District argues that it appropriately withheld and redacted employment applications and the identity of candidates not selected for employment positions within the District. Section 708(b)(7)(iv) of the RTKL exempts from disclosure the “employment application of an individual who is not hired by the agency.” 65 P.S. § 67.708(b)(7)(iv). Although the RTKL does not define “employment application,” the OOR has found that material submitted by an applicant for consideration by the hiring agency falls under Section 708(b)(7)(iv), while extraneous material either not provided by the applicant or not intended to be used in the hiring decision does not. *See e.g., Gulden v. City of Harrisburg*, OOR Dkt. AP 2024-2763, 2025 PA O.O.R.D. LEXIS 102; *Javitz v. Scranton City*, OOR Dkt. AP 2020-1118, 2020 PA O.O.R.D. LEXIS 2901, *5-6 (materials submitted by applicants are either applications or the functional equivalent thereof, and are exempt under 65 P.S. § 67.708(b)(7)(iv)); *Wuertenberg v. Franklin Cnty.*, OOR Dkt. AP 2013-2162, 2014 PA O.O.R.D. LEXIS 26 (resumes submitted by applicants qualify for exemption).

In support of the District's position, the Wright Attestation provides, in relevant part, the following:

3. With respect to [] (Log 32-33) (voice message transcript), an individual left a voice message, dated June 2, 2026, in which he (the said individual) expressed an interest in the football head coach position which was recorded/transcribed; However, the individual did not or was not able to apply for the position and the individual was not hired by the District for the position.

4. With respect to [] (Log 34) (Email from candidate withdrawing from consideration from the football head coach position), the District received an email from an individual, dated May 27, 2026, that informed the District that he (the said individual) wanted to withdraw from consideration for the football head coach position and the individual was not hired by the District for the position.

5. With respect to [] (Log 45)(Email with names of candidates on attached pdf files who were being interviewed on Thursday, April 23, 2026), all of the names on the pdf files, with the exception of the pdf file with the name of (Bud) Kyle who was hired as the football head coach, are redacted because the named individual either applied for the football head coach position and was not hired or the named individual did not apply for the football head coach position.¹⁴

6. With respect to [] (Log 46) (Email with names of candidates on attached pdf files who were being interviewed on Friday, April 24, 2026), all of the names on the pdf files are redacted because the named individual either applied for the football head coach position and was not hired or the named individual did not apply for the football head coach position.

7. With respect to [] (Log 70-75) (Interview Packet containing the online application, cover letter of interest, and resume of an applicant/candidate), the record contains the online application, cover letter of interest and resume of the applicant/candidate for football head coach position; however, the applicant/candidate was not hired by the [D]istrict.

8. With respect to [] (Log 86-96) (Interview Packet containing the online application, cover letter of interest, and resume of an applicant/candidate), the record contains the online application, cover letter of interest and resume of the applicant/candidate for football head coach position; however, the applicant/candidate was not hired by the [D]istrict.¹⁵

¹⁴ The names of the individuals that did not apply for the head coaching position were applying for the assistant coaching position or assistant "AD" position. *See* Log pp. 8-9.

¹⁵ While the Wright Attestation is silent as to Log 76-85, the description contained in the Log is identical to the description provided for Log 70-75 and 86-96. Additionally, Log 76-85 is an interview packet that was attached to the email found at Log 45, which discusses the interview line-up for the head and assistant coaching positions. As such, Log 76-85 is also found to be exempt pursuant to Section 708(b)(7)(vi). *See* Log pp. 8, 12-14.

Here, the evidence is undisputed that responsive records listed above are akin to employment applications and resumes for individuals not hired for the head coaching position or other open positions within the District. Because Section 708(b)(7)(iv) of the RTKL expressly exempts from disclosure “[t]he employment application of an individual who is not hired by the agency[,]” and the Request seeks responsive records related to “the hiring process,” the “application process” and “communications” regarding the “head football coaching position,” the exemption explicitly applies to the applicants not hired by the District. *See Wuertenberg v. Franklin Cnty.*, OOR Dkt. AP 2013-2162, 2014 PA O.O.R.D. LEXIS 26 (holding that resumes of individuals not hired are exempt from disclosure under 65 P.S. § 67.708(b)(7)(iv)); 65 P.S. § 67.708(b)(7)(iv); *see also Pa. Game Comm’n v. Fennell*, 149 A.3d 101 (holding that the OOR must consider uncontradicted statements in the appeal filing when construing exemptions); *Office of the Governor v. Davis*, 122 A.3d 1185, 1192 (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record); *Staniszewski v. City of Washington*, OOR Dkt. AP 2022-0181, 2022 PA O.O.R.D. LEXIS 660; *Norris v. Pa. Public Sch. Emp. Ret. Sys.*, OOR Dkt. AP 2022-1612, 2022 PA O.O.R.D. LEXIS 2076.

Accordingly, the names of the individuals and the records relating to the employment applications of the individuals not hired by the District may be redacted and withheld pursuant to 65 P.S. § 67.708(b)(7)(iv).

5. The District did not appropriately withhold written criticisms of an employee

The District asserts that records were withheld that contain written criticisms of an employee. Section 708(b)(7) of the RTKL exempts from disclosure certain records relating to an agency employee, including “[w]ritten criticisms of an employee,” 65 P.S. § 67.708(b)(7)(vi).

“[T]he RTKL expressly exempts ‘written criticisms of an employee’ from public access,” and the purposes of the request are not relevant to that determination. *See Perrine v. Lakeview Sch. Dist.*, OOR Dkt. AP 2009-0374, 2009 PA O.O.R.D. LEXIS 239; *Johnson v. Pa. Convention Ct. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012) (Section 708(b)(7) applies whenever there is criticism of individuals who are employees of the agency). However, the OOR has distinguished “written criticisms of an employee” that originate from an individual within an agency from those that originate outside of the agency. *See Bhaya v. Central Bucks School District*, OOR Dkt. AP 2014-0319, 2014 PA O.O.R.D. LEXIS 372 (finding that a parent’s complaint to the school district did not qualify as a “written criticism of an employee” under Section 708(b)(7)(vi)); *see also McGraw v. City of Wilkes-Barre*, OOR Dkt. AP 2019-1909, 2019 PA O.O.R.D. LEXIS 1753.

In support of the District’s position, the Glover-Brown Attestation indicates that Log 47-49 consist of meeting notes prepared as a result of a meeting that was attended by members of the community, the Superintendent and Ms. Glover-Brown. Glover-Brown Attestation ¶ 3. The notes refer to the state of athletic programs, with a focus on the football program, and contain the written criticisms of an employee of the District. Glover-Brown Attestation ¶ 4.

Based upon the evidence submitted by the District, the written criticisms do not originate internally, but rather, are based upon comments provided by the community. As such, the OOR is unable to conclude that any comment or complaint made by the public constitutes a “written criticism” as contemplated by Section 708(b)(7)(vi),¹⁶ and as such, Log 47-49¹⁷ is subject to disclosure. *See Osborne v. Philadelphia School District*, OOR Dkt. 2025-3008, 2026 PA

¹⁶ Based on the underlying purpose of the RTKL, “exemptions from disclosure must be narrowly construed.” *See Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013); *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *16 (Pa. Commw. Ct. 2012) (citing *Bowling*, 990 A.2d at 824) (“The RTKL must be construed to maximize access to government records”).

¹⁷ To the extent Log 47-49 contains the names of any student athletes, said names may be redacted in accordance with 65 P.S. § 708(b)(30).

O.O.R.D. LEXIS 1170 (finding a communication containing criticisms originating from a member of the public do not contain written criticisms as contemplated by Section 708(b)(7)(vi) of the RTKL).

6. The District has failed to demonstrate it appropriately withheld some records responsive to the Request that reflect internal, predecisional deliberative materials

Section 708(b)(10)(i)(A) of the RTKL exempts from disclosure records reflecting:

[t]he internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

65 P.S. § 67.708(b)(10)(i)(A). To withhold a record under Section 708(b)(10)(i)(A), an agency must show: 1) the deliberations reflected are internal to the agency, including representatives; 2) the deliberations reflected are predecisional, i.e., before a decision on an action; and 3) the contents are deliberative in character, i.e., pertaining to a proposed action. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011).

The District argues that it withheld records responsive to Item 6 that contain internal, predecisional deliberative information. In support of the District's assertion the records were properly withheld pursuant to Section 708(b)(10)(i)(A), the Bernhard Attestation explains that all information and records regarding prospective employees are kept internal and confidential until information is disclosed at a public board meeting for each prospective employee. Bernhard Attestation ¶ 4. Additionally, after the District interviews a prospective employee, some form of record is generated to designate an individual for employment for a particular position that reflects the District's internal decision-making process and precedes the District's hiring decision.

Bernhard Attestation ¶ 5. Further, as noted in the Ferrell Second Attestation, Log 14 contains opinions of concern and impact regarding a candidate being considered for the football head coach position. Ferrell Second Attestation ¶ 3.

In review of the senders and recipients contained within the Log, all emails with the specified attachments are internal;¹⁸ however, the District must also establish that the withheld records are predecisional and deliberative in nature. Furthermore, an agency must “submit evidence of specific facts showing how the information relates to a deliberation of a particular decision.” *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 379 (Pa. Commw. Ct. 2013). The term “deliberation” is generally defined as “[t]he act of carefully considering issues and options before making a decision or taking some action...” BLACK’S LAW DICTIONARY 492 (9th ed. 2009); *see also Heintzelman v. Pa. Dep’t of Cmty. & Econ. Dev.*, OOR Dkt. AP 2014-0061, 2014 PA O.O.R.D. LEXIS 254, *aff’d* No. 512 C.D. 2014, 2014 Pa. Commw. Unpub. LEXIS 644 (Pa. Commw. Ct. 2014). In addition, to prove that a record is exempt under this section, an agency must explain how the information withheld reflects or shows the deliberative process in which an agency engages during its decision-making. *See Twp. of Worcester v. Off. of Open Records*, 129 A.3d 44, 61 (Pa. Commw. Ct. 2016). Further, purely factual material contained in otherwise deliberative documents is required to be disclosed if it is severable from its context. *See Pa. Pub. Util. Comm’n v. Nase*, 302 A.3d 264, 272 (Pa. Commw. Ct. 2023) (quoting *McGowan*, 103 A.3d at 383). However, “factual material can still qualify as deliberative information if its ‘disclosure would so expose the deliberative process within an agency that it must be deemed exempted;’ or in other words, when disclosure of the factual material ‘would be tantamount to the publication of

¹⁸ See https://www.ycs.k12.pa.us/staff?page_no=1 (last accessed by the OOR on August 20, 2026).

the [agency's] evaluation and analysis.” *McGowan*, 103 A.3d at 387 (quoting *Trentadue v. Integrity Communication*, 501 F.3d 1215, 1228-29 (10th Cir. 2007)).

Recently, in *Shepherd v. Pennsylvania Office of the Governor*, in discussing *McGowan v. Pennsylvania Department of Environmental Protection*, 103 A.3d 274 (Pa. Commw. Ct. 2014), the Commonwealth Court found the following:

McGowan guides that not every internal agency communication involving a decision to be made or a question to be answered is subject to the predecisional deliberative exemption. Rather, it is apparent that the exemption protects those communications which reflect that an agency is deliberating, as in *McGowan*, a particular determination, ruling or policy. See *Office of General Counsel v. Bumsted*, 247 A.3d 71, 84 (Pa. Cmwlth. 2021) (only information that constitutes confidential deliberations of law or policymaking reflecting opinions, recommendations or advice is protected as deliberative). This ‘big picture’ approach avoids an overbroad interpretation of the deliberative process exemption, which could conceivably lead to the exemption of virtually any discussion or dialogue that occurs within an agency. Moreover, it furthers the RTK Law’s directive that exemptions from disclosure must be narrowly construed.

2025 Pa. Commw. Unpub. LEXIS 277, 14 (June 5, 2025). As a result, the Commonwealth Court conducted an *in camera* review of the records identified as exempt under Section 708(b)(10)(i)(A) and found that while the records contained discussion of various administrative and agency minutiae, none of the discussions rose to the level of a predecisional deliberation regarding a significant decision of the agency.

The *Shepherd* Court found that the evidence submitted, i.e., the Exemption Log, did not “set forth the type of fulsome discussion necessary to show that the records at issue are exempted as predecisional and deliberative.” The *Shepherd* Court found “that the documents discuss[ing] an employee’s resignation and the proper processing thereof; the hiring of a new employee and the determination of salary; the drafting of proposed employee separation letter; the possible acquisition of a new conferencing system; and whether certain employees were required to file statements of financial interests” were not internal, predecisional deliberations. The *Shepherd*

Court reasoned that “[l]ike the travel reimbursement documents discussed above, the remaining documents do not show that the Office was deliberating a particular determination, ruling or policy such that they should be exempted as predecisional.”

While the Bernhard and Ferrell Second Attestations confirm all of the withheld emails and attachments represent predecisional information, the evidence submitted does not support the District’s position that all of the above withheld records are deliberative in nature. The records do not contain deliberations of law or policymaking as noted in *Shepherd*, but rather daily administrative decision making, which includes the hiring of a head football coach. Further, the attachments located at Log 50-52, 53-61 and 62-69 are meeting notes and agendas—for which the District has provided no evidence as to how any of these items are deliberative or are used in the deliberative process.¹⁹ Thus, the District has not properly withheld the remaining responsive records located at Log 14, 38-39, 40-41, 50-52, 53-61 and 62-69 under Section 708(b)(10)(i)(A) of the RTKL.

7. The District demonstrated it performed a good faith search for responsive records and additional responsive records do not exist

The District asserts that additional records responsive to Items 2, 3 and 5 of the Request do not exist in its possession, custody or control. In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact

¹⁹ Log 50-52 is attached to Log 12-13, which provides the meeting minutes; Log 53-61 is attached to Log 20, which provides the agenda and does not include any request for input or changes; and Log 62-69 is attached to Log 37, which also provides the agenda and does not include any request for input or changes. See Log pp. 1, 2, 6, 11, 12.

agents within its control, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020).

An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

Here, Items 2 and 3 of the Request seek records related to the timeline, application and hiring process for the District head football coaching position. Item 5 of the Request seeks the identity of the District staff member who recommended Bud Kyle for the head football coaching position. In support of the District's argument that it does not possess additional responsive records to Items 2, 3 and 5 of the Request, the Ferrell Attestation indicates that the District inquired with its Superintendent, the Human Resource Department and the IT Department to search for responsive records. Ferrell Attestation ¶ 3; Berry-Brown Attestation ¶ 3. As explained, other than the job posting provided to the Requester, there are no District records for hiring timelines and application processes in general, in part because the timelines and processes are different for each hire and vary based on the circumstances for each hire. Bernhard Second Attestation ¶ 4. Further, there are no records showing the staff member who recommended Bud Kyle; however, the recommendation was made by the District Superintendent. Berry-Brown Attestation ¶¶ 4-6. Thus, the District has demonstrated that a good faith search for records responsive to Items 2, 3 and 5 of the Request was performed. Based on the evidence provided, the District has demonstrated that it does not possess additional records responsive to either Item of the Request. There has been no

sufficient evidence provided that otherwise contradicts the statements offered by the District in the attestations submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, based on the evidence provided, the District has met its burden of proof that additional responsive records do not exist in the District's possession, custody or control.²⁰ *Hodges*, 29 A.3d at 1192.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part and dismissed as moot in part**, and the District is required to provide the withheld records as outlined herein to the Requester within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the York County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL; however, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.²¹ 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: August 21, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

²⁰ The OOR makes no determination as to whether records *should* exist, as our inquiry is limited to only whether or not records are “in existence and in possession of the ... agency at the time of the right-to-know request.” *Moore*, 992 A.2d at 909; *see also* 65 P.S. § 67.705.

²¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

Sent to: Madeline Stoner (via portal only)
Jeffrey A. Gettle, Esq. (via portal only)
Lori Ferrell (via portal only)