



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JEREMY KROMER,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2026-3304
	:	
PENNSYLVANIA GAME	:	
COMMISSION,	:	
Respondent	:	

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* For the following reasons, the appeal is dismissed in part and denied in part.

On June 27, 2026, Jeremy Kromer (“Requester”) submitted a request (“Request”) to the Pennsylvania Game Commission (“Commission”) pursuant to the RTKL, seeking records related to “the bat habitat conservation project at the abandoned Buffalo and Susquehanna Railroad tunnel located in Sabula, Sandy Township, Clearfield County, Pennsylvania, from 2010 to present.” On August 6, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Commission granted in part and denied in part the Request.

On August 12, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial. The Requester limited his appeal to whether records were properly withheld under the noncriminal investigation exemption of Section 708(b)(17), whether

records were properly withheld as attorney/client privilege/work product, and whether records were properly withheld under Federal Copyright protections. 65 P.S. § 67.708(b)(17); 65 P.S. § 67.102; 65 P.S. § 67.305(a)(2); 17 U.S.C. § 103. The OOR invited both parties to supplement the record and directed the Commission to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On August 31, 2026, the Commission submitted a position statement stating that it was waiving the exemptions it had previously claimed under Section 709(b)(17) and the attorney client privilege and/or work product doctrine. 65 P.S. § 67.708(b)(17); 65 P.S. § 67.102; 65 P.S. § 67.305(a)(2). Within its submission, the Commission provided the two email chains that it had previously withheld pursuant to the attorney client privilege and/or attorney work product doctrine. Exhibit “A”. The Commission also provided the three records it had previously withheld as pursuant to the noncriminal investigative exemption. *Id.* Therefore, the appeal is moot as to the records provided to the Requester. *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”).

With respect to the production of the withheld publications,¹ the Commission provided the Requester with an opportunity to choose a date and time to inspect the two publications withheld under the Federal Copyright Act. The Copyright Act is a federal law creating limitations on who can reproduce various creative materials and does not actually prohibit disclosure of records under the RTKL. 17 U.S.C. §§ 106, 501. However, in *Ali v. Philadelphia City Planning Commission*, the Commonwealth Court held that while the Copyright Act does not “exempt [] materials from

¹ “Environmental control reduces white-nose syndrome infection in hibernating bats” by B.J.Sewall, et al., Copyright 2023 and “The Caves of Centre County, PA” compiled and edited by Gordon O. Dayton and William B. White, Copyright 1979.

disclosure under the RTKL” it “limits the level of access to a public record only with respect to duplication, not inspection.” 125 A.3d 92 at 101-05 (Pa. Commw. Ct. 2015). The Commonwealth Court further explained:

Because we lack jurisdiction under federal law to resolve the question of whether a local agency’s disclosure of copyrighted material pursuant to the RTKL without the owner’s consent constitutes infringement under the Copyright Act, where a local agency has refused to duplicate a public record in response to a RTKL request by invoking the Copyright Act, our review must be confined to determining whether the local agency has met its burden of proving facts sufficient to show that forced duplication of copyrighted material under the RTKL implicates rights and potential liabilities arising under the Copyright Act that can only be resolved by the federal courts.

... we hold that where a local agency invokes the Copyright Act as a basis to limit access to a public record to inspection only, the absence of consent by the copyright owner to duplication in response to a RTKL request should be presumed.

125 A.3d at 104-05. Therefore, where an agency demonstrates that a record is subject to copyright, the OOR may only direct the agency to provide inspection and cannot order duplication of the record. *See, e.g., Perlmutter v. Yardley Borough*, OOR Dkt. AP 2022-2347, 2022 PA O.O.R.D. LEXIS 2537; *Smith v. West Chester Area Sch. Dist.* OOR Dkt. AP 2022-1674 (consolidated), 2022 PA O.O.R.D. LEXIS 2123. As the Commission has shown these two publications are subject to copyright and has offered the Requester the opportunity to choose a date and time to inspect the records, and the OOR cannot grant any additional relief, this portion of the appeal must be denied.

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**. The Commission is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per 65 P.S. § 67.1303, but 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.² 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 website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 1, 2026

/s/ Meryl M. Peterman

MERYL M. PETERMAN, ESQ.
APPEALS OFFICER

Sent via OOR E-file appeal portal to:

Jeremy Kromer
Zachary Fahnestock (AORO)

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).