

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
KEN ZAPINSKI AND PITTSBURGH	:	
WORKS TOGETHER,	:	
Requester	:	
	:	Docket No: AP 2026-3156
v.	:	
	:	
ALLEGHENY COUNTY,	:	
Respondent	:	

FACTUAL BACKGROUND

On June 8, 2026, Ken Zapinski of Pittsburgh Works Together (“Requester”) submitted a request (“Request”) to Allegheny County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, in relevant part, “all studies, summaries, reports, memorandum and other materials **submitted by the [Fracking] Committee to the full Board of Health** as part of its March 18, 2026, report to the Board of Health.” (emphasis added).

On July 17, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the County denied this portion of the Request, asserting that “[t]here are six records within the scope of your request that are not being provided in their entirety in order not to disclose [i]nformation relating to internal, predecisional deliberations, exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL.”

On August 3, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. In a statement filed with his appeal, the Requester specifically challenges the County’s decision to withhold “studies, reports, and data produced by third parties.” The OOR invited both parties to supplement the record and directed the County to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On August 13, 2026, the County submitted a position statement reiterating its position. In support of its position, the County submitted the statement, made under 18 Pa.C.S. § 4904, of John Cronin, Assistant Solicitor for the County’s Health Department. Also on August 13, 2026, the Requester submitted a position statement challenging the County’s arguments.

LEGAL ANALYSIS

The County 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 County 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)).

The County maintains that it properly withheld these records under Section 708(b)(10)(i)(A) of the RTKL, which exempts from public disclosure a record that reflects:

The 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... any research, memos or other documents used in the predecisional deliberations.

65 P.S. § 67.708(b)(10)(i)(A).

The Allegheny County Board of Health held a public meeting on March 18, 2026. According to the minutes of that meeting, which the Requester uploaded with his appeal, all ten members were present and the Fracking Committee provided an update to the Board of Health “which included documentation regarding the concerns around health impacts and oil and gas development.” The documents are described in the minutes as: “a) COBRA Analysis which is a risk and benefit mapping tool from the EPA; b) List of public commenters with fracking concerns over the past two years; c) Compilation of research fact sheets for community and mental health impacts from oil and gas and general health impacts; d) Air pollution health impacts, research comparison; e) Health research studies of residents living near fracking sites.” On appeal, the Requester specifically challenges: the “[c]ompilation of research fact sheets for community and mental health impacts from oil and gas and general health impacts; [a]ir pollution health impacts, research comparison; and [h]ealth research studies of residents living near fracking sites,” *i.e.*, items c, d, and e from the meeting minutes.¹

Cronin describes the records at issue on appeal as follows:

a) Attachment 1 - Fracking Health Impact Research.docx

i. This document is a compilation of research materials and potential policy recommendations based on the research.

ii. This document was developed by ACHD employees and privately shared with members of the Board of Health.

b) Fracking and Health Summary Draft.pdf

¹ Although the County initially identified six responsive records, the OOR finds that the Requester narrowed his appeal to these three specific items from the Board of Health’s March 18, 2026 meeting minutes. The Requester is not prohibited from making a new request for records and, if necessary, filing a new appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

i. This document is a compilation of research materials and potential policy recommendations based on the research.

ii. This document was developed by Laura Dagley, Chair of the Fracking Committee, and privately shared with members of the Board of Health.

c) Hazardous Air Pollutants From Fracking.docx

i. This document is a compilation of research materials related to potential policy and legislative regulations.

ii. This document was developed by a member of the Fracking Committee and privately shared with members of the Board of Health.

Cronin Attestation, ¶ 8. Here, the County claims that the records “are in draft form, have been prepared by a member of the agency, and are for the purpose of possibly recommending action to the Board of Health at a later date... Further, the documents contain compilations of research materials (studies and data prepared by third parties), which are being used as part of the predecisional deliberation process.” Cronin attests that the withheld records, “were created by agency members and shared only with agency members,” “were not shared at a public meeting,” “contain[] research related to potential future policy or legislative recommendations,” and were created “before any policy recommendations have been made.” Cronin Attestation, ¶ 9.

However, the evidence indicates that the responsive records presented to the Board of Health by the Fracking Committee at a Board of Health public meeting that was subject to the Sunshine Act. Therefore, the analysis under Section 708(b)(10)(ii) applies. Section 708(b)(10)(ii) of the RTKL provides:

Subparagraph (i)(A) shall apply to agencies subject to 65 Pa.C.S. Ch. 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Ch. 7. A record which is not otherwise exempt from access under this act and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 shall be a public record.²

² The County does not claim any other exemption(s) under the RTKL beyond subparagraph 708(b)(10)(i)(A).

The Sunshine Act defines “deliberation” as “[t]he discussion of agency business held for the purpose of making a decision.” *See* 65 Pa. C.S. § 703. Here, for a record of an agency otherwise exempt as an internal, predecisional deliberation to be subject to public disclosure, two requirements must be met: (1) it must have been presented to a quorum of the Board of Health; and (2) it must have been presented for the Board of Health’s deliberation. *Hale v. Borough of Gettysburg*, OOR Dkt. AP 2016-0642, 2016 PA O.O.R.D. LEXIS 1128; *Bidlingmaier v. Jenkintown Borough*, OOR Dkt. AP 2021-2605, 2022 PA O.O.R.D. LEXIS 144. Even if the March 18, 2026 meeting was not open to the public, the OOR has found that records presented to a quorum for the purpose of making a decision are subject to production. *Longo v. Phoenixville Area Sch. Dist.*, OOR Dkt. AP 2020-0504, 2020 PA O.O.R.D. LEXIS 1361 (finding emails sent to a quorum of the School Board for deliberation were public records).

The minutes of the Board of Health’s March 18, 2026 meeting indicate that after Board member Dagley provided the Fracking Committee’s update, Board member Mendez asked about the Fracking Committee’s “next course of action,” to which Board member Portlock responded that “the committee would make recommendations to the board and then the board would evaluate the recommendations.” Here, the evidence indicates that the responsive records were prepared by a member of the County’s Board of Health, are for the purpose of possibly recommending action to the Board of Health, and include research and memos used exclusively by the County during internal, predecisional deliberations. Therefore, the records would ordinarily be exempt under 65 Pa. C.S. § 708(b)(10)(i)(A). However, despite the County’s assertions, the evidence shows that the records were presented to a quorum of the Board of Health for deliberation at a public meeting on March 18, 2026. Therefore, under 65 Pa. C.S. § 708(b)(10)(ii), they are public records. For

these reasons, the OOR finds that the County has not met its burden of proof. 65 P.S. § 67.708(a)(1).

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide to the Requester the responsive records which the Fracking Committee presented to the Board of Health at the March 18, 2026 Board of Health meeting. 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 Allegheny 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 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.³ 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: September 3, 2026

/s/ Josh Macel

APPEALS OFFICER
JOSH MACEL

Sent *via* Appeals Portal to: Ken Zapinski; Jessica Garafolo (AORO); John Cronin, Esq.

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