



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JAMES FAUNES AND	:	
ROSS FELLER CASEY, LLC,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2026-2831
	:	
PENNSYLVANIA DEPARTMENT OF	:	
TRANSPORTATION,	:	
Respondent	:	

On June 4, 2026, James Faunes, Esq. and Ross Feller Casey, LLC (collectively “Requester”) submitted a request (“Request”) to the Pennsylvania Department of Transportation (“Department” or “PennDOT”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...[The Department’s] entire investigation file, including but not limited to [1] reports, [2] statements, [3] photos and videos regarding the incident involving our client, ...[the Department’s] employee, Tregan Layton which occurred on May 3, 2026 at...[a specified address].

On June 23, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department partially denied the Request, arguing that the records responsive to the portion of the Request seeking reports, statements, photos, and videos are exempt from disclosure as criminal or noncriminal investigative records, 65 P.S. §§ 67.708(b)(16)-(17). The Department also argues that the responsive E-Payroll statements contain exempt personally identifiable

information, 65 P.S. § 67.708(b)(6), and exempt information about an individual’s medical status, 65 P.S. § 67.708(b)(5).

On July 14, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the partial denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Department to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On July 27, 2026, the Department submitted a position statement reiterating its grounds for the partial denial. In support, the Department submitted the attestation of its District Executive for Engineering District 8-0, Kevin Keefe (“Keefe Attestation”), which verifies the Department’s position statement, describes the search for records responsive to the Request and addresses the Department’s basis for redacting or withholding certain records located.

On September 2, 2026, in response to the OOR’s request for clarification, the Requester confirmed that the appeal is limited to the withheld records and does not include the redactions made to the responsive E-Payroll statements.

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth 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 Department 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-

¹ The Requester granted the OOR a thirty-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”)

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)).

On appeal, the Department argues that it properly withheld the records responsive to the portion of the Request seeking reports, statements, photos, and video because the records are related to a noncriminal investigation it conducted. *See* 65 P.S. § 67.708(b)(17). The Requester argues that the Department’s denial is overbroad, that “routine administrative records, workplace accident reports, or standard operational logs do not become exempt just because an agency later investigates an incident[,]” that records that fall into the exception to the exemption must be disclosed, and that the records should be disclosed with redactions.

Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “[c]omplaints submitted to an agency,” “[i]nvestigative materials, notes, correspondence and reports,” and “[a] record that, if disclosed, would ... [r]eveal the institution, progress or result of an agency investigation....” 65 P.S. §§ 67.708(b)(17)(i)-(ii), (vi)(A). For this exemption to apply, an agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *See Pa. Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination, or probe must be “conducted as part of an agency’s official duties.” *Id.* at 814. An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted factfinding and investigative powers.² *See Pa. Dep’t of Pub. Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would “craft a gaping exemption under which any governmental information-gathering could be

² Here, it is undisputed that the Department has the authority to investigate employee conduct or workplace injuries.

shielded from disclosure.” *Id.* at 259. However, the investigation must surpass the agency’s routine performance of its duties, and the agency cannot rely merely on broad statements that an investigation occurred to satisfy its burden to prove the applicability of the exemption.³

In support of the Department’s position, the Keefe Attestation explains that “[w]hen an incident occurs involving a Department employee, whether injurious or not, the Department investigates the incident by taking witness statements and photographs[,] which, then “help the Department to determine a course of action in response to the event.” *See* Keefe Attestation, ¶¶ 10-12.⁴ The Keefe Attestation describes the withheld records as related to an “incident at a Department salt stockpile involving an injury to a Department employee” and “include investigation interviews with witnesses, internal email communications, and photographs” related to the incident. *See id.*, ¶¶ 7-8. Additionally, the Keefe Attestation states that “investigation in this case involves the conduct of an agency employee and a reported injury by that employee[, which]...may have resulted from inappropriate conduct or another issue at the...salt stockpile”⁵ and, as such, the “the Department is conducting a searching inquiry into how the injury occurred and what steps can potentially be taken in the future to avoid other such injuries.” *Id.*, ¶¶ 14-15. Further, the Keefe Attestation confirms that releasing the withheld records “could not only impede

³ *Anand v. Commonwealth*, 329 A.3d 1, 18 (Pa. Commw. Ct. 2024) (citing *Pennsylvania Public Utility Commission v. Friedman*, 293 A.3d 803, 828 (Pa. Commw. Ct. 2023)); *see also Pa. Dep’t of Labor & Indus. v. Darlington*, 234 A.3d 865, 873-76 (Pa. Commw. Ct. 2020).

⁴ Under the RTKL, a sworn affidavit or statement made under the 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); *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

⁵ This portion of the Department’s evidence clearly demonstrates that its investigation is not merely a routine investigation of the salt stockpile, like the routine field inspection of the agency’s boiler in *Darlington*. 234 A.3d 865. Here, the investigation was triggered by a workplace injury that “may have resulted from inappropriate conduct or another issue at the...salt stockpile.” *See* Keefe Attestation, ¶ 14. Thus, the Department has demonstrated that the instant matter surpasses its routine performance of its duties. *See e.g. Ricci v. Pa. Dep’t of Labor and Indus.*, OOR Dkt. AP 2023-0062, 2023 PA O.O.R.D. LEXIS 238.

the status of ongoing investigations surrounding this situation but also could incumber future investigations into matters of workplace safety and the enforcement of workplace rules.” *Id.*, ¶ 16. Finally, there is nothing in the records to show any of the withheld records fall within the exception to the exemption set forth in Section 708(b)(17)(vi)(A). *See* 65 P.S. § 67.708(b)(17)(vi)(A). Accordingly, based on the evidence provided, the Department demonstrated that it properly withheld the responsive records. *See* 65 P.S. § 67.708(b)(17); *see also, e.g., Schifano v. Pa. Office of Admin.*, OOR Dkt. AP 2021-1986, 2021 PA O.O.R.D. LEXIS 2227; *Falin v. Montgomery County Dist. Atty’s Off.*, OOR Dkt. AP 2026-2130, 2026 PA O.O.R.D. LEXIS 2571.

Furthermore, because the Department demonstrated that the records are exempt under Section 708(b)(17) of the RTKL, the records do not constitute “public records” that are subject to the redaction provisions in 65 P.S. § 67.706. *See Castillo v. Pa. State Police*, 310 A.3d 831 (Pa. Commw. Ct. 2024) (holding that an agency is not required to redact a record if the record falls within an exemption under Section 708(b)).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Department 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 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.⁶ All documents or communications following the

⁶ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

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 10, 2026

/s/ Erika Similo

ERIKA SIMILO
APPEALS OFFICER

Sent via portal to: James Faunes, Esq.
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