

[illegible]

1

text message, letter, or memorandum) prepared, sent, received, or maintained by any member of the [] Office, with or between the [] Office and each of the following entities and individuals:

1. The Pennsylvania Office of Attorney General (“OAG”), including any attorney, agent, employee, or representative thereof;
2. The ... DEP ..., including any bureau, division, office, regional office, or employee thereof, including but not limited to all records relating to the March 6, 2025 Order issued to Sunoco Pipeline L.P. and Energy Transfer, LLC;
3. The Pennsylvania Office of General Counsel (“OGC”), including any attorney, employee, or agent thereof;
4. Upper Makefield Township, including its Board of Supervisors, any individual Supervisor or Commissioner, all Township officers, employees, attorneys, agents, contractors, and representatives, acting in any capacity;
5. Pennsylvania State Senator Frank Santarsiero, and any member of his staff, office, or agents;
6. Pennsylvania State Senator Caroline Comitta, and any member of her staff, office, or agents;
7. Pennsylvania State Senator Katie Muth, and any member of her staff, office, or agents;
8. Pennsylvania State Representative Perry Warren, and any member of his staff, office, or agents;
9. The law firm of Berger Montague, P.C., including any partner, associate, employee, or agent thereof;
10. The Delaware Riverkeeper Network, including its Delaware Riverkeeper, Maya van Rossum, and any employee, officer, agent, or representative thereof;
11. The Clean Streams Foundation, including any officer, director, employee, agent, or representative thereof;
12. Food and Water Watch, including Ginny Kerslake and any other employee, officer, agent, or representative thereof;
13. Sunoco Pipeline L.P., including any officer, director, employee, agent, counsel, or representative thereof;

14. Energy Transfer, LLC, including any officer, director, employee, agent, counsel, or representative thereof;
15. Center for Coalfield Justice, including any officer, director, employee, agent, or representative thereof;
16. Any Media relating to Twin Oaks, including but not limited to communications with the following reporters, journalists, and news outlets, and any employee, agent, or representative thereof:
 - a. Tom Sofield, and any outlet with which he is or has been affiliated;
 - b. Frank Kummer, and any outlet with which he is or has been affiliated;
 - c. Emily Neil, and any outlet with which they are or have been affiliated;
 - d. WHYY, including any reporter, editor, producer, or other employee or agent thereof;
 - e. The Philadelphia Inquirer, including any reporter, editor, producer, or other employee or agent thereof;
 - f. Spotlight PA, including any reporter, editor, producer, or other employee or agent thereof;
 - g. NewtownPANow, including any reporter, editor, producer, or other employee or agent thereof; and
 - h. LevittownNow, including any reporter, editor, producer, or other employee or agent thereof;

This category includes, without limitation, all press releases, statements, talking points, background materials, interview requests, responses to media inquiries, and any other Records prepared for, transmitted to, or received from any Media contact, relating to Twin Oaks; and

17. All Records within the Date Range reflecting, describing, or relating to the use of Artificial Intelligence [“AI”] by any member of the [] Office in connection with Twin Oaks, including but not limited to: (a) any prompts, queries, or inputs submitted to any AI tool or platform relating to Twin Oaks; (b) any outputs, responses, summaries, drafts, analyses, or other content generated by any AI tool or platform relating to Twin Oaks; (c) any communications regarding the use or proposed use of AI in connection with Twin Oaks; (d) any policies, guidance, directives, or approvals governing or authorizing the use of AI by [the] Office personnel in connection with Twin Oaks or environmental enforcement matters generally; and (e) any contracts, agreements, or licenses with any AI tool or platform provider that were used or accessed in connection with Twin Oaks.

This Request encompasses all such Records within the Date Range without further limitation, and includes all drafts, attachments, enclosures, and documents incorporated by reference.

If any documents are redacted or withheld for any reason, the recipient needs to provide a privilege log with the date/time of the record, the senders and recipients, the general subject of the communication, and the privileges asserted.

Requester Appeal, pp. 11-13 (emphasis in original) (internal footnotes added).

On May 21, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Office partially granted the Request (“Final Response”),³ providing thirty-eight pages of responsive records. The Office also partially denied the Request, asserting that additional responsive records, and portions of the disclosed records, are exempt from public disclosure under 65 P.S. §§ 67.708(b)(6)(i)(A), (b)(10)(i)(A) or the attorney-client and attorney-work product privileges.

On June 10, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the partial denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Office to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

Between June 17 to 29, 2026, multiple submissions were made by the parties and the OOR regarding the Office’s and the Requester’s separate requests to extend the appeal submission period, which were granted by the OOR.

On July 10, 2026, the Office disclosed 74 pages of previously withheld records, which were partially redacted under 65 P.S. § 67.708(b)(6)(i)(A). The Office also submitted a Privilege Log, indicating, in part, that two records were also withheld under 65 P.S. § 67.708(b)(7) and/or

³ The Final Response was jointly issued by the OGC, which received an almost identical RTKL request on April 14, 2026 from the Requester. A separate appeal pertaining to the OGC’s portion of the Final Response is docketed at *Haverstick v. Pa. Off. of General Counsel*, OOR Dkt. AP 2026-2277. Therefore, none of the determinations made in this Final Determination pertain to that separate RTKL request or the OGC’s responses thereto.

the executive and chief executive privileges. In addition, the Office submitted a list of the senders/recipients of the withheld records, which identified their agency titles (“Personnel List”), and the attestation of Marc Eisenstein (“Eisenstein Attestation I”), Office Agency Open Records Officer (“AORO”), which reiterated the Office’s grounds for denial and further indicated, in part, that “[o]ne record contains a site map of an infrastructure facility[.]” and that “[c]ertain records were generated by or submitted to agencies under the jurisdiction of the Office[.]” which are “records of investigations undertaken under the statutory authority of those agencies[.]”⁴

That same day, the Requester submitted a position statement, arguing that the Office failed to prove that it was permitted to withhold any responsive records under the raised exemptions and privileges, and that said records are subject to the redaction provisions of 65 P.S. § 67.706.⁵

On July 24, 2026, the OOR directed the Office to submit supplemental evidence related to the raised exemptions and in support of the 65 P.S. §§ 67.708(b)(3), (b)(16) or (b)(17) exemptions, if records were withheld under those grounds. The OOR also directed the Requester to clarify whether he was challenging any of the redactions made to the disclosed records.

In response on July 27, 2026, the Requester asserted that he is “is not challenging any of the redactions based on ‘personal identification information such as personal email addresses,

⁴ The Privilege Log identifies the 145 withheld responsive records by Control Number, senders/recipients, date/time, and file type, and it also provides a brief description of those records and the Office’s basis for withholding such. The Eisenstein Attestation I verifies that the Privilege Log “truly and accurately reflects the nature of the withheld records.” *Id.* at ¶ 15.

⁵ Contrary to the Requester’s additional assertions, both an attestation and a Privilege Log were produced by the Office on appeal. Moreover, although the Request sought a privilege log reflecting any redacted or withheld records, the Office was not required to provide evidence in support of its grounds for denial at the response stage of the RTKL process. See 65 P.S. §§ 67.901, 903; see also *Levin v. Pa. Dep’t of Educ.*, OOR Dkt. AP 2023-2588, 2025 PA O.O.R.D. LEXIS 1017, *19 (explaining that “[t]he language in Section 903 does not include a requirement that the agency link a basis for denial with a specific record”).

telephone numbers, personal financial information, or similar personal identifying information.’ So far as Requester understands, redactions were only made on those grounds.”^{6,7}

On August 3, 2026, after being provided additional time by the OOR, the Office submitted the second attestation of Mr. Eisenstein (“Eisenstein Attestation II”) in response to the OOR’s inquiry.⁸

LEGAL ANALYSIS

The Office 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 Office 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)). Although the Requester asks the OOR to conduct *in camera* review of the withheld records, the OOR declines to do so because it has the necessary information and evidence before it to adjudicate this matter.

⁶ Because the Requester is not challenging any of the redactions made to the disclosed records under 65 P.S. § 67.708(b)(6)(i)(A), they will not be further addressed in this Final Determination. However, we note that the OOR has previously found that it was permissible for an agency to redact agency-issued email addresses and telephone numbers for individuals under 65 P.S. § 67.708(b)(6)(i)(A) where, as in the instant matter, the agency provided evidence that said information was not held out to the public. *See Shepherd v. Pa. Off. of the Governor*, OOR Dkt. AP 2025-1185, 2026 PA O.O.R.D. LEXIS 884, *9-10; *see also* Eisenstein Attestation I, ¶ 8.

⁷ The OOR extended the deadline for the issuance of the Final Determination in this matter on multiple occasions, ultimately to September 18, 2026, upon the agreement of the Requester. *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)”).

⁸ Both of Mr. Eisenstein’s attestations are made under the penalty of perjury.

1. The appeal is dismissed as moot in part

As previously noted, on July 10, 2026, the Office disclosed 74 pages of previously withheld records, which were partially redacted under 65 P.S. § 67.708(b)(6)(i)(A). Accordingly, as it pertains to the information provided during the pendency of this matter, 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. Certain records are privileged or exempt under 65 P.S. § 67.708(b)(10)(i)(A)

On appeal, the Office argues that it properly withheld 145 responsive records under 65 P.S. § 67.708(b)(10)(i)(A), the attorney-client privilege and/or the attorney-work product doctrine. The Requester contends that the Office failed to meet its burden of proof, and that to the extent the withheld records “only contain facts, ... those records do not constitute attorney-work product and should be produced.” July 10, 2026 Requester Position Statement, pp. 7-9.

Section 708(b)(10)(i)(A) of the RTKL exempts from 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 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). For this exemption to apply, three elements must be satisfied: 1) “[t]he records must ... be ‘internal’ to a governmental agency[;]” 2) the deliberations reflected must be predecisional, i.e., before a decision on an action; and 3) the contents must be deliberative in character, i.e., pertaining to proposed action. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011). 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).

For the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client. *See Bousamra v. Excelsa Health*, 210 A.3d 967, 983 (Pa. 2019) (internal citations omitted). “[A]fter an agency establishes the privilege was properly invoked under the first three prongs, the party challenging invocation of the privilege must prove waiver under the fourth prong.” *Off. of the Governor v. Davis*, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2015) (citations omitted). The attorney-client privilege protects only those disclosures necessary to obtain informed legal advice, where the disclosure might not have occurred absent the privilege, and where the client’s goal is to obtain legal advice. *See Joe v. Prison Health Services, Inc.*, 782 A.2d 24 (Pa. Commw. Ct. 2001).

The attorney-work product doctrine, on the other hand, prohibits disclosure “of the mental impressions of a party’s attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories.” Pa.R.C.P. 4003.3. It applies “regardless of whether the work product was prepared in anticipation of litigation.” *Bousamra*, 210 A.3d at 976. Work-product immunity is only waived by disclosure to an adversarial party or by disclosure “to third persons in circumstances in which there is a significant likelihood that an adversary or potential adversary in anticipated litigation will obtain it.” *Id.* at 978 (citation omitted).

Here, the Request expressly seeks various records regarding the release of petroleum products through a pipeline leak in Upper Makefield Township that is the subject of a March 6, 2025 Order issued by the DEP to Sunoco Pipeline L.P. and Energy Transfer, LLC, including all matters arising out of, related to, or connected with that release, including the investigation, remediation, monitoring, enforcement, and litigation associated therewith. *See Pa. Game Comm’n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (explaining that the OOR must consider uncontradicted statements contained in the appeal as evidence). The Office’s attestations, Privilege Log and Personnel List affirm that:

[] With respect to materials denoted in the [P]rivilege [L]og as containing internal, predecisional deliberations, the Office withheld records that include collaboration and consideration of matters within the executive branch of Commonwealth government. Such records reveal the thoughts and impressions of agency officials with respect to pending matters discussed between agency officials and employees within the [] Office or between the [] Office and other agencies [i.e., the DEP, the OGC, the Pennsylvania House of Representatives and/or the Pennsylvania State Senate].^[9] Such communications were not disclosed beyond the agencies.

[] With respect to materials denoted in the [P]rivilege [L]og as containing attorney-client or attorney work product privileged material, records reveal requests for or the provision of legal advice between client and counsel [i.e., the OGC, the Office and/or the DEP],^[10] and denote the legal issues or problems posed to or by counsel. As to each of the privileged communications, the communications were between attorney and client, or conveyed the thoughts and mental impression of counsel, and included no strangers to such communications. Neither the Office, agencies nor counsel has disclosed such communications beyond the Office or affiliated agencies, nor have any parties waived such privileges.

⁹ Records exchanged with another agency are considered “internal” to the agency for the purposes of the Section 708(b)(10)(i)(A) exemption, even communications with the Pennsylvania legislature, “as the legislature has chosen to define itself as a ‘legislative agency’” under the RTKL. *See Shepherd v. Pa. Off. of the Governor*, OOR Dkt. AP 2025-1626, 2025 PA O.O.R.D. LEXIS 2698, *15 (citing 65 P.S. § 67.102)).

¹⁰ The OGC provides legal representation to the Office and the Commonwealth agencies under the Governor’s jurisdiction, including the DEP. *See* <https://www.pa.gov/agencies/ogc/about-ogc-home/representation-and-services/agencies-served-by-ogc> (last visited Sept. 8, 2026).

Eisenstein Attestation I, ¶¶ 9-10 (internal footnotes added); *see also* Eisenstein Attestation II, ¶¶ 6-15.¹¹

The Office's Privilege Log and attestations further describe the withheld records as follows, which were circulated among personnel of the Office, the OGC and/or the DEP for deliberation, review, consideration and comment: (1) memorandum and records detailing cabinet officials' and/or other agency officials' and employees' thoughts and impressions conveying status of and potential strategies for implementing administration objectives;¹² (2) draft press releases, communications regarding such and/or discussions concerning press inquiries and press release strategies; (3) communications regarding proposed social media strategy; (4) draft responses to press inquiries and edits;¹³ (5) draft responses to separate inquiries from a Member of Congress and a federal official; (6) draft invitations; (7) draft orders and communications regarding such; (8) draft advisories; (9) communications discussing an upcoming webinar and the proposed press strategy for such; and (10) the status of a pending public safety matter. *See* Privilege Log, pp. 6-13; *see also* Eisenstein Attestation I, ¶ 9.

The Office's attestations also explain that the records at Control Nos. REL0000279429, REL0000279420, REL0000290815, REL0000281746, REL0000281651, REL0000281648, REL0000468274 and REL0000468274.0002, which include the aforementioned draft invitations,

¹¹ Under the RTKL, a 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. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Office has acted in bad faith, "... the averments in the [attestations] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

¹² *See Shepherd v. Pa. Off. of the Governor*, OOR Dkt. AP 2025-1749, 2025 PA O.O.R.D. LEXIS 1766, *10-11 (explaining that communications concerning legislative strategy, a matter in which the Office is uniquely involved, as the executive agency representing the Governor of Pennsylvania, and communications concerning strategy regarding planning press events may be exempt under Section 708(b)(10)(i)(A) of the RTKL).

¹³ The OOR has consistently held that purely internal discussions weighing how to respond to press inquiries may be deliberative in character because they discuss the best way to issue a response to an outside person or media figure. *See, e.g., Shepherd v. Pa. Off. of the Governor*, OOR Dkt. AP 2023-0861, 2023 PA O.O.R.D. LEXIS 1357.

“consist of a draft response to a pending legislative inquiry regarding DEP program activities, and DEP officials’ thoughts and impressions regarding the content and strategy of such a response, as well as related strategy regarding legislative outreach and communications strategy.” Eisenstein Attestation II, ¶ 8. In addition, the attestations reflect that “REL0000664775, REL0000664924 REL0000665175 and REL0000665175.0001 consist[] of a draft press release regarding DEP’s response to a public safety matter, and DEP officials’ thoughts on elements of importance and strategy involved in disseminating such a press release.” *Id.* at ¶ 9.

In addition, the Office’s attestations affirm that:

[] REL0000285006, REL0000548568 and REL0000284998 consist of status reports circulated among DEP and Office ... officials detailing officials’ thoughts and strategies regarding DEP activities in responding to a public safety matter, as well as official’s questions, concerns and responses to such concerns regarding DEP’s activities and implementation of DEP’s program elements.

[] REL0000470301 is a communication between DEP and [] Office officials in which such officials disseminated and discussed a proposed draft letter regarding possible DEP and federal governmental activities. Such communications include DEP and [] Office officials’ thoughts regarding the accuracy, viability and desirability of such letter.

[] REL0000470303 includes discussion between DEP counsel and client officials regarding the legal viability of the letter referenced in REL0000470301, as well as client’s suggestions to ensure accuracy.

[] REL0000666473 is a communication between DEP and [] Office officials regarding DEP’s proposed activities and responses to a public safety matter within the programmatic jurisdiction of DEP. REL0000666473 includes officials’ thoughts, recommendations and analysis regarding DEPs’ developing strategies, and DEP officials’ mental impressions and understanding of the current state of the programmatic response.

[] REL0000666416.0001 is a proposed communication drafted by DEP officials for internal review by DEP and Office ... employees and officials, in anticipation of potentially providing such communication to stakeholders. This proposal was circulated among DEP and Office ... Officials via REL0000666416, and reflects officials’ and employees’ thoughts regarding DEP strategy and program implementation.

[] With respect to record REL0000620102.0001 is an organizational assessment drafted by DEP Chief Counsel which contains recommendations, performance reviews and criticisms of employees under the supervision of the Chief Counsel. The record also reflects the Chief Counsel's thoughts, impressions and strategies for the development of the Office under his direction and supervision.

Eisenstein Attestation II, ¶¶ 11-16.

The Office's attestations further affirm that 52 of the withheld records¹⁴ also reveal the sought after and/or provided legal advice, strategy, mental impressions and thought processes of OGC attorneys. *See* Privilege Log, pp. 7-13; Eisenstein Attestation I, ¶ 10; Eisenstein Attestation II, ¶¶ 6-8, 16. The attestations also reflect that "[n]one of the responsive material within the withheld records contain any severable factual information." Eisenstein Attestation II, ¶ 7. Instead, "it consists of investigative materials, or is intrinsically intertwined with officials' thoughts, considerations and legal questions or analysis and is not separable from such deliberations or legal advice." *Id.*

Contrary to the Requester's arguments, the evidence presented by the Office is sufficient to establish that the above-mentioned withheld responsive records preceded final decisions, were maintained internally, do not contain any factual material that is severable from the context of the records, and that they reflect the Office's deliberations or deliberative process. Therefore, the

¹⁴ Those records include Control Nos. REL0000665440.0001, REL0000285791, REL0000292118, REL0000285839, REL0000607752, REL0000283789, REL0000283811, REL0000283853, REL0000283864, REL0000281090, REL0000263585, REL0000254755, REL0000250603, REL0000250608, REL0000281339, REL0000291168, REL0000606615, REL0000263874, REL0000263970, REL0000665440, REL0000665462, REL0000666500, REL0000502116, REL0000501910, REL0000501964, REL0000501466, REL0000501483, REL0000501492, REL0000501502, REL0000504594, REL0000501521, REL0000488337, REL0000488349, REL0000488368, REL0000494724, REL0000488402, REL0000270535, REL0000270591, REL0000420321, REL0000420327, REL0000281648, REL0000281651, REL0000281746, REL0000256086, REL0000253203, REL0000253238, REL0000285599, REL0000283845, REL0000470301, REL0000470303, REL0000281239, and REL0000620102.0001. *See* Privilege Log, pp. 7-13. While REL0000665440 and REL0000665462 did not actually involve counsel, the evidence presented by the Office affirms that those records disseminated counsels' mental impressions and thought processes. *See* Privilege Log, p. 9; *see also Erlich v. City of Phila. Off. of Prop. Assessment*, OOR Dkt. 2025-0369, 2025 PA O.O.R.D. LEXIS 1263, *7 (citing *King Drug Co. of Florence v. Cephalon, Inc.*, 2013 U.S. Dist. LEXIS 129472 (E.D. Pa. 2013)) (explaining that communications shared by non-attorney employees may be privileged if they were made to relay information requested by attorneys, or to disseminate legal advice given by those attorneys so that employees of a corporation or government agency act appropriately).

Office has met its burden of proving, by a preponderance of the evidence, that those records are exempt from disclosure under 65 P.S. § 67.708(b)(10)(i)(A). In addition, the Office's attestations affirm that certain records are records of investigations undertaken by agencies under the jurisdiction of the Office, such as the DEP, and include a site map of infrastructure facility, the disclosure of which would jeopardize the security of that site and surrounding areas. *See* Eisenstein Attestation I, ¶¶ 11-12; Eisenstein Attestation II, ¶ 6. Moreover, the disclosed records and information that is publicly accessible via the DEP's website reflect that the DEP received complaints relating to the Sunoco jet fuel pipeline leak in Upper Makefield Township and investigated that incident.¹⁵ Therefore, to the extent those investigative records and site map were used in the Office's predecisional deliberations, there are also exempt under 65 P.S. 67.708(b)(10)(i)(A).

Additionally, there is no indication in the appeal record that the aforementioned 52 records that were withheld as privileged were for the purpose of committing a crime or tort, and no evidence has been presented by the Requester to demonstrate that waiver of the raised privileges occurred. Accordingly, based on the evidence presently before the OOR, the Office has also established that the portions of said records, which include the requests for legal advice or strategy, and convey counsels' mental impressions or thought processes, are protected from disclosure under the attorney-client privilege and/or the work product doctrine. *See* 65 P.S. § 67.305(a)(2). Therefore, despite the Requester's arguments, the Office was not required to produce redacted versions of the above-mentioned responsive records. *See Nase, supra; see also Heavens v. Pa. Dep't of Evntl. Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. Ct. 2013).

¹⁵ *See* <https://www.pa.gov/agencies/dep/dep-regions/southeast-regional-office/upper-makefield-pipeline#accordion-89de73df27-item-fa80749ecc> (last accessed Sept. 8, 2026).

However, the Office’s evidence is insufficient to establish that the record at Control No. REL0000501941, which consists of draft webpage edits and communications related to such that were circulated among Office and DEP personnel for review, consideration and comment and/or that highlight “an official’s thoughts regarding what elements of such updates are notable or important[,]” are deliberative in character under 65 P.S. § 67.708(b)(10)(i)(A). *See* Privilege Log, p. 13; Eisenstein Attestation II, ¶ 10. Instead, it appears that said record contains deliberations of daily administrative decision making, rather than deliberations of law or policymaking. *See Shepherd v. Pa. Off. of the Governor*, OOR Dkt. AP 2024-0101, 2024 PA. O.O.R.D. LEXIS 1425, *aff’d in part and reversed and remanded in part on other grounds*, No. 900 C.D. 2024, 2025 Pa. Commw. Unpub. LEXIS 277 (Pa. Commw. Ct., June 5, 2025).

Accordingly, we are constrained to find that Office has failed to establish that it was permitted to withhold REL0000501941 under 65 P.S. § 67.708(b)(10)(i)(A). Because the Office has not raised any alternative grounds for withholding that record, it must be disclosed to the Requester.¹⁶

3. Certain information is exempt under 65 P.S. § 67.708(b)(7)

The Office asserts that it properly withheld portions of Control No. REL0000620102.0001, under Section 708(b)(7) of the RTKL, which exempts from disclosure records relating to an agency employee, including, among other things, “[a] performance rating or review[;]” and “[w]ritten criticisms of an employee.” 65 P.S. §§ 67.708(b)(7)(ii),(vi). The provisions of this exemption only apply to the specific information and documents mentioned therein, and do not protect a broad

¹⁶ To the extent that personal identification information that is either expressly exempt under 65 P.S. § 67.708(b)(6)(i)(A) or protected by the constitutional right to privacy is contained within REL0000501941, it may be redacted by the Office.

class of generic “personnel records.” *See e.g., Adams v. Garnet Valley Sch. Dist.*, OOR Dkt. 2024-0183 (consolidated), 2024 PA O.O.R.D. LEXIS 476.

As previously noted, the Office’s attestations affirm that part of REL0000620102.0001, which is “an organizational assessment drafted by DEP Chief Counsel[,]” contains recommendations, performance reviews and criticisms of employees under the supervision of the Chief Counsel[.]” Eisenstein Attestation II, ¶ 16. Moreover, no evidence has been presented to contradict the Office’s attestations. Accordingly, the Office has also established by a preponderance of the evidence, that those portions of REL0000620102.0001 are expressly exempt under 65 P.S. 67.708(b)(7).¹⁷

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part and dismissed as moot in part**, and the Office is to provide the record at Control No. REL0000501941 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 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.¹⁸ 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>.

¹⁷ Based on these determinations, the OOR need not address any of the Office’s alternative grounds for withholding the responsive records that we have already found to be privileged or exempt under 65 P.S. §§ 67.708(b)(7) and (b)(10)(i)(A).

¹⁸ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: September 17, 2026

/s/ Megan Burns

MEGAN BURNS
APPEALS OFFICER

Sent via OOR Portal to: Matthew Haverstick, Esq.; Gregory McIntosh, Esq.; Marc Eisenstein, AORO; and Thomas P. Howell, Esq.