pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JIM MOLLICK,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-3254**
	:	
WORCESTER TOWNSHIP,	:	
Respondent	:	

FACTUAL BACKGROUND

On June 15, 2026, Jim Mollick ("Requester") submitted a request ("Request") to Worcester Township ("Township") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> 1. All emails sent from and/or received by the following email address during the time period from 1/1/26 through 1/31/26: ddemeno@worcestertwp.com, lbetz@worcestertwp.com, csteere@worcester.com.

On July 20, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Township partially granted the Request, providing over 1,200 responsive emails, and partially denied the Request, asserting that additional responsive emails are exempt under the attorney-client privilege and attorney work product, and exempt as employee records and noncriminal investigation records. 65 P.S. §§ 67.708(b)(7), (b)(17).

On August 10, 2026, the Requester appealed to the Office of Open Records ("OOR"), stating grounds for disclosure.[1] The OOR invited both parties to supplement the record and directed the Township to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On August 20, 2026, the Township submitted a position statement reiterating its grounds for denial. The Township claims that in addition to the previously cited exemptions, responsive emails are also exempt as donation records and property acquisition records. 65 P.S. §§ 67.708(b)(13), (b)(22). In support of its position, the Township submitted the affidavits of Daniel DeMeno ("DeMeno Affidavit"), the Township's Manager and Agency Open Records Officer ("AORO"), and Devin Ralph ("Ralph Affidavit"), the Township's Solicitor.

On August 20, 2026, the Requester provided rebuttal argument, asserting the Township's evidence was not sufficient to prove the remaining emails should be withheld.

On August 27, 2026, the OOR directed the Township to provide an exemption log pertaining to the withheld responsive records and an accompanying affidavit verifying the facts contained within the exemption log.

On September 2, 2026, the Township submitted an exemption log ("Log"), with the accompanying affidavits of Mr. DeMeno ("DeMeno Affidavit 2") and Attorney Ralph ("Ralph Affidavit 2"), providing additional detail on the accuracy of the Log's contents.

On September 8, 2026, the Requester provided a rebuttal statement in response to the Log and additional affidavits, asserting that the affidavits are conclusory and that the records should be

[1] The Requester granted the OOR a 30-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).").

redacted rather than withheld in their entirety. The Requester also seeks an *in camera* review of the withheld records.[2]

LEGAL ANALYSIS

The Township 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 Township 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)). Here, the Requester seeks an *in camera* review; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter. Therefore, the request for *in camera* review is hereby denied.

1. The Township has demonstrated that some of the withheld responsive emails are privileged

The Township asserts that identified as Emails 1-5, 7, 11-14, 16, 18-25, 28-40, 43-44, 46-56, 59-77 and 80 were withheld because they consist of privileged communications between Township officials and employees and their Solicitor. The RTKL's definition of privilege includes the attorney-work product doctrine and the attorney-client privilege, and the presumption that

[2] On September 18, 2026, the Requester made an additional submission that was not admitted into the record as it was untimely and cumulative. *See* 65 P.S. § 67.1102(b)(3)("In the absence of a regulation, policy or procedure…, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute").

records in the possession of agencies are public records does not apply to records that are privileged. *See* 65 P.S. §§ 67.102 and 305(a)(2).

In order 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. *Bousamra v. Excela Health,* 210 A.3d 967, 982-83 (Pa. 2019) (citing *Nationwide Mut. Ins. Co. v. Fleming,* 924 A.2d 1259, 1263-64 (Pa. Super. Ct. 2007), *aff'd* 992 A.2d 65 (2010)). "[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." *Office of the Governor v. Davis,* 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2014). An agency may not, however, rely on a bald assertion that the attorney-client privilege applies. *See Clement v. Berks County,* OOR Dkt. AP 2011-0110, 2011 PA O.O.R.D. LEXIS 139 ("Simply invoking the phrase 'attorney-client privilege' or 'legal advice' does not excuse the agency from the burden it must meet to withhold records"). "[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. 2014) (citations omitted).

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. "The purpose of the work product

doctrine is to protect the mental impressions and processes of an attorney acting on behalf of a client, regardless of whether the work product was prepared in anticipation of litigation." *Bousamra*, 210 A.3d 976 (internal citations omitted); *see also Heavens v. Pa. Dep't of Envtl. Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. Ct. 2013) ("[U]nder the RTKL the work-product doctrine protects a record from the presumption that the record is accessible by the public if an agency sets forth facts demonstrating that the privilege has been properly invoked"). While the attorney-client privilege is waived by voluntary disclosure, *Bousamra*, 210 A.3d at 978 (internal citation omitted), the work-product doctrine is not primarily concerned with confidentiality, as it is designed to provide protection against adversarial parties. *Id.* at 979 (internal citations and quotation omitted).

In support of its position, the Township submitted four affidavits and the Log, which describes the withheld emails; identifies the emails by number, date, record type and authors/recipients; and lists the Township's bases for withholding such. Attorney Ralph affirms he is a licensed attorney in Pennsylvania and is employed by Brant and Associates, LLC, the Solicitor appointed by the Township. Ralph Affidavit ¶ 1. Attorney Ralph also identifies special counsel, Laurie Fiore, Esquire and Jonathan Long, Esquire, that represent the Township and are included in these emails. *Id.* at ¶ 10, *See* Log. A total of 64 emails were withheld under the attorney-client privilege, which discuss a pending action within the Montgomery County Court of Common Pleas, *Worcester Township v. Cassel*, MCCP Docket No. 2023-02985; alleged allegations of the Sunshine Act; legal advice regarding a draft agreement with the Skippack Watershed Alliance; the land development projects known as the Reserve at Center Square and White Tail Farm; zoning hearing matters regarding three properties; and legal advice regarding RTK requests. *See* Log; Raph Affidavit, ¶ 7. These discussions were held outside the presence of strangers, for the purpose of securing legal opinion, advice and assistance in legal matters regarding the Township. Raph

Affidavit 2, ¶ 3. These emails also include mental impressions of the attorneys for the Township along with their conclusions, opinions, notes, summaries, and legal research and theories. *Id.* Attorney Ralph affirms that in his professional legal opinion, the attorney-client privilege applies to the withheld records. Ralph Affidavit, ¶ 9.

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). In the absence of any evidence that the Township has acted in bad faith or that additional responsive records exist, "the averments in [the affidavits] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. 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)). In the instant matter, the evidence presented affirms that the Township is the client of Brant and Associates, LLC, and it is not waived. Further, it is undisputed that Attorney McKenna, Attorney Ralph, Attorney Fiore, and Attorney Long are licensed to practice in Pennsylvania. Additionally, the Township's evidence shows that the withheld responsive Emails 1-5, 7, 11-14, 16, 18-25, 28-40, 43-44, 46-56, 59-65, 67-71, 74-77 and 80 were only exchanged between the solicitors, special counsel and Township employees. *See* Log; Ralph Affidavit, ¶ 10. Accordingly, the first two elements of the attorney-client privilege have been satisfied, and the Requester has not submitted any evidence to suggest that the privilege has been waived. Finally, the Township's evidence affirms that the emails were exchanged for the purpose of providing legal services and advice regarding various Township business. *See* Log; Ralph Affidavit, ¶ 7.

However, Emails 66, 72 and 73, which the Township asserts are protected under the attorney-client privilege and attorney work product and discuss legal strategy of pending litigation,

do not list an attorney as a sender or recipient of those emails. *See* Log. This inherently prohibits either the attorney-client privilege or the attorney work product doctrine to apply, as no further explanation is provided as to why these emails should be exempt from public access. As such, these emails must be provided to the Requester.

The Requester's additional arguments that the Log and supporting attestations lack sufficient detail to find that privilege applies to the remainder of the records must fail. General descriptions of the subject matter regarding the legal advice and strategies are provided within the Log itself and the affidavits, and the level of detail sought by the Requester would undermine the purpose of the privilege. Therefore, the Township has met its burden of proving that Emails 1-5, 7, 11-14, 16, 18-25, 28-40, 43-44, 46-56, 59-65, 67-71, 74-77 and 80 are protected by privilege and not subject to public access. However, Emails 66, 72 and 73 must be disclosed, as the Township's legal counsel are not senders or recipients of those communications.

2. The Township has demonstrated that it appropriately withheld records containing personal medical information

The Township also asserts that Email 78 contains protected health information. Section 708(b)(5) of the RTKL exempts from disclosure:

> [a] record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information.

65 P.S. § 67.708(b)(5). Attorney Ralph affirms that the information contained within this email is regarding an employee's confidential medical records and records of an individual's medical, psychiatric, or psychological history or disability status. Ralph Affidavit 2, ¶ 5. The email is

between the Employment Consultant for the Township and the Township Manager and discusses available workplace support services. *See* Log.

Accordingly, the Township has met its burden of proving that the withholding of Email 78 based upon protected health information was proper under Section 708(b)(5) and is exempt from disclosure. 65 P.S. §§ 67.708(b)(5).

3. A portion of the withheld responsive records are exempt employee records

The Township asserts that it withheld Emails 10, 78 and 79 and because they contain an employee's performance review and workplace support services program information. The Township also asserts that Emails 8 and 9 relate to employee records, but have previously been provided to the Requester. Section 708(b)(7) of the RTKL exempts from disclosure certain "records relating to an agency employee, [including ...] (ii) [a] performance rating or review" and "(v) [w]orkplace support services program information." 65 P.S. § 67.708(b)(7)(ii), (v).

The RTKL expressly provides that certain employment records are expressly exempt from disclosure, such as a performance evaluation or review, and workplace support services program information. *See* 65 P.S. § 67.708(b)(7)(ii) and (v); *see also Miller v. Allegheny Cnty. Health Dep't*, OOR Dkt. AP 2021-2506, 2021 PA O.O.R.D. LEXIS 2550 (the Department's attestations made under the penalty of perjury that responsive records were exempt under Section 708(b)(7) were sufficient to deny access).

Here, the Township provided sufficient evidence to demonstrate that Emails 78 and 79 involve the Township's Employment Consultant and provide workplace support services program information to an employee of the Township. *See* Log; Ralph Affidavit 2, ¶ 5. Accordingly, the Township has demonstrated that it properly withheld Emails 78 and 79 under Section 708(b)(7)(v) of the RTKL.

However, it is unclear whether Email 10 consists of an employment rating or review under Section 708(b)(7)(ii), or an employment contract that has already been provided to the Requester. The Log indicates that Email 8 is a copy of a signed, unredacted employment agreement that has already been provided to the Requester. *See* Log. Email 9 indicates that it also has been previously provided to the Requester but cites that it is duplicative of Email 10, which is cited as being exempt under Section 708(b)(7)(ii) as an employment rating. *Id*. This, on its face, is contradictory, as it indicates the record has already been disclosed but is also exempt from access. Further, Attorney Ralph does not clarify these emails in his affidavit, stating that "two emails that were previously identified as withheld under the sections related to employee records were duplicative of records previously provided to Requester…namely the employment contract for the Township Manager, Dan DeMeno." Ralph Affidavit 2, ¶ 6. Email 10 is not discussed whatsoever. *See generally* Ralph Attestation 2.

Because it is unclear whether all three of these emails contain an employee contract already provided to the Requester, or if Email 10 is not duplicative of Emails 8 or 9 and contains exempt information under Section 708(b)(7)(ii), we are constrained to find that the Township has failed to meet its burden to prohibit access to Emails 8-10 and those records must be provided to the Requester.

4. Some responsive records are noncriminal investigative records

The Township asserts that Emails 15, 41 and 42 are not subject to public access under Section 708(b)(17) of the RTKL, which exempts from disclosure records of an agency "relating to a noncriminal investigation," including "[i]nvestigative materials, notes, correspondence and reports…". 65 P.S. § 708(b)(17)(ii). In order 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 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; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *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 shielded from disclosure." *Id.* at 259.

Attorney Ralph affirms Emails 15, 41 and 42 contain details of a noncriminal investigation of a property within the Township for potential violations of the Township Code in relation to stormwater. Raph Affidavit 2, ¶ 7. They include photographs, notes of inspection, and discussion of the investigation. *See* Log. Mr. DeMeno affirms that in his role as the Township Manager and Zoning Officer, he is to investigate complaints related to alleged violations of the Township Code and that Emails 15, 41, and 42 relate to potential violations of the Township Code in relation to stormwater management. DeMeno Affidavit, ¶ 11.

Here, based on the evidence submitted, the Township has met its burden of proof that the responsive emails relate to a noncriminal investigation that the Township conducted and is not subject to public disclosure under the RTKL. *Moran v. Hampton Township*, OOR Dkt. AP 2023-0648, 2023 PA O.O.R.D. LEXIS 1120. Accordingly, the Township may withhold the responsive records under Section 708(b)(17) of the RTKL. 65 P.S. § 67.708(b)(17).

5. Some responsive records contain exempt donor information

The Township asserts that Email 6 and 17 are exempt pursuant to Section 708(b)(13) of the RTKL. This provision exempts from disclosure, "[r]ecords that would disclose the identity of

an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to provide remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor."

Attorney Ralph affirms that both emails would disclose the identity of individuals who donated to the Township's Open Space Fund. *See* Log; Ralph Affidavit, ¶ 9. Attorney Ralph also submitted a redacted list of donations to the Township Open Space Fund that was previously provided to the Requester under a separate RTK request. Ralph Affidavit, ¶ 10.

However, rather than redacting the exempt information from the email, the Township has withheld it in its entirety. Section 706 of the RTKL provides:

> If … a public record … contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, … and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted.

65 P.S. § 67. 706; *see also Silver*, 58 A.3d 125 (reasoning that, while the act of terminating an employee is available to the public, the entirety of the termination letter is not, and approving of the agency's provision of employment termination letter, redacted of everything but the actual employment termination language). Section 708(b)(13) only exempts information that would disclose donor identity, and it is unclear how an entire email would implicate the identity of a donor. 65 P.S. § 67.708(b)(13). The Township has not proven that the entirety of these emails comprises exempt donor identification; accordingly, it must produce a redacted copy of Emails 6 and 17. *See* 65 P.S. § 67.706.

6. The Township has not proven certain emails are exempt as contents of real estate evaluations

Here, the Township asserts that Emails 26-29, 45, and 57-58 are not subject to disclosure under Section 708(b)(22) of the RTKL. 65 P.S. § 67.708(b)(22). The plain language of Section 708(b)(22)(i) unambiguously exempts:

> The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency relative to the following:
>
> (A) The leasing, acquiring or disposing of real property or an interest in real property.
> (B) The purchase of public supplies or equipment included in the real estate transaction.
> (C) Construction projects.

65 P.S. § 67.708(b)(22)(i)(A). *see also Voit v. Concord Twp.*, OOR Dkt. AP 2021-1568, 2021 PA O.O.R.D. LEXIS 1642 (holding that records such as agreements of sale, easements, building reports, maintenance/cost estimates "...related to the purchase of [a farm]" are exempt under (b)(22) where the agency has not made a decision to acquire the farm); *Hooper & King of Prussia Historical Society v. Upper Merion Twp.*, OOR Dkt. AP 2022- 0045, 2022 PA O.O.R.D. LEXIS 508 (holding that a facility condition assessment report relating to water damage and structural deficiencies is exempt under (b)(22) as an evaluation related to a construction project where no decision had been made to proceed with the project); *Baran v. Pa. Turnpike Comm'n*, OOR Dkt. AP 2013-0970, 2013 PA O.O.R.D. LEXIS 538 (holding that a noise study performed to evaluate engineering and environmental conditions related to a construction project is exempt under (b)(22) where no decision has been made to proceed with construction). However, the exemption "shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project." 65 P.S. § 67.708(b)(22)(ii).

Attorney Ralph affirms that Emails 26-29, 45, and 57-58 constitute the contents of evaluations made by the Township in relation to the potential acquisition and/or interest in that real property, but that no decisions have been made to acquire the subject properties to date. Ralph Affidavit 2, ¶ 8; *See* Log. While the Ralph Affidavit cites the exact language from Section 708(b)(22), it provides no detail regarding the property in question, the types of evaluations that were conducted, or how the contents of these emails reflect the contents of an evaluation. This conclusory language is insufficient to meet an agency's burden of proof. *See Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 659 (Pa. Commw. Ct. 2016) ("Affidavits that are conclusory or merely parrot the exemptions")(citing *Carey v. Dep't of Corrections*, 61 A.3d 367, 375-79 (Pa. Commw. Ct. 2013); (*Scolforo v. Off. of the Governor*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)("[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records."). Accordingly, the Township has failed to meet its burden of proving that Emails 26-29, 45, and 57-58 constitute the contents of evaluations made in relation to potential acquisition of real property. 65 P.S. § 67.708(b)(22)(i)(A).

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Township is required to provide Emails 8-10, 26-29, 45, 57-58, 66, 72-73, and Emails 6 and 17 with appropriate redactions pursuant to 65 P.S. § 67.708(b)(13) as described above 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 Montgomery 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 18, 2026

/s/ Julie Sodl

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APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Jim Mollick
Dan DeMeno, AORO
Devin Ralph, Esq.

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