pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
RYAN BRIGGS AND PHILADELPHIA INQUIRER,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-3468**
	:	
CITY OF PHILADELPHIA LAW DEPARTMENT,	:	
Respondent	:	

FACTUAL BACKGROUND

On June 24, 2026, Ryan Briggs and Philadelphia Inquirer (collectively "Requester") filed a request ("Request") with the City of Philadelphia Law Department ("City") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking "[a]ll records, including but not limited to communications, memos, meeting minutes and financial documents regarding both [C]ity employee Jazelle Jones and the Deferred Retirement Option Plan, aka DROP, generated between January 1 2024 and [the present]."

On July 1, 2026, the City invoked a thirty-day extension to respond, *see* 65 P.S. § 67.902(b), and on July 31, 2026, the Requester granted the City's request for an additional extension to August 10, 2026. On that date, the City provided some records, redacted of personal identification information, 65 P.S. § 67.708(b)(6)(i)(A), and withheld others, arguing that they are

internal, predecisional and deliberative. *See* 65 P.S. § 67.708(b)(10)(i)(A). On August 21, 2026, in response to the Requester's request, the City produced an exemption log.

On the same day, the Requester filed an appeal with the OOR, challenging the denial and stating grounds for disclosure. Specifically, the Requester states that he believes the City overapplied the exemption for internal, predecisional and deliberative records and notes that he sought records dating to 2024, but none were included.[1] The OOR invited both parties to supplement the record and directed the City to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On September 8, 2026, the City submitted a position statement, a verified exemption log and submitted a statement made under the penalty of unsworn falsification to authorities, 18 Pa.C.S. § 4904, by Margot Smith ("Smith Attestation"),[2] the Chief Deputy City Solicitor in the City Law Department's RTKL Unit. The City argues on appeal that some emails that were withheld are also protected by the attorney-client privilege, attorney work product doctrine and/or Rule 1.6 of the Rules of Professional Conduct. Pa.R.P.C. 1.6(a).

LEGAL ANALYSIS

The City 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

[1] The Requester does not challenge the City's redactions of personal identification information. Accordingly, he has waived any objections thereto. *See Pa. Dep't of Corr. v. Off. of Open Records*, 18 A.3d 429 (Pa. Commw. Ct. 2011). The exemption log submitted by the City on appeal reveals that the City also redacted a home address and a date of birth. While these are not expressly included in the RTKL's exemption for personal identification information, the Requester was provided an exemption log prior to filing the appeal that reflected the redaction of this information and he did not challenge the City's redactions. Accordingly, the Requester has waived any objection to the redaction of a home address and date of birth.

[2] Under the RTKL, an affidavit or statement made under 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).

City 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)).

1. The City has not proven that records are internal, predecisional and deliberative

The City argues that responsive records reflect its internal, predecisional deliberations. Section 708(b)(10)(i)(A) of the RTKL 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 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). In order 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).

To be deliberative in nature, a record must make recommendations or express opinions on legal or policy matters and cannot be purely factual in nature. *Kaplin*, 19 A.3d at 1214. The term "deliberation" is generally defined as "[t]he act of carefully considering issues and options before making a decision or taking some action ...." BLACK'S LAW DICTIONARY 492 (9th ed. 2009); *see also Heintzelman v. Pa. Dep't of Cmty. & Econ. Dev.*, OOR Dkt. AP 2014-0061, 2014 PA

O.O.R.D. LEXIS 254, *aff'd* No. 512 C.D. 2014, 2014 Pa. Commw. Unpub. LEXIS 644 (Pa. Commw. Ct. 2014). In addition, to prove that a record is exempt under this section, an agency must explain how the information withheld reflects or shows the deliberative process in which an agency engages during its decision-making. *See Twp. of Worcester v. Off. of Open Records*, 129 A.3d 44, 61 (Pa. Commw. Ct. 2016).

Here, the Smith Attestation states in conclusory fashion that the records are internal and contain predecisional deliberations. Smith Attestation, ¶ 17. The verified exemption log describes the email chains that were withheld on this basis:

- TAS.ME.00000009 – discusses the status of an employee in the City's internal system for the purpose of verifying benefits
- TAS.ME.00000075 and BIF.ME.00000363 - discusses a review of a Deferred Retirement Option Plan file for a City employee for the purpose of verifying benefits
- TAS.ME.00000022[3] - discusses the next steps for processing the Deferred Retirement Option Plan Distribution to the recipient

In *Shepherd v. Office of the Governor,* No. 900 C.D. 2024, 2025 Pa. Commw. Unpub. LEXIS 277 (June 5, 2025), the Commonwealth Court discussed *McGowan v. Pennsylvania Department of Environmental Protection,* 103 A.3d 374 (Pa. Commw. Ct. 2014):

> *McGowan* guides that not every internal agency communication involving a decision to be made or a question to be answered is subject to the predecisional deliberative exemption. Rather, it is apparent that the exemption protects those communications which reflect that an agency is deliberating, as in *McGowan*, a particular determination, ruling or policy.

The *Shepherd* Court found that the evidence submitted did not "set forth the type of fulsome discussion necessary to show that the records at issue are exempted as predecisional and deliberative." The *Shepherd* Court found that those documents reflecting discussions about

[3] The exemption log reflects that this record is partially exempt, but does not identify which exemption applies. However, the description of the record, together with the fact that TAS.ME.00000022.0 is listed separately in the log as being redacted of a home address, date of birth and a payroll and social security numbers, suggest that TAS.ME.00000022 was redacted on the basis of Section 708(b)(10)(i)(A).

reimbursements; an employee's resignation and the hiring of a new employee; the drafting of proposed employee separation letter; the acquisition of a new conferencing system; and whether certain employees were required to file statements of financial interests were not internal, predecisional deliberations. The *Shepherd* Court reasoned that the evidence does not show that "the Office was deliberating a particular determination, ruling or policy such that they should be exempted as predecisional."

As in *Shepherd*, that the emails contain discussions of the status of an employee, next steps for processing the distribution, and review of the Deferred Retirement Option Plan is not sufficient to establish that the City was deliberating a particular determination within the meaning of the exemption. Accordingly, the City has not met its burden of proof.[4] *See* 65 P.S. § 67.708(a)(1).

2. Attorney-client privilege and/or the attorney-work product doctrine

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. *See Bousamra v. Excela Health*, 210 A.3d 967, 983 (Pa. 2019) (internal citation omitted). When waiver is at issue, the burden of proof shifts to the requester. *See Bagwell v. Pa. Dep't of Educ.*, 103 A.3d 409, 420 (Pa. Commw. Ct. 2014). An agency may not rely on a bald assertion that the attorney-client privilege applies;

[4] However, as the Requester does not challenge the redaction of personal identification information or material protected by the constitutional right to privacy, any personal information may be redacted from the records.

instead, the agency must establish the first three prongs of the privilege for it to apply. *See*, *e.g.*, *Mezzacappa v. Northampton Cnty.*, OOR Dkt. AP 2022-2617, 2023 PA O.O.R.D. 240.

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 at 976 (*see also Heavens v. Pa. Dep't of Env't 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). 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 (internal quotation omitted).

In a related vein, Rule 1.6 of the Pennsylvania Rules of Professional Conduct prohibit the disclosure of records related to efforts to settle litigation. *See* Pa.R.P.C. 1.6. The Pennsylvania Supreme Court has sole jurisdiction over the practice of law which includes the conduct of litigation and efforts to settle litigation. *City of Pittsburgh v. Silver*, 50 A.3d 296, 300 (Pa. Commw. Ct. 2012). Further, in *Office of Open Records v. Center Township*, the Commonwealth Court clarified that:

> [O]ur Supreme Court's authority under Article V, Section 10(c) trump[s] the RTKL's requirement that the documents should be disclosed and that the OOR lack[s] subject matter jurisdiction to order disclosure.
>
> When its holding is understood in context, *Silver* stands for the limited proposition that the RTKL cannot mandate and the OOR cannot order the disclosure of settlement documents when that disclosure would contravene the ethics-based rule of confidentiality in Pa.R.P.C. 1.6.

95 A.3d 354, 360-61 (Pa. Commw. Ct. 2014).

Here, the Smith Attestation provides that the City withheld records that contain requests for and the provision of legal advice to and from City Law Department attorneys to City employees, without the presence of strangers. Smith Attestation, ¶ 18. The Attestation explains that the attorneys who represent the City are members in good standing of the Pennsylvania Bar. *Id.* Further, one email chain also contains information relating to settlement negotiations. *Id.*, ¶ 19. As evidence establishes that the records meet the elements of privilege and there is no evidence of waiver, the City has met its burden of proving that the records are privileged. *See* 65 P.S. § 67.305(a)(2).

3. No other records exist

The Requester argues that he sought records dating back to 2024, but none were included. However, the Smith Attestation describes in detail the searches conducted by the City for electronic correspondence, which included searching for records dating back to the beginning of 2024. Smith Attestation, ¶¶ 6-8. The City subsequently provided the records returned by this search to the Pensions Department and Jazelle Jones and asked them to provide any responsive records that had not been returned by the City's search thus far, such as text messages or any other non-email records. *Id.*, ¶ 9. Neither Ms. Jones nor the Pensions Department had any additional records, and all responsive, non-exempt, non-privileged public records were produced. *Id.*, ¶¶ 10, 20.

"The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request." *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (finding that in the absence of countervailing evidence establishing that the agency acted in bad faith or that the agency records exist, averments of nonexistence should be accepted as true."). Accordingly, the City has met its burden of proving that it is not withholding responsive records aside from those discussed above. *See Hodges*, 29 A.3d at 1192.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and **denied in part**, and the City is required to produce the records indicated above, redacted of any personal information, 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 Philadelphia 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 as per Section 1303 of the RTKL, 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any appeal and should not be named as a party.[5] 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 24, 2026

/s/ Blake Eilers
Blake Eilers, Esq.
Senior Appeals Officer

Delivered via e-file portal to: Ryan Briggs; Margot B. Smith, Esq,; Omar Rabady, Esq.

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