



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
HARRY GURAL,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2026-3875
	:	
EAST BUFFALO TOWNSHIP,	:	
Respondent	:	

FACTUAL BACKGROUND

On July 30, 2026, Harry Gural (“Requester”) submitted a request (“Request”) to East Buffalo Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

...[C]opies of all communications concerning Lots 135 and 136 of the Beagle Club Subdivision, also identified as [addresses omitted], sent, received, or created from December 1, 2025 through March 19, 2026, inclusive.

This [R]equest includes emails, text messages, letters, memoranda, written notes or summaries of oral communications, and all attachments.

This [R]equest covers communications sent or received by any [] Township official, employee, or representative concerning either lot, including members of the Board of Supervisors, members of the Planning Commission, the Township Manager, Township administrative staff, the Township Engineer, CKCOG¹ personnel acting for or communicating with the Township, and Township legal, zoning, planning, engineering, or other consultants.

¹ Central Keystone Council of Governments.

This includes internal communications and communications with CKCOG, the property owners, the developer and their representatives, neighboring property owners, or other members of the public.

This [R]equest includes responsive communications concerning Township business maintained on non-Township accounts or devices.

On August 6, 2026, the Township invoked a thirty-day extension to respond to the Request, 65 P.S. § 67.902(b). As the Requester did not receive a response from the Township by the expiration of the thirty-day extension, or by September 8, 2026,² the Request was deemed denied on that date. *See* 65 P.S. § 67.901.

On September 14, 2026, the Requester filed an appeal with the Office of Open Records (“OOR”), claiming the Request was deemed denied. 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 this appeal. 65 P.S. § 67.1101(c).

On September 16, 2026, the Borough issued an untimely response, partially granting the Request and indicating that responsive records were available on a thumb drive at the Township building. In a corresponding email, dated September 8, 2026, the Township explained a portion of the Request was denied, claiming a portion of the responsive records are not subject to disclosure pursuant to the attorney-client privilege, 65 P.S. §§ 67.102 (definition of privilege), 67.305(a)(2), 67.506(c)(2).³

On September 17, 2026, the Requester submitted correspondence, claiming the Township had not met its burden to prove the withheld records are privileged, and to the extent the records would be privileged, asserted that the records should be provided in redacted format.

² As the thirtieth day fell on a Saturday, September 5, 2026, and the Township was closed in observance of Labor Day on September 7, 2026, the Borough’s final response was due on September 8, 2026.

³ The Township’s final response and associated email correspondence regarding the final response was submitted by the Requester on September 17, 2026.

On September 24, 2026, the Township submitted a position statement, reiterating its basis for partial denial of the Request. In support of its position, the Township submitted two attestations made subject to the penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities, authored by Jolene Helwig (“Helwig Attestation”), the Township’s Agency Open Records Officer (“AORO”), and Jason T. Brudecki, Esq. (“Brudecki Attestation”), the Township’s Solicitor. Additionally, the Township submitted an Exemption Log (“Log”), outlining the withheld responsive records.⁴

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)).

1. The appeal as it relates to the records provided during the appeal is moot

During the pendency of the appeal, the Township provided responsive records to the Requester on a thumb drive. *See* Borough position statement p. 2. As such, the appeal as to the records provided to the Requester during the pendency of 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

⁴ The Log is verified to be true and correct. *See* Brudecki Attestation ¶ 7.

that a matter was settled by provision of records, and thus, “the controversy has been mooted”).

2. The Township demonstrated that the withheld responsive records are privileged

The RTKL excludes records subject to a privilege from the definition of “public record.” *See* 65 P.S. § 67.102. The RTKL defines “privilege” as “[t]he attorney-work-product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.” *Id.* 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. *Joe v. Prison Health Services, Inc.*, 782 A.2d 24 (Pa. Commw. Ct. 2001). 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. Excelsa Health*, 210 A.3d 967, 976 (Pa. 2019). “[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) (citing *id.*).

The Township asserts that the records withheld encompass communications between legal counsel and Township staff and either seek legal advice or provide legal opinions and, therefore, the responsive records are protected by the attorney-client privilege. *See* Township position statement pp. 4, 5; *see also* Log pp. 1-3; Brudecki Attestation; Helwig Attestation. Specifically,

the Log details that the communications involve access and permit issues, a foundation pour underway, a stop work order, a protective zoning appeal, letters to the Zoning Hearing Board, certification and determination of imminent peril and a request to resume construction. *See* Log pp. 1-3.

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). In the absence of any evidence that the Township has acted in bad faith, “the averments in the [attestations and Log] should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. 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)).

Based upon the review of the attestations and the descriptions contained within the Log, the Township has demonstrated that the withheld records are protected by the attorney-client privilege. The records consist of communications between the Township and its solicitors, containing or seeking legal advice related to zoning issues, including the involvement of the Zoning Hearing Board. The withheld records either seek or provide legal advice. Furthermore, the Township affirms that the withheld records have not been shared beyond the Township, no privileges have been waived and the Requester has not proven waiver of attorney-client privilege.⁵ As such, the responsive records were properly withheld under the attorney-client privilege and the records are not subject to public access. *See Pa. Health and Wellness, Inc. v. Pa. Dep’t of Human*

⁵ *See* Township position statement p. 5.

Resources, OOR Dkt. AP 2020-1398, 2021 PA O.O.R.D. LEXIS 644; *see also Shannon v. Pa. Dep't of General Services*, OOR Dkt. AP 2021-1375, 2021 PA O.O.R.D. LEXIS 1765.⁶

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Township 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 Union 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; however, 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.⁷ 65 P.S. § 67.1303. 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: October 9, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Harry Gural (via portal only)
Jason T. Brudecki, Esq. (via portal only)
Jolene D. Helwig (via portal only)

⁶ While the Requester asserts the responsive records should be released in redacted format, “where a record falls within an exemption under Section 708(b), it is not a public record as defined by the RTKL and an agency is not required to redact the record....” *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 481 (Pa. Commw. Ct. 2010). As the responsive records are not subject to access, the Township does not need to provide the records to the Requester in redacted format.

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).