pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JOHN PETERSEN,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-2148**
	:	
TREDYFFRIN TOWNSHIP,	:	
Respondent	:	

FACTUAL BACKGROUND

On April 21, 2026, John Petersen ("Requester") submitted a request ("Request") to Tredyffrin Township ("Township") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> [a]ny public record of commentary concerning the Home Rule Charter Committee since October 23, 2025. This would include commentary contained in the minutes of the Home Rule Charter Committee, commentary sent by residents via email or similar means, or direct commentary of supervisors. Note: specific request includes the commentary referenced by William Martin at tonight's supervisor's meeting (4/20/2026) of Supervisor Bhaskar's comments that up to the present, have never been referenced directly or when other public commentary was received, causing the vote at the March meeting to be postponed.

On May 22, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Township partially granted the Request, providing the Requester with responsive records regarding "commentary sent by residents via email or similar means." The Township

denied the remainder of the Request, arguing that "commentary contained in the minutes of the Home Rule Charter Committee" does not exist, and that the remainder of the responsive records are exempt as they relate to the drafts of a bill, resolution, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency, and consist of internal predecisional deliberations. 65 P.S. §§ 67.708(b)(9), (b)(10)(i)(A).

On June 1, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the Township's thirty-day extension notice and its denial, and 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 June 24, 2026, the Township submitted a position statement reiterating its grounds for partial denial. In support of its position, the Township submitted an affidavit authored by Gabrielle Ignarri ("Ignarri Affidavit"), the Township's the Agency Open Records Officer ("AORO").

On June 25, 2026, the OOR requested the Township submit an Exemption Log describing the records withheld and an attestation by a person with actual knowledge of the contents of the records.

On June 26, 2026, the Requester submitted a reply statement, asserting that the Township's basis for invoking a thirty-day extension was improper and not supported by the circumstances.

On June 30, 2026, the Township submitted a position statement, objecting to the necessity for an exemption log due to the Requester's focus on procedural arguments, but the Township also submitted an Exemption Log ("Log") with an affidavit authored by AORO Ignarri ("Ignarri Supplemental Affidavit") verifying the contents of the Log. On June 30, 2026, the Requester

[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).").

submitted reply statements to the Township's submissions, asserting there are inconsistencies within the Township's submissions.

On August 3, 2026, the OOR directed the Township to produce the withheld records for *in camera* review. On August 11, 2026, the Township submitted the unredacted records for *in camera* review. The Township also submitted correspondence, objecting to the Order requiring *in camera* review based upon the Requester's focus on procedural arguments. The Township also objects to the Requester's June 26, 2026 and June 30, 2026 submissions as being untimely.[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)).

1. The Township properly invoked a thirty-day extension notice

The Requester primarily asserts that the Township failed to properly invoke a thirty-day extension pursuant to 65 P.S. § 67.902. Under Section 902 of the RTKL, an agency is permitted

[2] The Requester's June 26, 2026 and June 30, 2026 submissions were considered for their limited probative value. However, on August 24, 2026, the Requester submitted correspondence describing a timeline clarification and discussion of the Township's use of a Board of Supervisors' email alias that was untimely submitted and did not involve the production of records relevant to this appeal. Therefore, the August 24, 2026 submission was not considered for adjudication of the appeal, and, therefore, will not be discussed in the Final Determination. *See* 65 P.S. § 67.1102(a)(2)((stating that "[t]he appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute").

to extend the time in which to respond to a request. 65 P.S. § 67.902. The reasons an agency may extend its response period are specifically set forth in Section 902(a) of the RTKL. 65 P.S. § 67.902(a). In this instance, AORO Ignarri sent a letter on April 28, 2026 to the Requester identifying one of the four reasons under Section 902 of the RTKL for which the Township was invoking a thirty-day extension of time to respond. The Township cited Section 902(a)(4) in its response, which permits an extension when a legal review is necessary, and Section 902(a)(7), which permits an extension when the extent or nature of the request precludes a response within the required time period. *See* 65 P.S. §§ 67.902(a)(4), (a)(7). Specifically, the April 28, 2026 stated:

> Please note that the records you have requested may require review by the Township Solicitor to confirm whether the records sought are public records. Section 902 (a)(4) of the RTKL provides that where a legal review is necessary to determine whether the record sought is a record subject to access under the RTKL, an extension of time is permitted under the RTKL to provide the requested documents. Additionally, Section 902(a)(7) of the Right-to-Know Law provides that the extent or nature of the request precludes a response within the required time period, and an extension of time is permitted under the RTKL to provide the requested documents.

See April 28, 2026 Notice of Extension, appeal p. 8.

Based upon the OOR's review of the appeal and the filings of the parties, the OOR concludes that the April 28, 2026 letter to the Requester properly invoked an extension under Section 902(b) of the RTKL for the Request.

The Requester makes various arguments to assert that the thirty-day extension was waived. He asserts that legal review is not necessary because agency records are presumed public. However, merely because a record is presumed public does not make it so, as evidenced by the numerous exemptions to public access recognized by the RTKL. The Requester also asserts that the Township should have been able to provide a response within the original five-day time period

and asserts the Township has shown inconsistencies in its submissions. The OOR concludes all these arguments are baseless. Upon receipt of the Request, the Township immediately began a search for records and sought legal review by their solicitor. *See* Ignarri Supplemental Affidavit. Nothing in the Township's responses has been outside the requirements of the RTKL. The content of the April 28, 2026 letter complied with Section 902(b) and was sufficient to put the Requester on notice that an extension was being invoked for the Request underlying this appeal.

The Township asserts that this procedural argument is the only issue on appeal, and that the Requester has not objected to the partial denial of the Request. The OOR disagrees. The Requester specifically states in his appeal statement that "the relief demanded are the balance of any denied public records under this request…color has to be provided to substantiate either how [these records] may be pre[]decisional or subject to attorney-client privilege; or something else that would be excepted from the [RTKL]." *See* Requester's Appeal Statement, p.4. Accordingly, the remaining issues on appeal will be addressed.

2. The Township has proven some records are privileged

The Township asserts that Emails identified by Bates Numbers 001-002, 003-004, 005-006, 007-025, and 280-284 are protected by the attorney client privilege. 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).

In the instant matter, the evidence presented affirms that Attorney Patrick McKenna is the solicitor for the Township, and it is undisputed that he is licensed to practice in Pennsylvania. Additionally, an *in camera* review of the Emails cited by the Township as being protected under the attorney-client privilege were transmitted solely between Township officials and staff and Attorney McKenna and staff in his Office. Emails identified by Bates Nos. 001-002, 003-004, and 005-006 provide legal services and assistance in a legal matter, namely, the drafting of a Home Rule Charter. Emails identified by Bates Nos. 280-284 are seeking legal advice and include the Solicitor's legal opinions and advice regarding the Township referendum. However, the Township grouped Bates Nos. 007-025 together, which consists of one email and the Draft Charter that was attached. While Bates No. 007 is a privileged communication in which Attorney McKenna provides legal services, 008-025 is a draft bill and will be addressed separately. Accordingly, Bates Nos. 001-002, 003-004, 005-006, 007, and 280-284 are privileged records.

3. The Township proved some records are predecisional deliberations

The Township claims that Email Bates No. 026-027, 028-029, 137, 138-160 and 161-279 are fully exempt under Section 708(b)(10)(i)(A) of the RTKL, which exempts from disclosure records of "internal, predecisional deliberations of an agency, its members, employees or officials," as well as deliberations between such individuals and another agency. 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." *Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011).

Additionally, Section 708(b)(10)(ii) of the RTKL provides that: "[a] record that is not otherwise exempt from access under [the RTKL] and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 [relating to open meetings] shall be a public record." 65 P.S. § 67.708(b)(10)(ii). The Sunshine Act defines "deliberation" as "[t]he discussion of agency business held for the purpose of making a decision." *See* 65 Pa. C.S. § 703. For a record of an agency otherwise exempt as an internal, predecisional deliberation to be subject to public disclosure, two requirements must be met: 1) it must be presented to a quorum; and 2) it must be presented for deliberation. *Hale v. Borough of Gettysburg*, OOR Dkt. AP 2016-0642, 2016 PA O.O.R.D. LEXIS 1128; *Bidlingmaier v Jenkintown Borough*, OOR Dkt. AP 2021-2605, 2022 PA O.O.R.D. LEXIS 144. Section 708(b)(10)(ii) may apply to a record submitted to the full quorum even if the record is not presented at a public meeting. *Esposito v. Pennridge Sch. Dist.*, OOR Dkt. AP 2019-1521, 2019 PA O.O.R.D. LEXIS 1532. The OOR has found that any record presented to

a quorum for the purpose of making a decision is subject to production. *Longo v. Phoenixville Area Sch. Dist.*, OOR Dkt. AP 2020-0504, 2020 PA O.O.R.D. LEXIS 1361.

In this instance, based on the OOR's *in camera* review, the records identified as Bates No. 028-029 and 138-139 are emails that are deliberative in nature, providing comments regarding the Draft Charter and seeking the Committee to review the drafts for further consideration and editing. However, these two emails were distributed to the entire Committee.[3] The OOR has previously held that the exception to the exemption at Section 708(b)(10) becomes operative when the record, intended for deliberation, is received and considered by a quorum and not merely when deliberation at a public meeting actually occurs. *See, e.g., Bidlingmaier v Jenkintown Borough*, OOR Dkt. AP 2021-2605, 2022 PA O.O.R.D. LEXIS 144 (proposal that a fire chief submitted to entire borough council for the purposes of deliberation must be provided pursuant to Section 708(b)(10)(ii)); *Esposito*, 2019 PA O.O.R.D. LEXIS 1532 (email to entire school board from superintendent asking if more interviews should be conducted qualifies for Section 708(b)(10)(ii) exception); *Longo*, 2020 PA O.O.R.D. LEXIS 1361 (the fact that deliberative emails were not presented at a public meeting was immaterial, and the agency bore the burden of showing that Section 708(b)(10)(ii) does not apply). Here, the two emails were sent to the entire Committee offering suggestions to changes of the Home Charter and asking for further deliberations. As such, the emails were provided to a quorum for deliberation and must be provided under Section 708(b)(10)(ii) of the RTKL. While the records may have been subject to 65 P.S. §

[3] Home Rule Charter Committees, or government study commissions, are comprised of elected officials who vote according to a quorum and are agencies subject to the Sunshine Act. *See* 53 Pa. C.S. §§ 2912(a); 2916(b); 65 Pa. C.S. § 703. The Township's Home Rule Charter Committee is comprised of 11 members, and all were included on these two emails. *See* https://www.tredyffrin.org/Boards-Commissions/Board-of-Supervisors/Charter-Review-Committee (last accessed on October 9, 2026).

67.708(b)(10)(i)(A), the evidence demonstrates that the Township cannot rely upon that exemption.[4]

The Township also claims that Bates No. 026-027 is exempt as internal deliberations. Based on the OOR's *in camera* review, we agree with the Township's description that the record identified as Bates No. 026-027 is an email chain in which a Township Supervisor and a Home Rule Charter Committee Member are each providing comments regarding the Draft Charter to other members of Township staff as well as Attorney McKenna, in response to an email by Attorney McKenna seeking additional review and comments on the Draft Charter. It is clear that the nature of the discussion is deliberative and made prior to the finalization of the Home Charter, and the discussion was internal to the Township. Therefore, the record identified as Bates No. 026-027 is exempt under Section 708(b)(10)(i)(A) of the RTKL.

The Township also claims that the records identified as Bates No. 137 and 161 are completely exempt under Section 708(b)(10)(i)(A) of the RTKL. Based on the OOR's *in camera* review, we disagree. Bates No. 137 is an email from the Township Manager to the entire Committee outlining the various documents attached to the email. There is nothing deliberative in nature about this email, beyond the attached documents, and provides merely an explanation of those documents. Bates No. 161 is similar, as it is an email from the Township Manager to the entire Board of Supervisors that includes the draft documents and describes the progress and scheduling plans of the Committee. Again, the email is merely an explanatory outline of what has been accomplished by the Committee and is not deliberative in nature.[5]

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[4] The Township's alternative arguments for exemption of these emails also do not apply. Emails discussing a draft policy do not constitute an actual draft of a statement of policy and are not exempt under Section 708(b)(9) of the RTKL. *McCormick v. Pennridge Sch. Dist.*, OOR Dkt. AP 2023-0499, 2023 PA O.O.R.D. LEXIS 1653, *43. Additionally, the emails are not for the purpose of securing either an opinion of law, legal services or assistance in a legal matter from the Township's solicitor. *Bousamra*, 210 A.3d at 982-83.

[5] It is noted that even if these emails were deliberative in nature, they would be subject to access under Section 708(b)(10)(ii) of the RTKL, as they were sent to a quorum of both the Home Charter Committee and the Board of

Accordingly, Bates Nos. 028-029, 137, 138-139, and 161 are subject to access. 65 P.S. §§ 67.708(b)(10)(i)(A), (b)(10)(ii), and Bates Nos. 026-027 is exempt as predecisional deliberations under the RTKL. 65 P.S. § 67.708(b)(10)(i)(A).

4. The Township proved some records are drafts of a bill

The Township asserts almost every withheld record is exempt pursuant to 65 P.S. § 67.708(b)(9); however, as set forth above, the majority of these records have already been addressed. Thus, only the records identified as Bates Nos. 008-025, 030-036, 040-160 and 162-279 will be addressed in regard to the claim of exemption under Section 708(b)(9).

Section 708(b)(9) of the RTKL exempts from disclosure "[t]he draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency." 65 P.S. § 67.708(b)(9). This exemption, however, covers only drafts that fall into the specific categories identified in the exemption. *See, e.g., Public Interest Legal Foundation v. City of Phila. Office of City Commissioners*, OOR Dkt. AP 2018-0256, 2018 PA O.O.R.D. LEXIS 562 (drafts of transcripts do not meet the categories identified by the exemption).

Additionally, the 708(b)(9) exemption only applies to the actual drafts of the specifically listed categories of documents, and it does not apply to other categories of records that relate to the drafts. For example, in *McCormick v. Pennridge Sch. Dist.*, OOR Dkt. AP 2023-0499, 2023 PA O.O.R.D. LEXIS 1653, the school district withheld an email in its entirety based on Section 708(b)(9), asserting that the email chain contained discussions of a draft copy of the student handbook. However, the OOR concluded that, "while a draft of the student handbook itself can be considered as a statement of School District policy as it pertains to its students and therefore exempt under Section 708(b)(9), *any emails discussing* that same policy do not constitute an actual

Supervisors. Nor do the alternative arguments provided by the Township apply, for the same reasons outlined in Footnote 4 of this Final Decision.

draft of a statement of policy, and as such are not exempt under Section 708(b)(9) of the RTKL." *McCormick*, 2023 PA O.O.R.D. LEXIS 1653, *43 (emphasis in original).

Based on the OOR's *in camera* review, we agree with the Township's description that the records identified as Bates Nos. 008-025, 030-036, 040-160 and 162-279 are all draft versions of the proposed Home Charter. Accordingly, Bates Nos. 008-025, 030-036, 040-160 and 162-279 are exempt under Section 708(b)(9) of the RTKL.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part and denied in part**, and the Township is required to provide records identified as Bates Nos. 028-029, 137, 138-139, and 161 within thirty days of the date of this order. 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 Chester 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.[6] 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 13, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

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

Sent via E-File Portal to: John Petersen
Gabrielle Ignarri, AORO
Patrick M. McKenna, Esq.