pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
BRYAN STINE,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-3822**
	:	
UPPER MOUNT BETHEL TOWNSHIP,	:	
Respondent	:	

FACTUAL BACKGROUND

On August 13, 2026,[1] Bryan Stine ("Requester") submitted a request ("Request") to Upper Mount Bethel Township ("Township") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

1. All correspondence (emails, letters, text messages, memoranda) between any current member of the [Township] Board of Supervisors — or any Township employee, solicitor, or engineer acting on the Township's behalf — and any representative, employee, attorney, consultant, or agent of Slate Belt Holdings LLC, Talen Energy Corporation, or River Pointe Logistics, dated from January 1, 2025 to the present.

2. All correspondence relating to the proposed Memorandum of Understanding between the Township, the [Township] Municipal Authority, and the data center developer, including drafts, redlines, and internal Township communications discussing its terms, dated from January 1, 2025 to the present.

[1] While the Request is dated August 12, 2026, the Request was received by the Township on August 13, 2026. *See also Stine v. Upper Mt Bethel Township*, OOR Dkt. AP 2026-3456, 2026 PA O.O.R.D. LEXIS 3365.

3. Copies of any non-disclosure agreements, confidentiality agreements, or similar agreements entered into by the Township, the Township Municipal Authority, or any individual Supervisor with Slate Belt Holdings LLC, Talen Energy Corporation, River Pointe Logistics, or Amazon/Amazon Web Services, from January 1, 2025 to the present.

4. Any Statements of Financial Interest filed by current Board of Supervisors members (John Bermingham, David Friedman, Cori Eckman, Jason Albert, and Jonathan Erler) for calendar years 2025 through 2026, to the extent such records are maintained by or available through the Township.

5. Meeting minutes, agendas, and any recordings (audio or video) of executive sessions in which the data center proposal, the MOU,[2] or the $50 million donation contingency was discussed, dated from January 1, 2025 to the present.

As the Requester did not receive the Township's response within five business days of the Request, the Requester filed an appeal with the Office of Open Records ("OOR") on September 10, 2026, claiming that the Request was deemed denied. *See* 65 P.S. § 67.901. 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 September 14, 2026, the Requester submitted a supplemental filing indicating that he received correspondence from the Township on that same date invoking a thirty-day extension pursuant to 65 P.S. § 902, which included records responsive to Item 4 of the Request. The Requester also submitted the Township's September 14, 2026 letter, which indicates no records responsive to Item 5 of the Request exist, and that additional time was needed to respond to Items 1, 2 and 3 of the Request. Lastly, the Requester attached the responsive records provided by the Township.[3]

[2] Memorandum of Understanding.

[3] The Requester sought clarification from the OOR as to whether the Township's issuance of the thirty-day extension letter was timely. On September 15, 2026, the OOR notified the parties that based upon the submissions in the appeal, the OOR was inclined to find that the thirty-day extension notice was issued untimely and the parties should be prepared to address the merits of the appeal. As the Request was received by the Township on August 13, 2026, the Township had five business days from August 13, 2026 to respond to the Request, or until August 20, 2026. Thus, the invocation of the thirty-day extension was not timely. 65 P.S. §§ 67.901, 67.902.

On September 22, 2026, the Township submitted additional responsive records and indicated that draft versions of the Memorandum of Understanding are exempt pursuant to 65 P.S. § 67.708(b)(9), and that correspondence between Talen Energy or Slate Belt Holding LLC and correspondence regarding the Memorandum of Understanding do not exist.

On September 23, 2026, the Requester submitted a second supplemental filing, arguing that deficiencies still remained in the Township's response.

On September 23, 2026, the OOR directed the Township to clarify its position, describe the search conducted for responsive records and provide a supporting attestation or affidavit.

On September 24, 2026, the Township submitted the affidavit authored by Cynthia E. Beck ("Beck Affidavit"), the Township's Agency Open Records Officer ("AORO"). AORO Beck indicates that records responsive to Item 2 are exempt as drafts of a bill and predecisional deliberations, that records responsive to Items 3 and 5 do not exist and that there are no additional records responsive to Items 1 and 2 of the Request. 65 P.S. §§ 67.708(b)(9); (b)(10).[4]

On September 24, 2026, the Requester submitted a third supplemental filing, asserting the Beck Affidavit is deficient.

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

[4] While the Township raises these exemptions for the first time on appeal, the Pennsylvania Supreme Court has previously held that in the context of RTKL appeals, agencies are permitted to raise new grounds on appeal to the OOR, regardless of whether they were raised in the agency's response. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013); *McClintock v. Coatesville Area Sch. Dist.*, 74 A.3d 378 (Pa. Commw. Ct. 2012). As a result, the Township was permitted to raise exemptions for the first time during the appeal.

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. Responsive records were provided on appeal

On appeal, the Township provided five Statements of Financial Interest responsive to Item 4 of the Request, as well as emails and text messages between Township Officials, two fire companies, and other individuals responsive to Items 1 and 2 of the Request. Therefore, the appeal is dismissed as moot as to the records provided. *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. The Township has not proven that withheld records are draft documents

The Township asserts that draft versions of the Memorandum of Understanding are exempt pursuant to 65 P.S. § 67.708(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 Section 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 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).

Here, the Township has failed to establish how drafts of a Memorandum of Understanding between the Township, the Township Municipal Authority, and a data center developer, are drafts "of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency." The Township cites this exemption without providing any additional argument or evidence to support how a Memorandum of Understanding fits within one of the specifically listed categories of documents provided in Section 708(b)(9) of the RTKL. Therefore, the Township has not met its burden of proving that the drafts of the Memorandum of Understanding are exempt pursuant to Section 708(b)(9) of the RTKL. *See* 65 P.S. § 67.708(a)(1).

3. The Township failed to prove the withheld records are internal, predecisional deliberations

The Township claims emails responsive to Item 2 of the Request 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).

Regarding the first element of the exemption, records are not "internal" under Section 708(b)(10) if they are sent to or from a party that is not an employee or official of an entity that is defined as an agency under the RTKL. *Bagwell v. Pennsylvania Office of the Governor*, OOR Dkt. AP 2013-1551, 2013 PA O.O.R.D. LEXIS 1227. Communication with a third party, even one with whom the agency has a contractual relationship, renders the exemption inapplicable to an item. *Chester Water Auth. v. Pa. Dep't of Comm. and Econ. Dev.*, 249 A.3d 1106, 1113 (Pa. 2021). AORO Beck indicates the withheld correspondence is between the Township, the Township Water Authority, and a data center developer discussing the proposed Memorandum of Understanding. Beck ¶ 5. The record clearly shows the communications were exchanged with a third-party data center developer, and there is no argument or evidence presented to suggest that these communications are internal to the Township. Therefore, the records withheld are not internal to the Township and cannot be withheld under Section 708(b)(10)(i)(A) of the RTKL. *Chester Water Auth.*, 249 A.3d at 1114. Because the Township has raised no other basis for withholding the communications, it has not met its burden of proof under the RTKL. *See* 65 P.S. § 67.708(a)(1); 65 P.S. § 67.305.

4. The Township failed to prove additional records do not exist

In response to a request for records, "an agency shall make a good faith effort to determine if … the agency has possession, custody or control of the identified record[.]" 65 P.S. § 67.901.

While the RTKL does not define the term "good faith effort," in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, the Commonwealth Court stated:

> As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession… When records are not in an agency's physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining all potentially responsive records, an agency has the duty to review the records and assess their public nature under … the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

AORO Beck attests that in her capacity as the AORO for the Township, she conducted a full and complete search of Township records. Beck Affidavit ¶ 2. She indicates that there are no records responsive to Items 3 and 5 of the Request, and that despite the Requester's belief that correspondence between the Township and Talen Energy or Slate Belt Holdings exist in response to Item 1 of the Request, AORO Beck maintains that her previous statement that they do not exist is true and correct based upon the search of Township records. *Id.* ¶ 4.

AORO Beck does not provide details regarding the search conducted in response to the Request, including the locations searched or inquiries with any custodians that may possess potentially responsive records, despite the OOR specifically directing the Township to do so. This conclusory response is not sufficient to meet the Township's burden of proof. 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). However, this affidavit must offer more than conclusory statements. *See Office of the Governor v. Scolforo*, 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"); *see also Marshall v. Neshaminy Sch. Dist.*, OOR Dkt. AP 2010-0015, 2010 PA O.O.R.D. LEXIS 67 (finding that an agency's conclusory affidavit was insufficient). Based upon the conclusory evidence provided, the Township failed to describe the good faith search conducted that would be reasonably calculated to identify the requested records or demonstrate that no additional records exist. *See Stookey v. Unionville-Chadds Ford Sch. Dist.*, OOR Dkt. AP 2018-2025, 2018 PA O.O.R.D. LEXIS 1359; *Pa. Dep't of Labor and Indust. v. Earley*, 126 A.3d 355 (Pa. Commw. Ct. 2015).

The Township is therefore directed to conduct a supplemental good faith search for as set forth in 65 P.S. § 67.901, and provide any records discovered as a result of that search. However, the OOR is mindful that an agency cannot produce records that do not exist within its "possession, custody or control" and, accordingly, is not ordering the creation of any records. 65 P.S. § 67.705.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **dismissed as moot in part**, and the Township is required to provide draft versions of the Memorandum of Understanding and the communications with the data center developer, as well as conduct a good faith search for additional records within thirty days. However, if additional records cannot be located as a result of its search, the Township shall provide a detailed affidavit or attestation to the Requester confirming same 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

Northampton 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.[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 OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: October 13, 2026

/s/ Julie Sodl

_____

APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Bryan Stine
Cynthia Beck, AORO

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