



FINAL DETERMINATION

IN THE MATTER OF :
 :
JOHN ORTH and NIGRELLI PLUMBING :
& EXCAVATION, :
Requester :
 :
v. : **Docket No: AP 2026-3380**
 :
CITY OF PITTSBURGH, :
Respondent :

FACTUAL BACKGROUND

On July 9, 2026,¹ John Orth and Nigrelli Plumbing & Excavation (collectively “Requester”) submitted a request (“Request”) to the City of Pittsburgh (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq*, seeking records related to a code ordinance violation received from the City regarding a specific address (“subject property”).² *See* Request, Items 1-16.

On August 14, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the City denied the Request in part, claiming that portions of the Request are insufficiently specific, 65 P.S. § 67.703, records responsive to portions of the Request do not exist and the City is not required to create new records, 65 P.S. § 67.705, and that responsive records

¹ The Request is dated July 8, 2026; however, it was received by the City on July 9, 2026.

² The Request also asks the City to “preserve all documents, electronically stored information, emails, photographs, inspection notes, permit records, internal communications, digital files, and any other materials relating to [address omitted], DOMI Case No. CF-DOMI-2026-023606, and Docket No. MJ-05228-NT-0000325-2026 while this matter remains pending.”

are protected by the attorney-client privilege and the attorney-work product doctrine.

On August 17, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.³ *See* Statement in Support of Appeal. 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 August 18, 2026, the Requester submitted a “Supplemental Submission” and “Attestation of John Orth,” reiterating his arguments raised in the Statement in Support of Appeal.

On August 27, 2026, the City submitted a position statement, arguing that the City provided records responsive to Items 1, 3, 4, 9, 11, 12, and 16, email communications responsive to Items 1, 3, 5, 9, 11, and 12, and, on appeal, provided records responsive to Items 2 and 7.⁴ The City further asserts that it does not possess “PA 811” related records for Item 14 and argues that Items 6, 8, 10, 13, and 15 are insufficiently specific, 65 P.S. § 67.703.⁵ Finally, the City “withheld Purview-collected email communications that were potentially responsive but are not subject to disclosure because the attorney-client privilege and attorney-work product doctrine apply.” In support of its position, the City submitted the attestation, made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, of Cade Richmond, Esq. (“Richmond Affidavit”), Open Records Officer (“ORO”).

On August 27, 2026, the Requester submitted a responsive position statement and a supplemental “Attestation of John Orth,” challenging the City’s position statement and identifying the “records remaining at issue.” The Requester, in summation, is seeking “public records showing

³ The Requester granted the OOR an extension of time to issue a final determination. *See* 65 P.S. § 67.1101(b)(1).

⁴ *See* “call record Items 2 and 7.”

⁵ The City further asserts that to the extent Items 6, 8, 10, 13, and 15 list specific types of records, the City has provided those records. *See* Position Statement, pp. 5-6.

how the City reached its determination, what evidence it relied upon, what other potentially responsible parties were considered or investigated, and whether records exist that support or contradict that determination.”⁶

On August 28, 2026, upon agreement by the Requester, the OOR extended the submission period to provide the City the opportunity to respond, among other things, to the Requester’s “Records Remaining at Issue.” *See* OOR correspondence.

On September 4, 2026, in response to the OOR’s inquiry, the City submitted the attestation, made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, of Brian Ralston (“Ralston Attestation”), the Inspection and utility Supervisor for the City of Pittsburgh Department of Mobility and Infrastructure (“DOMI”). The Ralston Attestation asserts that responsive records relate to a noncriminal investigation. 65 P.S. § 67.708(b)(17).

On September 4, 2026, the Requester submitted a supplemental position statement, arguing, among other things, that “Section 708(b)(17) should not be applied categorically to every record concerning the property” and that the “email-production and attorney-client privilege issues remain unresolved.”

On September 9, 2026, the Requester submitted an additional position statement.

On September 18, 2026, the City submitted a Privilege Log, identifying the record number, bates number, document date, document description, and the privilege claimed for the withheld responsive records.

On September 21, 2026, the Requester submitted a responsive position statement, addressing, among other things, the City’s Privilege Log.

⁶ As noted by both parties, there is pending litigation against Nigrelli Plumbing & Excavation, docketed at DOMI Case No. CF-DOMI-2026-023606.

On October 9, 2026, in response to an inquiry by the OOR, the City submitted the supplemental attestation, made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, of Cade Richmond, Esq. (“Richmond Supplemental Attestation”). The Richmond Supplemental Attestation affirms that the “call record is also responsive to Item 14.”

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 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). Based upon my review of the appeal and the evidence, I make the following conclusions of law and findings of fact:

- The appeal is moot in part. During the pendency of the appeal, the City provided a call log responsive to Items 2, 7, and 14 of the Request. *See* City’s August 27, 2026 submission (“call record Items 2 and 7”). As such, the appeal is dismissed as moot as it relates to the records provided on appeal *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”).
- The City proved that Sections 708(b)(17)(i), (ii), (vi)(A) apply to the records. For these sections to apply, the City must prove that it conducted a noncriminal investigation and that the records relates to such investigation and includes, complaints submitted to an agency, investigative materials, notes, correspondence and reports, and a record, that if disclosed, would reveal the institution, progress or result of an agency investigation. *See* 65 P.S. § 67.708(b)(17)(i), (ii), (vi)(A). Here,

the City submitted the Ralston Attestation,⁷ authored by the City’s Department of Mobility and Infrastructure Inspection and Utility Supervisor, who asserts that a PA One Call (“Pa 811”) initiated an investigation into the subject property. Ralston Attestation, ¶ 3. As part of this investigation, Mr. Ralston “researched the subject property, the facts of the PA 811 Call, visited the subject property (either [himself] or [a] deputized investigator), taken notes on the investigation, and collected records about the investigation.” *Id.* at ¶ 4. As such, Mr. Ralston’s file contains “notes about the investigation status, complaints responsive to the subject [R]equest, [and] notes related to work performed at the subject property” that the “disclosure of [which] would reveal the status of the Cit’s noncriminal agency investigation, as the investigative file contains all notes and records about the subject property, conditions about the property, and work performed by contractors.” *Id.* at ¶ 7. Based on this evidence, including the Request itself, which seeks records related to a “complete investigative file,” the City has proven, by a preponderance of the evidence, that it properly withheld records relating to a noncriminal investigation. 65 P.S. § 67.708(a)(1); *Campbell v. Pa. Interscholastic Ath. Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (emphasizing that the standard of proof before the OOR is tantamount to a “more likely than not” standard).

⁷ Under the RTKL, a sworn 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 or that additional records exist, “the averments in [the attestations] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’t 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)).

- The City’s Privilege Log identifies personally-identifiable information that the City withheld from disclosure.⁸ *See* Privilege Log. Section 708(b)(6) of the RTKL exempts from disclosure “[a] record containing all or part of a person’s Social Security number, driver’s license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential information number.” 65 P.S. § 67.708(b)(6)(i)(A). As such personal identification information is expressly exempt, the City may redact personal identification information from the responsive records. *See* 65 P.S. § 67.706.
- The City has met its burden of proving that responsive email records are exempt from access pursuant to the attorney-client privilege and 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. Excelsa Health*, 210 A.3d 967, 983 (Pa. 2019) (internal citations omitted). “[A]fter an agency establishes the privilege was properly invoked under the first three prongs, the party

⁸ The OOR notes that the City does not specifically identify what personally-identifiable information applies to the responsive records.

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 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 Richmond Attestation, authored by the City’s AORO and Assistant Solicitor, affirms that the City withheld emails “not subject to disclosure because the emails contained confidential communications between a City attorney and City employees or representatives about legal matters.” Richmond Attestation, ¶ 15. Further, the Privilege Log identifies those emails subject to the attorney-client privilege and the attorney-work product doctrine. *See* Privilege Log. The Requester has not proven any waiver of this privilege. Accordingly, the City has demonstrated that the requirements have been met pursuant to *Bousamra*, and these records are exempt from access pursuant to the attorney-client privilege and the attorney-work product doctrine.

- The City conducted a good faith search, provided responsive records, and demonstrated that additional responsive records do not exist in its possession, custody or control. 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[.]” While the RTKL does not define the term “good faith effort,” the Commonwealth Court stated, in part, that “the open records officer has a duty to advise all custodians of potentially responsive records about the request.” *See Uniontown Newspapers, Inc., v. Pa. Dep’t of Corr.*, 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. Here, the City circulated a memorandum requesting responsive records to the DOMI and the Department of Permits, Licenses, and Inspections (the "PLI"). Richmond Attestation, ¶¶ 3-4. The PLI records custodian confirmed no records were in PLI's possession and that all responsive records were held by the DOMI. *Id.* at ¶ 5. As a result of this search, the DOMI produced records responsive to the Request, including the complete "investigative file" responsive to the Request. *Id.* at ¶ 7. In addition, Eileen Hotham, a legal assistant, performed a Microsoft Purview email pull of records responsive to the Request, reviewed each email, and identified which emails were responsive to the Request. *Id.* at ¶¶ 11-13. Therefore, the City has met its burden by a preponderance of the evidence that it conducted a good faith search, provided responsive records, and demonstrated that additional responsive records are not in its possession, custody or control.

- The City also argues that the Request is insufficiently specific in part as it relates to Items 6, 8, 10, 13, and 15. 65 P.S. § 67.703. While noting that the City provided records responsive to these items (i.e., "all permits, permit applications, permit reviews, amendments, approvals, denials, inspection reports, restoration records, close-out documents, and other permit-related records"), *see* Position Statement, p. 6, we are satisfied that the City reasonably interpreted the Request, conducted a

good faith search, and demonstrated that additional records do not exist in its possession, custody or control. *See Spatz v. City of Reading*, OOR Dkt. AP 2013-0867, 2013 PA O.O.R.D. LEXIS 513 (an agency may interpret the meaning of a request but that interpretation must be reasonable). Because the City has demonstrated that it conducted a good faith search, reasonably interpreted the Request, and that no additional responsive records exist, the OOR need not address the City's alternative ground for denial under 65 P.S. § 67.703. *See Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927. Accordingly, for the reasons set forth in this paragraph, the OOR will not further address Section 703 of the RTKL.

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the City 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 Allegheny 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. 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.⁹ 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>.

⁹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: October 15, 2026

/s/ Lyle Hartranft

LYLE HARTRANFT, ESQ.
APPEALS OFFICER

Sent via e-file portal to: John Orth; Cade Richmond, Esq., AORO;