



FINAL DETERMINATION

IN THE MATTER OF	:
	:
LINN BUMPERS AND	:
BAKER BOTTS LLP,	:
Requester	:
	:
v.	:
	:
PHILADELPHIA INTERNATIONAL	:
AIRPORT,	:
Respondent	:

Docket No: AP 2026-1036

FACTUAL BACKGROUND

On February 17, 2026, Linn Bumpers, on behalf of Baker Botts LLP (collectively, “Requester”), submitted a request (“Request”) to the Philadelphia International Airport (“Airport”)¹ pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the following:

[Item] (1) Any and all data, reports, logs, lists, or other information which contain, reflect, analyze, discuss, or otherwise relate to any soil, sediment, groundwater, surface water, or other media sampling for per- and polyfluoroalkyl substances (PFAS) at or in connection with the...Airport.

[Item] (2) Any and all data, reports, logs, lists, or other information which relate in any way to uses, operations, spills, or discharges at...[the] Airport involving aqueous film-forming foam (AFFF), including any training performed with AFFF.

¹ The City of Philadelphia (“City”) Law Department (“Law Department”) received and responded to the Request and participated on appeal on behalf of the Airport.

[Item] (3) Any and all maps, drawings, or diagrams that display current or former locations where firefighting training activities took place at or in connection with the...Airport.

[Item] (4) Any and all maps, drawings, or diagrams that display current or former locations at or in the vicinity of...[the] Airport where... AFFF[] was stored.

[Item] (5) Any and all data, reports, logs, lists, or other information identifying or relating to the type(s), brand name(s), manufacturer(s), or chemical composition(s) of...AFFF[] purchased by or for, stored at, and/or used at the...Airport from 1965 to the present.

On February 25, 2026, after the Request was already deemed denied on February 24, 2026,² the Airport issued an untimely Final Response, purporting to deny the Request and asserting that it is insufficiently specific and unreasonably burdensome under 65 P.S. § 67.703. In addition, the Airport stated that responsive records would likely be exempt from disclosure under 65 P.S. §§ 67.708(b)(1)(ii), (b)(3)(iii), (b)(6), (b)(10)(i)(A), (b)(12), (b)(17); the constitutional right to privacy, PA. CONST. ART. I, § 1; Section 403.85(e) of the Uniform Construction Code's ("UCC") implementing regulations, 34 Pa. Code. § 403.85(e); and the federal Copyright Act. *See* 17 U.S.C. §§ 102(a), 106, 201, 501, 506. The Airport also asserted that the Request was forwarded to other City departments that would generally maintain the types of sought-after records, and that they would contact the Requester directly if responsive records were located.³

On March 17, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. Specifically, the Requester argued that the Request is sufficiently specific, that the Airport failed to conduct a good faith search and to

² *See* 65 P.S. § 67.901.

³ *See* 65 P.S. § 67.502(b)(1) ("The open-records officer shall ... direct requests to other appropriate persons within the agency or to appropriate persons in another agency ..."). The City departments that were forwarded the Request included the Department of Licenses & Inspections ("L&I Department"), Department of Public Health ("Health Department"), Water Department and Fire Department. *See* April 6, 2026 Airport Position Statement, p. 2. Based on the City's RTKL Policy, its departments are assigned their own open records officers, and therefore, are distinct agencies for the purposes of the RTKL. *See* <https://www.phila.gov/open-records-policy/> (last visited Oct. 9, 2026). As such, any responses to the Request that were issued by those departments and the parties' arguments concerning such are all outside the scope of the instant appeal and will not be further addressed in this Final Determination.

demonstrate that responsive records are not subject to public access pursuant to any RTKL exemptions, privileges or laws or regulations. The OOR invited both parties to supplement the record and directed the Airport to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

From March 27-31, 2026, multiple correspondence were filed by the parties and the OOR, pertaining, in part, to submission period and Final Determination extensions.

On April 6, 2026, after being provided additional time by the OOR, the Airport submitted a position statement, reiterating its grounds for denial and further asserting that it would continue to search for responsive records as a courtesy to the Requester. In support of its position, the Airport submitted the attestation of Margot B. Smith, Esq. (“Smith Attestation I”), Chief Deputy City Solicitor for the RTKL Unit and Agency Open Records Officer (“AORO”) for the Law Department.

On April 10, 2026, the OOR directed the parties to address whether any laws or regulations require the Airport to possess the types of records sought in Items 3 and 4 of the Request.

In response, on April 22, 2026, the Airport made a submission, arguing that as a Federal Aviation Administration (“FAA”)-certified Part 139 airport, it is required to maintain certain records as specified in Section 139.301 of the FAA Regulations, 14 C.F.R. §§ 1.1 *et seq.*, and to furnish those records to the FAA Administrator upon request, but that it is not aware of any law or regulation that requires it to maintain the types of records sought in Item 3 and 4 of the Request. Alternatively, the Airport argued that even if it were required to maintain such “maps, drawings, or diagrams,” they would likely be exempt under 65 P.S. §§ 67.708(b)(2) and (b)(3). In addition, the Airport requested additional time to supplement the record, indicating that it was in the process of reviewing records that it believed may be responsive to portions of the Request.

That same day, the Requester made a submission, arguing that the FAA regulations require the Airport to possess all of the types of records sought in Items 1-5 of the Request.

On May 1, 2026, after the OOR granted the Airport's April 22, 2026 extension Request, the Airport filed its third position statement, reiterating its specificity argument and further asserting that it attempted a search for records based on the Request, as written, and that it disclosed certain responsive records to the Requester on May 1, 2026, which were partially redacted under the Copyright Act and 65 P.S. § 67.708(b)(3)(iii). In addition, the Airport argued that it also withheld five records under 65 P.S. §§ 67.708(b)(3), (b)(10) and/or (b)(22).⁴ In support of its position, the Airport submitted the second attestation of Attorney Smith ("Smith Attestation II").^{5,6}

LEGAL ANALYSIS

The Airport 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 Airport 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

⁴ Because the Airport did not provide further argument or evidence establishing that the located responsive records are exempt under the UCC and/or 65 P.S. §§ 67.708(b)(1)(ii), (b)(2), (b)(12) or (b)(17), those issues are deemed abandoned on appeal and will not be further addressed in this Final Determination.

⁵ Both of Attorney Smith's attestations are made subject to penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

⁶ The OOR extended the deadline for the issuance of the Final Determination in this matter on multiple occasions, ultimately to October 19, 2026, upon the agreement of and/or after receiving no objection from the Requester. *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)").

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 is dismissed as moot in part

On May 1, 2026, the Airport disclosed soil sampling reports prepared by third parties, a safety data sheet related to AFFF, and records of a purchase order and of the locations where AFFF was applied at the Airport, some of which were partially redacted (“Disclosed Records”). *See* Smith Attestation II, ¶¶ 5-6, 8-9, 11-12, 16.⁷ The Requester has not raised any issues for the OOR to adjudicate with respect to those records. Accordingly, as it pertains to the information provided during the pendency of this matter, 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 that a matter was settled by provision of records and, thus, “the controversy has been mooted”).

2. The Request was sufficiently specific, in part, to the extent that the Airport was able to locate certain responsive records

As a FAA-certified Part 139 airport, the FAA Regulations require the Airport to maintain various records regarding personnel trainings, inspections, accidents and incidents, airport conditions, safety risk managements documentation and safety communications. *See* 14 C.F.R. § 139.301(a)-(c). Those regulations also set forth provisions pertaining to aircraft rescue and firefighting, including the equipment and extinguishing agents that may be used, training requirements and the handling and storing of hazardous substances and materials. *See* 14 C.F.R.

⁷ Under the RTKL, a statement made under the 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); *see also Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Airport has acted in bad faith, “... the averments in the [attestations] 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)).

§§ 139.315-139.321.⁸ In addition, the Airport is required to maintain an Airport Certification Manual, which contains, in part, “a description of the facilities, equipment, personnel, and procedures for meeting the aircraft rescue and firefighting requirements, in accordance with §§ 139.315, 139.317 and 139.319[.]” *See* 14 C.F.R. § 139.203(b)(16).

The Airport argues that the Request is insufficiently specific and unduly burdensome, as a whole, because it has an overly broad scope, in that it seeks an expansive group of all types of records, including types not specifically listed. It further asserts that Items 1-4 of the Request do not include a timeframe and that the sixty-one year timeframe of Item 5 is too lengthy. In addition, the Airport argues that none of FAA Regulations specify that it must maintain “maps, drawings, or diagrams” that display locations related to firefighting training activity or the storage of AFFF, as sought in Items 3 and 4 of the Request.

The Requester contends that the Request has defined subject matters because it seeks records relating to sampling data for PFAS contamination, the use of AFFF and firefighting training at the Airport. The Requester also asserts that each Item of the Request includes a sufficiently narrow timeframe because PFAS have been the focus of environmental investigation for only about the past decade-and-a-half, and the timeframe during which AFFF was utilized began in the 1960s. In addition, the Requester asserts that the FAA Regulations require the Airport to maintain each of the records or information sought in Items 1-5 of the Request.

Section 703 of the RTKL provides that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested” 65 P.S. § 67.703. When determining whether a particular request is sufficiently

⁸ Various FAA Advisory Circulars, including those pertaining to Aircraft Rescue and Fire Fighting (“ARFF”), extinguishing agents, trainings and equipment are also publicly accessible on the FAA’s website; however, they are recommended guidelines that are not mandatory and do not constitute regulations. *See* https://www.faa.gov/airports/airport_safety/aircraft_rescue_fire_fighting (last accessed Oct. 13, 2026).

specific, the OOR uses the nonexclusive, multifactor test employed by the Commonwealth Court in *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015). First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought[,]” and “should provide a context to narrow the search.” *Pittsburgh Post-Gazette*, 119 A.3d at 1125 (quoting 65 P.S. § 67.102; *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012)). Second, “[t]he scope of the request must identify ‘a discrete group of documents, either by type ... or by recipient.’” *Id.* (quoting *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)). Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126.

In support of its position, the Airport’s attestations indicate that “[a]ny and all data, reports, logs, lists, or other information” used in the Request is too broad and “encompasses every and any form of record, which does not provide sufficient specificity or limiting context to meaningfully guide the [Airport’s] search for all potentially responsive records or to reasonably judge their responsiveness.” Smith Attestation I, ¶¶ 6-8, 11-13. In addition, the attestations state that Items 1-4, “essentially seek all records from all time, and that while Item 5 “does suggest a timeframe,... “[it] seeks records going back to 1965[,]” which “does not allow the [Airport] to understand what records are actually responsive to the [R]equest and effectively constitutes a search of all existing records.” *Id.* at ¶¶ 9-10. The attestations further provide that the Request “would place an unreasonable burden on the [Airport] to attempt to search among ‘data, reports, logs, lists, or other information’ and ‘maps, drawings, or diagrams’ for an unlimited or significantly expansive amount of time without knowing, with specificity, what particular records or groups of records are actually being sought.” *Id.* at ¶ 14; *see also* ¶¶ 15-16.

The Airport’s attestations also state that, as a courtesy to the Requester, Attorney Smith, the RTKL Unit and Tameka Felder, Airport AORO, attempted to search for records responsive to the Request, as currently written, and examined “digital records sent by the Airport’s Environmental Services Manager, Trisha Grace.” Smith Attestation II, ¶ 2-4. As a result, the Disclosed Records, three documents related to a construction project that has not yet taken place, and two records of figures and overlaid drawings of Airport systems were located. *See id.* at ¶¶ 5, 10, 13.

Here, each Item of the Request identifies a subject matter – soil, sediment, groundwater, surface water or other media sampling for PFAS; uses, operations, spills or discharges at the Airport involving AFFF; trainings performed with AFFF; the locations of firefighting training activities; the storage locations of AFFF; and the types, brand names, manufacturers or chemical composition of AFFF purchased by or for, stored at and/or used at the Airport.

While the Request identifies some records by type – data, reports, logs, lists, maps, drawings or diagrams, – Items 1, 2 and 5 also broadly seek “other information” and require that each of the types of records sought therein *reflect, analyze, discuss, otherwise relate to or relate in any way* to the corresponding subject matters. *See In re Mazin*, No. 1126 C.D. 2022, 2025 Pa. Commw. Unpub. LEXIS 190, *10-11 (Pa. Commw. Ct., Apr. 21, 2025)⁹ (explaining that although the request specified a subject matter that was well-known to the agency, it failed to identify any particular type of record and included expansive language seeking all correspondence “relating to” the already general terms it laid out). Additionally, Items 3 and 4 are not expressly limited to locations at the Airport; instead the language contained therein broadens the scopes of those Items by requiring that the sought-after maps, drawings or diagrams display both current or former

⁹ An unpublished opinion of the Commonwealth Court may be cited for its persuasive value. 210 Pa. Code § 69.414.

locations where firefighting training activities took place at *or in connection with* the Airport, or that display current or former locations at or *in the vicinity of* the Airport where AFFF was stored.

Additionally, Items 1-4 do not identify a finite timeframe for which records are sought; however, Item 5 seeks records from 1965 to February 17, 2026.¹⁰ Therefore, when read as a whole, the Request has a very lengthy, 61-year timeframe. *See Greim v. Pa. State Police*, 329 A.3d 873 (Pa. Commw. Ct. 2025) (finding that it was error for the OOR to consider one item of a request as having nothing to do with the remainder of the request). Further, while the Airport's ability to search for, find and produce several responsive documents on appeal must be considered by the OOR,¹¹ it is not dispositive in this instance because the aforementioned scopes and timeframes of each Item of the Request are overly broad. Therefore, without additional limiting factors, the Request does not enable the Airport to ascertain what records are actually being requested. *See* 65 P.S. § 67.703.

Accordingly, the Request is sufficiently specific, to the extent that the Airport was able to identify several records as being responsive on appeal; however, the remainder of the Request is insufficiently specific. Nothing in this Final Determination prevents the Requester from submitting a more specific RTKL request for the same information to the Airport or to any other applicable City department, and if necessary, filing a new appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

¹⁰ While the timeframe of Item 5 is listed as "from 1965 to the present[.]" the Request can only seek records that were in existence as of February 17, 2026, the date of the Request. *See Pa. Dep't of Labor & Indus. v. Tabor*, No. 525 C.D. 2015, 2016 Pa. Commw. Unpub. LEXIS 251 (Pa. Commw. Ct. Mar. 31, 2016).

¹¹ *See e.g., Se. Pa. Transp. Auth. v. Anderson*, 337 A.3d 575, 586 (Pa. Commw. Ct. 2025) (citations omitted); *Pa. Dep't of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207, *7 (Commw. Ct., May 13, 2022) ("an agency's demonstrated ability to identify responsive records is a strong indication that a request was sufficiently specific.").

3. The Airport demonstrated that it was permitted to redact some records under 65 P.S. § 67.708(b)(3) and/or that access to certain information is governed by the Copyright Act

The Airport asserts that based on the legends on several of the figures contained in the Disclosed Records, said figures were redacted or withheld under 65 P.S. § 67.708(b)(3) because their disclosure would identify various aspects of sensitive locations at the Airport, including water and electric systems and structural elements. Additionally, the Airport argues that certain figures were redacted because they were marked as copyrighted material by a third party.

Section 708(b)(3) of the RTKL exempts from public disclosure:

A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:

....

(iii) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

65 P.S. § 67.708(b)(3)(iii). To determine whether a risk of harm is “reasonably likely,” the OOR must “look to the likelihood that disclosure would cause the alleged harm, requiring more than speculation.” *California Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018) (citing *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 375 (Pa. Commw. Ct. 2013)).

Additionally, the Copyright Act precludes the reproduction of any copyrighted works without the consent of the copyright holder. *See* 17 U.S.C. §§ 106, 501; *see also* 65 P.S. § 67.3101.1. However, it does not “exempt [] materials from disclosure under the RTKL[;]” instead, it “limits the level of access to a public record only with respect to duplication, not inspection.” *Ali v. Phila. City Planning Comm’n*, 125 A.3d 92, 101, 104-05 (Pa. Commw. Ct. 2015). Therefore, where an agency demonstrates that a record is subject to copyright, the OOR may only direct the agency to provide inspection and cannot order duplication of the record. *See, e.g., Wilmer v. Pa.*

Pub. Util. Comm'n, OOR Dkt. AP 2025-2072, 2025 PA O.O.R.D. LEXIS 2355, *appeal pending*, 1380 CD 2025 (Pa. Commw. Ct.); *Weaver v. West Perry Sch. Dist.*, OOR Dkt. AP 2023-0526, 2023 PA O.O.R.D. LEXIS 901.

Here, the Airport's attestations affirm that Attorney Smith, in her capacity as Law Department AORO and Chief Deputy City Solicitor for the RTKL Unit, is "very familiar with the processes and procedures of the City, its departments, offices, boards, and commissions, including specifically the Airport and other City [d]epartments that have records that may be responsive to requests related to Phase I environmental assessments — the Water Department, the L&I Department, the Health Department and the Fire Department. *See* Smith Attestation I, ¶ 4. As already noted above, the attestations also show that the Disclosed Records consist of soil sampling reports prepared by third parties, a safety data sheet related to AFFF, and records of a purchase order and of the locations where AFFF was applied at the Airport. *See* Smith Attestation II, ¶ 5. In addition, the Airport withheld three records related to a construction project and two records of figures and overlaid drawings of Airport systems. *See id.* at ¶¶ 10, 13.

The Airport's attestations further reflect that "[s]ome, though not all, of [] [the Disclosed] [R]ecords contain figures depicting various areas of the Airport with drawings overlaid indicating the locations of samples as well as various infrastructure systems, such as water and electrical lines, and the locations of utilities." *Id.* at ¶ 6. In addition, the attestations reflect that said figures:

...provide more specific information about the systems and structural elements than would otherwise be available through public depictions of the Airport facility like FAA documents or Google Earth images, [and that the disclosure of which] would create a demonstrable vulnerability for Airport facilities which are not accessible by the public. These areas of the Airport are not public because they contain sensitive airport operations, airport safety and security measures, and access to airplanes, mechanical systems, air operation systems, fuel, and other dangerous or vulnerable portions of the Airport and its operations that are run by both the Airport and the Federal government. The public release of this information presents a very real, substantial, and demonstrable risk of harm to individuals in the Airport, public

safety, and infrastructure because it could be used by bad actors many ways to carry out attacks, threats, and other disruptions to the thousands of individuals who both work and use the Airport on any given day, to the public safety activities carried out in the Airport, and to the Airport building itself as well as the Airport's infrastructure, resources, facilities, and information storage systems.

Smith Attestation II, ¶ 8; *see also* ¶ 9.

The Airport's attestations also affirm that "[t]wo [of the responsive] records contain almost entirely figures and overlaid drawings of these systems and infrastructures with only titles or brief descriptions of the figures[,] and that "[r]edacting th[o]se records would leave nothing responsive," thus, those "two records have been withheld." *Id.* at ¶ 10. In addition, the attestations reflect that "[s]ome [of the Disclosed] [R]ecords also contained figures marked as copyrighted by the third parties who prepared the reports[,] which were redacted pursuant to the Copyright Act. *Id.* at ¶¶ 11-12. Moreover, the Requester has not presented any evidence that contradicts the Airport's attestations.

Therefore, based on the above, the Airport has established, by a preponderance of the evidence, that it was permitted to withhold those two records and to redact the figures from the Disclosed Records, which depict drawings of the Airport, various infrastructure systems and the locations of utilities, access to airplanes, mechanical systems, air operation systems, fuel, etc., under 65 P.S. § 67.708(b)(3)(iii) because the disclosure of those records and information is reasonably likely to endanger the Airport's infrastructure and to aid bad actors in carrying out attacks or threats and/or in disrupting Airport services. *See, e.g., Petusky v. Girardville Area Municipal Auth.*, OOR Dkt. AP. 2025-0472, 2025 PA O.O.R.D. LEXIS 956; *13-14 (finding that the agency's evidence was sufficient to show its sewer system was critical infrastructure, and that disclosure of the map depicting such "would expose potential vulnerabilities that could allow for sabotage and result in the risk of a raw sewage release"); *Rafferty v. Newtown Twp.*, OOR Dkt. AP

2020-2094, 2020 PA O.O.R.D. LEXIS 3084 (denying access to infrastructure records consisting of water and sewage systems under 65 P.S. § 67.708(b)(3)(iii) where the agency’s evidence provided potential negative outcomes if said infrastructure records were disclosed).

However, to the extent that the aforementioned figures marked as copyrighted material, which were redacted by the Airport under the Copyright Act, do not depict the records of Airport infrastructure as discussed above, the Airport must make those figures available to the Requester for in-person inspection.

4. The Airport showed that certain records are exempt under 65 P.S. § 67.708(b)(22)

The Airport argues that certain environmental reviews related to construction projects and draft materials related to those projects were withheld under Section 708(b)(22) of the RTKL, which exempts from disclosure

(i)The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency relative to the following:

(A)The leasing, acquiring or disposing of real property or an interest in real property.

(B)The purchase of public supplies or equipment included in the real estate transaction.

(C)Construction projects.

(ii)This paragraph shall not apply once *the decision is made to proceed with* the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.

65 P.S. § 67.708(b)(22)(i)-(ii) (emphasis added); *see also Mountz v. Columbia Borough*, 260 A.3d 1046, 1051 (Pa. Commw. Ct. 2021) (holding that a “the decision to proceed” contemplates a situation where “the parties [are] past the point in time that the sales agreement can be voided without penalty to the buyer.”).

In this instance, the Smith Attestation II affirms that three records, which “relate[] to a construction project that has not yet taken place[,]” were withheld because they constitute

“environmental reviews conducted prior to the decision to proceed with a real estate transaction or construction project as well as the internal predecisional deliberations of” the Airport and “any research used in predecisional deliberations.” Smith Attestation II, ¶¶ 13-15. While the Smith Attestation II could have been more detailed, in the absence of any evidence to the contrary, it is sufficient to establish that the Airport was permitted to withhold the above-mentioned three records under 65 P.S. § 67.708(b)(22).¹² See, e.g., *Sloss v. Pa. Dep’t of Transp.*, OOR Dkt. AP 2026-2296, 2026 PA O.O.R.D. LEXIS 2701 (holding that the “‘drafts of estimates, reviews and evaluations’” created for a specific drainage project, where a final decision to proceed with said project had not yet been made, were exempt under 65 P.S. § 67.708(b)(22)); *Hooper v. Upper Merion Twp.*, OOR Dkt. AP 2022-0045, 2022 PA O.O.R.D. LEXIS 508 (finding that a facility condition assessment report relating to water damage and structural deficiencies was exempt under Section 708(b)(22) of the RTKL as an evaluation related to a construction project where no decision had been made to proceed with the project).

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part and dismissed as moot in part**. To the extent that the figures marked as copyrighted material, which were redacted from the Disclosed Records by the Airport under the Copyright Act, do not depict the Airport infrastructure records that we have determined are exempt under 65 P.S. § 67.708(b)(3)(iii), the Airport must make those figures available to the Requester for in-person inspection 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

¹² Based on this determination, the OOR need not address the Airport’s alternative grounds for withholding these three records under 65 P.S. § 67.708(b)(10)(i)(A).

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.¹³ 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 15, 2026

/s/ Megan Burns

MEGAN BURNS
APPEALS OFFICER

Sent via OOR Portal to: Linn Bumpers; Tameka Felder, AORO; and Kate Redding, Esq.

¹³ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).