

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
TODD SHEPHERD and BROAD	:	
AND LIBERTY,	:	
Requester	:	
	:	Docket No: AP 2026-1977
v.	:	
	:	
DELAWARE COUNTY,	:	
Respondent	:	

FACTUAL BACKGROUND

On April 9, 2026, Todd Shepherd and Broad and Liberty (collectively the “Requester”) submitted a request (“Request”) to Delaware County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Part A: Any and all documents reflecting the terms of the payment plan(s) entered into by Richard Womack for delinquent property taxes on [address omitted] and [address omitted], including but not limited to signed agreements, schedules of payments, interest rates, penalty assessments, and projected payoff dates.

Part B: Any and all records showing each payment received from Richard Womack (or on his behalf) pursuant to any payment plan for delinquent property taxes, including dates, amounts, and method of payment.

Part C: Any and all records reflecting the date(s) on which Richard Womack first entered into a payment plan for delinquent property taxes on each property.

Par[t] D: Any and all records showing the total outstanding balance owed by Richard Womack on delinquent property taxes as of March 1, 2026, broken out by property address and by taxing jurisdiction (county, municipality, school district).

Part E: Any and all records reflecting whether Richard Womack is current on all property tax obligations that have come due since the initiation of his payment plan(s), as required under the Real Estate Tax Sale Law, 72 P.S. § 5860.603.

Part F: Any and all written policies, guidelines, or procedures governing the Treasurer's Office or Tax Claim Bureau's process for entering into payment plans with delinquent property taxpayers, including eligibility criteria, minimum down payment requirements, maximum repayment periods, and interest/penalty terms.

Part G: Any and all email (including attachments) between any current or former member of [County] Council (or their staff), Executive Director Barbara O'Malley (or her staff), and the Treasurer's Office or Tax Claim Bureau regarding Richard Womack's delinquent tax accounts or payment plan(s), from January 1, 2022 to present. This request includes communications in either direction between the above-named parties.

Part H: Any and all email (including attachments) between any current or former member of [County] Council (or their staff), Executive Director Barbara O'Malley (or her staff), and the Treasurer's Office or Tax Claim Bureau regarding the delinquent tax account of Gloria Gaynor or the upset sale of her property at [address omitted] from January 1, 2021 to present. This request includes communications in either direction between the above-named parties.

Part I: Any and all email (including attachments) among current or former members of [County] Council, between council members and county staff, or by or to Executive Director Barbara O'Malley (or her staff), referencing Richard Womack's delinquent property taxes or federal tax lien, from January 1, 2021 to present. This request includes communications in either direction between the above-named parties.

Part J: Any and all records reflecting when any current or former member of [County] Council, Executive Director Barbara O'Malley (or her staff), or the county solicitor's office first became aware of the federal tax lien recorded against Richard Womack in July 2025, including any internal memoranda, emails, or notifications.

Part K: Any and all records reflecting when any employee, official, or agent of the [County] Treasurer's Office or Tax Claim Bureau first became aware of the federal tax lien recorded against Richard Womack in July 2025, including any internal memoranda, emails, notifications, or records of lien searches conducted on properties at [address omitted] or [address omitted].

On April 16, 2026, the County invoked a thirty-day extension to respond; however, as the County did not respond within the extension period, the Request was deemed denied on May 18, 2026. *See* 65 P.S. § 67.902(b)(2).

On May 19, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial.¹ The OOR invited both parties to supplement the record and directed the County to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On June 6, 2026, the matter was stayed by agreement of the parties. On June 15, 2026, the stay was lifted and the OOR set updated submission and Final Determination deadlines.

On July 6 and July 7, 2026, the Requester and the County notified the OOR that it was attempting to provide responsive records to the Requester, but due to technical issues, and the parties agreed to extend the submission period and the Final Determination deadline. These extensions were granted. Additional extensions were also subsequently requested and granted by the OOR in order to accommodate the County’s production of responsive records, with the Requester’s agreement.²

On September 14, 2026, the Requester notified the OOR that the County had turned over its final production of records. On September 14, 2026, the OOR set a supplemental briefing schedule and extended Final Determination deadline in order to accommodate the review of responsive records and provide the parties an opportunity to submit evidence and arguments relative to their positions.

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).”).

² *See* 65 P.S. § 67.1102(b)(3) (“In the absence of a regulation, policy or procedure..., the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”); 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).”).

On September 28, 2026, the County requested a one-week extension to submit evidence and a position statement; the Requester confirmed his agreement to the extension request.

On September 28, 2026, the OOR granted the extension request,³ and directed the Requester to also indicate what challenges remained on appeal.

On October 6, 2026, the County submitted a position statement, indicating that the responsive records were redacted based on the attorney-client privilege, and because the records included personal identification information, internal, predecisional deliberations, and correspondence with General Assembly members. *See* 65 P.S. § 67.305, §§ 67.708(b)(6)(i)(A), (b)(10)(i)(A), (b)(29). In support of its position, the County submitted the attestation made under the penalty of perjury⁴ authored by Leah Lewis (“Lewis Attestation”), the County’s Agency Open Records Officer (“AORO”). The County also submitted an exemption log (“Log”) that was verified under penalty of perjury⁵ by Attorney Meghan Byrnes, the County’s Solicitor.

On October 14, 2026, the OOR asked the Requester to indicate whether he objected to redactions of personal identification information pursuant to 65 P.S. § 67.708(b)(6)(i)(A). To date, no response has been received.

LEGAL ANALYSIS

The County 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 County 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

³ The OOR also sought the Requester’s agreement to a corresponding extension of the Final Determination deadline of one week, which was granted. *Id.*

⁴ 18 Pa. C.S. § 4904.

⁵ 18 Pa. C.S. 4904.

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 County provided responsive emails. 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 redaction of personal information was proper

The County redacted responsive records, citing Section 708(b)(6)(i)(A), which exempts “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 personal identification number.” 65 P.S. § 67.708(b)(6)(i)(A). The County did not provide information within an attestation or affidavit⁶ as to what personal identification information is contained in the redaction that falls within any of the exempted categories of information found in Section 708(b)(6)(i)(A); however, in reviewing the redacted records, it is clear based upon the context of the record as a whole as to what kind of information is redacted. *See Redacted Records*. It appears that personal emails of private citizens were redacted.

⁶ Both unsworn attestations made pursuant to 18 Pa.C.S. § 4904(b) and sworn affidavits may serve as sufficient evidentiary support of factual statements before the OOR. *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (citing *Moore v. OOR*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010)). On the other hand, statements contained in a submission, position statement, or brief that are not supported by an attestation or affidavit, are not competent evidence under the RTKL. *See Office of the Gov. v. Davis*, 122 A.3d 1185, 1193-94 (Pa. Commw. Ct. 2015).

There are some instances in which uncontradicted facts from the face of the record may establish a RTKL exemption. The OOR must consider undisputed statements within the record when determining if exemptions apply. *See Pa. Game Comm'n v. Fennell*, 149 A.3d 101, 104-05 (Pa. Commw. Ct. 2016); *Office of the Governor v. Davis*, 122 A.3d 1185 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). In *Fennell*, the Commonwealth Court held that the OOR can decide based upon the record, without a submission by either party, if a record is related to a noncriminal investigation under Section 708(b)(17) of the RTKL, when the record established uncontradicted facts regarding a complaint made concerning a specific incident and the Commonwealth agency known to be actively investigating the complaint, and the requester sought a copy of the report from that specific incident. 149 A.3d 101, 104-05 (Pa. Commw. Ct. 2016).

Here, it is clear on the face of the records redacted under this exemption that personal email addresses were redacted from the responsive records. The redacted information therefore falls within Section 708(b)(6) exemption. 65 P.S. § 67.708(b)(6)(i)(A). Accordingly, the County has met its burden of proving that the redaction of personal emails under Section 708(b)(6)(i)(A) is exempt from disclosure. 65 P.S. § 67.708(b)(6)(i)(A).⁷

3. The County has demonstrated some records are privileged

⁷ The County also asserted in its position statement that cell phone numbers are redacted pursuant to Section 708(b)(6) of the RTKL, as well as home address pursuant to the constitutional right to privacy. No evidence of these types of redactions could be found upon a review of the redacted records; however, to the extent there are any redactions of personal cell phone numbers and home addresses, they are also permissibly exempt. Cell phone numbers are facially exempt pursuant to 65 P.S. § 67.708(b)(6). Further, the OOR has previously found that individuals have a privacy interest in their home addresses. *Pennsylvania State Univ. v. State Employees' Retirement Bd.*, 935 A.2d 530, 533 (Pa. 2007); *West Chester Univ. of Pa v. Rodriguez*, 216 A.3d 503, 510 (Pa. Commw. Ct. 2019); *Monaghan v. Lycoming County*, OOR Dkt. AP 2023-2427, 2023 PA O.O.R.D. LEXIS 2848 *Gentner v Palisades School District*, OOR Dkt. AP 2022-0519, 2022 PA O.O.R.D. LEXIS 996. The Requester has not articulated any public interest in supporting the disclosure of home addresses, nor is the OOR able to perceive any such interest that outweighs the privacy interest of those individuals.

The Department asserts that the record identified as Bates No. 60 was redacted because it consists of privileged communications between the County Treasurer, James Hackett, and the Treasurer's legal counsel, Attorney Sherri Eyer. The RTKL's definition of privilege includes attorney-client privilege, and the presumption that records in the possession of agencies are public records does not apply to records that are privileged. *See* 65 P.S. §§ 67.102 and 305(a)(2).

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. Excelsa 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 support of its position, the County submitted the Log, which describes the redacted email; identifies the email by number, date, record type and author/recipient; and lists the County's bases for withholding such. The County also submitted the redacted records. Attorney Byrnes indicates this email was sent by James Hackett to the Treasurer's legal counsel, Attorney Sherri Eyer, seeking legal review and advice regarding legal research and a memorandum provided by Senator Kearney's office. *See Log*. These discussions were held outside the presence of third parties, for the purpose of securing legal opinion, advice and assistance in applying for grants for the Department. *Id.* Attorney Byrnes confirms the attorney-client privilege was not waived. *Id.*

Under the RTKL, a sworn affidavit or 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); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith or that additional responsive records exist, "the averments in [the 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 *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

In the instant matter, the evidence presented affirms that the Treasurer's office is the client of legal counsel, and the privilege is not waived. Further, it is undisputed that Attorney Eyer is licensed to practice in Pennsylvania. Additionally, the County's evidence shows that the redacted responsive email was only exchanged between the County Treasurer and legal counsel. *See Log, Redacted Records*. Accordingly, the first three elements of the attorney-client privilege have been satisfied, and the Requester has not submitted any evidence to suggest that the privilege has been waived. Finally, the County's evidence affirms that the email was exchanged for the purpose of

seeking legal services and advice regarding Senator Kearney's research and request for a meeting.

Id. Therefore, the redactions made to the record identified as Bates No. 60 were proper.⁸

4. The County has demonstrated that some records contain exempt predecisional deliberations

The County asserts that responsive redacted records identified by Bates No. 4, 8, 37-38, 53-55, 130-33, 163, 173-74, 184-85, 856-57, 861, 1367-68, 1709-11, 1713-16, 1720, 2296, and 4286 in the Log were properly withheld because they reflect the internal, predecisional deliberations of employees of the County. Section 708(b)(10)(i)(A) of the RTKL exempts from public disclosure a record that reflects:

The internal, predecisional deliberations of an agency, its members, employees, or officials or predecisional deliberations between agency members, employees, or official or members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

65 P.S. § 708(b)(10)(i)(A). 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. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011).

⁸ The County identifies a single email chain that was withheld in its entirety that is dated April 13, 2026, and is in regard to responding to this Request. *See* Log. A request can only seek records that are in existence as of the date of the Request; agencies are not required to provide records that do not exist, or have not been created, as of the time of the Request. *See* 65 P.S. § 67.705; *see also, e.g., Deeter v. New Britain Twp.*, OOR Dkt. AP 2019-1641, 2019 PA O.O.R.D. LEXIS 1314; *Terensky v. City of Monessen*, OOR Dkt. AP 2013-0772, 2013 PA O.O.R.D. LEXIS 349. This withheld record is not responsive to the Request as it was not created until after the Request was submitted and is therefore not addressed herein.

For purposes of this exemption, records that are exchanged with another agency are considered “internal” to the agency. *See Off. of the Governor v. Davis*, 122 A.3d 1185 (Pa. Commw. Ct. 2015). To be deliberative in nature, a record must make recommendations or express opinions on legal or policy matters and cannot be purely factual in nature. *Kaplin*, 19 A.3d at 1214. The term “deliberation” is generally defined as “[t]he act of carefully considering issues and options before making a decision or taking some action” BLACK’S LAW DICTIONARY 492 (9th ed. 2009); *see also Heintzelman v. Pa. Dep’t of Cmty. & Econ. Dev.*, OOR Dkt. AP 2014- 0061, 2014 PA O.O.R.D. LEXIS 254, *aff’d* No. 512 C.D. 2014, 2014 Pa. Commw. Unpub. LEXIS 644 (Pa. Commw. Ct. 2014). In addition, to prove that a record is exempt under this section, an agency must explain how the information withheld reflects or shows the deliberative process in which an agency engages during its decision-making. *See Twp. of Worcester v. Off. of Open Records*, 129 A.3d 44, 61 (Pa. Commw. Ct. 2016). Factual material contained in otherwise deliberative documents is required to be disclosed if it is severable from its context. *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014).

Attorney Byrnes attests that the redactions identified by Bates No. 4, 8, 37-38, 53-55, 130-33, 163, 173-74, 184-85, 861, 1367-68, 1709-11, 1713-16, 1720, and 2296 are discussions between County officials on how to draft responses to journalist inquiries, inquiries from members of the public, or RTKL requests prior to issuing a final response. *See Log*. The email identified by Bates No. 4286 was also a communication regarding advice on a draft statement to be read at the Council meeting and how the statement should be distributed from the County Communications Director to Councilperson Womack. *Id.* Further, the email identified by Bates No. 856-87 is a correspondence between Councilperson Monica Taylor and the County Executive Director regarding the status of a pending upset sale and discussions of potential actions regarding that sale

that the Council could take, which was to occur at an upcoming executive session. *Id.* These emails were internal and not shared with any outside parties. *Id.* Furthermore, Attorney Byrnes confirms that factual information could not be severed without disclosing the deliberations. *See Log.*

Based upon the evidence presented, the County has demonstrated, by a preponderance of the evidence, that the redactions contain internal, predecisional deliberations that must be withheld. 65 P.S. § 67.708(a)(1).

5. The County properly withheld records under Section 708(b)(29) of the RTKL

The County asserts that it properly redacted correspondence between a person and a member of the General Assembly in emails identified by Bates Nos. 49-50, 60-85, 87-90, 92-93, 97-98, 100-06, and 111-18. Section 708(b)(29) of the RTKL exempts from disclosure:

[c]orrespondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services. This paragraph shall not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure).

65 P.S. § 67.708(b)(29).

These correspondences occur between County officials and State Representative Gina Curry, State Senator Tim Kearney, and State Senator Williams that are directly related to constituent concerns with the tax/upset sale process, identifying certain constituents seeking assistance and why they are seeking assistance, discussing potential available courses of action regarding said concerns and requests, and setting up meetings to discuss these concerns. *See Log.* As such, this redacted information would identify a person who requested assistance or constituent services that was exchanged with members of the General Assembly; therefore, the County met its burden to demonstrate that the email exchange is exempt from public access under Section 708(b)(29) of the RTKL. *See Van Sickle v. London Grove Twp.*, OOR Dkt. AP 2013-0623, 2013

PA O.O.R.D. LEXIS 294 (finding that emails exchanged between an individual and members of the General Assembly in the possession of the Township are exempt under Section 708(b)(29) of the RTKL); *Kitchen and Pa. Spotlight v. York County*, OOR Dkt. AP 2021-1416, 2021 PA O.O.R.D. LEXIS 1858 (finding that responsive email records that contained correspondence between constituents, the county, members of the General Assembly, and the legislators' offices, which included the legislators' staff, were exempt from disclosure under Section 708(b)(29)).⁹

CONCLUSION

For the foregoing reasons, the appeal is **denied in part and dismissed as moot in part**, and the County 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 Delaware 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.¹⁰ 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 22, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

⁹ The County provides alternative arguments for almost all of the redacted records; however, no alternative arguments need to be addressed herein, as the County has already established that records are exempt as outlined above pursuant to attorney-client privilege, internal, predecisional deliberations, and communications with a member of the General Assembly. 65 P.S. § 67.305; §§ 67.708(b)(10), (b)(29).

¹⁰ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

Sent via E-File Portal to: Todd Shepherd; Meghan Byrnes, Esq.; Leah Lewis, AORO