pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	**:**
	:
JEFF BELKIN,	**:**
Requester	**:**
	:
v.	**:**
	: Docket No: AP 2026-2345
PENNSYLVANIA DEPARTMENT OF	**: (Consolidated with OOR Dkt. AP 2026-**
CORRECTIONS,	**: 2346)**
Respondent	**:**

FACTUAL BACKGROUND

On March 19, 2026 and April 6, 2026, Jeff Belkin, Esq. ("Requester") submitted two requests ("Requests") to the Pennsylvania Department of Corrections ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking, in relevant part:[1]

> **Request 1**
>
> [b] All documents that evidence, refer, or relate to the preparation and drafting of the RFP including, but not limited to, the preparation of written evaluation plans;
>
> [e] All documents, including without limitation, score sheets, summaries, pricing calculations, pricing estimates, agency and/or consulting reports, that evidence, refer, or relate to the evaluation and/or scoring of the proposals submitted by all offerors in response to the RFP;

[1] Both of the Requests contained items which the Department granted in whole or in part, and which the Requester does not contest on appeal. These are not reproduced in this Final Determination.

[f] All documents that evidence, refer, or relate to the evaluation of the relevant experience, performance or capabilities of the offerors in response to the RFP; and

[k] All communications and documents that evidence, refer, or relate to the contract awarded to ViaPath, including a copy of the contract

Request 2

a. All communications between Tammy Ferguson (the former Executive Deputy Secretary for Institutional Operations at the Department) and any Department staff involved in preparing the RFP or assessing RFP responses, including but not limited to senior or procurement staff, related to or referring to inmate communications services or charitable contributions from January 2024 to today;

b. All communications between Shirley Moore Smeal (the former Executive Deputy Secretary/Chief Operating Officer of the Department) and any Department staff involved in preparing the RFP or assessing RFP responses, including but not limited to senior or procurement staff, related to or referring to inmate communications services or charitable contributions from January 2019 to today;

c. All communications between Moore Smeal and Associates and any Department staff involved in preparing the RFP or assessing RFP responses, including but not limited to senior or procurement staff, related to or referring to inmate communication services or charitable contributions from January 2019 to today;

d. All communications between any members of ViaPath and/or ViaPath Foundation and any Department staff involved in preparing the RFP or assessing RFP responses, including but not limited to senior or procurement staff, related to or referring to inmate communication services or charitable contributions from January 2019 to today;

e. All communications between either Tammy Ferguson, Shirley Moore Smeal, or Moore Smeal and Associates and the Department, related to or referring to the RFP, including assessment of the RFP responses;

On June 3, 2026, following a 30 day extension, 65 P.S. § 67.902, the Department denied Items a, b, c, d, and e of Request 2, arguing that they are insufficiently specific under Section 703 of the RTKL. 65 P.S. § 67.703. The Department granted Item f in part, providing 14 pages of records and denying access to one record, arguing that access to that record would endanger the physical security of a building. 65 P.S. § 67.708(b)(3). The Department additionally denied Item g, explaining that no responsive records exist.

On June 4, 2026,[2] the Department granted Request 1 in part, but denied Items b, e, and f, arguing that the records responsive to those Items contain internal, predecisional deliberations of the agency. 65 P.S. § 67.708(b)(10)(i)(A). The Department purported to grant Item k, but provided only a Recommendation Letter.

On June 15, 2026, the Requester appealed to the Office of Open Records ("OOR"), arguing that the Department has not demonstrated that records responsive to Request 1 are exempt and that Request 2 is sufficiently specific.[3] The OOR invited both parties to supplement the record and directed the Department to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On June 26, 2026, the Department submitted position statements. In reference to Request 1, the Department submitted argument that the records responsive to Items b, e, and f contain internal, predecisional deliberations. In support of that position, the Department submitted the declaration of Amanda Wasko, the Chief of the Division of Administrative Services, who attests that she located and identified responsive records related to the preparation of the Combined Services RFP, and that all of those records consist of internal communications about the requirements for the RFP. The Department likewise submitted the declaration of Kara Levering, a Legal Analyst for the Department, who attests that she reviewed the responsive records and determined that those records represent internal, predecisional deliberations and documents used in the process to evaluate proposals.

In reference to Request 2, the Department submitted a position statement reiterating its argument that the Items of the Request are insufficiently specific, arguing that each Item possesses

[2] The Department responded in part on May 22, 2026, but the final response did not issue until June 4, 2026.
[3] These appeals were docketed at OOR Dkt. AP 2026-2345 and 2026-2346. They were later consolidated into 2026-2345.

an unhelpful subject matter, broad scope, and extremely long timeframe. In support of this argument, the Department submitted the second attestation of Kara Levering, who provides a list of reasons why the search required to respond to Request 2 cannot be conducted, including a lack of identified users, and that no records responsive to Item f of Request 2 exist.

On August 7, 2026, in response to an inquiry from the OOR, the Department submitted the attestation of Amanda Wasko, the Chief of the Department's Administrative Services Division, who attests that all withheld records responsive to Request 1 are exempt as internal, predecisional deliberations. In support, the Department submitted an exemption log.

On August 13, 2026, in response to a request from the OOR, the Requester granted an extension for the OOR to conduct an *in camera* review of the records responsive to Request 1. On August 14, 2026, the OOR ordered the Department to produce all records listed in the exemption log for review *in camera*. The Department provided those records by August 26, 2026, and the OOR subsequently conducted a review *in camera.*

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed 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 Department 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)). Here, the OOR additionally conducted an *in camera* review of all of the records withheld by the Department.

1. Some records responsive to Request 1 are internal, predecisional deliberations

The Department withheld several hundred documents responsive to Request 1, arguing that each relates to internal, predecisional deliberations of the Department. 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 officials and 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. § 67.708(b)(10)(i)(A). To withhold a record under Section 708(b)(10)(i)(A), an agency must show: 1) "[t]he records…[are] '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). Additionally, 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. Office of Open Records*, 129 A.3d 44, 61 (Pa. Commw. Ct. 2016). Further, 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't Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014). However, factual material can still qualify as deliberative information when its disclosure "'would be tantamount to the publication of the [agency's] evaluation and analysis.'" *McGowan*,

103 A.3d at 387 (quoting *Trentadue v. Integrity Communication*, 501 F.3d 1215, 1228-29 (10th Cir. 2007)).

In support of this argument, the Department submitted the first Wasko Attestation, which provides only that "5. All 119 responsive records represent internal predecisional deliberations in determining what the RFP would contain regarding services and what the requirements of those services would be and documents that were used in that internal predecisional process." Under the RTKL, a statement made under made under the penalty of perjury may serve as sufficient evidentiary support to sustain an agency's burden of proof, *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); however, "a generic determination or conclusory statements are not sufficient to justify the exemption of public records." *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) (*en banc*); *see also Office of the District Attorney of Phila. v. Bagwell*, 155 A.3d 1119, 1130 ("Relevant and credible testimonial affidavits may provide sufficient evidence in support of a claimed exemption; however, conclusory affidavits, standing alone, will not satisfy the burden of proof an agency must sustain to show that a requester may be denied access to records under the RTKL") (citations omitted); *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d at 659 ("Affidavits that are conclusory or merely parrot the exemption do not suffice") (citing *Scolforo*). Here, the First Wasko Attestation is conclusory, but the Department also submitted the First Levering Attestation, which provides that:

> 5. I personally reviewed all records provided and identified 41 responsive records. All responsive records contained the internal deliberations of evaluating proposals including the experience, performance or capabilities of offerors to the Combined Services RFP or the documents used in the course of those internal predecisional deliberations.

> 6. The subject matter of the 41 responsive records represented the internal, predecisional deliberations of the Department together with documents used in the predecisional process in the evaluation of proposals.

Although this attestation provided more context relating the withheld records to the elements of the exemption, it remained unclear what records were actually being withheld and therefore the OOR asked the Department to provide an exemption log.

The Department's exemption log is 90 pages long and provides the Bates number, filename, document type, file extension and 'primary date/time' of each file withheld.[4] It does not describe any of the records with any detail, and instead contains the same comment for each entry, restating the elements of Section 708(b)(10)(i)(A). Because the Department's attestation and exemption log did not demonstrate the elements of Section 708(b)(10)(i)(A), the OOR conducted an *in camera* review and examined each of the documents.

From that review, the OOR notes that many of the files listed in the exemption log are either duplicates or records sufficiently similar to each other that the OOR is unable to determine that they are not duplicates. The majority of the documents are copies of the RFP, prior RFPs, and attachments, amendments, or appendices thereto. It is unclear from the face of the records why these are responsive to the Request- the OOR presumes from the language of Request 1 and the Levering and Wasko attestations that they are draft documents, but is unable to confirm this by simple reference to the documents. Without additional information regarding the provenance and use of these documents, which are undifferentiated and generally not marked as drafts, the OOR is unable to find that they are facially exempt under Section 708(b)(10)(i)(A). Therefore, any record not addressed further below is not exempt and must be provided.

[4] The Second Wasko Attestation clarifies that the Department's earlier count inadvertently counted several 'subfolders' of records as single records, and therefore explains that 347 discrete files were withheld.

Other documents include more obviously internal deliberations, such as REL0000000002, REL0000000007, REL0000000065, REL000000231, and the records from REL0000000344-REL0000000348; these are facially internal employee communications, including email discussion, an internal forum system for discussing the RFP process, and the original scope of project proposing the RFP design. Likewise, REL0000000326-REL0000000331 are meeting notes which record deliberations about the project, and the exemption is facially applicable.

Some documents are plainly attached for the purpose of providing information for deliberation on the shape of the RFP or evaluation process, including REL0000000012, REL0000000013, REL0000000018, REL0000000019, REL0000000041, REL0000000043-REL0000000045, REL0000000060, REL0000000066, REL0000000074, REL0000000075, REL0000000101, REL0000000102, REL0000000118, REL0000000128, REL0000000131, REL0000000155, REL0000000156, REL0000000158, REL0000000161, REL0000000182, REL0000000188, REL0000000193, REL0000000222, REL0000000224, REL0000000225, REL0000000231, REL0000000232, REL0000000325, REL0000000332, REL0000000333, REL0000000334, and REL0000000343. Additionally, a number of records were attached which appear to be materials from past RFP processes, presumably intended to demonstrate what responses to the RFP at issue might look like. The OOR was able to facially discern that REL0000000239, REL0000000240-REL0000000248, REL0000000249, REL0000000250, REL0000000251-REL0000000253 and REL0000000335-REL0000000338 are historical records of responses to prior RFPs and contracts (including the fully executed contract with Smart Communications). Because these could only be responsive to the Request if they were being internally distributed as examples for work on the subject RFP, the OOR concludes that they are exempt.

Next, a significant group of documents include records about the evaluation process itself; although, notably, none of these documents include the actual evaluations of individual offerors. These include a blank worksheets for the proposal evaluations, REL0000000108,[5] the rules for the review, REL0000000111, and a large number of forms signed by prospective evaluators attesting that they do not have any conflicts of interest, REL0000000254-REL0000000315. The OOR is unable to determine how these records demonstrate internal, predecisional deliberations; they are internal and predecisional, but do not appear to record or reflect any kind of deliberation. Therefore, they must be provided. However, the OOR distinguishes these from another group of records, where various officials at the Department signed off on the draft contract and indicated that they had no objections to its final form, REL0000000136-REL0000000145, REL0000000166-REL0000000176 and REL0000000200-REL0000000210. These records formally record each signer's objections or lack thereof to the draft contract and therefore appear to be quintessentially exempt material under Section 708(b)(10)(i)(A).

Finally, a relatively small number of records concern the instant RFP directly. One group of records contains questions about the RFP received by the Department through a platform and answered, REL0000000087-REL0000000091. These records do not appear to be internal; to the extent they are draft responses to those questions and not shared outside the Department, the OOR was unable to determine this from the face of the records. Then there are proposal/response documents submitted by GTL, Smart Communications, Securus and ShawnTech in 2021, REL0000000227-REL0000000230. While these may have been attached to internal, predecisional documents, the OOR is unable to determine this from the record and cannot conclude that they are exempt.

[5] Also present at REL0000000163, REL0000000186, REL0000000198, REL0000000219.

Therefore, the OOR concludes that the Department properly withheld the records at REL0000000002, REL0000000007, REL0000000065, REL000000231, REL0000000344-REL0000000348, REL0000000326-REL0000000331, REL0000000012, REL0000000013, REL0000000018, REL0000000019, REL0000000041, REL0000000043-REL0000000045, REL0000000060, REL0000000066, REL0000000074, REL0000000075, REL0000000101, REL0000000102, REL0000000118, REL0000000128, REL0000000131, REL0000000155, REL0000000156, REL0000000158, REL0000000161, REL0000000182, REL0000000188, REL0000000193, REL0000000222, REL0000000224, REL0000000225, REL0000000231, REL0000000232, REL0000000325, REL0000000332, REL0000000333, REL0000000334, REL0000000343, REL0000000239, REL0000000240-REL0000000248, REL0000000249, REL0000000250, REL0000000251-REL0000000253, REL0000000335-REL0000000338, REL0000000136-REL0000000145, REL0000000166-REL0000000176, REL0000000200-REL0000000210. The OOR is unable to conclude that the Department properly withheld the remaining records for the reasons set forth above.

2. Request 2 is insufficiently specific

The Department argues that Request 2 is insufficiently specific under Section 703 of the RTKL. Section 703 of the RTKL states 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 specific, the OOR uses the three-part balancing 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." *Id.* at 1125 (quoting 65 P.S. § 67.102). 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 (citing *Carey*, *supra*). "The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request's timeframe is narrow enough is generally dependent upon the specificity of the request's subject matter and scope." *Id.*

The above factors are intended "to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested…. The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements." *Pa. Dep't of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 *6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022). Finally, we must analyze the entirety of a request, as it is possible that portions of a request are insufficiently specific, while other portions provide sufficient guidance. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting "the valid part of the request was included in a laundry list of requested materials").

Each Item of Request 2 seeks all communications between an identified party and all other Department employees involved in the recent comprehensive communications RFP regarding inmate communications services or charitable contributions, except for Item e, which seeks all communications related to the RFP. Item a has a moderate timeline of approximately two years-all other Items have a timeline of over seven years, except for Item e which has no timeline at all.

The Department raises several reasonable objections to the specificity of Request 2. First, the subject matter is extremely broad, seeking records 'related to or referring to' inmate communications services or charitable contributions; this subject matter does not so much identify

an activity of the agency as it identifies a wide tranche of related activities which are unlikely to provide the Department any guidance in narrowing down possible custodians of these records. Additionally, even the two-year timeframe listed under Item a is relatively long. Items b-d involve incredibly lengthy seven-year searches, while Item e has no timeframe, save perhaps the implied timeframe set by the start of the communications related to the RFP process years prior.

Additionally, the scope of the Request is broader than it may appear. The Request explains that:

> For the avoidance of doubt, Smart's request for "communications" includes, but is not limited to, emails, text messages, voice messages, instant messages, letters, meeting invites, meeting minutes, notes regarding meetings, and visitor logs. The reference in the requests above to "inmate communication services" includes, but is not limited to, tablets/kiosks, inmate telephone services, electronic funds transfer, digital intelligence services and inmate mail scanning services.

As the Commonwealth Court has observed in the past, a request for 'communications' is much broader than a request for email, as it entirely prevents simple electronic searches from sufficing.[6] *See, e.g., Shepherd v. Pa. Office of the Governor*, 340 A.3d 1061 (Pa. Commw. Ct. 2026) (emphasizing the fact that in *Keystone Nursing*, the request sought 'all correspondence', comparing that with the narrower scope of a request seeking only emails). The Requester's description of the Request as 'include[ing], but is not limited to,' various media provides no assistance, and is a suggestion that these are more types of records which should be searched. Notably, these are broad and all-inclusive types of media for which the Request asks the Department to search "related to or referring to" broad types of communication. Therefore,

[6] The Department submitted the attestation of Kara Levering, a legal analyst who attests that she is regularly called upon to undertake these searches and that it would be impossible to do so here. Much of her attestation turns on the Department's oft-repeated argument that it cannot conduct a search without knowing which domains to search; that is, it must have a list of email addresses. The OOR reiterates that this is not a requirement for RTKL requests. If a RTKL request is sufficiently specific, that means the Department should have sufficient context to identify domains to search itself. *Leuba v. Pa. Dep't of Corr.*, OOR Dkt. AP 2026-3892, 2026 PA O.O.R.D. LEXIS 4185. Here, however, the attestation convincingly explains that Request 2 contains insufficient context to identify domains to search.

because Request 2 possesses several broad subject matters, extremely broad scopes and very lengthy timeframes, it is not sufficiently specific under Section 703 of the RTKL

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required to provide records responsive to Request 1, aside from those identified above. 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 Commonwealth Court. 65 P.S. § 67.1301(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.[7] 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 website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: October 30, 2026

/s/ Jordan Davis

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JORDAN C. DAVIS, ESQ.
Deputy Chief Counsel

Sent via e-file portal to:
Jeff Belkin, Esq.;
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[7] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).