pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
EVAN WOOD,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-4287**
	:	
PENNSYLVANIA DEPARTMENT OF MILITARY AND VETERANS AFFAIRS,	:	
Respondent	:	

FACTUAL BACKGROUND

On August 24, 2026,[1] Evan Wood ("Requester") submitted a request ("Request") to the Pennsylvania Department of Military and Veterans Affairs ("DMVA") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*, seeking records "concerning House Hill 1626 of the 2023-2024 session, House Bill 799 of the 2025-2026 session, and Act 31 of 2025, relating to veterans' benefits and services workplace posting." *See* Request, Items 1-7.

On September 30, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the DMVA partially denied the Request, withholding responsive records, asserting that they relate to the drafts of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency, consist of internal, predecisional deliberations, or are protected by privilege. 65 P.S. §§ 67.708(b)(9), (b)(10)(i)(A).

[1] The Request was submitted on August 22, 2026, a Saturday, but was not received by the DMVA until the next business day, or August 24, 2026, in this instance.

On October 2, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. Specifically, the Requester "challenges the unallocated draft, deliberative/legislative-strategy and attorney-client withholding grounds and the completeness of the search within the original seven categories." The OOR invited both parties to supplement the record and directed the DMVA to notify the OOR if any third parties have a direct interest in this appeal. 65 P.S. § 67.1101(c).

On October 15, 2026, the DMVA submitted a position statement, reiterating its reason for denial, as well as the attestations, made subject to the penalties set forth in 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, from Susan Wolfe ("Wolfe Attestation"), Open Records Officer for the DMVA, and Seth Benge ("Benge Attestation"), Executive Policy Specialist with the Legislative Affairs Office of the DMVA.

On October 26, 2026, the OOR asked the Requester for additional time to issue a Final Determination in order to further develop the record. On October 27, 2026, the Requester did not consent to extending the Final Determination deadline. *See* Requester correspondence. On October 28, 2026, the OOR extended the submission period to provide the DMVA an opportunity to submit additional evidence.

On October 30, 2026, the DMVA submitted a Privilege Log, identifying the document number, date, document,[2] author, recipient, description of the record, and the nature of claimed privilege.

LEGAL ANALYSIS

The DMVA is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the

[2] The DMVA identified three memos, one bill summary and one email.

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 DMVA 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 DMVA has not met its burden of proving that it properly withheld internal, predecisional deliberations. As noted above, the DMVA identified in its Privilege Log three memos and one bill summary that it withheld pursuant to Section 708(b)(10) of the RKTL.[3] In order for an agency to claim the exemption found at 65 P.S. § 67.708(b)(10)(i)(A), the agency must prove that the records reflect internal, predecisional deliberations. While the records here may be predecisional and deliberative, the DMVA's evidence is silent regarding the internal nature of the documents. *See Chester Water Auth. v. Pa. Dep't of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that the exemption "does not serve to insulate communications exchanged between a Commonwealth agency and a private consultant from the Law's general requirement for openness"). Further, the DMVA's evidence simply states that the records contain "predecisional deliberations regarding a House Bill." Privilege Log. Thus, without this evidence, the OOR is unable to hold that said records are exempt pursuant to Section 708(b)(10) of the RTKL and will order the disclosure of Document numbers 1-4, subject to appropriate redaction under Section 708(b)(9), as discussed below.[4]

[3] The DMVA also withheld these records pursuant to Section 708(b)(9) of the RTKL.
[4] The OOR notes that the Requester was not amenable to an extension of time, and thus, we did not pursue *in camera* review. Based upon the subject matter of the records, it is possible that another fact-finder, with additional evidence, might come to a different conclusion.

- The DMVA has met its burden of proving that information contained in the responsive Memos and Bill Summary identified in the Privilege Log may be redacted under Section 708(b)(9) of the RTKL. Section 708(b)(9) exempts from disclosure "[t]he draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency." 65 P.S. § 67.708(b)(9). This exemption covers only drafts that fall into the specific categories set forth in Section 708(b)(9) of the RTKL. *See, e.g., Public Interest Legal Foundation v. City of Phila. Office of City Comm'rs*, OOR Dkt. AP 2018 0256, 2018 PA O.O.R.D. LEXIS 562 (drafts of transcripts do not meet the categories identified by the exemption); *but see Watt v. State College Borough*, OOR Dkt. AP 2020-0113, 2020 PA O.O.R.D. LEXIS 1777 (finding that a draft zoning ordinance was exempt). The Wolfe and Benge Attestations affirm that the DMVA withheld "drafts of a bill or statement of policy." Wolfe Attestation, ¶ 13; Benge Attestation, ¶ 11.[5] The Privilege Log further identifies the records that contain drafts of a bill and statements of policy. *See* Privilege Log, Documents 1-4; *see also* DMVA position statement, p 2. Finally, the OOR notes that the Request seeks a draft of House Bill 1626 and House Bill 799 and of Act 31 of 2025. *See Pa. Game Comm'n v. Fennell,* 148 A.3d 101 (Pa. Commw. Ct. 2016) (explaining that the OOR must consider uncontradicted statements contained in the appeal as evidence). Thus, the DMVA may redact records pursuant to Section 708(b)(9) of the RTKL. 65 P.S. § 67.708(b)(9).

[5] 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 DMVA has acted in bad faith, "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 DMVA has met its burden of proving that responsive records are exempt from access pursuant to the attorney-client privilege. 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. Excela 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 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 Wolfe and Benge Attestations affirm that the DMVA withheld documents protected by privilege sent to the DMVA's Office of Chief Counsel. Wolfe Attestation, ¶ 13; Benge Attestation, ¶ 11. Further, the Privilege Log identifies document number 5, an email from the Office of Chief Counsel, as "[c]ommunications between client and Office of Chief Counsel regarding advice and strategy on litigation against the Commonwealth." Privilege Log. Based on this evidence, including the Request itself and a review of the Privilege Log, the DMVA proved, by a preponderance of the evidence, that it properly withheld records that are protected under the attorney-client privilege. 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).

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the DMVA is required to provide document numbers 1-4, identified in the Privilege Log, subject to redaction pursuant to Section 708(b)(9) of the RTKL, to the Requester 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 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.[6] 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: November 4, 2026

/s/ Lyle Hartranft

LYLE HARTRANFT, ESQ.
APPEALS OFFICER

Sent via E-File Portal to: Evan Wood; Susan Wolfe, AORO; Darryl Liguori, Esq.

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