pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
PEGGY ROCK,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2025-4043**
	:	
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION,	:	
Respondent	:	

FACTUAL BACKGROUND

On August 27, 2026, Peggy Rock ("Requester") submitted an eight-part request ("Request") to the Pennsylvania Department of Transportation ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., "records relating to PennDOT Highway Occupancy Permit Application No. 359145, Gettysburg Station, Gettysburg Borough, Adams County, for which 501 Richardson Acquisition LLC is identified as the applicant."

On September 21, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department partially denied the Request, arguing that records are exempt under 65 P.S. § 67.708(b)(10)(i)(A) as records that reflect the internal, predecisional deliberations of an agency, that plans are exempt under 65 P.S. § 67.708(b)(22), that some records are confidential under state and federal law, and that other records are exempt under 65 P.S. § 67.708(b)(17) as

related to noncriminal investigations. Finally, the Department asserted that it does not possess records for Parts 2 and 8 of the Request.

On September 21, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the denials of Parts 1, 2, 3, 4, 5, 7 and 8 of the Request (i.e., all but Part 6) and stating grounds for disclosure.[1] 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 the appeal. 65 P.S. § 67.1101(c).

On October 1, 2026, the Department submitted a position statement, reiterating its grounds for denial. In support of its position, the Department submitted attestations, made subject to the penalties of 18 Pa.C.S. § 4904, from Adam Shanabrook, Open Records Officer for the Bureau of Office Services ("Shanabrook Attestation"), and Dan Whalen, the Department's Construction Manager for District 8-0 ("Whalen Attestation"). In addition, the Department provided an exemption log. The Attestations set forth supporting evidence and verify the accuracy of the statements made by the Department's counsel in the Department's position statement and exemption log.

LEGAL ANALYSIS

The Department 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 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-

[1] The Requester granted the OOR additional time to issue a final determination. *See* 65 P.S. § 67.1101(b)(1).

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)).

One method an agency may use in meeting the burden of proof that a record is exempt is testimonial affidavits, which if "found to be relevant and credible may provide sufficient evidence in support of a claimed exemption." *McGowan v. Pa. Dep't of Envtl. Prot.*, 103 A.3d 374, 381 (Pa. Commw. Ct. 2014) (quoting *Heavens v. Pa. Dep't of Envtl. Prot.*, 65 A.3d 1069, 1073 (Pa. Commw. Ct. 2013)). Such "affidavits must be detailed, nonconclusory, and submitted in good faith." *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) (en banc) (citation omitted). Attestations and affidavits that are "conclusory or merely parrot [an] exemption do not suffice" to satisfy an agency's burden of proof. *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 659 (Pa. Commw. Ct. 2016). "In other words, a generic determination or conclusory statement are not sufficient[.]" *Scolforo,* 65 A.3d at 1103. No evidence has been presented to show that the Department acted in bad faith, and therefore the averments in the Department's attestation are accepted as true. *Id*.

1. The Department demonstrated that no responsive records exist for Parts 2 and 8

The Department argues that a good faith search was conducted, and that no responsive records exist for Parts 2 and 8. In response to a request for records, "… an agency shall make a good faith effort to determine … whether the agency has possession, custody or control of the identified record[.]" 65 P.S. § 67.901. While the RTKL does not define the term "good faith effort," in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, the Commonwealth Court stated:

> As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession… When records are not in an agency's physical possession, an open records officer has a duty to contact

> agents within its control, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under … the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted) (*Uniontown Newspapers I*), *aff'd*, 243 A.3d 19 (Pa. 2020) (*Uniontown Newspapers II*). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

Here, Open Records Officer Shanabrook attests that a search was conducted and that no responsive records exist in the Department's possession, custody, or control for Parts 2 and 8. Shanabrook Attestation, ¶¶ 4-8. Based upon this evidence, the Department demonstrated that it conducted a good faith search for responsive records as required by 65 P.S. § 67.901 and did not locate any additional records. Therefore, the Department has met its burden of proof that it does not possess additional responsive records. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (citing 65 P.S. §67.708).

2. The Department established that the records listed in the Exemption Log are exempt from disclosure under Section 708(b)(10) of the RTKL

The Department argues that several responsive records reflect its internal, predecisional deliberations. 65 P.S. §67.708(b)(10)(i)(A). The Department provides descriptions of the records and subject matters in its Exemption Log. Section 708(b)(10)(i)(A) exempts from public disclosure a record that reflects:

> [t]he 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, ... 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) the deliberations reflected are internal to the agency, including representatives; 2) the deliberations reflected are predecisional, *i.e.*, before a decision on an action; and 3) the contents are deliberative in character, *i.e.*, pertaining to a proposed action. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011). For purposes of this exemption, records satisfy the "internal" element when they are maintained internal to one agency or among governmental agencies. *West Chester Univ. of Pa. v. Schackner*, 124 A.3d 382, 398 (Pa. Commw. Ct. 2015). The term "deliberation" is 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 be exempt from disclosure, 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).

The Department's position statement, which is verified by the Whalen Attestation, states:

> The records in the Department's possession responsive to the Request include documents required for the potential issuance of HOP No. 359145 requested by 501 Richardson Acquisition LLC. These documents are internal to the Department in that they were created by and for the Department use. These documents have not been shared outside of the Department. They are also deliberative in that they consider various construction options and are pertaining to a proposed action, namely the potential construction.
>
> The documents in the Department's possession are deliberative in nature, in that they examine multiple potential options and alternatives and consider the best course of action based on information collected regarding the impact of the

> potential construction. These documents were all created before a specific course of action was agreed upon.
>
> These documents in the Department's possession responsive to the Request comprise more than just factual data; the documents lay out several potential options to pursue, articulate policy considerations, and weigh potential impacts. (citations omitted)

Here, the Department has demonstrated that the records are internal and have not been shared outside the Department, the records are deliberative because they consider multiple potential options and alternatives for potential construction, and the records pre-date any Departmental action with regard to the proposed construction at issue (referring to a proposed "Gettysburg Station" project that will follow if certain application requirements are met in the future). The position statement indicates that the documents include "factual data" but does not assert that the factual information in the responsive records is interwoven with the deliberative materials such that factual information cannot be separated and provided to the Requester without disclosing internal, predecisional deliberative materials. Accordingly, the Department has met its burden of proof but must provide redacted versions of the records with the factual data preserved. *See* 65 P.S. § 67.708(a)(1).

3. The Department proved that accident reports and related safety studies are exempt

The Department withheld police accident reports that it acquired in relation to a Highway Occupancy Permit under Section 3754 of the Vehicle Code, which provides that:

> The [D]epartment, in association with the Pennsylvania State Police, may conduct in-depth investigations and safety studies of the human, vehicle and environmental aspects of traffic accidents for the purposes of determining the causes of traffic accidents and the improvements which may help prevent similar types of accidents or increase the overall safety of roadways and bridges.

75 Pa.C.S. § 3754(a). Notably, the Vehicle Code makes confidential any information, records and reports used in the preparation of in-depth accident investigations and safety studies. 75 Pa.C.S. § 3754(b).

In support of its argument that the responsive records are exempt, the Department relies on its verified position statement, which states:

> [T]he Department is statutorily empowered to conduct in-depth accident investigations and safety studies to determine the cause of accidents and study how to improve safety on roadways and bridges. In making this determination, the Department undertakes a systematic analysis of roadway conditions, traffic observations, traffic volumes, crash data, pedestrian data, signal systems, and roadway systems in order to make meaningful safety improvements. (citations omitted)

Position statement, pp. 7-8. Further, the position statement explains that the accident reports "reflect or discuss the findings of an in-depth accident investigation." *Id*., p. 7. Based upon this evidence, the Department demonstrated that the crash reports and related traffic studies are exempt from disclosure. Therefore, the Department has met its burden of proof.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required to provide records with factual data unredacted as set forth in Section 2 of this Final Determination. 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 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.[2] All documents or communications following the

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

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 23, 2026

/s/ Josh Macel

_____

APPEALS OFFICER
JOSH MACEL

Sent *via* Appeal Portal to: Margaret Rock; Adam Shanabrook (AORO); Victoria Edwards, Esq.; Madison Reed, Esq.; Cassidy DeCosmo, Esq.