pennsylvania
OFFICE OF OPEN RECORDS

# FINAL DETERMINATION

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| **IN THE MATTER OF** | : | |
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| **LACHLAN LOUDON and WOOMER & TALERICO,** | : | |
| **Requester** | : | |
| | : | |
| **v.** | : | **Docket No: AP 2026-4212** |
| | : | |
| **PENNSYLVANIA DEPARTMENT OF AGRICULTURE,** | : | |
| **Respondent** | : | |

As the Appeals Officer assigned to this matter by the Office of Open Records ("OOR"), I have reviewed the appeal filed with the OOR, as well as the Pennsylvania Department of Agriculture's ("Department") position statement and attestations made under the penalty of perjury[1] authored by Barbara Buckingham ("Buckingham Attestation"), the Department's Agency Open Records Officer ("AORO"), and Nichole Martz ("Martz Attestation"), the Department's Assistant Director of the Bureau of Food and Safety and Laboratory Services. Based upon my review of the appeal and necessary evidence, I make the following conclusions of law and findings of fact:

- The Department met its burden of proving that the records responsive to Items 1, 2, and 4 of the Request are exempt from disclosure. In order for an agency to claim the exemption found at 65

[1] 18 Pa. C.S. § 4904. The position statement is verified by Marija K. Kuren, the Department's Assistant Counsel.

P.S. § 67.708(b)(17), the agency must prove that the records relate to a noncriminal investigation, including "complaints," "[i]vestigative materials, notes, correspondence, and reports…". 65 P.S. 67.708(b)(17)(i)-(ii). The Request seeks complaints, notes, correspondence, witness statements, investigative materials, and photographs, which are facially exempt records. 65 P.S. § 67.708(b)(17). *See Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal materials when determining whether an exemption applies); *see also Office of the Governor v. Davis*, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2015)(*en banc*)(holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). The Department has the legislatively granted authority to conduct investigations of food establishments pursuant to the Food Safety Act, 3 Pa.C.S. §§ 5721-5737.

- The carve-out exception for records that involve the imposition of a fine or civil penalty under Section 708(b)(17) does not apply to the Request. 65 P.S. § 67.708(b)(17)(vi)(A). None of the investigations at issue resulted in the imposition of a fine or civil penalty, the suspension or revocation of a license, or a settlement agreement. *See* Department position statement p.5.
- The Department met its burden of proving that records responsive to Item 3 of the Request do not exist. The Buckingham Attestation demonstrates that the Department's AORO conducted a good faith search for responsive records by inquiring with staff within the Department's Bureau of Food Safety and Laboratory Services. *See* Buckingham Attestation ¶¶ 5, 8; Martz Attestation ¶ 10. The Requester has not submitted sufficient, credible evidence to rebut the Department's Attestations. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

For the foregoing reasons, the appeal is **denied**, and the Department 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 or petition for review 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 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: November 24, 2026**

*/s/ Julie Sodl*

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JULIE SODL, ESQ.
APPEALS OFFICER

Sent via E-File portal to: Lachlan Loudon, Esq.
Barbara Buckingham, AORO
Marija K. Kuren, Esq.

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