



FINAL DETERMINATION

IN THE MATTER OF

**MATTHEW HAVERSTICK,
Requester**

v.

**PENNSYLVANIA DEPARTMENT OF
REVENUE,
Respondent**

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Docket No: AP 2021-0849

INTRODUCTION

Matthew Haverstick, Esq. (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of Revenue (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records related to the Department Secretary’s testimony before the Pennsylvania House Appropriations Committee about Pennsylvania Skill Games. The Department granted the Request in part, and the Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **denied in part**, and the Department is required to take further action as directed.

FACTUAL BACKGROUND

On February 18, 2021, the Request was filed, stating:

With respect to the following assertion (in bold) made by Secretary Hassell during his Feb. 16, 2021 testimony to the House Appropriations Committee:

However, as we continue to move forward with these efforts to diversify the Lottery's business, we must also acknowledge the tremendous harm that the illegal gambling machines marketed as "Pennsylvania Skill Games" are causing for the Lottery. As we have shared with you in past conversation, these games are rapidly spreading at bars, convenience stores and other locations across Pennsylvania. **As a result, they are siphoning off millions of dollars in funding for the senior programs that older Pennsylvanians rely upon.**

1. All documents showing the calculation of "millions of dollars" as well as all documents used by the Secretary or the Department to make such a calculation[.]
2. All correspondence, including but not limited to emails, text message, or notes from telephone or video calls, regarding the same assertion.
3. All documents analyzing the effects of games other than "Pennsylvania Skill Games", VGTs and/or casinos on "funding for the senior programs that older Pennsylvanians rely upon."
4. All documents and correspondence regarding the drafting of the Secretary's Feb. 16 testimony.

On February 25, 2021, the Department invoked a thirty-day extension to respond. *See* 65 P.S. § 67.902(b). On March 26, 2021, in response to the Department's request, the Requester granted the Department an additional week to respond. *See* 65 P.S. § 67.902(b)(2). On April 5, 2021, the Department issued a response, noting that review of records was ongoing, but that it would be granting access to some records responsive to Items 1 and 2 of the Request, and that it was withholding or redacting personal identification information, *see* 65 P.S. § 67.708(b)(6)(i)(A), internal, predecisional deliberations and strategy to adopt a budget, *see* 65 P.S. §§ 67.708(b)(10)(i)(A)-(B), and confidential, proprietary information, *see* 65 P.S. § 67.708(b)(11). The Department also argues that Items 3 and 4 are insufficiently specific to enable the Department to identify responsive records, *see* 65 P.S. § 67.703. On April 16, 2021, the Department produced redacted records; on April 19, 2021, the Department provided an additional document to the Requester in both Word and Excel format.

On April 26, 2021, the Requester appealed to the OOR, challenging the partial denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On May 10, 2021, the Department submitted a position statement, reiterating its arguments and asserting that certain records are protected by the attorney-client privilege and/or the attorney work-product doctrine, *see* 65 P.S. § 67.305. The Department also submitted the attestation, made under penalty of perjury, by Joshua Kunkel, the Department's Deputy Open Records Officer. On the same day, the Requester submitted a position statement, requesting *in camera* review.² On May 26, 2021, the OOR ordered the production of responsive records for *in camera* review, and on June 8, 2021, the Department submitted responsive records, along with an exemption log, verified under penalty of perjury by Mr. Kunkel.³

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

¹ The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

² The Requester noted that he does not object to the Department's reaction of personal identification information.

³ The log submitted by the Department does not reflect that any confidential, proprietary information was withheld or redacted.

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence, and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, the OOR has reviewed records responsive to the Request *in camera*.

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. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b). Likewise, the burden of proof in claiming a privilege is on the party asserting that privilege. *Levy v. Senate of Pa.*, 34 A.3d 243, 249 (Pa. Commw. Ct. 2011).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The Department has proven that some records are exempt under Section 708(b)(10) of the RTKL

The Department argues that certain records reflect the Department’s internal, predecisional deliberations. *See* 65 P.S. § 67.708(b)(10)(i)(A). 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, ... 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). In order 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).

For purposes of this exemption, records that are exchanged with another agency are considered “internal” to the agency. *See Office 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. 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). However, factual material can still qualify as deliberative information if its “disclosure would so expose the deliberative process within an agency that it must be deemed

excepted”; or in other words, when disclosure of the factual material “would be tantamount to the publication of the [agency’s] evaluation and analysis.” *Id.* at 387-88 (citing *Trentadue v. Integrity Communication*, 501 F.3d 1215, 1228-29 (10th Cir. 2007)).

Here, Mr. Kunkel attests:

The documents marked as exempt pursuant to this exemption include draft language and other predecisional deliberations. The documents include drafts of the [Department] Secretary[’s] written testimony for the House Appropriations Committee. The documents also include emails and draft memo among [Department] personnel in the development and compilation of documents and information for the [Department’s] House Appropriations Committee Hearing regarding the [Department’s] budget for fiscal year 2021-2022. These documents reflect discussions among [Department] personnel regarding what information should be included and how the information should be presented. Additionally, the majority of the documents include either comments or redlines, further illustrating the draft/predecisional nature of the documents.

In camera review reveals that responsive memoranda were circulated amongst Department employees in preparation for the budget hearing. The memoranda contain notes, questions, and suggested edits related to discussions regarding proposed talking points for the Secretary’s testimony, questions that may arise during the hearing, and questions about certain statements suggested in the draft talking points.

While some of the memoranda have more comments and suggested edits than others, the fact remains that the presence of comments, text in red font, and suggested edits evidence the predecisional and deliberative nature of these records, consistent with Mr. Kunkel’s attestation. *See Glenza v. Pa. Dep’t of Envntl. Prot.*, OOR Dkt. AP 2016-1493, 2017 PA O.O.R.D. LEXIS 187 (finding that an attachment entitled “Draft Talking Points/Possible Questions/Timeline” was exempt).

Responsive emails also contain proposed responses to a media inquiry and suggested edits. Much of this draft language was ultimately included in the Department’s final reply to the reporter

that was provided to the Requester, but this fact does not change the nature of these records as internal, predecisional, and deliberative.⁴ See, e.g., *Miller v. Cumberland Valley Sch. Dist.*, OOR Dkt. AP 2018-1820, 2019 PA O.O.R.D. LEXIS 25 (finding that a consultant’s reports and recommendations were exempt despite the fact that some of those recommendations were subsequently incorporated in the agency’s policies); *Grove v. Penns Valley Area Sch. Dist.*, OOR Dkt. AP 2018-1343, 2018 PA O.O.R.D. LEXIS 1158 (finding that a document used to develop recommendations that were subsequently presented to the school board as budget recommendations was exempt).

Additionally, while some of the memoranda do contain factual material,⁵ the Department also argues that records reflect “[t]he strategy used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.” 65 P.S. § 67.708(b)(10)(i)(B). In order to be exempt under Section 708(b)(10)(i)(B), a record must reflect an agency’s strategy. See *Benefield v. Pa. Office of the Governor*, OOR Dkt. AP 2021-0756, 2021 PA O.O.R.D. LEXIS 748; *Camburn v. Borough of Pottstown*, OOR Dkt. AP 2015-0315, 2015 PA O.O.R.D. LEXIS 509. The term “strategy” means “the art of devising or employing plans or stratagem toward a goal.” *Knauss v. Chadds Ford Sch. Dist.*, OOR Dkt. AP 2009-0443, 2009 PA O.O.R.D. LEXIS 653 (citing Merriam-Webster’s Dictionary, 11th ed.); see also *Camburn v. Borough of Pottstown*, OOR Dkt. AP 2015-0246, 2015 PA O.O.R.D. LEXIS 436 (holding that records reflecting the strategy of an agency’s adoption of an ordinance was not subject to access under the RTKL).

⁴ Although the exemption log lists Bates No. 9.1, 10, 10.1, 13, and 18, nearly all of the content of these records has already been provided to the Requester.

⁵ Some of this material is available on the internet at <https://www.palottery.state.pa.us/About-PA-Lottery/Annual-Economic-Reports.aspx>. The Department also provided a link to the Secretary’s testimony: <https://houseappropriations.com/files/Documents/DOR%20Testimony%20Before%20House%20Appropriations%200-2-16-2021-%20FINAL.pdf>.

Unlike Section 708(b)(10)(i)(A), this section was not identified as an extension of the common law deliberative privilege in *McGowan*, and there is no requirement that purely factual information is not exempt Section 708(b)(10)(B). *See Benefield*, 2021 PA O.O.R.D. LEXIS 748.

Mr. Kunkel attests:

The documents redacted or withheld pursuant to this exemption include information that reflects the successful adoption of a budget as well as legislative proposals and regulations. [] This testimony, and the drafts thereof, set forth the [Department's] priorities. The presentation of the material as well as communications regarding the language of the material reflect the [Department's] strategy for the successful adoption of a budget, legislative proposal or regulation. The documents also include emails and draft memos shared among [Department] personnel in the development and compilation of documents and information for the [Department's] House Appropriations Committee Hearing. These documents reflect discussions among [Department] personnel regarding what information should be included and how the information should be presented which supports the strategy for the adoption of the [Department's] budget and legislative priorities. []

Under the RTKL, a sworn affidavit or statement made under penalty of perjury may serve as sufficient evidentiary support. *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 competent evidence that the Department acted in bad faith, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. 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)). Further, *in camera* review confirms that the content withheld by the Department is internal, predecisional, and deliberative; accordingly, the Department has met its burden of proving that this information is exempt from disclosure. *See* 65 P.S. § 67.708(a)(1).⁶

⁶ The Department identifies one email as protected by the attorney-client privilege and the attorney-work product doctrine. However, as the Department has proven this email is exempt under Section 708(b)(10), the OOR need not analyze whether it is also privileged.

2. The Department did not reasonably interpret Item 2 as being limited to emails

Item 2 seeks “[a]ll correspondence, including but not limited to emails, text message[s], or notes from telephone or video calls....” The Department interpreted this to seek emails in which calculations were provided specifically for the testimony.⁷ An agency may interpret the meaning of a request for records, but that interpretation must be reasonable. *See Garland v. Pa. Dep’t of Envntl. Prot.*, OOR Dkt. AP 2017-1490, 2017 PA O.O.R.D. LEXIS 1310; *Ramaswamy v. Lwr. Merion Sch. Dist.*, OOR Dkt. AP 2019-1089, 2020 PA O.O.R.D. LEXIS 2095. When a request is subject to multiple reasonable interpretations, the OOR’s task on appeal is to determine if the agency’s interpretation was reasonable. *Ramaswamy*, 2020 PA O.O.R.D. LEXIS 2095. The OOR determines this from the text and context of the request alone, as neither the OOR nor the requester is permitted to alter a request on appeal. *See McKelvey v. Pa. Office of the Attorney Gen.*, 172 A.2d 122, 127 (Pa. Commw. Ct. 2016); *Smith Butz, LLC v. Pa. Dep’t of Env’t Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016).

Here, the plain language of Item 2 indicates that it sought all correspondence and was not limited to emails, but also included text messages and notes from calls. Therefore, the Department’s interpretation was not reasonable. As the Department provides no evidence that it has searched for responsive texts and call notes, the Department is required to search for and provide any responsive records to the Requester.

3. Items 3 and 4 are sufficiently specific

The Department argues that the Items 3 and 4 of the Request are not sufficiently specific to enable it to identify responsive records. *See* 65 P.S. § 67.703. In determining whether a particular request under the RTKL is sufficiently specific, the OOR applies a three-part balancing

⁷ Although the Department’s response initially notes that Item 2 of the Request seeks all correspondence, the Department elaborates on its interpretation, explaining that Item 2 is limited to emails.

test set forth by the Commonwealth Court in *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015), and *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). The OOR examines to what extent the request identifies (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. *Pa. Dep't of Educ.*, 119 A.3d at 1125.

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* The subject matter should provide a context to narrow the search. *Id.* (citing *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (*en banc*)). Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *Id.*

Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126. “The timeframe prong is ... 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.* Failure to identify a finite timeframe will not render an otherwise sufficiently specific request overbroad. *See Pa. Hous. Fin. Agency v. Ali*, 43 A.3d 532, 536 (Pa. Commw. 2012) (concluding request for proposals and sales agreements relating to two specific projects that did not specify timeframe was sufficiently specific). Similarly, an extremely short timeframe will not rescue an otherwise overbroad request. *Cf. Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. 2011) (finding request for all emails sent or received by any school board member in thirty-day period to be sufficiently specific because of short timeframe), *appeal denied*, 54 A.3d 350 (Pa. 2012).

Here, the Request identifies as a subject matter a specific quotation from the Department Secretary’s testimony before the House Appropriations Committee. In relation to that quote, Item

3 seeks records analyzing the effects of games and casinos on funding for older Pennsylvanians, and Item 4 seeks records related to the drafting of the testimony. While the Items do not include an explicit time frame, one can be implied from the context of the Request, in that both Items refer to a specific comment made by Secretary Hassell. *See Iverson*, 50 A.3d at 284 (“the specificity of a request must be construed in the request’s context, rather than envisioning everything the request might conceivably encompass.”); *Askew v. Pa. Office of the Governor*, 65 A.3d 989 (Pa. Commw. Ct. 2013) (holding that an item or phrase must be construed in the context of the request). In its position statement, the Department acknowledges that it interpreted Items 1 and 2 of the Request as seeking records dating back to October 1, 2020. As Items 3 and 4 refer to the same testimony, one must also conclude that these Items include the same implied time frame.

In terms of scope, the Request seeks “all documents” and “correspondence;” in some cases, a request seeking all documents related to a particular subject matter is not be sufficiently specific. *See Ali*, 43 A.3d at 532 (finding that the portion of the request seeking “all communications ... concerning” a specific redevelopment project was insufficiently specific because it did not identify what type of records were requested); *see also Pa. State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Commw. Ct. 2010) (holding that a request for “all records, files, ... communications of any kind” relating to vehicle searches and seizures was insufficiently specific).

However, in *Carey v. Pa. Dep’t of Corr.*, the Court found that a request for “all documents/communications” related to a specific and “well-known” subject matter (the transfer of Pennsylvania inmates to Michigan) and limited to a time frame of four years and four months was sufficiently specific “to apprise [the agency] of the records sought.” 61 A.3d 367 (Pa. Commw. Ct. 2013); *see also Pa. Health and Wellness, Inc. v. Pa. Dep’t of Human Res., et al.*, OOR Dkt. AP 2020-1398, 2021 PA O.O.R.D. LEXIS 644 (finding that the portion of a request

seeking “[a]ll correspondence, or notes, memoranda, or presentations relating to such correspondence, regardless of physical form” related to a well-known request for applications was sufficiently specific because the agency should be able to identify custodians of potentially responsive records); *St. Hilaire v. W. Shore Reg’l Police Dep’t*, OOR Dkt. AP 2017-0439, 2017 PA O.O.R.D. LEXIS 452 (finding that a request with long timeframe and unlimited scope was sufficiently specific where the subject matter was well-defined).

The Department argues that it is unable to discern the meaning of “games,” as used in Item 3. The Request as a whole indicates that it is related to Secretary Hassell’s quoted statement, referring to “Pennsylvania Skill Games,” which is capitalized and enclosed in quotation marks in the Request. Although Secretary Hassell’s statement appears to refer to games of skill in general, “Pennsylvania Skill” is a trade-marked name referring to a specific product. *See POM of Pa., LLC v. Commonwealth of Pa. Dep’t of Revenue, et al.*, 221 A.3d 717, MD 2018 (Pa. Commw. Ct. 2019). Similarly, the term “video game terminals” (“VGTs”), is defined by statute as:

- (1) A mechanical or electrical contrivance, terminal, machine or other device approved by the board that, upon insertion of cash or cash equivalents, is available to play or operate one or more gambling games, the play of which utilizes a random number generator and:
□
- (2) Associated equipment necessary to conduct the operation of the contrivance, terminal, machine or other device.
- (3) The term does not include a slot machine ... or a coin-operated amusement game.

4 Pa.C.S. § 3102. Accordingly, Item 3 seeks records related to the analysis of how games other than “Pennsylvania Skill”-branded products, VGTs, as defined above, and casinos affect funding for older Pennsylvanians.

In support of his argument that the Department knows what “games” means, the Requester produces various records, including an email from the Department’s Executive Director that

mentions games produced by Gracie Technologies, LLC, Pong Game Studios Corporation, and Banilla Games, Inc., and an email by a Department Sales Representative discussing a new gambling machine that was not branded “Pennsylvania Skill” and asking whether it was qualified as a VGT. Thus, it is evident that the Department does monitor different gambling machines and modalities and the effect of those games on the lottery; this belies the Department’s argument that it does not know what is meant by “games *other than* “Pennsylvania Skill Games”, VGTs and/or casinos” (emphasis supplied). Additionally, the Department noted that its search for records responsive to Items 1 and 2 included the terms “games of skill,” “GOS,” “Pennsylvania Skill Games.” It argues that its search for records responsive to Items 1 and 2 was designed to be as broad as possible, and it is not clear to which other games Items 3 might refer. However, in consideration of the evidence produced by the Requester, the “games other than” those enumerated in the Request could have included, at a minimum, games produced by Gracie Technologies, LLC, Pong Game Studios Corporation, and Banilla Games, Inc., as well as the other vendors of which the Department is aware.

Accordingly, in light of the fact that Pennsylvania Skill is a particular brand name and VGTs are specifically defined by statute, the Department’s argument is unavailing, and the use of “games” in Item 3 does not render the Request insufficiently specific. The fact remains that the Request, when considered in its entirety, contains sufficiently specific information to guide a search for responsive records. *See Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 264-65 (Pa. Commw. Ct. 2012) (where a request delineated “a clearly-defined universe of documents[,]” there was no need to make judgment calls as to whether any records were related to the request).

The Department argues that Item 4 is insufficiently specific because it seeks records related to the drafting of any portion of the Secretary’s comments and thus implicates records outside of

the scope of the quoted testimony. However, it is unclear how this Item exceeds the scope of the testimony, as nothing changes the fact that the same quoted language precedes Item 4. In light of the fact that the Item references a particular Department activity, and the Department has acknowledged that the Request implicates a limited timeframe, this Item is sufficiently specific to guide the Department's search for responsive records, especially considering the fact that some records that have already been produced by the Department would be responsive to this Item. *See Pa. Dep't of Educ.*, 119 A.3d at 1126, n.8 (noting that, while not dispositive, the identification of responsive records suggests that a request is sufficiently specific). Therefore, Items 3 and 4 both provide sufficient context to guide the Department's search for any additional responsive records.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and **denied in part**, and, within thirty days, the Department is required to (1) search for and provide text messages and notes of calls responsive to Item 2 and all records responsive to Items 3 and 4, and (2) provide a verification that no other records exist. 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. 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.⁸ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

⁸ *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: September 17, 2021

/s/ Blake Eilers

Blake Eilers, Esq.

Appeals Officer

Sent via email to: Matthew Haverstick, Esq.;
James Gorman, Esq.;
Joshua Voss, Esq.;
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