See Attached list
Grieser / Schnee
via email 4/28/23

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

COUNTY OF BUCKS	:	
Petitioner	:	**2022-03083**
	:	
v.	:	
	:	
MEGAN BROCK	:	
Respondent	:	

ORDER

AND NOW, this **28th day of April, 2023**, upon consideration of the Petition for Review of the June 3, 2022 Final Determination of the Pennsylvania Office of Open Records ("Petition for Review") filed by the County of Bucks ("County") and the Answer and New Matter to Petition for Review of the June 3, 2022 Final Determination of the Pennsylvania Office of Open Records ("Answer and New Matter"), filed by Megan Brock ("Ms. Brock"), and for the reasons set forth in the Decision attached hereto as Exhibit "A,", it is hereby **ORDERED** and **DECREED** as follows:

1. The Petition for Review is **GRANTED**, in part, and **DENIED**, in part;

2. Within ten (10) days hereof, the County shall produce to Ms. Brock the following records:

   a. Record identified as page #017 and referenced in Paragraph 160 of the Decision;

   b. Record identified as pages #018-022 and referenced in Paragraph 165 of the Decision;[1]

   c. Record identified as page #023 and referenced in Paragraph 171 of the Decision;

[1] The personal email address of the individual who sent the emails to Central Bucks School District which are part of this record shall be redacted.

d. Record identified as pages #024-026 and referenced in Paragraph 177 of the Decision;[2]

e. Record identified in Paragraph 194 of the Decision; and

f. Record identified in Paragraph 195 of the Decision.

3. Within thirty (30) days hereof, the County shall make a payment to Counsel for Ms. Brock in the amount of $1,500.00 pursuant to 65 P.S. §67.1305(a).

BY THE COURT:

DENISE M. BOWMAN, J.

N.B. It is your responsibility to notify all interested parties of the above action.

[2] The email which begins at the bottom of page #024 and ends at the top of page #025 shall be redacted on the grounds that such information is protected from disclosure pursuant to the attorney-client privilege.

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

COUNTY OF BUCKS	:	**No.: 2022-02979**
	:	
Petitioner	:	
	:	
v.	:	
	:	
	:	
MEGAN BROCK	:	
	:	
Respondent	:	

COUNTY OF BUCKS	:	
Petitioner	:	
	:	**CONSOLIDATED**
	:	**(2022-03083)**
v.	:	
	:	
MEGAN BROCK	:	
Respondent	:	

DECISION

I. INTRODUCTION AND SUMMARY

This matter involves two petitions ("Petitions") filed by the County of Bucks ("County") challenging decisions made by the Pennsylvania Office of Open Records ("OOR") relating to three requests by Megan Brock ("Ms. Brock") under the Pennsylvania Right to Know Law, 65 P.S. §§67.101, *et seq.* ("RTKL").[1] The County partially denied her requests, and, thereafter, Ms. Brock took appeals to the OOR. In both instances, Ms. Brock requested the OOR to review the documents at issue before ruling on her appeal. Ms. Brock also took the position that the County

[1] At one point there were three petitions filed by the County which were consolidated under Docket No. 2022-02979. The third petition (initially filed at Docket No. 2022-04043) involves several additional requests made by Ms. Brock under the RTKL. That matter has been severed and will be ruled upon separately. To most clearly present the history of this litigation, however, it will be referenced in the Procedural History section of this Decision.

had not performed a sufficiently thorough search, and, therefore, acted in bad faith. The County submitted an affidavit in both appeals which, *inter alia*, set forth a description of the search of the documents performed by the County. In response, Ms. Brock included documents in her submissions which she claimed proved the County failed to conduct a thorough search and/or withheld documents improperly.

Subsequent to the filing of the Petitions, the County filed a motion asking this Court to perform a review the documents, *in camera*, and also to open the record so that additional evidence could be submitted by the parties. The County argued that supplementation of the record was warranted given Ms. Brock's allegations of bad faith. Ms. Brock opposed the request. Ms. Brock also opposed the request that the Court perform an *in-camera* review of the documents. Ultimately, the Court ruled that it would not open the record to receive supplemental evidence from the parties, but would perform an *in-camera* review of the documents.

The Court has since reviewed the records made before the OOR (including the submissions of both parties), and the parties' briefs and arguments submitted to this Court. The Court also has performed an *in camera* inspection of the documents. Having considered the records in their totality, and having applied the relevant law, the Court concludes that the County's request for relief is properly granted, in part, and denied, in part, with respect to the Petition for Review of the May 27, 2022 Final Determination of the Pennsylvania Office of Open Records (initially docketed at 2022-02979) and also the Petition for Review of the June 3, 2022 Final Determination of the Pennsylvania Office of Open Records (initially docketed at 2022-03083).[2] As discussed in detail below, even considering that the purpose of the RTKL is to

[2] Although the two Petitions which are the subject of this consolidated matter are addressed together in this Decision, the Court will issue separate Orders for each and file same under the docket number originally assigned to the case.

promote transparency and that the exemptions thereto are to be construed narrowly, certain of the records sought by Ms. Brock are not "public records" as that term is defined by the RTKL and, thus, are protected from disclosure.[3] However, there also are other documents sought by Ms. Brock which do not fall under any exemption to the RTKL and which the County should have produced. Additionally, the Court has identified a few documents which were not produced by the County which are responsive and should have been produced. Consequently, the Court has imposed a penalty against the County in each of the two matters pursuant to 65 P.S. §67.1305(a).

The foregoing rulings are supported by the following Findings of Facts and Conclusions of Law:

II. FINDINGS OF FACT

A. Procedural History

1. Petitioner, the County, is a local agency as defined by §102 of the RTKL.

2. Respondent, Ms. Brock, is an adult individual who resides in Bucks County.

1. First Appeal to the OOR

3. On February 7, 2022, Ms. Brock submitted a RTK request to the County ("First RTK Request").

4. Ms. Brock presented her First RTK Request as follows:

> Copies of any/all electronic correspondence, records, and attachments sent/received by Eric Nagy to any/all of the following: Diane Ellis-Marseglia, Bob Harvie, Larry King, Gail Humphrey, and David Damsker *from 8/10/2021 to 8/28/2021*, on the buckscounty.gov domain. I am requesting records containing: 1. Any/all communications about Bucks County Health Department School Guidance,

[3] Because these documents fall outside the definition of "public records," they cannot be disclosed even in a redacted form. *See Commonwealth v. Simpson*, 151 A.3d 678, 684 (Pa. Commw. Ct. 2016) (explaining that if the requested information is exempt under 65 P.S. §67.708 of the RTKL, the information is not a "public record" and is exempt from disclosure in its entirety).

> including but not limited to guidance amended in reaction to the 8/23/2021 letter from Alison Beam. 2. Any/all communications about the PA DOH and 8/23 letter from Alison Beam.

First RTK Request (emphasis added).

5. On March 8, 2022, the County received a second RTK request from Ms. Brock ("Second RTK Request").

6. Ms. Brock presented her Second RTK Request as follows:

> Please send a copy of the email or emails that was/were sent to Margaret McKevitt *on 8/23/2021* on the buckscounty.gov domain, *which contained the final copy of the Bucks County COVID-19 Amended School Guidance*, which was then sent to Mark Hoffman. Please include any/all responses and/or correspondence to/from this email, between Ms. McKevitt and the sender. If any parts of email must be redacted, please at minimum provide the subject line of any emails as well as the recipients and/or senders.

Second RTK Request (emphasis added).

7. On March 9, 2022 and March 10, 2022, the County partially denied the First RTK Request and the Second RTK Request.

8. The County took the position that any responsive records not provided or redacted contain internal, predecisional deliberations, contain personal identification information, consist of draft documents, and/or constitute attorney-client privileged communications.

9. On March 10, 2022, Ms. Brock appealed the County's denial of her First RTK Request and her Second RTK Request to the OOR.

10. Ms. Brock's appeal to the OOR relating to the First RTK Request was assigned docket number AP 2022-0628.

11. Ms. Brock's appeal to the OOR relating to the Second RTK Request was assigned docket number AP 2022-0627.

12. Ms. Brock's appeals to the OOR were consolidated under docket number AP 2022-0627 ("Consolidated First Appeal to OOR").

13. On March 22, 2022, the County submitted an Affidavit of its Open Records Officer ("Cain Aff. – AP 2022-0627"), in response to Ms. Brock's Consolidated First Appeal.

14. In support of the County's position that the records at issue were "properly withheld and redacted," the County offered the following:

> In conducting the search for records for the underlying requests of Appeals 2022-0624, 0625, 0626, 0267, and 0268, the Agency conducted thorough email searches using the search terms listed in Ms. Brock's requests.[4]
>
> After the email searches, the emails were reviewed for responsiveness and redacted or withheld, as indicated above, if any RTKL exemptions applied.
>
> In her appeals, Ms. Brock asserts that the Agency failed to provide a redaction log of all the withheld documents and acting [sic] wrongfully and in bad faith. This is not a proper appeal since she did not state which exemptions the agency asserted were improper.
>
> Section 1101 of the RTKL requires Ms. Brock "to address any grounds stated by the agency for delaying or denying the request." She has failed to meet her statutory requirements.
>
> Further, where an agency sufficiently explains the basis for nondisclosure through an affidavit, a log is not necessary. See Chambersburg Area School District v. Dorsey, 97 A.3 1281, 1289 (Pa. Comwlth. 2014).
>
> In each of the requests above, the Agency has indicated the exemption that resulted in records being redacted. Thus, no log is required.
>
> Additionally, "[u]nder Section 706, the redaction requirement only applies to public records, and if a record falls within one of the exemptions set forth in Section 708, that record is not a public record as defined by Section 102 of the RTKL." Commonwealth v. Simpson, 151 A.3d 678, 684-85 (Pa. Commw. Ct. 2016). Further, "[w]here the whole of a record falls under Section 708 exemption, redaction is not required." Id.

[4] Appeals 2022-0624, 0625 and 0626 refer to RTK requests made by Ms. Brock which are not the subject of the Petitions discussed herein.

> To the extent the records were not public records, the Agency properly withheld records.

Cain Aff. – AP 2022-0627, ¶¶19-26.

15. On March 25, 2022 Ms. Brock submitted an email to the OOR in support of the Consolidated First Appeal to OOR ("Brock Submission to OOR- AP 2022-2067").

16. In support of her First Appeal to OOR, Ms. Brock requested an *in-camera* review of the documents at issue. *See* Brock Submission to OOR-AP 2022-2067.

17. Ms. Brock also attached five pages of documents which she avers were obtained through another RTK request and which she contends are responsive to her First RTK Request and Second RTK Request but which were not produced by the County. *See id.*

18. Ms. Brock avers that such documents show that the County wrongfully withheld documents and acted in bad faith. *See id.*

19. The OOR did not perform an *in camera* inspection of the records.

20. On May 27, 2022, OOR Appeals Officer, Ryan W. Liggitt, Esquire ("Mr. Liggitt"), issued a Final Determination ("First Final Determination").

21. The OOR found that the County properly redacted personal email addresses. *See* First Final Determination at 5-6.

22. The OOR also found that the County improperly redacted (work) email addresses of members of the County's Board of Commissioners and employees of the County. The OOR reasoned that because these email addresses are held out to the public, they are not exempt from disclosure. *See id.* at 6-7.

23. Additionally, the OOR found that the County failed to submit sufficient evidence to establish that the responsive records were exempt from public access under the pre-decisional

deliberation exemption, the attorney client privilege and/or because the records were draft documents. *See id.* at 9-10.

24. Finally, the OOR found that while it could not conclude that the County had conducted a good faith search for records, it did not find that the record supported a finding of bad faith. *See id.* at 11-12.

25. Based upon the submissions of Ms. Brock and the County, but without having reviewed the documents at issue, the OOR granted the appeal in part and denied it in part, and directed that the County provide all responsive records subject to redactions of personal identification information. *See id.* at 12.

26. The parties agree that to date, the County has taken the following additional action relating to Ms. Brock's First RTK Request and Second RTK Request:

- 2022-0627: On March 9, 2022, the County provided one email which was initially redacted to remove County and State email addresses.
- 2022-0627: On June 27, 2022, the County provided an unredacted version of the email to Ms. Brock in its Petition for Review of the May 27, 2022 Final Determination of OOR.
- 2022-0628: The County provided no records since all were redacted as containing internal, predecisional deliberations, personal identification information, draft documents, and attorney-client privileged communications.

Joint Stipulation of Facts ("Joint Stipulation") at 2.[5]

27. As to the records which remain in dispute, the parties agree with respect to Ms. Brock's First RTK Request, the County identifies three emails, consisting of thirteen (13) PDF

[5] On November 30, 2022, the parties executed a Joint Stipulation covering the First Appeal to CCP, Second Appeal to CCP and Third Appeal to CCP and addressing what the parties agreed the County had produced to date and also the universe of documents which remain at issue. *See id.*

pages, as being withheld. *See id.* Ms. Brock contends that additional records exist which are responsive to her First RTK Request. *See id.* The parties agree that no other records remain in dispute regarding Ms. Brock's Second RTK Request. *See id.*

2. Second Appeal to the OOR

28. On February 7, 2022, Ms. Brock submitted another RTK request to the County ("Third RTK Request").

29. The Third RTK Request sought the following:

> Copies of any/all electronic correspondence, records, and attachments *sent/received by Eric Nagy to/from Margaret McKevitt from 8/10/21 to 8/28/21* on the buckscounty.gov domain containing 1. Any/all communications *about the Bucks County Health Department School Guidance*. 2. Any/all communications *about the letter sent from Allison Beam on 8/23*, including but limited to changes and amendments made by the BCHD guidance in response to this letter.

30. On March 15, 2022, the County partially denied Ms. Brock's Third RTK Request.

31. The County took the position that any responsive documents not provided or which were redacted contain personal identification information, are draft records, contain internal, pre-decisional deliberations, and/or are protected from disclosure by the attorney-client privilege.

32. On April 5, 2022, Ms. Brock took an appeal to the OOR which docketed the matter as AP 2022-0846 ("Second Appeal to OOR").

33. On April 15, 2022, the County submitted an Affidavit of its Open Records Officer ("Cain Aff. – AP 2022-0846"), in response to Ms. Brock's appeal docketed at AP 2022-0846.

34. In support of the County's position that the records at issue were properly withheld and/or redacted, the County offered the following:

> In conducting the search for records for the underlying request of Appeal 2022-0846, the Agency conducted thorough email searches using the search terms listed in Ms. Brock's requests.

The two-part Request concerns the Bucks County Health Department School Guidance. It specifically asks for "questions/concerns and amending the guidance" and "changes and amendments." By reviewing the terms of the search, it is clear that Ms. Brock is asking for "internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members."

After the email searches, the emails were reviewed for responsiveness and redacted or withheld, as indicated above, if any RTKL exemptions applied.

In her appeal, Ms. Brock asserts that the Agency acted in bad faith. This is not a proper appeal since she did not state which exemptions the agency asserted were improper.

Section 1101 of the RTKL requires Ms. Brock "to address any grounds stated by the agency for delaying or denying the request." She has failed to meet her statutory requirements.

Further, where an agency sufficiently explains the basis for nondisclosure through an affidavit, a log is not necessary. See Chambersburg Area School District v. Dorsey, 97 A.3 1281, 1289 (Pa. Comwlth. 2014).

The Agency's response indicates the exemptions that resulted in records being redacted. Thus, no log is required.

Additionally, "[u]nder Section 706, the redaction requirement only applies to public records, and if a record falls within one of the exemptions set forth in Section 708, that record is not a public record as defined by Section 102 of the RTKL." Commonwealth v. Simpson, 151 A.3d 678, 684-685 (Pa. Commw. Ct. 2016). Further, "[w]here the whole of a record falls under Section 708 exemption, redaction is not required." Id.

To the extent the records were not public records, the Agency properly withheld records.

Finally, her allegations of bad faith are unsupported by any evidence. In fact, since September 2021, we have received 56 requests from Ms. Brock and have responded to each of them, with the exception of 8 requests whose responses are due on April 20, 2022.

Cain Aff. – AP 2022-0846 at ¶¶9-18.

35. Also on April 15, 2022, Ms. Brock submitted an email to the OOR in support of her Second Appeal to OOR ("Brock Submission to OOR- AP 2022-0846").

36. In support of her Second Appeal to OOR, Ms. Brock requested an *in-camera* review of the documents at issue. *See* Brock Submission to OOR-AP 2022-0846 at 1.

37. Ms. Brock also attached five pages of documents which she avers were obtained through another RTK request and which she contends are responsive to her Third RTK Request but which were not produced by the County. *See id.* at 7.

38. Ms. Brock avers that such documents show that the County wrongfully withheld documents and acted in bad faith. *See id.* at 1.

39. The OOR did not perform an *in camera* inspection of the records.

40. On June 3, 2022, OOR Appeals Officer, Magdalene C. Zeppos-Bros, Esquire ("Ms. Zeppos-Bros") issued a Final Determination ("Second Final Determination").

41. In its Second Final Determination, the OOR found that the County properly redacted personal email addresses in the emails provided to Ms. Brock. *See* Second Final Determination at 3-4 .

42. The OOR also found that the County had improperly redacted (work) email addresses of members of the County's Board of Commissioners and employees of the County. *See id.* at 4-5.

43. The OOR reasoned that because these email addresses are held out to the public, they are not exempt from disclosure. *See id.* at 5.

44. Additionally, the OOR found that the County failed to submit sufficient evidence to establish that the responsive records are exempt from public access under the pre-decisional deliberation exemption and/or the attorney client privilege, or that any of the records are draft documents. *See id.* at 5-8.

45. Ultimately, the OOR granted the appeal, in part, and denied the appeal, in part, directing the County to provide all responsive records subject to the redactions of personal identification information. *See id.* at 10.

46. With respect to Ms. Brock's Third RTK Request, the parties agree that County has since provided two partially redacted PDF pages. *See* Joint Stipulation at 2. Nine emails, consisting of twenty-six (26) PDF pages continue to be withheld by the County. *See id.* Ms. Brock contends that additional records exist which are responsive to her Third RTK Request. *See id.*

3. Third Appeal to OOR

47. On March 15, 2022, the County received four (4) additional completed RTK request forms from Ms. Brock (collectively, "Additional RTK Requests").

48. Ms. Brock presented a first RTK request made on March 15, 2022 ("Fourth RTK Request") as follows:

> Copies of any/all electronic correspondence, records, and attachments sent/received by Diane Marseglia to any/all of the following: Eric Nagy, Bob Harvie, Larry King, Gail Humphrey, James O'Malley, Margaret McKevitt, and David Damsker from 8/10/2021 to 9/1/2021, on the buckscounty.gov domain. I am requesting records containing: 1. Any/all communications about Bucks County Health Department School Guidance, including but not limited to guidance amended in reaction to the 8/23/2021 letter from Alison Beam. 2. Any/all communications about the PA DOH, 8/23 letter from Alison Beam, and the changes made to BCHD school guidance on 8/23.

49. Ms. Brock presented a second RTK request made on March 15, 2022 ("Fifth RTK Request") as follows:

> Copies of any/all electronic to any/all of the correspondence, records, and attachments sent/received by Bob (Robert) Harvie following: Eric Nagy, Larry King, Gail Humphrey, Diane Marseglia, James O'Malley, Margaret McKevitt, and David Damsker from 8/10/2021 to 9/1/2021, on the buckscounty.gov domain. I am requesting records containing: 1. Any/all communications about Bucks County Health Department School Guidance, including but not limited to guidance

amended in reaction to the 8/23/2021 letter from Alison Beam. 2. Any/all communications about the PA DOH, 8/23 letter from Alison Beam, and the changes made to BCHD school guidance on 8/23.

50. Ms. Brock presented a third RTK request made on March 15, 2022 ("Sixth RTK Request") as follows:

> Copies of any/all electronic correspondence, records, and attachments sent/received by Gail Humphrey to any/all of the following: Eric Nagy, Bob Harvie, Larry King, James O'Malley, Margaret McKevitt, Diane Marseglia, and David Damsker from 8/10/2021 to 9/1/2021, on the buckscounty.gov domain. I am requesting records containing: 1. Any/all communications about Bucks County Health Department School Guidance, including but not limited to guidance amended in reaction to the 8/23/2021 letter from Alison Beam. 2. Any/all communications about the PA DOH, 8/23 letter from Alison Beam, and the changes made to BCHD school guidance on 8/23.

51. Ms. Brock presented a fourth RTK request made on March 15, 2022 ("Seventh RTK Request") as follows:

> Copies of any/all electronic correspondence, records, and attachments sent/received by Margaret McKevitt to any/all of the following: Eric Nagy, Bob Harvie, Larry King, James O'Malley, Gail Humphrey, Diane Marseglia, and David Damsker from 8/10/2021 to 9/1/2021, on the buckscounty.gov domain. I am requesting records containing: 1. Any/all communications about Bucks County Health Department School Guidance, including but not limited to guidance amended in reaction to the 8/23/2021 letter from Alison Beam. 2. Any/all communications about the PA DOH, 8/23 letter from Alison Beam, and the changes made to BCHD school guidance on 8/23.

52. On April 20, 2022, the County partially denied the Additional RTK Requests.

53. On May 10, 2022, Ms. Brock took an appeal to the OOR which docketed the matter as AP 2022-1116 ("Third Appeal to OOR").

54. On July 18, 2022, OOR Appeals Officer Erin Burlew, Esquire ("Ms. Burlew") issued a Final Determination ("Third Final Determination").

55. The OOR granted the appeal, in part, and denied it, in part. *See* Third Final Determination at 7.

56. With respect to the Third Appeal to CCP, the parties agree that the County initially produced 110 PDF pages of partially redacted records. Subsequent to the issuance of the Third Final Determination, the County released an additional 69 PDF pages of records that had previously been redacted as "employee criticism." *See* Joint Stipulation at 5.

57. Thereafter, the County produced an additional 10 PDF pages of records which previously had been withheld. *See id.*

58. The parties agree that the documents which remain in dispute include twenty-seven (27) emails, consisting of 114 PDF pages. *See id.*

B. Petitions for Review by the Court of Common Pleas

59. On June 27, 2022, the County filed a Petition for Review of the May 27, 2022 Final Determination of the Pennsylvania Office of Open Records ("Petition for Review of First Final Determination"). This matter was initially docketed at 2022-02979 ("First Appeal to CCP").

60. In its Petition for Review of First Final Determination, the County requests this Court to reverse the First Final Determination and declare that the County is not required to take any further action on Ms. Brock's First RTK Request or her Second RTK Request.

61. On July 18, 2022, Ms. Brock filed an Answer and New Matter to Petition for Review of the May 27, 2022 Final Determination of the Pennsylvania Office of Open Records ("Answer and New Matter to Petition for Review of First Final Determination").

62. In that Answer and New Matter for Review of First Final Determination, Ms. Brock requests that the Court dismiss and deny the Petition for Review of the First Final Determination, affirm the First Final Determination, award Ms. Brock attorney's fees, and impose monetary penalties against the County.

63. On July 1, 2022, the County filed a Petition for Review of the June 3, 2022 Final Determination of the Pennsylvania Office of Open Records ("Petition for Review of Second Final Determination"). This matter was initially docketed at 2022-03083 ("Second Appeal to CCP").

64. In its Petition for Review of Second Final Determination, the County requests this Court to reverse the Second Final Determination and declare that the County is not required to take any further action with respect to Ms. Brock's Third RTK Request.

65. On July 18, 2022, Ms. Brock filed an Answer and New Matter to Petition for Review of the June 3, 2022 Final Determination of the Pennsylvania Office of Open Records ("Answer and New Matter to Petition for Review of Second Final Determination").

66. In that Answer and New Matter for Review of Second Final Determination, Ms. Brock requests that the Court dismiss and deny the Petition for Review of the Second Final Determination, affirm the Second Final Determination, award Ms. Brock attorney's fees, and impose monetary penalties against the County.

67. By order entered August 3, 2022, the Court consolidated the First Appeal to CCP and the Second Appeal to CCP under the docket number 2022-02979 ("Consolidation Order").

68. On August 17, 2022, the County filed a Petition for Review of the July 18, 2022 Final Determination of the Pennsylvania Officer of Open Records ("Petition for Review of Third Final Determination"). This matter was initially docketed at 2022-04043 ("Third Appeal to CCP").

69. On August 19, 2022, the OOR submitted the Certified Record relating to the First Final Determination to the Prothonotary of Bucks County which was docketed at 2022-02979.

70. On that same date, the OOR submitted the Certified Record relating to the Second Final Determination to the Prothonotary of Bucks County which also was docketed at 2022-02979.

71. On September 12, 2022, by Order filed that same date, the Court consolidated the Third Appeal to CCP with the First Appeal to CCP and Second Appeal to CCP under the docket number 2022-02979.

72. On October 3, 2022, Ms. Brock filed an Answer and New Matter to Petition for Review Filed in 2022-04043 ("Answer and New Matter to Petition for Review of Third Final Determination").

73. In that Answer and New Matter for Review of Third Final Determination, Ms. Brock requests that the Court dismiss and deny the Petition for Review of the Third Final Determination, affirm the Third Final Determination, award Ms. Brock attorney's fees, and impose monetary penalties against the County.

74. On October 31, 2022, the County filed its Motion to Supplement Record and for In-Camera Review of Records ("Motion to Supplement and for In-Camera Review").

75. In its Motion to Supplement and for In-Camera Review, the County sought to supplement the record by providing an affidavit containing a redaction and privilege log regarding the redactions that are at issue in these matters.

76. The County also sought to have the Court to review the responsive records and affidavit *in-camera* given Ms. Brock's claim that the County acted in bad faith and request for the imposition of sanctions and penalties.

77. On November 7, 2022, Ms. Brock filed her Response to County of Bucks' Motion to Supplement Record and Motion for In-Camera Review of Records ("Response to Motion to Supplement and for In-Camera Review").

78. In her Response to Motion to Supplement, and notwithstanding that Ms. Brock had requested an *in-camera* inspection by the OOR in First Appeal to OOR and Second Appeal to OOR, Ms. Brock opposed the County's requests to expand the evidentiary record and to have the Court conduct an *in-camera* review of the documents.

79. Ms. Brock argued that this Court could sufficiently rely upon the certified record developed by the OOR and the County's actions with respect to allegations of bad faith.

80. On December 7, 2022, the Court entered an Order which denied the County's request to supplement the record but granted its request for an *in-camera* review of the records which it had yet to produce in connection with the First Appeal to CCP, Second Appeal to CCP and Third Appeal to CCP ("December 7, 2022 Order").

81. On February 7, 2023, the County submitted correspondence to the Court and Counsel for Ms. Brock attaching a log of the documents which the County would be providing to the Court for an *in-camera* review with the "subject" block of that log redacted ("Redacted Log"). *See* February 7, 2023 Correspondence attached hereto as Exhibit "A."

82. In that February 7, 2023 correspondence, Counsel for the County advised that when it provided the documents to the Court for its *in-camera* review, the County would provide another copy of the log with the "subject" block on the log unredacted ("Unredacted Log").

83. Thereafter, the County submitted copies of documents which the parties agree remain in dispute in each of the First Appeal to CCP, Second Appeal to CCP and Third Appeal

to CCP for an *in camera* review by the Court along with a copy of the Unredacted Log. The County did not provide a copy of the Unredacted Log to Counsel for Ms. Brock.

84. Next to each document identified in the Redacted Log, the County identifies the basis or bases upon which it has refused to disclose the record. *See id.*

85. The County cites to the predecisional deliberation exemption of the RTKL as a basis to withhold every document. *See id.*

86. As to certain of the records identified on the Redacted Log, the County also relies upon the exemption under the RTKL which applies to drafts of bills, resolutions, regulations, statements of policy, management directives, ordinances or amendments. *See id.*

87. Additionally, with respect to some of the records identified in the Redacted Log, the County references the attorney-client privilege as a basis for withholding the records. *See id.*

88. Upon receipt of the records provided by the County, the Court began to perform its *in-camera* review.[6]

89. Thereafter, and prior to reviewing the documents related to the Third Appeal to CCP, the Court learned that the Certified Record from the OOR Record relating to the Third Final Determination had not been filed with the Prothonotary of Bucks County.

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[6] In the Unredacted Log, the County also included the following statement:

> The joint stipulation of fact filed on 11/30/22, states that OOR Case #2022-3083 [sic] consists of 9 emails, consisting of 26 PDF pages have been withheld. It also states the OOR Case # 2022-04043 consists of 27 emails, consisting of 114 PDF pages have been withheld. Upon further review, OOR Case # 2023-3038 [sic] had 8 emails consisting of 26 PDF pages withheld and OOR Case # 2022-04043 had 28 emails consisting of 114 PDF pages withheld.

Unredacted Log at 4.

90. On March 7, 2023, the Court entered an Order directing the Prothonotary of Bucks County to issue a Writ of Certiorari upon the Pennsylvania Office of Open Records for the Certified Record relating to the Third Final Determination.

91. Thereafter, Counsel for Ms. Brock requested oral argument.

92. By Order dated March 21, 2023, oral argument was scheduled for April 20, 2023.

93. On March 28, 2023, the Court entered an Order severing the Third Appeal to CCP from the two other consolidated matters and directing that oral argument scheduled for April 20, 2023 would address only the First Appeal to CCP and Second Appeal to CCP.

94. Thereafter, the Third Appeal to CCP was re-assigned.

95. On April 20, 2023, counsel for the parties appeared before the Court and made argument on the First Appeal to CCP and Second Appeal to CCP.

III. CONCLUSIONS OF LAW

A. Applicable Scope and Standard of Review

96. Decisions of the OOR appeals officers are reviewable upon petitions for review – to the Commonwealth Court when the matter arises from a determination made by a Commonwealth agency, and to the court of common pleas for the county where the local agency is located when the matter arises from a determination made by a local agency. *See* 65 P.S. §§67.1301-1302.

97. The RTKL requires both the Commonwealth Court and the court of common pleas for the county where the local agency is located to render decisions that "contain findings of fact and conclusions of law based upon the evidence as a whole. The decision[s] shall clearly and concisely explain the rationale for the decision." 65 P.S. §67.1301(a); §67.1302(a).

98. Courts reviewing decisions of the OOR have the authority to expand their record to fulfill their statutory role and thus are entitled to the broadest scope of review. *See Bowling v. Office of Open Records*, 75 A.3d 453, 475-77 (Pa. 2013).

99. This scope of review includes an *in-camera* review of the record and supplementing the record through a hearing or even a remand of this matter to the OOR, if the Court so decides. *See Bowling v. Office of Open Records*, 990 A.2d 813, 820 (Pa. Commw. Ct. 2010).

100. The applicable standard of review is akin to a *de novo* review. *See id.* at 818.

101. A *de novo* standard of review permits the Court to determine the case anew, including matters relating to testimony and other evidence. *See Bowling*, 75 A.3d at 466 n.14.

B. The Right to Know Law, Applicable Burden of Proof and Exemptions

102. The RTKL is the statute providing for access to public records in Pennsylvania. *See* 65 P.S. §67.101-3104.

103. The RTKL defines the term, "record," as:

> [I]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

65 P.S. §67.102.

104. The RTKL defines a "public record" as, *inter alia*, a record of an agency that: "(1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal

or State law or regulation or judicial order or decree; or (3) is not protected by a privilege." 65 P.S. §67.102.[7]

105. Under the RTKL, agency records are *presumed to be public record*, accessible for inspection and copying by anyone requesting them, and must be made available to a request unless they are: (1) exempt under Section 708 of the RTKL; (2) protected by a privilege; or (3) exempt under any other Federal or State law or regulation or judicial order or decree. *See* 65 P.S. §67.305.

106. If the requested information is exempt under §708(b) of the RTKL, the information is not a "public record" and is exempt from disclosure in its *entirety*. *See Simpson*, 151 A.3d at 684 (emphasis added).

107. "Consistent with the RTKL's goal of *promoting government transparency* and its remedial nature, the *exceptions to disclosure of public records must be narrowly construed*." *Central Dauphin Sch. Distr. v. Hawkins*, 286 A.3d 726, 741 (Pa. 2022) (quoting *Pa. State Police v. Grove*, 161 A.3d 877, 892 (Pa. 2017)) (emphasis added).

108. In seeking to prove that a record is exempt from disclosure, the *agency claiming the exemption bears the burden* of proving it by a preponderance of the evidence. *See* 65 P.S. §67.708(a)(1) (emphasis added).

109. "A preponderance of the evidence standard, the lowest evidentiary standard, is tantamount to a more likely than not inquiry." *Delaware County v. Shaefer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012); *see also Pennsylvania State Troopers Ass'n v. Scolforo*, 18 A.3d 435,

[7] The RTKL identifies four types of public agencies: Commonwealth agencies, local agencies, legislative agencies, and judicial agencies. *See* 65 P.S. §§67.301-304.

439 (Pa. Commw. Ct. 2011) (explaining that by the preponderance of the evidence standard, "the existence of a contested fact is more probable than its nonexistence").

110. Although the purpose of the RTKL is to promote access to official government information to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions, where an agency proves by a preponderance of the evidence that an exemption set forth in §708(b) applies, the Court will be constrained by the applicable law to conclude that the record is exempt from public disclosure in its entirety. *See Askew v. Pennsylvania Office of the Governor*, 65 A.3d 989, 991 (Pa. Commw. Ct. 2013) (citation omitted); *see, e.g., California Borough v. Rothey*, 185 A.3d 456, 465 (Pa. Commw. Ct. 2018) (holding that video taken by surveillance camera in holding cell which recorded commission of a crime related to criminal investigation and thus was exempt from disclosure pursuant to §708(b)(16)).

1. Exemption Pursuant to §708(b)(9)

111. Under §708(b)(9) of the RTKL, a record is exempt is if it is: "The 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).

2. Exemption Pursuant to §708(b)(10)(i)(A)

112. Pursuant to §708(b)(10)(i)(A), a record that is protected from disclosure pursuant to the predecisional deliberative exemption 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 predecisional deliberations.

65 P.S. §67.708(b)(10)(i)(A).

113. To establish this exception, an agency must show: (1) the information is internal to the agency; (2) the information is deliberative in character; and, (3) the information is prior to a related decision, and thus, "predecisional." *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 658 (Pa. Commw. Ct. 2016) (holding that exemption did not apply where Department of Education did not submit sufficient facts to show the deliberative character of the records at issue).

114. It is well-settled that "[r]ecords satisfy the 'internal' element when they are maintained internal to one agency or among governmental agencies." *Id.* (citation omitted) (internal quotations omitted).

115. Additionally, "[o]nly information that constitutes confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice is protected as deliberative." *Id.* (citation omitted) (internal quotations omitted).

116. To demonstrate that withheld documents are "deliberative" in character, the agency must "submit evidence of specific facts showing how the information relates to deliberation of a particular decision." *Id.* at 659.

117. Agencies can meet this burden by submitting an affidavit that sets forth sufficient facts enabling a fact-finder to draw its own conclusions. *See Carey v. Pennsylvania Dep't of Corr.*, 61 A.3d 367, 379 (Pa. Commw. Ct. 2013) (holding that predecisional deliberative exemption did not apply where DOC failed to submit sufficient proof to show that the communication at issue were "deliberative" rather than factual in nature).

118. However, affidavits which are conclusory or merely parrot the exemption will not suffice. *See Bagwell*, 131 A.3d at 659.

3. Attorney/Client Privilege

119. Section 102 of the RTKL defines "privilege," as: "The attorney work-product doctrine, the attorney client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court incorporating the laws of this Commonwealth." 65 P.S. §67.102.

120. The burden of proving a privilege rests on the party asserting it. *See Heavens v. Dep't of Envtl. Prot.*, 65 A.3d 1069, 1074 (Pa. Commw. Ct. 2013).

121. In the context of the RTKL, the party asserting the attorney-client privilege as a basis to avoid disclosure of records must establish the following four elements: (1) that the asserted holder of the privilege is or sought to become a client; (2) that the person to whom the communication was made is a member of the bar of a court, or his or her subordinate; (3) that the communication relates to a fact of which the attorney was informed by the client, without the presence of strangers, for the purpose of securing an opinion of law, legal services or assistance in a legal matter; and (4) that the claimed privilege has not been waived by the client. *See Pennsylvania Dep't of Educ. v. Bagwell*, 114 A.3d 1113, 1123-24 (Pa. Commw. Ct. 2015); *Chambersburg Area Sch. Dist.* v. *Dorsey*, 97 A.3d 1281, 1289 (Pa. Commw. Ct. 2014); *see also Nationwide Mut. Ins. Co. v. Fleming,* 924 A.2d 1259, 1264 (Pa. Super. Ct. 2007), *aff'd by an equally divided court*, 992 A.2d 65 (Pa. 2010) (holding that "[the] the attorney-client privilege protects from disclosure only those communications made by a client to his or her attorney which are confidential and made in connection with the providing of legal services or advice").

C. Analysis of County's Bases for Withholding Disputed Documents After In-Camera Review of Documents

1. First Appeal to CCP

122. The first record withheld by the County (#001-#003) is three pages and consists of an exchange of emails between and among various County officials, including a County Solicitor, regarding a draft of a document.

123. The County contends that this first record is exempt from disclosure because it is a draft, it falls under the predecisional deliberative exemption, and also its disclosure is protected by the attorney-client privilege. *See* Exhibit A at 1.

124. A review of this first record reveals that the information contained therein is internal to the County of Bucks, is deliberative in character as to certain policymaking, and also that the information pre-dates any actual decision by the County, and thus, is predecisional.

125. Also, the document which is the subject of the email exchange is a draft of a statement of policy.

126. Additionally, a County Solicitor is copied on both emails which make up the first page of the record, and there is a request for legal review of the draft document attached.

127. Accordingly, the Court finds that this first record is properly exempted from disclosure as a draft, under the predecisional deliberative exemption, and also pursuant to the attorney-client privilege.

128. The second and third records withheld by the County (#004-#007 and #008-#013) are similar to one another and consist of email exchanges between and among County officials and members of the press who are seeking information regarding the "updated guidance" as to COVID-19 mitigation measures, that as of that date, already had been shared with the public and school districts.

129. The County contends that these second and third records are protected from disclosure as drafts and also based upon the predecisional deliberation exemption. *See* Exhibit A at 1.

130. The Commonwealth Court has explained that a determination as to the applicability of the predecisional deliberation exemption to records concerning how to respond to media inquiries is fact specific. *See e.g., Dep't of Corrections v. Fiorillo*, 167 A.3d 305 (Pa. Commw. Ct. 2017).[8]

131. Where communications among agency employees and/or officials concern how to respond to media inquiries which relate to a contemplated or proposed course of action, a change in policy or a pending investigation, then such records may be protected from disclosure pursuant to this exemption if they satisfy the three-part test. *See e.g., id.* (holding that predecisional deliberation exemption applied to communications among agency members regarding how to respond to media inquiries regarding a pending investigation).

132. The documents which make up the second and third records consist of email exchanges which occurred after the updated COVID-19 guidance had been released by the County to local school districts.

133. Thus, there was no *pending* investigation or *contemplated* change in policy in existence at the time.

134. In other words, any concerns by the County as to how to respond to the press inquiries could not be inextricably intertwined with any *pending* investigation or *contemplated* change in policy.

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[8] The Court recognizes that *Fiorillo* is a reported single-judge opinion and, thus, it is cited for its persuasive value and not as binding precedent.

135. Additionally, these email exchanges do not include any drafts of the types of documents which are intended to be protected under 65 P.S. §67.708(b)(9).

136. Accordingly, these second and third records are not protected from disclosure under 65 P.S. §67.708(b)(9) or §67.708(b)(10)(i)(A).

2. Second Appeal to CCP

137. The first record withheld by the County (#001-#003) consists of an email from a County official to other County officials, including a County Solicitor.

138. The document attached to the email is a draft of a document which purports to offer to the public guidance, information and the County's position on a particular topic.

139. The County contends that this record is exempt from disclosure as a draft, pursuant to the predecisional deliberation exemption, and also because its disclosure is protected by the attorney-client privilege. *See* Exhibit A at 2.

140. A review of the face of this first record reveals that the document attached to the email is a draft statement of policy.

141. Additionally, the record is internal to the County of Bucks, is deliberative in character as to certain policymaking and a proposed course of action, and pre-dates any actual decision, and thus, is predecisional.

142. Further, it is clear from the face of the record that the draft is being provided to an attorney for the County for the purposes of obtaining legal advice.

143. Thus, the Court finds that this record is protected from disclosure pursuant as draft, under the predecisional deliberation exemption and also pursuant to the attorney-client privilege.

144. The second record withheld by the County (#004-#011) is eight pages and consists of various exchanges of emails among County officials, including the County Solicitor, requesting and giving input on a draft of a document.

145. The County contends that this record is exempt from disclosure as a draft, pursuant to the predecisional deliberation exemption, and also because its disclosure is protected by the attorney-client privilege. *See* Exhibit A at 2.

146. A review of this record reveals that the information contained therein is internal to the County of Bucks, is deliberative in character as to certain policymaking and the information pre-dates any actual decision, and thus, is predecisional. Also, the document which is the subject of the deliberations is in draft form.

147. Although a County Solicitor is copied on that latter half of these 10 emails, the County Solicitor does not provide any advice as part of this record. Rather, he is merely carbon copied on the second half of these emails. Additionally, there is nothing in this record which demonstrates that copying the County Solicitor was done for the specific purpose of obtaining legal advice as compared to merely keeping that individual apprised of the exchange of information.

148. Accordingly, the Court finds that that this record is protected from disclosure as a draft and also under the predecisional deliberation exemption. It is not, however, protected from disclosure by the attorney-client privilege.

149. The third record withheld by the County (#012-#013) is two pages and consists of exchanges of emails among County officials regarding a draft of a document.

150. The County contends that this document is exempt from disclosure as a draft and pursuant to the predecisional deliberation exemption. *See* Exhibit A at 2.

151. There are no deliberations or discussions about the document contained within the record.

152. The face of the record plainly reveals, however, that the document which is contained within these emails is a draft document and relates to policymaking.

153. Thus, the Court finds that the record is protected from disclosure as a draft but not pursuant to the predecisional deliberation exemption.

154. The fourth record withheld by the County (#014-#016) consists of an exchange of emails between and among various County officials, including a County Solicitor, regarding a draft of a document.

155. The County contends that this record is exempt from disclosure because it is a draft, it falls under the predecisional deliberative exemption, and also its disclosure is protected by the attorney-client privilege. *See* Exhibit A at 2.

156. A review of this first record reveals that the information contained therein is internal to the County of Bucks, is deliberative in character as to certain policymaking, and also that the information pre-dates any actual decision by the County, and thus, is predecisional.

157. Also, the document which is the subject of the email exchange is a draft of a statement of policy.

158. Additionally, a review of an email on the first page of the record makes clear that the email and draft document are being sent to the County Solicitor for the purpose of obtaining legal advice.

159. Accordingly, the Court finds that this record is exempted from disclosure as a draft, under the predecisional deliberative exemption, and also pursuant to the attorney-client privilege.

160. The fifth record (#017) is a single page and consists of an exchange of emails between County officials regarding a press release from the County relating to amended COVID-19 mitigation guidance which had been released to the public. The document also includes a draft of the press release itself.

161. The County contends that this document is exempt from disclosure as a draft and pursuant to the predecisional deliberation exemption.

162. And although it may be in draft form, the press release itself is not the type of document that is protected from disclosure as a "draft." *See* 65 P.S. §67.708(b)(9).

163. Additionally, there are no substantive deliberations or discussions about the draft press release itself included among this exchange of email.

164. Accordingly, this fifth record is not exempt from disclosure under the RTKL and is to be produced.

165. The sixth record (#018-#022) is five pages and consists of emails from a member of the public to the Superintendent of Schools of Central Bucks School District ("CBSD") and CBSD school board members with certain County officials copied. There is also an exchange of emails between County officials, including a County Solicitor, which include comments on the emails directed to CBSD.

166. The County contends that this record is exempt from disclosure as a draft, pursuant to the predecisional deliberation exemption, and also because its disclosure is protected by the attorney-client privilege. *See* Exhibit A at 2.

167. None of the documents which make up this record constitutes a draft of any document prepared by the County.

168. Also, although the County Solicitor is copied on the exchange of emails between the County officials, there is nothing in the record which shows it was shared with him for the specific purpose of obtaining legal advice.

169. Further, there is nothing deliberational or predecisional about the comments made by the County officials regarding the email directed to CBSD.

170. Accordingly, this sixth record is not exempt from disclosure and should be produced. [9]

171. The seventh record (#023) is one page and consists of an email from a County official to various other County officials, including a County Solicitor, sharing a link to a document prepared by the sender (a County official) and an email back from another County official, not a County Solicitor.

172. The County contends that this record is exempt from disclosure as a draft, pursuant to the predecisional deliberation exemption, and also because its disclosure is protected by the attorney-client privilege. *See* Exhibit A at 2.

173. Although there is reference to a draft in this record, the record only reflects a link to a shared file and not a draft of a document itself. [10] Additionally, there is nothing within the record which would indicate that the document which is the subject of this email is the type of document protected under §708(b)(9).

174. Similarly, there is nothing deliberational about the comment which was made in response to the document which was shared via the link.

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[9] A personal email address of the individual who sent the emails to CBSD is contained within this document. That email address shall be redacted.

[10] This begs the question as to why the document itself was not produced for the *in-camera* inspection.

175. Also, while a County Solicitor is copied on the email which contains the link to the document being shared, there is no specific indication in the record that the document was being shared with the County Solicitor for the purpose of obtaining legal advice.

176. Accordingly, this seventh record is not exempt from disclosure and is to be produced.

177. The eighth record (#024-#026) is three pages and consists of the same email which was shared as part of the seventh record. Additionally, there are various responses to that email from other County officials.

178. The County contends that this record is exempt from disclosure as a draft, pursuant to the predecisional deliberation exemption, and also because its disclosure is protected by the attorney-client privilege. *See* Exhibit A at 2.

179. There is no actual draft of any document as part of this record but only a link to a shared file.

180. Also, there is nothing in this record which reveals that the document which is being shared via a link is the subject of confidential deliberations of law or policymaking.

181. However, unlike the seventh record, the eighth record expressly shows that the document being shared via a link is being shared with the County Solicitor for purposes of obtaining legal advice.

182. Thus, if the County had provided the actual draft document it properly would be protected from disclosure by the attorney-client privilege.

183. Additionally, one email which makes up part of this record reveals that the document is being shared with the County Solicitor for purposes of obtaining legal advice. Thus,

the contents of that particular email would be properly redacted pursuant to the attorney-client privilege.[11]

D. Analysis of Ms. Brock's Request for Imposition of Sanctions

184. In addition to disclosure of the records in dispute, Ms. Brock seeks the imposition of sanctions against the County.

185. Section 1305(a) of the RTKL provides that "[a] court may impose a civil penalty of not more than $1,500 if an agency denied access to a public record in bad faith." 65 P.S. §67.1305(a).

186. Ms. Brock contends in the First Appeal to OOR and the Second Appeal to OOR that the County failed to conduct a thorough search for documents responsive to her request, and, thus, engaged in bad faith.

187. In support of its position that it did perform a proper search, the County submitted Affidavits in both appeals, which, *inter alia*, explained how the search was performed. *See* Cain Aff. – AP 2022-0627 and Cain Aff. – AP 2022-0846.

188. In the Brock Submission to OOR – AP 2022-0627, however, Ms. Brock attaches five pages of documents which she identifies as having been "obtained legally through the Right to Know process" and which she contends fall outside the County's "redaction criteria." Brock Submission to OOR – AP 2022-0627.

189. The first two pages consist of emails between David Damsker, Director, Bucks County Health Department ("Dr. Damsker"), and a non-County officer/employee (a doctor). Thus, this document falls outside the scope of Ms. Brock's First RTK Request and her Second RTK Request.

[11] This is the third email on page #024. *See* Unredacted Log at 2.

190. The third and fourth pages that Ms. Brock attaches to the Brock Submission to OOR – AP 2022-0627 are included in the documents that were produced to the Court by the County for an *in-camera* review.

191. The fifth page of the documents provided by Ms. Brock in the Brock Submission to OOR – AP 2022-0627 includes a string of four emails. The first in time is from Faith Haeussler, Director of Intergovernmental Affairs, Commonwealth of Pennsylvania Department of Health ("Director Haeussler") dated August 23, 2021. It is unclear to whom the email was sent. Above that is an email from Bucks County Commissioner Diane M. Ellis-Marseglia ("Commissioner Marseglia") to Director Haeussler dated August 24, 2021 and sent at 8:31 a.m. Above that is a response from Director Haeussler at 9:29 a.m. The document reveals that approximately 15 minutes later, Commissioner Marseglia then forwarded the entire email string to Margaret McKevitt, Bucks County Chief Operating Officer ("Ms. McKevitt"), Bucks County Commissioner Robert Harvie, Jr. ("Commissioner Harvie"), Bucks County Commissioner Gene DiGirolamo ("Commissioner DiGirolamo"), Eric Nagy, Bucks County Director of Policy and Communications ("Mr. Nagy"), Larry King, Director, Bucks County Commissioners' Office of Public Information, Gail Humphrey, Bucks County Chief Clerk ("Ms. Humphrey"). This fifth page of the documents provided by Ms. Brock in connection with her First Appeal to OOR is responsive to her First RTK Request and is not protected from disclosure by any exemption under the RTKL. It should have been produced by the County.

192. In the Brock Submission to OOR – AP 2022-0846, Ms. Brock attaches five pages of emails which she advises were "legally obtained through RTK" and which she argues "should have been included in the responsive record." Brock Submission to OOR – AP 2022-0846 at 1.

193. The first page is an email between Ms. McKevitt and Mr. Nagy dated August 23, 2021 which includes a link to website. The link to the website does not reference the specific topics identified in Ms. Brock's Third RTK Request, and thus, on its face, this document does not appear responsive to that particular request.

194. The next document is three pages and consists of an email dated August 23, 2021 from Margie McKevitt to Mark Hoffman, Ed.D. ("Dr. Hoffman") with copies to various County officials, including, Commissioner Marseglia, Commissioner Harvie and Commissioner DiGirolamo, as well as, Dr. Damsker, Mr. Nagy, Mr. King, James O'Malley, Bucks County Deputy Director of Communications ("Mr. O'Malley") and Ms. Humphrey. The email requests Dr. Hoffman to distribute the attached copy of the County's amended Covid-19 school guidance to the various Bucks County school superintendents. This document falls within Ms. Brock's Third RTK Request. It is not protected from disclosure by any exemption to the RTKL. It should have been produced.

195. The fifth page consists of an email from Director Haeussler to the Bucks County Commissioners and copied to Ms. McKevitt. It is dated August 23, 2021 and the subject is "Letter from Pa DOH." Ms. McKevitt then forwards the email, without comment, to Commissioner Harvie, Commissioner DiGirolamo and Mr. Nagy. This document falls within Ms. Brock's Third RTK Request. It is not protected from disclosure by any exemption to the RTKL. It should have been produced.

196. Additionally, a review of the documents relating to the Second Appeal to CCP reveals that the County failed to produce for the *in-camera* inspection, the document which was the subject of the shared link contained with the seventh and eighth records.

197. This particular document is specifically identified in the "Subject" box of the Unredacted Log.

198. Also, one of the County's "Bases for Withholding" the seventh and eighth records is that these records include a draft and a review of the seventh and eighth records reveals that the only document contained within them that could be considered a "draft" would be this particular document.

199. Notwithstanding this, the document was not included among the records provided to the Court for an *in-camera* inspection.

200. Furthermore, the County has not provided any explanation as to why such document has not been provided to the Court.

201. In light of this, the Court finds the County's assertion of the exemption under §708(b)(9) (drafts) as a basis to withhold the seventh and eighth records relating to the Second Appeal to CCP was made in bad faith.

202. Additionally, the Court finds that the imposition of sanctions against the County in the form of a $1,500 penalty in each of the First Appeal to CCP and the Second Appeal to CCP is warranted given the County's failure to produce documents which clearly existed, fell within the RTK Requests at issue, and were not protected from disclosure by any exemption under the RTKL. *See* 65 P.S. §67.1305(a) (stating that [a] court may impose a civil penalty of not more than $1,500 if an agency denied access to a public record in bad faith).

BY THE COURT:

4-28-23

DENISE M. BOWMAN, J.

COPIES SENT TO:

Daniel Grieser, Esquire
ddgrieser@buckscounty.org

Chadwick J. Schnee, Esquire
chadwick@schneelegal.com