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473 CD 2026

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Case No. 473 CD 2026

TECFUSIONS, INC.,

Petitioner/Appellant,

v.

PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC ENGAGEMENT, KATIE MALONE AND TECHNICAL.LY,

Respondents/Appellees

Appeal from the March 10, 2026 Final Determination of the Pennsylvania Office of Open Records (Docket No. AP 2026-0174)

BRIEF OF PETITIONER/APPELLANT

KNOX McLAUGHLIN GORNALL
& SENNETT, P.C.

Michael J. Musone, Esq.
PA Attorney ID No. 306682
Timothy S. Wachter, Esq.
PA Attorney ID No. 203113
120 West Tenth Street
Erie, PA 16501
(814) 459-2800

Attorneys for TECfusions, Inc.

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<u>STATEMENT OF JURISDICTION</u>

TECfusions filed a Petition for Review seeking *de novo* review of a Final Determination of the Pennsylvania Office of Open Records pursuant to 65 P.S. § 67.1301(a). Jurisdiction is proper before this Court under 42 Pa.C.S. § 763.

ORDER IN QUESTION

In a March 10, 2026 Final Determination, the Pennsylvania Office of Open Records granted in part a request to the Pennsylvania Department of Community and Economic Development made under the Pennsylvania Right to Know Law, in part, as follows:

> For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required to provide record nos. 6, 7, 28, 29, and 31 previously redacted or withheld pursuant to Sections 708(b)(10) and (b)(11) within thirty days. This Final Determination is binding on all parties.

See March 10, 2026 Final Determination, included in the Appendix.

4904-5217-2222, v. 1

Statement of the Standard and Scope of Review

A final determination by the Office of Open Records is not entitled to a deferential standard of review. *See Bowling v. Office of Open Records*, 990 A.2d 813, 819 (Pa. Commw. Ct. 2010) ("[A] court reviewing an appeal from an OOR hearing officer is entitled to the broadest scope of review."). Accordingly, this Court is not limited to the rationale offered in the OOR's Final Determination. *Id.* at 820. Rather, this Court may act as the fact finder during judicial review of a Right to Know Law administrative determination. *See Levy v. Senate of Pennsylvania*, 94 A.3d 436, 442 (Pa. Commw. Ct. 2014). To this end, the Court can accept additional evidence that was not considered before the OOR. *Southeastern Pennsylvania Transportation Auth. v. Anderson*, 337 A.3d 575, 585 (Pa. Commw. Ct. 2025).

STATEMENT OF QUESTIONS INVOLVED

1. Whether the Commonwealth Court of Pennsylvania should exercise its authority under 65 Pa.C.S. § 67.1301 and conduct a *de novo* review of whether the TECfusions' PowerPoint presentation contains trade secret information under 65 P.S. § 67.708(b)(11), and confidential proprietary information under 65 P.S. § 67.708(b)(11)?

Suggested Answer: Yes.

2. Whether the Office of Open Records erred in holding that the TECfusion Record was not exempt from disclosure under 65 P.S. §67.708(b)(11)?

Suggested Answer: Yes.

<u>STATEMENT OF THE CASE</u>

A. Procedural background

On November 12, 2025, Katie Malone, on behalf of Technical.ly (together, "Requestor"), submitted a request to the Pennsylvania Department of Community and Economic Development ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 et seq., stating:

> I am requesting all records, including emails and text messages, sent to or from Secretary Rick Siger between January 1, 2025, and November 11, 2025, that contain or reference the phrase "data center" or "data centers." This [R]equest includes:
>
> • The full text of each message.
>
> • The date and time each message was sent or received.
>
> • The names and email addresses or phone numbers of all senders and recipients.
>
> If any responsive records are stored in archived systems, on personal devices, or in accounts managed by outside parties on behalf of Secretary Siger, please include those records as well.

R. 7a (the "Request").

In a January 7, 2026 correspondence, the Department granted the Request in part, providing 60 pages of responsive records. R. 2a–3a. The Department's January 7, 2026 correspondence also denied the Request in part, redacting or withholding records because they reflect internal, predecisional deliberations; confidential proprietary information/trade secrets; and notes and working papers.

R. 3a. One such withheld document was a 22-page PowerPoint presentation record from TECfusions to the Department (the "TECfusions Record" or "Record"), which was sent as part of a confidential proposal for a consulting relationship between TECfusions and the Commonwealth related to data centers in the Commonwealth. R. 111a–113a. *See also* Declaration of TECfusion, R. 153a ¶¶ 7–8.

On January 14, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the Department's denial. R. 1a. Subsequently, TECfusions requested and was permitted to participate as a Direct Interest Participant, arguing that the TECfusions Record includes trade secrets and/or confidential proprietary information, and that disclosure would cause it prejudice. R. 131a–136a.

On March 10, 2026, the OOR issued a Final Determination ("Final Determination") at Docket No. AP 2026-0174 granting in part and denying in part the Request. R. 139a. Regarding the TECfusions Record, the OOR's Final Determination found that the record did not contain trade secrets and/or confidential proprietary information. R. 146a–149a. Subsequently, TECfusions filed a Petition for Review before this Court.

B. TECfusions's interactions with the Department and the TECfusions Record

TECfusions is a global data center operator. R. 152a ¶ 3. Data centers are centralized facilities housing information technology infrastructure (such as servers, storage, and networking) designed to securely store, process, and manage massive amounts of data and applications. R. 152a ¶ 4. Driven by the demand for artificial intelligence, the data center industry is highly competitive and rapidly evolving, with numerous entities competing for limited land, power and telecommunications resources. R. 152a ¶ 5.

The Department is an agency of the Commonwealth of Pennsylvania, with the purpose of promoting business in the Commonwealth. R. 153a ¶ 6. In 2023, TECfusions was in discussions with the Department in attempts to partner with the Commonwealth as a consultant and partner to establish and operate data centers in the Commonwealth. R. 153a ¶ 7.

As part of TECfusions's discussions, on November 21, 2023, TECfusions provided the Department with the TECfusions Record, a 22-page PowerPoint presentation titled "Keystone Connect, A Sustainable Economic Development Strategy For Pennsylvania." R. 153a ¶ 8. The TECfusions Record was supplied to the Department for its own internal use, only, and was otherwise protected from disclosure to other third parties and protected within TECfusions's business operations. R. 153a ¶ 9

The TECfusions Record contains TECfusions's forward-looking plans and projections for data centers both in Pennsylvania and across the country, including internal assumptions, pricing frameworks and partnership models. R. 153a ¶ 10.

The TECfusions Record is expressly noted to be confidential and cannot be divulged to any other person without TECfusions's written consent. R. 153a ¶ 11.

The strategies contained in the TECfusions Record represent the product of substantial internal effort and investment. R. 157a ¶ 23. TECfusions has expended approximately $250,000 to date on its development, including executive time, specialized consulting support, financial modeling, technical analysis, and preparation of related materials. *Id*. This figure reflects only direct, identifiable costs and does not capture the significant opportunity cost of senior leadership time devoted to creating and refining this proprietary framework. *Id.*

1. The economic value of the TECfusions Record.

Public disclosure of the TECfusions Record would harm TECfusions's competitive position in the data center marketplace. R. 155a–156a ¶¶ 18–22. Specifically, public release of the TECfusions Record would enable market participants to replicate or preempt TECfusions's plans, undercutting project feasibility and damaging its contractual negotiations and discussions with both private and governmental partners. *Id.* Public release of the TECfusions Record would reveal TECfusions's market selection criteria, deployment roadmap and targeting strategy. *Id.* This would allow others to anticipate where and when TECfusions intends to enter specific regions and to move first, lock up key sites, secure scarce power and fiber capacity, and undercut TECfusions in negotiations with landlords, utilities, and anchor tenants. *Id.* Competitors could effectively "shadow" the strategy, selectively copying the most attractive elements while avoiding our sunk costs and development risk. *Id.* Public release would also adversely impact TECfusions's bargaining position in power procurement, site acquisition, and tenant contracting—areas where timing and exclusivity are key to maintaining competitive advantage. *Id.*

Because the TECfusions Record contains internal assumptions, pricing frameworks and partnership models, access to this information would distort competitive bidding and negotiations. Counterparties could use this information to demand more favorable terms, play the company against competitors, or structure requests for proposals and contracts in a way that disadvantages its offerings relative to those who have adapted its approach. *Id*.

Lastly, disclosure of the TECfusions Record would weaken its position with select entities and strategic partners by exposing non-public concepts, structures, and negotiation tactics that are designed to be presented in a controlled manner and at the appropriate time. *Id.* This would impair TECfusions' ability to differentiate itself in a crowded field and diminish the value of the unique strategic insight embedded in these materials.

Accordingly, disclosure of the TECfusions Record would place TECfusions at a distinct and immediate competitive disadvantage, undermining both its private investment value and the broader economic impact our projects are designed to achieve.

2. TECfusions's efforts to protect the TECfusions Record.

Access to the TECfusions Record and strategies and materials contained therein is tightly restricted even within TECfusions. R. 154a ¶ 12. Only a small group of senior personnel have direct knowledge of this including: the Founder and CTO, who developed the strategy; the Chief of Staff and VP of Government Relations, who participates in strategic and governmental discussions, and; the Director of Marketing, solely for the purpose of preparing aligned presentation materials. *Id.* Select members of TECfusions's legal team have been briefed on these materials in connection with this appeal. *Id.* Aside from the individuals noted above, no other TECfusions employee has access to these strategies or materials, and they are not available through general company systems or communications channels. R. 154a ¶ 13. This information is stored in restricted locations with limited access rights and is not maintained on open or shared drives. R. 154a ¶ 13.

TECfusions relies on written nondisclosure agreements with employees, actual and prospective tenants, prospective and active suppliers, advisors, counterparties, and government partners when sharing any strategic, commercial, or technical materials such as that contained in the TECfusions Record. R. 154a–

155a ¶ 14. These non-disclosure agreements expressly define the information as confidential and proprietary, restrict its use to specified purposes and prohibit further dissemination or unauthorized disclosure, reflecting TECfusions's ongoing intent and efforts to preserve its protected status. *Id.*

TECfusions regularly contracts with government entities under terms that protect similar information from public disclosure. R. 155a ¶ 15. Those contracts generally include strict confidentiality provisions and nondisclosure obligations that apply to strategic, commercial, technical, and planning materials similar to the TECfusions Record, and expressly restrict further distribution or release without TECfusions's consent. *Id.* These protections are consistent with standard government practices for handling contractors' proprietary and competitively sensitive information. *Id.*

Summary of the Argument

Under Section 708(b)(11) of the RTKL, 65 P.S. § 67.708(b)(11), a record is exempt if it constitutes or reveals either a trade secret or confidential proprietary information. A party resisting disclosure must prove the exemption by a preponderance of the evidence—a more-likely-than-not standard. The evidence here demonstrates the TECfusions Record independently satisfies both grounds for protection.

The TECfusions Record is a protected trade secret because it is a confidential compilation of forward-looking plans and projections, internal assumptions, pricing frameworks, partnership models, market-selection criteria, a deployment roadmap, and a targeting strategy. TECfusions invested approximately $250,000 in developing that proprietary framework. The TECfusions Record is not generally known, is not readily duplicated without reproducing TECfusions's investment and analysis, and has been tightly restricted both inside and outside the company. Only a small group of senior personnel has access; the information is stored in restricted locations rather than open or shared drives; TECfusions uses nondisclosure obligations when sharing comparable information; and the Record itself expressly prohibits disclosure without TECfusions's written consent. Those facts establish the substantial secrecy and competitive value that this Court has identified as the most important trade-secret considerations.

The same evidence establishes that the TECfusions Record is confidential proprietary information. TECfusions competes in a rapidly evolving data-center market in which numerous entities pursue limited land, power, and telecommunications resources. Disclosure would allow a competitor to use TECfusions's nonpublic strategy affirmatively: it could anticipate the regions and timing of TECfusions' planned expansion, secure scarce sites and capacity first, copy selected elements of the strategy without bearing TECfusions's sunk costs and development risk, and use TECfusions's pricing and partnership frameworks to undercut it in negotiations. That is a concrete likelihood of substantial competitive injury, not a generalized or speculative concern.

Because the TECfusions Record satisfies both branches of Section 708(b)(11), the OOR erred in directing its disclosure. On this Court's *de novo* review, the Final Determination should be reversed insofar as it requires production of the TECfusions Record, and the TECfusions Record should be withheld from public disclosure

ARGUMENT

A. The TECfusions Record is exempt from disclosure under the RTKL because it is both a trade secret and contains confidential proprietary information.

Under the RTKL, information is only subject to disclosure if it is a "public record." 65 P.S. § 67.301(a). Pursuant to Section 305, however, records in the possession of a Commonwealth agency shall be presumed public unless: (1) exempted under Section 708 of the RTKL; (2) protected by a privilege; or (3) exempted under any other federal or state law or regulation or judicial order. 65 P.S. § 67.305; *Crouthamel v. Dep't of Transp.*, 207 A.3d 432, 437 (Pa. Commw. Ct. 2019). Section 708 exempts, in relevant part, "[a] record that constitutes or reveals a trade secret or confidential proprietary information." 65 P.S. § 67.708(b)(11).

The agency receiving a RTKL request or a party opposing the request bears the burden of proving that the record is exempt by a preponderance of the evidence. 65 P.S. § 67.708(a)(1). A preponderance of the evidence is such evidence as would lead a factfinder to find that the existence of a contested fact is more probable than the nonexistence of the contested fact. *Off. of the Dist. Att'y of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (Pa. Commw. Ct. 2017). The preponderance standard is the lowest evidentiary standard, tantamount to a more-likely-than-not inquiry. *Crouthamel*, 207 A.3d at 437 (quotation omitted).

1. The TECfusions Record is a trade secret exempt from disclosure.

Under the RTKL, a trade secret is defined as follows:

> Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:
>
> (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
>
> (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
>
> The term includes data processing software obtained by an agency under a licensing agreement prohibiting disclosure.

65 P.S. § 67.102.

Pennsylvania courts look at six factors to determine whether information qualifies as a trade secret under the RTKL:

1. The extent to which the information is known outside of the business;
2. The extent to which the information is known by employees and others in the business;
3. The extent of measures taken to guard the secrecy of the information;
4. The value of the information to the business and to competitors;
5. The amount of effort or money expended in developing the information; and
6. The ease or difficulty with which the information could be properly acquired or duplicated by others.

Crouthamel, 207 A.3d at 438. This Court holds that the most critical criteria are substantial secrecy and competitive value. *W. Chester Univ. of Pennsylvania v. Schackner*, 124 A.3d 382, 392 n.15 (Pa. Commw. Ct. 2015); *Crouthamel*, 207 A.3d at 439.

The TECfusions Record is the type of compilation expressly encompassed by the statutory definition of a trade secret. It is not merely a collection of general facts about data centers or a generic promotional presentation. Rather, it combines TECfusions's forward-looking plans and projections with the company's internal assumptions, pricing frameworks, partnership models, market-selection criteria, deployment roadmap, and targeting strategy. R. 153a ¶ 10. The economic value lies in the integrated strategy the compilation reveals. The question under Section 67.102 and *Crouthamel* is therefore whether that compilation derives value from not being generally known and whether TECfusions used reasonable measures to preserve its secrecy. Every one of the six trade-secret factors supports TECfusions's position here.

The first three factors establish substantial secrecy. The TECfusions Record is not known outside TECfusions except by those to whom it was provided for a limited and confidential purpose. TECfusions supplied it to the Department for the Department's internal use as part of discussions concerning a proposed consulting and partnership relationship; it was not distributed for public consumption. R.

153a ¶ 9. The Record itself states that it is confidential and may not be divulged to another person without TECfusions's written consent. R. 153a ¶ 11. Providing a confidential proposal to a potential government partner for a defined business purpose is consistent with preserving secrecy, not abandoning it.

Access inside TECfusions is likewise tightly controlled. Only a small group of senior personnel—the Founder and CTO, the Chief of Staff and Vice President of Government Relations, and the Director of Marketing for the limited purpose of preparing aligned materials—has direct access. R. 154a ¶ 12. Select legal personnel were briefed only in connection with this RTKL dispute. *Id.* The information is kept in restricted locations with limited access rights and is not available through general company systems, communications channels, or shared drives. R. 154a ¶ 13. TECfusions also relies on written nondisclosure agreements when it shares comparable strategic, commercial, and technical information with employees, tenants, suppliers, advisors, counterparties, and government partners. R. 154a ¶ 14. These are concrete and reasonable measures to guard secrecy, not a bare assertion that the material is confidential.

The remaining factors establish independent economic value and the difficulty of proper duplication. TECfusions expended approximately $250,000 developing the strategies in the Record through executive time, specialized consulting, financial modeling, technical analysis, and the preparation and refinement of related materials. R. 157a ¶ 23. That amount does not include the opportunity cost of the senior leadership time devoted to the project. *Id.* A competitor receiving the Record would obtain the benefit of that work without incurring the same expense, time, or development risk. The Record therefore has value both to TECfusions, which paid to create and refine it, and to competitors, who could acquire the finished strategy through disclosure at no comparable cost.

The Record's competitive value also follows from the nature of the market. Data-center operators compete for finite land, power, and telecommunications resources, and timing and exclusivity materially affect site acquisition, power procurement, and tenant contracting. R. 152a ¶ 5. Disclosure of TECfusions's market-selection criteria, deployment roadmap, and targeting strategy would allow competitors to anticipate where and when TECfusions intends to expand, move first to secure the most attractive sites and scarce capacity, and shadow the portions of TECfusions' strategy they consider most promising. Disclosure of internal assumptions, pricing frameworks, and partnership models would also permit competitors to tailor competing proposals and undercut TECfusions in negotiations. The information has value precisely because those matters are not generally known or readily ascertainable.

Thus, the two considerations this Court has identified as most important—substantial secrecy and competitive value—are strongly established. *Schackner*, 124 A.3d at 392 n.15; *Crouthamel*, 207 A.3d at 439. The other four factors point in the same direction: knowledge is limited inside and outside the company, TECfusions uses specific protective measures, it invested substantial money and effort, and a competitor could not properly duplicate the integrated strategy without undertaking comparable work. At a minimum, those facts make it more likely than not that the TECfusions Record is a trade secret. It is therefore exempt from disclosure under Section 708(b)(11).

2. The TECfusions Record contains confidential proprietary information and is therefore exempt from disclosure.

The TECfusions Record independently satisfies the confidential proprietary information exemption. For confidential proprietary information, the party seeking an exemption must demonstrate both that the information is privileged or confidential and that disclosure would cause substantial harm to its competitive position. 65 P.S. § 67.102; *Pennsylvania Pub. Util. Comm'n v. Friedman*, 293 A.3d 803, 826 (Pa. Commw. Ct. 2023). In determining whether information is confidential, courts consider the efforts the parties undertook to maintain its secrecy. *Friedman*, 293 A.3d at 826. Regarding substantial harm, the courts look at whether the entity from whom the information was obtained can establish (1) actual competition in the relevant market; and (2) a likelihood of substantial competitive injury based on the release of the information. *Id*. The competitive harm analysis is specifically limited to harm flowing from the affirmative use of proprietary information by competitors; it does not encompass simply any injury to competitive position. *Department of Corrections v. Maulsby*, 121 A.3d 585, 590 (Pa. Commw. Ct. 2015); *Department of Education v. Massey*, 348 A.3d 339, 349 (Pa. Commw. Ct. 2025).

The first element—confidentiality—is established by the same evidence of restricted access and protective measures discussed above. The Record was prepared as a confidential business proposal, was provided to the Department only for internal use in connection with a potential relationship, expressly barred further disclosure without written consent, and has never been made available through TECfusions's public or shared systems. R. 153a–154a. Only specifically identified senior personnel and limited legal personnel have access. R. 153a ¶ 12. Under *Friedman*, those efforts establish that the information is confidential. 293 A.3d at 826.

The evidence also establishes actual competition in the relevant market. TECfusions is a global data-center operator. R. 152a ¶ 3. The data-center industry is rapidly evolving and highly competitive, with numerous entities competing for the same limited inputs—land, electrical power, fiber capacity, tenants, suppliers, and governmental and private-sector partners. R. 152a ¶ 5. TECfusions therefore does not merely face a theoretical possibility of competition; it operates in a market where competitors pursue the same scarce resources and commercial opportunities. *Id.*

The likely injury would arise from competitors' affirmative use of the proprietary information, as *Maulsby* and *Massey* require. A competitor could use the market-selection criteria and deployment roadmap to predict TECfusions's intended geographic expansion and project timing, then acquire key sites or reserve scarce power and fiber capacity before TECfusions can do so. It could use the pricing frameworks and internal assumptions to calibrate a lower competing offer without undertaking the modeling and analysis TECfusions performed. It could use the partnership models and targeting strategy to approach the same landlords, utilities, anchor tenants, and governmental partners with proposals designed around TECfusions's own nonpublic framework. It could selectively copy the most attractive portions of the strategy while avoiding TECfusions' sunk costs and development risk.

This is not an allegation of generalized business embarrassment, reputational injury, or harm arising merely because the public learns that TECfusions communicated with the Commonwealth. TECfusions has identified the particular nonpublic information competitors would receive, the market in which they compete, the scarce resources over which they compete, the ways competitors could use the information, and the resulting loss of first-mover and bargaining advantages. Those specific competitive uses make substantial injury likely, and they connect the anticipated harm directly to disclosure of the proprietary information. *Friedman*, 293 A.3d at 826; *Maulsby*, 121 A.3d at 590; *Massey*, 348 A.3d at 349.

Accordingly, the evidence establishes by a preponderance that disclosure of the TECfusions Record is likely to cause substantial competitive injury through competitors' affirmative use of TECfusions's proprietary work. The Record is therefore confidential proprietary information exempt under Section 708(b)(11). Because either exemption independently requires withholding, the OOR's disclosure order should be reversed.

<u>CONCLUSION</u>

For the foregoing reasons, TECfusions has established by a preponderance of the evidence that the TECfusions Record constitutes a trade secret and, independently, contains confidential proprietary information within the meaning of Section 708(b)(11) of the RTKL. The Record derives substantial economic value from its secrecy, has been subject to reasonable and meaningful safeguards, and contains nonpublic strategies that competitors could affirmatively use to preempt TECfusions' plans, secure scarce resources, avoid its substantial development costs, and undercut it in commercial negotiations.

Accordingly, TECfusions respectfully requests that this Honorable Court reverse the March 10, 2026 Final Determination of the Office of Open Records insofar as it directs disclosure of the TECfusions Record and hold that the Record is exempt from public disclosure under 65 P.S. § 67.708(b)(11).

KNOX MCLAUGHLIN GORNALL &
SENNETT, P.C.

BY: <u>*/s/ Michael J. Musone*</u>

Michael J. Musone, Esq.
PA Attorney ID No. 306682
Timothy S. Wachter, Esq.
PA Attorney ID No. 203113
120 West Tenth Street
Erie, PA 16501
(814) 459-2800

Attorneys for TECfusions, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Brief for Appellant upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

Service by First Class United States Mail addressed as follows:

Commonwealth Court of Pennsylvania
Prothonotary's Office
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
P.O. Box 69185
Harrisburg, Pennsylvania 17106

(an original and 4 copies)

Paula Kundsen Burke, Esq.
4000 Crums Mill Road, Suite 101
Harrisburg, Pennsylvania 17112-0225

(via PacFile electronic filing)

Lori K. Irwin, Esq.
Pennsylvania Office of General Counsel
400 North St., 4th Floor
Harrisburg, Pennsylvania 17120-0225

(via PacFile electronic filing)

Respectfully submitted,

KNOX MCLAUGHLIN GORNALL & SENNETT, P.C.

BY: *<u>/s/ Michael J. Musone</u>*

Michael J. Musone, Esq.
120 West Tenth Street
Erie, PA 16501

Attorneys for TECfusions, Inc.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Michael J. Musone
Michael J. Musone

APPENDIX

pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
KATIE MALONE AND TECHNICAL.LY,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-0174**
	:	
PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT,	:	
Respondent	:	
	:	
and	:	
	:	
TECFUSIONS, INC.	:	
Direct Interest Participant	:	

FACTUAL BACKGROUND

On November 12, 2025, Katie Malone, a reporter with Technical.ly (collectively "Requester") submitted a request ("Request") to the Pennsylvania Department of Community and Economic Development ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., stating:

> I am requesting all records, including emails and text messages, sent to or from Secretary Rick Siger between January 1, 2025, and November 11, 2025, that contain or reference the phrase "data center" or "data centers." This [R]equest includes:

- The full text of each message.
- The date and time each message was sent or received.
- The names and email addresses or phone numbers of all senders and recipients.

> If any responsive records are stored in archived systems, on personal devices, or in accounts managed by outside parties on behalf of Secretary Siger, please include those records as well.

On November 19, 2025, the Department invoked a thirty-day extension to respond. 65 P.S. § 67.902(b). On December 12, 2025, the Department requested an extension to issue its final response, which the Requester agreed to. 65 P.S. § 67.902(b)(3). On January 7, 2026, the Department granted the Request in part, providing 60 pages of responsive records. The Department also denied the Request in part, redacting or withholding records because they reflect internal, predecisional deliberations; confidential proprietary information/trade secrets; and notes and working papers. 65 P.S. § 67.708(b)(10); 65 P.S. § 67.708(b)(11); 65 P.S. § 67.708(b)(12).

On January 14, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the Department's denial and stating grounds for disclosure.[1] The OOR invited both parties to supplement the record and directed the Department to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On January 27, 2026, the Department submitted a position statement reiterating its grounds for denial. In support of its position, the Department submitted the attestation of Eileen Quinn ("Quinn Attestation"), Open Records Officer ("AORO") for the Department.

On February 3, 2026, the OOR sought clarification from the Department to affirm that the information presented in the exemption log is true and accurate. On February 4, 2026, the Department submitted the Supplemental Attestation of Eileen Quinn ("Supplemental Quinn

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[1] The Requester does not challenge the redactions made pursuant to Section 708(b)(6). Accordingly, the OOR need not address these redactions on appeal. 65 P.S. § 67.708(b)(6). *See Dep't of Corr. v. Office of Open Records*, 18 A.3d 429 (Pa. Commw. Ct. 2011) (issues not raised on appeal are waived).

Attestation"), which affirms that the information contained in the exemption log is true and accurate.[2]

On February 5, 2026, because the Department raised the RTKL's trade secrets/confidential proprietary information ("CPI") exemption, the OOR directed the Department to issue notice of the appeal to relevant third parties identified by the Department if it had not already done so. Additionally, the OOR further extended the final determination deadline to allow all parties a meaningful opportunity to participate in the appeal. *See* 65 P.S. § 67.1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").

That same day, the Department advised the OOR that it had already previously notified the two third parties concerning their ability to participate in the appeal. On February 6, 2026, the OOR acknowledged the Department's correspondence, and advised that it would issue a final determination by the original due date.

On February 10, 2026, the OOR received a Request[3] for Direct Interest Participant ("DIP") Status from TECfushions, Inc., ("TECfushions"). TECfushions requested to participate as a DIP, arguing that their 22-page PowerPoint presentation record includes trade secrets and/or CPI, and disclosure would prejudice them. TECfushions also acknowledged that the Department timely issued third-party notice on January 21, 2026.

That same day, after review and consideration of the request, the OOR granted TECfushions DIP status in the appeal. *See* 65 P.S. § 67.1101(c)(2) (permitting an appeals officer to grant a request to participate if "the appeals officer believes the information will be probative").

[2] The Quinn Attestation and Supplemental Quinn Attestation are made subject to penalties under 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.
[3] Counsel for TECfushions asserts that the statements made in the Request to Participate are true and correct to the best of their knowledge, information, and belief.

Additionally, the OOR issued correspondence, setting a final submission schedule for the parties, and extending the final determination due date. The OOR further advised that after a certain date, no additional submissions would be accepted or considered. To date, the OOR has not received any supplemental submissions from the parties.

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Department is required to demonstrate, "by a preponderance of the evidence," that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as "such proof as leads the fact-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)).

1. The Department has demonstrated that certain records were properly redacted pursuant to Section 708(b)(10) of the RTKL

The Department asserts that records identified as Nos. 1-5, 7-9, 11-27, and 29-34 were properly redacted because they reflect internal, predecisional deliberations. Section 708(b)(10)(i)(A) exempts from public disclosure a record that reflects:

> [t]he internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, … or course of action or any research, memos or other documents used in the predecisional deliberations.

65 P.S. § 67.708(b)(10)(i)(A). To withhold a record under Section 708(b)(10)(i)(A), an agency must show: 1) the deliberations reflected are internal to the agency, including representatives; 2) the deliberations reflected are predecisional, *i.e.*, before a decision on an action; and 3) the contents are deliberative in character, *i.e.*, pertaining to a proposed action. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011). For purposes of this exemption, records that are exchanged with another agency are considered "internal" to the agency. *See Off. of the Governor v. Davis*, 122 A.3d 1185 (Pa. Commw. Ct. 2015); *see also West Chester Univ. of Pa. v. Schackner*, 124 A.3d 382, 398 (Pa. Commw. Ct. 2015) ("Records satisfy the 'internal' element when they are maintained internal to one agency or among governmental agencies"). However, communications with outside consultants and independent contractors are not "internal," and are therefore, not subject to the exemption. *See Chester Water Auth. v. Pa. Dep't of Community and Econ. Dev.*, 249 A.3d 1106, 1112-13 (Pa. 2021).

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. The term "deliberation" is generally defined as "[t]he act of carefully considering issues and options before making a decision or taking some action...." BLACK'S LAW DICTIONARY 492 (9th ed. 2009); *see also Heintzelman v. Pa. Dep't of Cmty. & Econ. Dev.*, OOR Dkt. AP 2014-0061, 2014 PA O.O.R.D. LEXIS 254, *aff'd* No. 512 C.D. 2014, 2014 Pa. Commw. Unpub. LEXIS 644 (Pa. Commw. Ct. 2014). In addition, to be exempt from disclosure, an agency must explain how the information withheld reflects or shows the deliberative process in which an agency engages during its decision-making. *See Twp. of Worcester v. Off. of Open Records*, 129 A.3d 44, 61 (Pa. Commw. Ct. 2016). 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 Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014). In support of the Department's position, the Quinn Attestation states, in part:

> 9. Exemption Log Entries Numbers 1-5, 7-9, 11-27, and 29-34 detail the records redacted due to reflecting predecisional deliberations and/or due to being items used in predecisional deliberations per [S]ection 708(b)(10)(i)(A), OOR Final Determinations, and Pennsylvania caselaw; such entries have been narrowly redacted when showing predecisional deliberations or when an item used for predecisional deliberations and not factual data, with the remainder of the emails left intact for Requester; the referenced emails are internal to [the Department], except when one additional agency is involved, such the DEP or the Office of the Governor, or when a [Department] consultant or potential consultant is involved in such deliberations; such deliberations occur prior to the specific decision referenced in the Exemption Log; such entries are deliberative in nature, showing the debating of the next steps in the decision-making process and are not informational in nature; to supply more details in the Exemption Log would go too far to violate the deliberative process exception; evidence of more details for the deliberations lie in the names of authors and recipients of the emails, the context of the subjects of the emails, and the remainder of the emails left unredacted. [Citations omitted].

Under the RTKL, an affidavit or statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith, "the averments in the [attestation] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

The Department's attestation and exemption log support that certain records that are internal because they were only exchanged between and involved employees of the Department. A review of the exemption log and descriptions of the records provided further support that those records were withheld because the records reflect discussions and suggestions that considered how to implement courses of action which had not yet occurred concerning how to approach solidifying potential partnerships involving the Department, how to participate in Department endeavors, and next steps on how to approach media attention directed toward the Department and proposed press releases as further described in the exemption log. The Department attests that the records were not fully withheld, but rather, were provided with all severable factual information. Accordingly, based upon the evidence provided here, the Department has demonstrated that certain records were properly redacted of internal, predecisional deliberations pursuant to Section 708(b)(10) of the RTKL.

However, after review of the Department's evidence and exemption log, there are records that were not properly redacted of internal, predecisional deliberations. For example, records identified as Nos. 7, 29, and 31 are described as communications between "TEC[f]ushions['] legal counsel at Dentons Cohen Grisby and [Department] employees," between "the [Department] Secretary and [Department] employee and *proposed partner*," and between "the [Department] Secretary and *potential partner*." *See* Exemption Log. Such descriptions clearly imply that certain communications were held with individuals other than Department employees. Moreover, the Department states that certain communications involve a "[Department] consultant or potential consultant." However, as previously stated, communications with outside consultants and independent contractors are not "internal," and are therefore, not subject to the exemption. *See Chester Water Auth.*, 249 A.3d at 1112-13. Accordingly, the OOR has determined that these records were not properly redacted pursuant to under Section 708(b)(10), and absent any further argument or evidence to redact these records, the OOR will order full disclosure of records Nos. 7, 29, and 31.

2. The Department has not demonstrated that certain records were properly withheld pursuant to Section 708(b)(11) of the RTKL

The Department asserts that records identified as Nos. 6 and 28 are exempt from access as trade secrets and confidential proprietary information. Section 708(b)(11) of the RTKL exempts from disclosure "[a] record that constitutes or reveals a trade secret or confidential proprietary information." 65 P.S. § 67.708(b)(11). These terms are defined in Section 102 of the RTKL as follows:

> "Confidential proprietary information." Commercial or financial information received by an agency:
>
> (1) which is privileged or confidential; and
> (2) the disclosure of which would cause substantial harm to the competitive position of the [entity] that submitted the information.
>
> "Trade secret." Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:
>
> (1) derives independent economic value, actual or potential, from not being generally known to and not being readably ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
> (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

65 P.S. § 67.102. An agency must establish that both elements of either of these two-part tests are met for the exemption to apply. *See Office of the Governor v. Bari*, 20 A.3d 634 (Pa. Commw. Ct. 2011). In determining whether certain information is "confidential," the OOR considers "the efforts the parties undertook to maintain their secrecy." *Commonwealth v. Eiseman*, 85 A.3d 1117, 1128 (Pa. Commw. Ct. 2014), *rev'd in part*, *Pa. Dep't of Pub. Welfare v. Eiseman*, 125 A.3d 19 (Pa. 2015). "In determining whether disclosure of confidential information will cause 'substantial harm to the competitive position' of the person from whom the information was obtained, an entity needs to show: (1) actual competition in the relevant market; and, (2) a likelihood of substantial competitive injury if the information were released." *Id.*

Pennsylvania courts confer "trade secret" status based upon the following factors: (1) the extent to which the information is known outside of the business; (2) the extent to which the information is known by employees and others in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to [the] business and to competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *See*, *e.g.*, *Crum v. Bridgestone/Firestone N. Amer. Tire*, 907 A.2d 578 (Pa. Super. Ct. 2006) (adopting standard from RESTATEMENT (SECOND) OF TORTS § 757 (1965)). To constitute a "trade secret," the information must be an "actual secret of peculiar importance to the business and constitute competitive value to the owner." *Parsons v. Pa. Higher Educ. Assistance Agency*, 910 A.2d 177 (Pa. Commw. Ct. 2006). The most critical criteria are "substantial secrecy and competitive value." *Crum*, 907 A.2d at 585. In support of the Department's position, the Quinn Attestation states, in part:

> 10. Exemption Log Entry Number 6 details a record reflecting confidential proprietary information per [S]ection 708(b)(11) of the RTKL, OOR Final Determinations, and Pennsylvania caselaw; the [PowerPoint] has been removed from the record production entirely because the entire [PowerPoint] is confidential proprietary information and there remains nothing left to supply to Requester; the [PowerPoint], titled Keystone Connect, A Sustainable Economic Development Strategy For Pennsylvania, is a forward-thinking document with plans, projections, estimates, and outlooks; TEC[f]usions supplied a disclaimer noting that competitors would derive economic value from obtaining the [PowerPoint] to the disadvantage of TEC[f]usions and the [PowerPoint] is kept confidential from anyone outside of the company, except for those at [the Department] and the Commonwealth, in attempts to partner with the Commonwealth as its consultant and partner. [Citations omitted].
>
> …
>
> 12. Exemption Log Entry Number 28 details a record reflecting confidential proprietary information per [S]ection 708(b)(11) of the RTKL, OOR Final Determinations, and Pennsylvania caselaw; the [PowerPoint] has been removed from the record production entirely because the entire [PowerPoint] is confidential proprietary information and there remains nothing left to supply to

> Requester; the [PowerPoint], titled Carbovolt Labs, Proudly advancing American innovation to achieve energy independent and full decarbonization, is a forward-thinking document with plans, projections, estimates, and outlooks; the [PowerPoint] notes that competitors would derive economic value from obtaining the [PowerPoint] to the disadvantage of Carbovolt Labs and the [PowerPoint] is kept confidential from anyone outside of the company, except for those at [the Department] and the Commonwealth, in attempts to partner with the Commonwealth as its partner.

The descriptions provided in the exemption log provide essentially the same evidence as the Quinn Attestation. The Department notified the OOR that these entities had been previously provided with notice of the appeal. However, TECfushions, after requesting to participate in this matter and subsequently obtaining DIP status, has not submitted any substantial evidence to support its position. Further, Carbovolt Labs has not participated on appeal.

Where a third party makes a submission and marks it as confidential, proprietary information or as containing a trade secret, an agency may raise Section 708(b)(11) to avoid prejudicing the rights of those third parties. *Davis v. Pa. Dep't of Health*, OOR Dkt. AP 2023-0332, 2023 PA O.O.R.D. LEXIS 524 (explaining that the agency may raise the exemption to protect the rights of third parties). However, an agency is not permitted to delegate its responsibility to determine whether a record is exempt to a third party entirely. *McKelvey v. Pa. Dep't of Health*, 255 A.3d 385, 404 (Pa. 2021) ("the language of the RTKL is plain and unambiguous, placing the burden and responsibility on the governmental agency to independently evaluate and discern the validity of claimed exemptions to disclosure in the first instance, including those made by third parties."). Third parties are permitted to raise and defend exemptions to protect their information. *Highmark Inc. v. Voltz*, 163 A.3d 485, 491 (Pa. Commw. Ct. 2017) (*en banc*); *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638 (Pa. Commw. Ct. 2016); *Bari*, 20 A.3d 634 (citations omitted).

Here, while the entities apparently safeguard the records by physically marking them with a disclaimer, the Department has not provided any specific evidence to demonstrate how disclosure of these PowerPoints would create substantial harm to the competitive positions of these third parties. Moreover, the OOR must consider that TECfusions, although obtaining DIP status, failed to provide any specific evidence demonstrating actual competition in the relevant market, a likelihood of substantial competitive injury if the information were released, or demonstrating that the PowerPoint presentation contains trade secrets of TECfushions. As previously stated, Carbovolt Labs has not participated on appeal after previously receiving notice, nor provided any specific evidence to establish that the records contain trade secrets/CPI, or how release of this information would be damaging to their competitive positions in the market.

Accordingly, absent any additional evidence or argument, the OOR must find that records Nos. 6 and 28 may not be withheld under Section 708(b)(11) of the RTKL. *See*, *e.g.*, *Mission Pa., LLC v. McKelvey*, 212 A.3d 119, 137-138 (Pa. Commw. Ct. 2019), *appeal denied by* 223 A.3d 675 (Pa. 2020) (redactions were not supported by the evidence where the third party did not prove the confidential nature of, or describe, the content of its redactions); *Wickard v. Pa. Dep't of Gen. Servs.*, OOR Dkt. AP 2025-1553, 2025 PA O.O.R.D. LEXIS 2304 (certain third parties did not participate on appeal and therefore failed to provide evidence that responsive proposals contain CPI/trade secrets exempt under Section 708(b)(11)).

3. The Department has demonstrated that a record is exempt from access pursuant to Section 708(b)(12) of the RTKL

The Department asserts that it properly withheld one record, identified as No. 10, pursuant to Section 708(b)(12) of the RTKL. Section 708(b)(12) exempts from disclosure "[n]otes and working papers prepared by or for a public official or agency employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose." 65 P.S. 67.708(b)(12).

This exemption protects "notes and working papers prepared by or for a public official or agency employee regarding agency-related business, but not for an official function." *Escalera v. Adams Cnty.*, OOR Dkt. AP 2011-0184, 2011 PA O.O.R.D. LEXIS 176. The records must be for the specific employee's own personal use and not distributed outside of their office, *Glunk v. Pa. Dep't of State*, 102 A.3d 605 (Pa. Commw. Ct. 2014) and must be used to carry out the employee's official duties. *Pa. Dep't of Labor & Indus. v. Tabor*, 2016 Pa. Commw. Ct. Unpub. LEXIS 251 (Pa. Commw. Ct. 2016). This exemption covers documents "necessary for that official that are 'personal' to that official in carrying out his public responsibilities." *City of Phila. v. Phila. Inquirer*, 52 A. 3d 456, 461 (Pa. Commw. Ct. 2012) (*en banc*). The Commonwealth Court has also held that:

> "Personal" within this definition does not mean that it has to involve a public official's personal affairs—a message slip that his wife called—because those types of documents are not covered by the RTKL; it covers those documents necessary for that official that are "personal" to that official in carrying out his public responsibilities.

Smith ex rel. Smith Butz, LLC v. Pa. Dep't of Env't Prot., 161 A.3d 1049, 1066-67 (Pa. Commw. Ct. 2017). In support of the Department's position, the Quinn Attestation states, in part:

> 11. Exemption Log Entry Number 10 details a record, titled Talking Points: The Impact of Vaccine Manufacturing and Data Centers on Pennsylvania's Economy, that is the working papers/notes of a public official, made by such public official, for use only by the public official, used in the public official's non[-]official capacity, per [S]ection 708(b)(12) of the RTKL, OOR Final Determinations, and Pennsylvania caselaw; the working papers/notes are not distributed outside of [the Department] and are used ONLY by Secretary Siger in his work, but not used in any official capacity. The entire 3 pages of the Talking Points was removed because the entire 3 pages make up the working papers/notes and there is nothing remaining to be supplied to Requester after removal of the parts that make up the working papers/notes. [Citations omitted].

Here, the evidence provided by the Department affirms that record No. 10 consists of notes personal to Secretary Siger created and used for his work, but not used in any official capacity, and this record has not been distributed outside of his office. Accordingly, the Department has demonstrated that record No. 10 is exempt from access under Section 708(b)(12) of the RTKL.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required to provide record nos. 6, 7, 28, 29, and 31 previously redacted or withheld pursuant to Sections 708(b)(10) and (b)(11) within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.[4] All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: March 10, 2026

/s/ Tope L. Quadri

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TOPE L. QUADRI
APPEALS OFFICER

Sent via portal to: Katie Malone
Eileen Quinn, AORO
Shawn P. Kerns, Esq.
Oscar Gonzalez, Esq.

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