

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet



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County

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Docket No: C-48-CV-2024-1039	

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SECTION A

Commencement of Action:

<input type="checkbox"/> Complaint	<input type="checkbox"/> Writ of Summons	<input type="checkbox"/> Petition
<input type="checkbox"/> Transfer from Another Jurisdiction		<input type="checkbox"/> Declaration of Taking

Lead Plaintiff's Name: Michael Long

Lead Defendant's Name: Borough of Bath

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits outside arbitration limits (check one)

Is this a Class Action Suit? Yes No

Is this an MDJ Appeal? Yes No

Name of Plaintiff/Appellant's Attorney: _____

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
- Malicious Prosecution
- Motor Vehicle
- Nuisance
- Premises Liability
- Product Liability (does not include mass tort)
- Slander/Libel/ Defamation
- Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
- Debt Collection: Credit Card
- Debt Collection: Other _____
- Employment Dispute: Discrimination
- Employment Dispute: Other _____
- Other: _____

CIVIL APPEALS

- Administrative Agencies
- Board of Assessment
- Board of Elections
- Dept. of Transportation
- Statutory Appeal: Other 65 P.S. Section 67.1302
- Zoning Board
- Other: _____

MASS TORT

- Asbestos
- Tobacco
- Toxic Tort - DES
- Toxic Tort - Implant
- Toxic Waste
- Other: _____

REAL PROPERTY

- Ejectment
- Eminent Domain/Condemnation
- Ground Rent
- Landlord/Tenant Dispute
- Mortgage Foreclosure: Residential
- Mortgage Foreclosure: Commercial
- Partition
- Quiet Title
- Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
- Declaratory Judgment
- Mandamus
- Non-Domestic Relations Restraining Order
- Quo Warranto
- Replevin
- Other: _____

PROFESSIONAL LIABILITY

- Dental
- Legal
- Medical
- Other Professional: _____

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PROOF OF SERVICE

**Commonwealth of Pennsylvania
County of Northampton
Court of Common Pleas**

2024 MAR -1 P 11: 30
COURT OF COMMON PLEAS
CIVIL DIVISION
NORTHAMPTON COUNTY, PA

MICHAEL LONG,

Petitioner,

v.

BOROUGH OF BATH and OFFICE OF OPEN RECORDS,
Respondents.

Case No.: C-48-CV-2024-1039

I, Michael Long hereby certify that I am over the age of eighteen years and am not a party to the within action. On March 1, 2024 I served a true and correct copy of the Cross-Appeal of and petition for review of Final Determination upon Reconsideration dated January 12, 2024, Issued by Pennsylvania Office of Open Records at OOR Docket No. AP 2023-1598 the following parties:

- 1. For Borough of Bath**
J. Chadwick Schnee, Esq.

chadwick@schneelegal.com

74 East Main Street, #648

Litiz, PA 17543
- 2. For Office of Open Records:**
333 Market Street, 16th Floor

Harrisburg, PA 17101

Oor-postfd@pa.gov

Service was made by the following method:

- **Electronic Service:** Sending the documents to the designated email addresses of the individuals or entities listed above.

I declare under the penalty of perjury under the laws of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Executed on March 1, 2024, at Bath, PA.

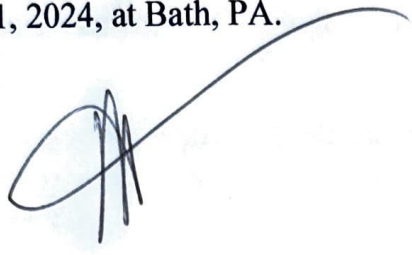
Michael Long

220 Creek Road

Bath, PA 18014

610-507-3721

Michael.Long479@gmail.com

A handwritten signature in black ink, consisting of a large, sweeping loop followed by several vertical strokes, positioned to the right of the contact information.

The basis for this Cross-Appeal and Petition for Review is set forth as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 42 Pa.C.S. § 933(a)(2) and 65 P.S. § 67.1302(a) of the RTKL, which allow for appeals of final OOR determinations to the court of common pleas in the county where the parties reside or where the agency is located. See Pa. R.C.P. No. 1006; Pa. R.C.P. No. 2179.

PARTIES

2. Appellant Michael Long ("Appellant") is an adult individual residing in Bath, PA, a small town where community ties run deep, and the governance of public resources affects every resident's daily life. As a community member, Appellant has a personal stake in open governance and the prudent expenditure of public funds. His pursuit of transparency is not merely academic but is driven by a commitment to his community's well-being and the democratic principles enshrined in the Pennsylvania Constitution. See Pa. Const. art. 1, § 1; Pa. Const. art. 1, § 20; *Pa. State Educ. Ass'n v. Commonwealth*, 622 Pa. 231, 243-44 (2013).
3. Appellee Borough of Bath ("Appellee" or "Borough") is not just a municipality but the heart of a community where decisions made in its halls reverberate through the streets, homes, and lives of its residents. As an "agency" under RTKL § 102, 65 P.S. § 67.102, the Borough's actions and records are the foundation upon which

public trust is built or eroded. See *Dep't of Labor & Indus. v. Heltzel*, 90 A.3d 823, 828 (Pa. Commw. 2014).

4. Appellee Office of Open Records ("OOR") stands as the guardian of transparency, adjudicating disputes with the promise of ensuring public access to the workings of government. Its role is pivotal in maintaining the balance between necessary confidentiality and the public's right to know. See 65 P.S. § 67.503(a); *Bowling v. Office of Open Records*, 990 A.2d 813, 820 (Pa. Commw. 2010).

NATURE OF ACTION

5. This appeal arises from the Final Determination of the Pennsylvania Office of Open Records (OOR) issued on January 12, 2024 reversing key provisions of its initial Final Determination of November 3, 2023. The OOR ruled largely in favor of Appellant Michael Long in its initial determination regarding his Right-to-Know Law (RTKL) request submitted to Appellee Borough of Bath seeking records related to Borough governance. However, upon the Borough's Petition for Reconsideration, the OOR improperly reversed course without sufficient legal grounds.
6. At issue is whether the OOR violated firmly established legal standards in rendering determinations under the RTKL without adherence to precedents requiring the introduction of new evidence or arguments before allowing reversals of Final Determinations. Also in question is whether judicial oversight and intervention are necessary to realign the OOR's protocols with governing RTKL

jurisprudence. Beyond the procedural defects, substantive issues remain regarding the Borough's denial of access to requested public records.

STANDARD AND SCOPE OF REVIEW

7. The standard of review in appeals from OOR determinations under the RTKL is de novo, while scope of review is plenary. *Bowling v. Office of Open Records*, 990 A.2d 813, 818 (Pa. Commw. Ct. 2010).
8. Reviewing courts owe no deference to prior decisions, substituting their own findings for those of the agencies under scrutiny. *Padgett v. Pennsylvania State Police*, 73 A.3d 644, 647 (Pa. Commw. Ct. 2013).
9. A court conducting review de novo undertakes independent analysis of the evidentiary record before them without restrictions. *Pennsylvania Dep't of Educ. v. Bagwell*, 131 A.3d 638 (Pa. Commw. Ct. 2016).
10. Exclusions claimed under the RTKL receive equally exhaustive plenary review assessing whether agencies have satisfied statutory burdens. *Levy v. Senate of Pennsylvania*, 65 A.3d 361 (Pa. Commw. Ct. 2013).

FACTUAL AND PROCEDURAL BACKGROUND

11. On May 17, 2023, Appellant submitted a RTKL request to Appellee Borough seeking communications and records related to Borough governance from 3 September 2021 through May 2022. The request aimed to glean insight into

discussions and determinations reflecting upon matters of substantial civic interest.

See 65 P.S. § 67.301; 65 P.S. § 67.706.

12. More specifically, the request encompassed emails and documentation touching upon council appointments, personnel decisions, policies implicated in leadership changes, and other governance discussions among key officials during the designated period.

13. On June 23, 2023, Appellee issued a final partial denial of the request without sufficient evidence specified records did not exist or were exempt. See 65 P.S. § 67.901; 65 P.S. § 67.908(a)(1).

14. On July 13, 2023, Appellant timely appealed to the OOR in accordance with RTKL procedures. See 65 P.S. § 67.1101(a)(1). The OOR properly exercised jurisdiction as the designated appeals officer.

15. An initial November 3, 2023, Order, the OOR largely ruled in Appellant's favor but later reversed key provisions upon the Borough's request for reconsideration in a January 12, 2024, Determination.

16. The partial denial of the RTKL request by the Borough, and the subsequent reversal of the OOR's initial decision in favor of transparency, significantly impede public insight into governance matters critical to the community's well-being. These actions not only obscure the processes behind council appointments and policy decisions but also set a concerning precedent for the accessibility of public records. The lack of sufficient evidence provided by the Borough to justify

nondisclosure raises questions about adherence to RTKL mandates, underscoring a controversial disregard for the law's intent to promote open governance.

17. Aggrieved by numerous flaws in the reconsideration procedures and result, Appellant now appeals pursuant to Pa. R.A.P. 1501 et seq. and other relevant laws to obtain appropriate relief from this Court. See 65 P.S. § 67.1302(a).

ISSUES ON APPEAL

18. This appeal meticulously addresses grave legal issues highlighting the Borough's and Office of Open Records' (OOR) disregard for the Right-to-Know Law (RTKL), including a failure to adhere to procedural standards and a potential finding of bad faith. The issues, expanded with relevant precedent and Bluebook-style citations, are as follows:

Unjustified Reversal of Final Determination

19. The OOR's reversal on reconsideration, absent new evidence, fails to satisfy the legal standard that reconsideration is predicated on new, substantive developments. This contravenes the precedent set in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161, 1169 (Pa. Commw. Ct. 2018), which underscores the necessity of new evidence or argument for reconsideration.

20. The OOR's reconsideration and subsequent reversal of a decision that initially granted access to critical records lack new substantive evidence, breaching the standard established in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, which

requires new evidence or argument for such an action. This arbitrary reversal deprives the public of information needed to understand controversial policy decisions, disrupting the RTKL's purpose.

Failure to Uphold Consistency in Decision-Making

21. The OOR's inconsistent application of RTKL standards betrays its duty to maintain predictable jurisprudence. This inconsistency is antithetical to the consistent application of law required by *Padgett v. Pa. State Police*, 73 A.3d 644, 649 (Pa. Commw. Ct. 2013), undermining the reliability of the administrative review process.
22. The OOR's divergent outcomes on similar RTKL requests undermine the predictability and reliability of the RTKL process, violating the consistency required by *Padgett v. Pa. State Police*. This inconsistency in application impedes the ability to anticipate outcomes and trust in the administrative process.

Contravention of Clear Legislative Intent for Transparency

23. The Borough's actions, affirmed by the OOR, conflict with the RTKL's unambiguous legislative intent to promote governmental transparency, as elucidated in *SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1042 (Pa. Commw. Ct. 2012), and *Office of the Governor v. Davis*, 122 A.3d 1185, 1193 (Pa. Commw. Ct. 2015), which emphasizes the law's purpose to facilitate access to public records.

24. The Borough's overly broad interpretation of exemptions in withholding council appointment records subverts the RTKL's explicit intent to foster government transparency. Cases like *SWB Yankees LLC v. Wintermantel* and *Office of the Governor v. Davis* emphasize the law's purpose to ensure public access, which the Borough's actions directly oppose.

Neglect of Individualized Privilege Review

The overbroad application of attorney-client privilege by the Borough, without a detailed, record-by-record assessment, contradicts the specificity required by RTKL jurisprudence. This issue is highlighted in *Trib Total Media v. Highlands Sch. Dist.*, 3 A.3d 695, 702 (Pa. Commw. Ct. 2010), and *Redacted v. Redacted*, 11 A.3d 1221, 1225 (Pa. Commw. Ct. 2011), which call for meticulous individualized review when invoking privilege.

25. The Borough's sweeping claim of attorney-client privilege over a wide array of documents, including communications beyond the scope of legal advice, overlooks the meticulous review called for by *Trib Total Media v. Highlands Sch. Dist.* and *Redacted v. Redacted*. This broad-brush approach denies proper scrutiny of leadership changes and transparency.

Manager Statement Contradicting Later Search Claims

26. Exhibit E shows the Borough Manager explicitly confirming a broad search universe, belying later assertions of a narrow initial interpretation. This directly conflicts with grounds for reversed transparency rulings, violating anti-distortion dictates per *Padgett v. Pa. State Police*, 73 A.3d 644, 647-48 (Pa. Commw. Ct. 2013).

Email Chain Omissions Violating Disclosure Duties

27. Exhibit B shows emails with sections removed without basis, contradicting privilege claims over excluded discussions per *Tribune-Review Publ'g Co. v. Allegheny Cnty. Hous. Auth.*, 611 A.2d 693, 695 (Pa. Commw. Ct. 1992). This defiance of transparency standards merits investigation.

Deficient De Novo Review Practice:

28. The Borough and the OOR failed in their obligation to apply the de novo standard of review mandated by RTKL. This deficiency runs counter to the principles established in *Uniontown Newspapers*, 185 A.3d at 1169, and *Padgett*, 3 A.3d at 349, which enjoin an independent and exhaustive examination of all pertinent evidence without deference to prior decisions.

29. Both the Borough and the OOR neglected their duty for an independent, thorough review of evidence, as decreed by *Uniontown Newspapers* and *Padgett*. By relying

on the Borough's assertions, the OOR failed to perform the requisite de novo review, compromising the fairness of the RTKL request assessment.

Abdication of Evidentiary Burdens

30. The Borough's inadequate justification of its exemption and privilege claims fails to meet the RTKL's evidentiary thresholds. This neglect mirrors the concerns raised in *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 380 (Pa. Commw. Ct. 2014), and *Scolforo v. Office of the Governor*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013), which obligate agencies to substantiate their exemption claims with specific evidence.

31. The Borough's failure to provide specific evidence for its exemption and privilege claims falls short of the RTKL's evidentiary standards. This issue, which echoes the concerns in *McGowan v. Pennsylvania Dep't of Environmental Protection*, 103 A.3d 374 (Pa. Commw. Ct. 2014) and *Scolforo v. Pennsylvania Office of Open Records*, 65 A.3d 1095 (Pa. Commw. Ct. 2013), affects the ability to access key communications, including those concerning public expenditure.

Inadequate Forensic Investigation of Records

32. The insufficient examination of email records without due forensic analysis undermines the integrity of the RTKL process. The necessity for in-depth consideration is highlighted in *Levy v. Senate of Pa.*, 65 A.3d 361, 369 (Pa.

Commw. Ct. 2013), which mandates comprehensive analysis in RTKL proceedings.

33. The Borough's cursory keyword search by an external IT consultant does not fulfill the comprehensive analysis required for a thorough RTKL review, as mandated by *Levy v. Senate of Pa.* This insufficient effort undermines the integrity of the RTKL process and hinders the complete disclosure of relevant records.

Compromised Factual Integrity

34. The contradictions in Manager Flynn's affidavits and the unaddressed inconsistencies regarding personnel actions raise significant concerns about the factual underpinnings of the Borough's position. This issue, akin to the factual scrutiny in *Dep't of Env'tl. Prot. v. Cole*, 52 A.3d 541, 548 (Pa. Commw. Ct. 2012), highlights the importance of factual accuracy for fair adjudication under RTKL.
35. The discrepancies in Manager Flynn's affidavits and unaddressed inconsistencies regarding personnel actions, such as the timing of a resignation, undermine the factual basis of the Borough's position. As in *Dep't of Env'tl. Prot. v. Cole*, factual accuracy is paramount for fair RTKL adjudication, which is compromised here.

Pattern of Bad Faith Actions by the Borough

36. The cumulative effect of delayed responses, misleading affidavits, and shifting justifications for record withholding suggest a deliberate pattern of bad faith by the Borough. This pattern, which may warrant a finding of bad faith, is incompatible

with the principles articulated in *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 652 (Pa. Commw. Ct. 2016), and *Office of the Governor v. Donahue*, 20 A.3d 123, 127 (Pa. Commw. Ct. 2011), where agencies are held to a standard of good faith and transparency.

37. The Borough's pattern of delayed responses, misleading affidavits, and shifting justifications for record withholding suggests a strategy to limit transparency, potentially constituting bad faith. This pattern is incompatible with the good faith standard upheld in *Pa. Dep't of Educ. v. Bagwell* and *Office of the Governor v. Donahue*, where agencies are expected to operate with transparency and integrity.

LEGAL ANALYSIS

Manager Statement Belies Narrow Search Rationale for Reversal

38. Reconsideration under the RTKL requires substantive new evidence or arguments per **Uniontown Newspapers v. Pa. Dep't of Corr.**, 185 A.3d 1161 (Pa. Commw. Ct. 2018). This prevents misuse of reconsideration to re-litigate settled rulings absent unforeseen developments. However, the Borough provided no new proof before gaining a reversal enabling narrowed disclosure. Worse, Manager statements directly contradict the narrow search premise offered.

39. Exhibit E presents the Manager attesting to searches encompassing records “including, but not limited to” certain officials. This affirms an appropriately

expansive search universe aligned with the Request's broad "any combination" language seeking insights into governance decisions affecting public welfare.

40. Despite the Manager's statement proving a wide initial search, the Borough secured a reversal by claiming without substantiation that it reasonably read the Request narrowly from the outset. Allowing agencies to implausibly morph factual narratives to suit transparency avoidance sets alarming precedent that the Requester must not shoulder alone.
41. Instead, scrutiny must turn to the decision to reverse full disclosure without basis while accepting shifting tales that defeat open government ends. Left unchecked, such process flaws systemic to the OOR risk corrupting civic channels demanding rehabilitation through ongoing judicial oversight.

Unjustified Reversal of Final Determination

42. The legal framework for reconsideration under Pennsylvania's Right-to-Know Law (RTKL) mandates the introduction of new, substantive evidence or previously unconsidered arguments, as clearly delineated in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018). The precedent established in this case emphasizes that reconsideration should serve to correct oversights or to address developments that were unforeseen during the original determination, thereby reinforcing the RTKL's commitment to transparency.

43. The Office of Open Records' (OOR) decision to reverse its final determination without the emergence of new evidence starkly deviates from this established standard, raising significant concerns regarding procedural fidelity. Such action not only contravenes the precedent set in *Uniontown Newspapers* but also jeopardizes the foundational transparency objectives of the RTKL, suggesting a departure from the statute's intent to provide a fair and transparent public record disclosure framework.

44. This reversal, in the absence of new and substantial developments, signifies a potential lapse in the adherence to the RTKL's procedural safeguards. These safeguards are designed to prevent the reconsideration mechanism from being misused as a vehicle for redundant litigation. It underscores the necessity for a rigorous assessment of the OOR's adherence to the principles and legal standards that underpin the RTKL, ensuring that the law's integrity and the public's trust in the transparency of governmental operations are preserved.

Failure to Uphold Consistency in Decision-Making

45. The principle of consistency in legal decision-making, a fundamental tenet of administrative law, ensures predictability and fairness, fostering public trust in the adjudicative processes. The RTKL, designed to promote transparency and access to public records, implicitly mandates this consistency for its effective implementation. However, the OOR's inconsistent application of RTKL standards, as observed, significantly undermines this essential principle.

46. *Padgett v. Pa. State Police*, 3 A.3d 345, 349 (Pa. Commw. Ct. 2010), underscores the importance of consistency in the application of the law, affirming that predictable jurisprudence is critical for maintaining the integrity of legal processes. The OOR's deviation from this established expectation not only compromises the reliability of the administrative review process under the RTKL but also erodes public confidence in the mechanisms intended to ensure governmental transparency and accountability.

47. The inconsistency noted in the OOR's decision-making process, particularly when revisiting previously settled standards without new substantive evidence or rationale, directly contravenes the legal standards set forth in *Padgett*. This practice disrupts the foundational legal framework of the RTKL, challenging the statute's overarching goals and diminishing the efficacy of public access rights.

48. Such a departure from established legal norms calls for a rigorous review and possible recalibration of the OOR's decision-making protocols. Upholding consistency is paramount to ensuring that the RTKL fulfills its legislative intent, safeguarding the public's right to access government records in a transparent and predictable manner.

Contravention of Clear Legislative Intent for Transparency

49. The foundational premise of Pennsylvania's Right-to-Know Law (RTKL) is to foster governmental transparency and facilitate public access to records. This mandate is critically examined considering the Borough's handling of a particular

RTKL request, which reveals a pattern of delay and inconsistency that runs counter to the law's intent.

50. The Borough's use of the maximum 35-day extension allowed under the RTKL, followed by a series of affidavits with shifting definitions of what constitutes a "responsive record," highlights a concerning approach to transparency. This inconsistency is not merely procedural but impacts the very essence of public access to information.
51. Throughout the case, the Borough's affidavits have variably expanded and contracted the scope of what was considered responsive, covered by privilege, or even existent. Such fluctuating positions, particularly the late-stage contention that beyond emails, nothing was considered responsive, and they themselves claimed under penalty of perjury that nothing beyond emails even existed as responsive. To this date, they have yet to disclose what these records are that they are so inclined to prevent the release of, which is in stark contrast with the RTKL's transparency objectives.
52. In *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013), the court emphasized the necessity for clear and consistent justifications for withholding records. The Borough's shifting stance on the nature and scope of responsive records directly contravenes the evidentiary standards established in this precedent, undermining the RTKL's presumption in favor of access.
53. The strategic use of the RTKL's maximum response time, coupled with inconsistent affidavits, can be interpreted as a tactic to delay and complicate the

information request process. Such tactics erode the statute's integrity and the public's ability to engage meaningfully with governmental processes.

54. Given these observations, as well as those not yet covered, judicial intervention becomes imperative to rectify the misapplication of the RTKL by the Borough. The case presents a clear instance where adherence to the RTKL's legislative intent for transparency and the judicious application of its provisions have been significantly compromised.

55. The Borough's approach, marked by delays and inconsistent affidavits, necessitates a reevaluation under the RTKL. The actions observed not only contravene established legal precedents but also undermine the foundational principles of transparency and accountability integral to the RTKL. As such, this case underscores the need for stringent adherence to the RTKL's mandates, ensuring that the public's right to access governmental records is upheld in both letter and spirit.

Neglect of Individualized Privilege Review

56. Right-to-Know Law jurisprudence unequivocally demands a detailed, record-by-record assessment when considering the application of attorney-client privilege. The Pennsylvania Commonwealth Court in *Trib Total Media v. Highlands Sch. Dist.*, 3 A.3d 695, 702 (Pa. Commw. Ct. 2010), underscored the necessity for a meticulous, individualized review of records to determine the applicability of

attorney-client privilege, rejecting the application of the privilege in an overly broad manner without a thorough examination of each record.

57. Additionally, *Redacted v. Redacted*, 11 A.3d 1221, 1225 (Pa. Commw. Ct. 2011), reiterated the need for specificity when invoking attorney-client privilege. The court insisted that public agencies must provide detailed reasons why each record or part of a record is protected by such privilege. This case reinforced the principle that a blanket application of the privilege is inappropriate and that each claim of privilege must be substantiated by a particularized analysis.

58. The neglect of individualized privilege review by a public agency does not align with the specific guidance provided by RTKL case law. Each invocation of attorney-client privilege must be supported by a specific demonstration of why the privilege applies to that record, ensuring that the application of privilege is narrowly tailored to serve its intended protective function. This approach upholds the RTKL's objective to promote transparency and public access to government records, as reflected in the broader legislative intent of the RTKL (65 P.S. §§ 67.101 et seq.).

Deficient De Novo Review Practice

59. The de novo standard of review, pivotal in Pennsylvania's Right-to-Know Law (RTKL) litigation, mandates an independent and exhaustive examination of all evidence, without deference to prior decisions. This principle ensures appeals are

evaluated on their merits, aligning with the transparency and accountability objectives of the RTKL.

60. In *Bowling v. Office of Open Records*, 990 A.2d 813 (Pa. Commw. Ct. 2010), the Commonwealth Court emphasized that reviewing courts have the authority to substitute the OOR's findings with their own, underlining the independence of the de novo review. Similarly, *Pennsylvania State Education Ass'n v. Department of Community & Economic Development*, 637 Pa. 337, 148 A.3d 142 (2016), reinforced the appeal process's autonomy, highlighting the critical role of due process rights in RTKL appeals.

61. These precedents underscore a clear mandate: appeals under the RTKL require a thorough, uninfluenced reassessment of evidence. The Borough and the OOR's failure to adhere to this standard, as demonstrated in my case, contradicts established legal principles, compromising the integrity of the review process. Despite presenting substantial evidence challenging the Borough's compliance, the OOR's reconsideration failed to reflect an independent analysis, echoing the Borough's contested assertions.

62. By not applying a de novo review, the OOR has neglected its statutory duty and undermined the legislative intent behind the RTKL, depriving me of a fair and impartial adjudication.

Abdication of Evidentiary Burdens

63. The Borough's handling of RTKL requests, particularly regarding discussions about a council position potentially benefiting the mayor's husband, starkly illustrates an abdication of evidentiary burdens demanded by the RTKL. This neglect is evidenced by the Borough's reliance on vague affidavits and shifting factual narratives, failing to meet the evidentiary thresholds established in pivotal cases like *McGowan v. Pa. Dep't of Env'tl. Prot.* and *Scolforo v. Office of the Governor*. These precedents underscore the agency's duty to substantiate exemption claims with concrete evidence.

64. The exemption log's references to email exchanges involving individuals without a clear legal basis for inclusion further undermine any claims of privilege. Such inclusion directly contradicts the established criteria for maintaining attorney-client privilege, indicating a systematic failure to apply exemptions properly. This disregard for the necessary confidentiality underscores the Borough's broader pattern of transparency and accountability violations, emphasizing the critical need for judicial oversight.

65. The premature engagement in discussions about the mayor's husband's candidacy, coupled with the selective withholding and editing of email communications, breaches the ethical and legal standards of transparency. Specifically, the omission of key parts of an email chain that discuss this candidacy—shared among a wide

recipient group—undermines any claims of privilege and suggests an intent to manipulate the appointment process.

66. Moreover, the engagement of an IT consultant for a seemingly straightforward keyword search, evidenced by an outlier invoice devoid of customary detail, raises further questions about the Borough’s commitment to transparency. This action, especially when considered alongside reminders of email “scrubbing” mentioned in Borough meeting agendas, implies a concerted effort to withhold or destroy records pertinent to public interest.

67. These actions, collectively, not only demonstrate a clear departure from the RTKL’s transparency and accountability mandates but also highlight the need for judicial oversight. The pattern of behavior exhibited warrants a thorough investigation to ensure the public’s right to access government records is upheld, free from improper conduct or inadequate adherence to evidentiary requirements.

Inadequate Forensic Investigation of Records

68. The Borough’s strategy of filing three statutory appeals within a mere six weeks, followed by motions aimed at vacating my responses, epitomizes an aggressive legal posture that not only burdens the appellate process but also potentially stifles the pursuit of transparency. This tactic, arguably, seeks to exploit the procedural complexities of the law to hinder the disclosure of information, contrary to the Right-to-Know Law’s (RTKL) essence. Such actions necessitate a critical examination under the lens of *Levy v. Senate of Pa.*, where the Commonwealth

Court emphasized the judiciary's oversight in safeguarding the RTKL's objectives against undue procedural hurdles.

69. The Borough's approach, by inundating the process with appeals and motions, could be seen as an attempt to erode the foundational principles of transparency and public access, warranting judicial intervention to uphold the integrity of the RTKL process.
70. While pursuing transparency through the RTKL, the pattern of litigation initiated by the Borough, characterized by the filing of multiple statutory appeals and motions within a short span, demonstrates a use of legal processes that appears to extend beyond the bounds of seeking a legitimate legal resolution. This strategy, resulting in an undue burden on the appellate process and potentially deterring the pursuit of lawful requests, raises concerns that may align with the concept of abusive litigation. The cumulative effect of these actions, particularly when viewed against the backdrop of the RTKL's intent to facilitate public access to information, suggests a departure from the principles of fair and equitable legal practice.

Compromised Factual Integrity

71. The submission of contradictory affidavits by the Borough, marked by significant inconsistencies regarding personnel actions, critically undermines the factual integrity necessary for fair adjudication under the RTKL. The court in *Department of Environmental Protection v. Cole* emphasized the need for affirmed factual

evidence to accurately assess the validity of RTKL exemptions or privileges, asserting that due process requires an opportunity to hear evidence upon the factual issues. Absent a finding based on evidence heard, the Borough of Bath had no basis to determine that the records fall within exceptions—this is fundamental for evidence-based adjudication.

72. Furthermore, the Borough's shifting factual narratives reflect adjudication flaws, as cautioned against in *Office of Open Records v. Center Township*. This case clarifies that unsupported factual assertions are insufficient, highlighting the requirement for affidavits to detail specific reasons for exemptions to allow for comprehensive RTKL analysis.

73. The Borough's practice of providing counterfactual affidavits and not addressing inconsistencies compromises the factual integrity required for RTKL adjudication and jeopardizes the transparency and accountability objectives at the heart of the statute. Addressing these factual distortions is a fundamental prerequisite for legitimate RTKL review, in line with established case law and the legislative intent for transparency within governmental operations.

74. Here is a draft analysis section addressing the email chain omissions issue, incorporating the full Bluebook citations:

Email Chain Omissions Violating Disclosure Duties

75. Exhibit B contains an email chain with sections omitted without notice, referencing private discussions about a council vacancy without the Borough

Solicitor included. This belies any privilege claims over the missing portions, which likely detail the conversation, negating the 10/19/21 attorney-client privilege assertion per *Tribune-Review Publ'g Co. v. Allegheny Cnty. Hous. Auth.*, 611 A.2d 693, 695 (Pa. Commw. Ct. 1992).

76. Providing the email chain omitting portions referencing excluded council deliberations defies transparency dictates. Coupled with the explicit mention of conversations with the Solicitor, this strengthens inferences of improperly circumscribed disclosure. *Levy v. Senate of Pa.*, 65 A.3d 361, 380 (Pa. Commw. Ct. 2013) mandates rigorous records scrutiny by agencies, not just cursory review.
77. Allowing key segments to be removed without legal basis frustrates accountability aims underpinning the RTKL. If exclusions could be invoked simply by extracting full context, the resultant opacity would corrupt civic processes reliant on visibility. Only comprehensive disclosure can validate consent to exert power on the public's behalf.

Bad Faith Obligations Contravened Necessitating Finding

78. While individual irregularities may raise questions regarding accountability, it is the composite contraventions that manifest into conscious violations. The case of *Uniontown Newspapers v. Pa. Dep't of Corr.*, 243 A.3d 19, 29 (Pa. 2020), determined that only the most egregious official failings clear the bars justifying a finding of bad faith. However, the defiance in this case captures not mere mistakes but willful transgressions that are unambiguously evident.

79. Exhibit A illustrates evolving affidavits with shifting timelines surrounding critical resignation/appointment decisions. Factual reversals on pivotal occurrences dissolve the basic assumptions of candor—lying or misremembering prove equally disqualifying. *Padgett v. Pa. State Police*, 73 A.3d 644, 647-48 (Pa. Commw. Ct. 2013), determined that contradictory statements mandate judicial intervention when facts change to adapt to transparency inquiries.
80. Exhibit B showcases a partially redacted email chain with missing responses concealing communications. Obscuring visibility into official deliberations through redactions signifies choices that maximize opacity. *JPay, Inc. v. Dep't of Corrections*, 89 A.3d 756, 763 (Pa. Commw. Ct. 2014), held that prisons blocking accountability pathways absent compelling cause conflict with governance rules that rely on visibility to legitimize the power exercised.
81. Exhibit C presents a Drivelocker invoice documenting over \$2000 of "Right-to-Know" work over multiple weeks surrounding the RTKL request. Outsourcing email/record handling to third-party consultants deserves scrutiny, given that non-essential support enlists public funds. *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638 (Pa. Cmwlth. 2016), argued that case veracity suffers through repeated modifications or clarifications ultimately needed.
82. Exhibit D contains prior signed statements insisting that consolidated audit reports were irretrievable from financial systems, followed by the provision of specifically requested reports, contradicting initial claims regarding database functionality. Factual distortions dissolve the professed digital barriers. Defiance that flouts

transparency carries consequences. *Bagwell*, 131 A.3d 638 (Pa. Cmwlth. 2016), found that when litigation unintentionally uncovers falsehoods, negligence presumptions are exhausted.:

83. Exhibit E documents Manager Flynn definitively attesting searches were conducted based on communications between parties “including, but not limited to” certain key figures. This affirms an expansive search approach aligned with the request’s inclusive “any combination” wording, contradicting later claims of improper narrow interpretation. The factual distortion enabled an unjustified reversal breaching access rights under the false pretense of reasonableness. But reason loses shape when stories shift shape without accountability.

84. Exhibit F Exemption Log

85. But willful deceptions erode the basic bonds of honesty between institutions and individuals. Left unchecked, such risks undermine the informed consent central to self-determined democratic societies. Only judicial intervention compelling reconciliation and deterrence can restore the public agencies to trusting partnerships with the public—partnerships that are meant to anchor bonds that have been severely tested here.

86. The scale of procedural distortions and substantive opacity exhibited in aggregate leaves little leeway to legitimately explain away the conscious efforts to frustrate visibility, which is otherwise guaranteed unambiguously as a necessary pillar of democracy. The court now shoulders the responsibility of realigning official rulings with the lived Constitutional expectations that communities reasonably

rely upon when seeking simple truths through complex systems that no longer speak truths simply.

87. This remains a matter of restoring faith that facts matter more than expediencies in arenas that obscure light. The law still affirms that those wearing institutional banners never supersede the authority of those who confer institutional banners in the first place. Public servants remain public servants, not private arbiters. Let the record corrections reflect that enduring reality through a reconsidered remedy that brings new light into darkened shadows where questions clouding duties demand answers clearing doubts, as accountability necessitates, and justice requires in this case.

88. **Wherefore**, this appeal and petition for review illuminate not only a procedural oversight but a fundamental misalignment with the principles of transparency and accountability central to the Right-to-Know Law (RTKL). By failing to adhere to these tenets, the Borough of Bath and the Office of Open Records undermine public trust and the very fabric of democratic engagement.

89. The discrepancies and inconsistencies highlighted in their handling of the RTKL request not only contravene statutory obligations but also erode the public's confidence in their governing bodies to act with integrity and transparency.

90. It is imperative, therefore, that this Honorable Court recognize the gravity of these violations and the precedent they set for public access to information. Overturning the Office of Open Records' Final Determination is not merely a corrective action

for this case but a necessary stance to ensure adherence to the law and to reaffirm the public's right to transparent and accountable governance.

Respectfully submitted,

A handwritten signature in blue ink, consisting of a large, stylized 'M' followed by a long horizontal line extending to the right.

Michael Long (Pro Se)

220 Creek Road

Bath, PA 18014

610-507-3721

Michael.Long479@gmail.com

Date: March 1, 2024

VERIFICATION I, Michael Long, verify that I am the appellant in this matter and that the facts set forth in the attached Notice of Appeal from Determination of the Office of Open Records are true and correct to the best of my knowledge, information and belief. I understand that the statements therein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

I further verify that I prepared the attached appeal document myself without the assistance of an attorney. I am aware that as a pro se litigant, the court may construe my filings liberally in recognition that I lack formal legal training.

Michael Long Appellant, pro se

220 Creek Road

Bath, PA 18014

Michael.Long479@gmail.com

610-507-3721

A handwritten signature in blue ink, appearing to be 'M Long', with a long horizontal line extending to the right.

Date: March, 1 2024

Exhibit

A

Please note that this request includes any relevant communications that are not covered by attorney-client privilege. Under the RTKL, attorney-client privilege does not apply to factual information or data, the application of law to fact, or legal strategy, among other things.”

8. I will refer to the above referenced part of the Right-to-Know Law request, dated May 17, 2023, as “RTKL Request”.

9. Mr. Long’s above statement in is RTKL Request regarding the scope of attorney-client privileged communications is erroneous.

10. The attorney-client privilege has the purpose of fostering the free and open exchange of relevant information between the lawyer and the client. Gillard v. AIG insurance Company, 15 A.3d 44 (Pa. Supreme 2011).

11. To establish the attorney-client privilege, the person claiming it must demonstrate:

- (1) The asserted holder of the privilege is or sought to become a client.
- (2) The person to whom the communication was made is a member of the bar of a court, or his subordinate.
- (3) The communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort.
- (4) The privilege has been claimed and is not waived by the client.

Office of the Governor v. Davis, Jr., 122 A.3d 1185 (Pa. Cmwlth. 2015)(citing Nationwide Mutula Insurance Company v. Fleming, 924 A.2d 1259 (Pa. Super. 2007), *affirmed by an equally divided court*, 992 A.2d 65 (Pa. Supreme 2010).

12. The attorney-client privilege operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice. Gillard, supra.

13. The holder of the privilege is the client or person seeking to become the client. Office of the Governor, supra.

14. Here, the holder of the privilege is the Borough of Bath (the “Borough”) and the Borough has not waived the privilege.

15. Bradford T. Flynn (“Flynn”) is an Open Records Officer for the Borough.

16. Flynn is also the Manager for the Borough.

17. On or around June 23, 2023, Flynn, in his capacity as a Borough Open Records Officer, asked me to review several potentially responsive emails that he located via his search on the Borough's server for emails between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, and me from September 20, 2021, to May 15, 2022, regarding the subject matters identified in the RTKL Request.

18. Based on my review of the potentially responsive emails that Flynn located via his search on the Borough's server, I identified only my email of December 3, 2021, from me to former Borough employee Marena Rasmus with copy to me, Borough Engineer Madison, Mayor Fiorella Mirabito and all Council members at that time (including, but not limited to, Michele Ehrgott, Phyllis Andrews, and Barry Fenstermaker) (the "JFK Email of 12-3-21") as containing my legal advice regarding several parts of proposed Resolution #2021-012 including, but not limited to, Article 2.7(f) of proposed Resolution #2021-012.

19. Article 2.7 of proposed Resolution #2021-012 relates to the process to appoint a person to a vacated Council seat. Thus, Article 2.7(f) of proposed Resolution #2021-012 relates to the process to appoint a person to a vacated Council seat. Because of that, my legal advice in the JFK Email of 12-3-21 regarding Article 2.7(f) of proposed Resolution #2021-012 relates to the appointment of a person to a vacated Council seat and, therefore, it related to the prospective appointment of Emmanuel Mirabito to the Council seat that was imminently being vacated by former Councilmember Mark Saginario.

20. The JFK Email of 12-3-21 falls within the "between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, **and** James Kratz, from September 20, 2021, to May 15, 2022" stated in Mr. Long's RTKL Request. Emphasis added.

21. The JFK Email of 12-3-21 was made to representatives of my client, the Borough, for purposes of providing legal advice, outside the presence of strangers, in response to a communication from Flynn, outside the presence of strangers, for an opinion of law regarding any part of proposed Resolution #2021-012 and not for the purpose of committing a crime or tort.

22. The JFK Email of 12-3-21 is protected by the attorney-client privilege. Office of the Governor, supra; Gillard, supra.

23. On or around June 23, 2023, I also stated to Flynn that, as a precautionary measure, he should note in the Borough's letter of June 23, 2023, to Mr. Long that emails from me to Flynn, Mayor Fiorella Mirabito and/or members of Council regarding my legal advice regarding the resignation of Mark Saginario from Council, the vacated Council seat following Mark Saginario's resignation, the appointment of Emmanuel Mirabito to the Council seat and the process to appoint a person to Council seat are attorney-client privileged and not subject to access per RTKL Section 102 (definitions of "privilege" and "public record").

24. I stated "and/or" to Flynn because (a) the JFK Email of 12-3-21 which falls within the "between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, **and** James Kratz" but also (b) I had/have the following email exchange for legal advice that does not fall within "between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, **and** James Kratz":

(a) Email exchange in October 2021 (the "Email Exchange in October 2021") with Flynn and Council President Ehrgott regarding their request for legal advice regarding the resignation of then Councilmember Mark Saginario, the vacated Council seat following Mark Saginario's resignation and the general process to appoint a Council person. The prospective appointment of Emmanuel Mirabito to the Council seat was not a part of this email exchange. The legal advice that I provided via the JFK Email of 12-3-21 related to the prospective appointment of Emmanuel Mirabito because it related to the prospective appointment of any person to a vacated Council seat.

25. The Email Exchange in October 2021 was made to representatives of my client, the Borough, for purposes of providing legal advice, outside the presence of strangers, in response to emails from Flynn and Council President Ehrgott, outside the presence of strangers, for an opinion of law and legal assistance regarding the resignation of then Councilmember Mark Saginario, the vacated Council seat following Mark Saginario's resignation and the general process to appoint a Council person and not for the purpose of committing a crime or tort.

26. The Email Exchange in October 2021 is protected by the attorney-client privilege. Office of the Governor, supra; Gillard, supra.

27. I stated “and/or” to Flynn as stated in paragraph 24 above because I desired that Flynn inform Mr. Long that I did provide legal advice on the topics covered by the Email Exchange in October 2021 so Mr. Long is aware that Flynn and/or Council President Ehrgott were aware of my legal advice so Mr. Long may possibly find that he does not need to make another right-to-know law request on that topic/time period.

28. On or around June 23, 2023, I also searched my email records for the Borough and did not find any other email exchanges regarding Mr. Long’s other subject matters during the relevant time frame so I informed Flynn that I didn’t have other attorney-client privileged emails to note for Mr. Long.

29. In preparing this Affidavit, I performed another search to ensure my initial search was correct and I located the following email exchanges:

(a) Email exchange on April 21, 2022 (the “JFK 4-21-22 Email Exchange #1”), between Flynn and me wherein Flynn sought legal opinions regarding the prospective employment of Fiorella Mirabito as a part-time office clerk of the Borough and form of compensation and where I provided legal advice in response to same.

(b) Email exchange on April 21, 2022 (the “JFK 4-21-22 Email Exchange #2”), between Council President Ehrgott and me wherein Council President Ehrgott sought legal opinion regarding the prospective employment of Fiorella Mirabito as a part-time office clerk of the Borough and where I provided legal advice in response to same.

30. The JFK 4-21-22 Email Exchange #1 was made to a representative of my client, the Borough, for purposes of providing legal advice, outside the presence of strangers, in response to a communication from Flynn, outside the presence of strangers, for opinion of laws regarding the prospective employment of Fiorella Mirabito as a part-time office clerk of the Borough and form of compensation.

31. The JFK 4-21-22 Email Exchange #1 is protected by the attorney-client privilege. Office of the Governor, supra; Gillard, supra.

32. The “JFK 4-21-22 Email Exchange #2” was made to a representative of my client, the Borough, for purposes of providing legal advice, outside the presence of strangers, in response to a communication from Council President Ehrgott, outside the presence of strangers, for an opinion of law regarding the prospective employment of Fiorella Mirabito as a part-time office clerk of the Borough.

33. The JFK 4-21-22 Email Exchange #2 is protected by the attorney-client privilege. Office of the Governor, supra; Gillard, supra.

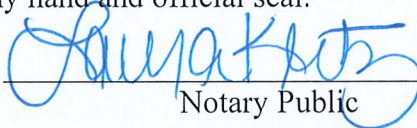
34. While the JFK 4-21-22 Email Exchange #1 and JFK 4-21-22 Email Exchange #2 each fall outside of Mr. Long's "between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, and [Solicitor Kratz]" designation via his RTKL Request and are attorney-client privileged, I am informing Mr. Long of the existence of the JFK 4-21-22 Email Exchange #1 and JFK 4-21-22 Email Exchange #2 so Mr. Long is aware that Flynn and Council President Ehrgott were aware of the legal advice that I provided so Mr. Long may possibly find that he does not need to make another right-to-know law request on those topics/time period.



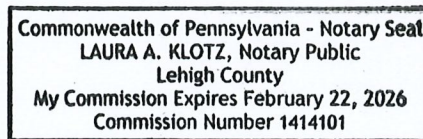
JAMES F. KRATZ, ESQ.

On this, the 24th day of July, 2023, before me a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared JAMES F. KRATZ, ESQ., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.



Notary Public



Please note that this request includes any relevant communications that are not covered by attorney-client privilege. Under the RTKL, attorney-client privilege does not apply to factual information or data, the application of law to fact, or legal strategy, among other things.”

8. I will refer to the above referenced part of the Right-to-Know Law request, dated May 17, 2023, as “RTKL Request”.

9. Mr. Long’s above statement in is RTKL Request regarding the scope of attorney-client privileged communications is erroneous.

10. The attorney-client privilege has the purpose of fostering the free and open exchange of relevant information between the lawyer and the client. Gillard v. AIG insurance Company, 15 A.3d 44 (Pa. Supreme 2011).

11. To establish the attorney-client privilege, the person claiming it must demonstrate:

- (1) The asserted holder of the privilege is or sought to become a client.
- (2) The person to whom the communication was made is a member of the bar of a court, or his subordinate.
- (3) The communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort.
- (4) The privilege has been claimed and is not waived by the client.

Office of the Governor v. Davis, Jr., 122 A.3d 1185 (Pa. Cmwlth. 2015)(citing Nationwide Mutula Insurance Company v. Fleming, 924 A.2d 1259 (Pa. Super. 2007), *affirmed by an equally divided court*, 992 A.2d 65 (Pa. Supreme 2010).

12. The attorney-client privilege operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice. Gillard, *supra*.

13. The holder of the privilege is the client or person seeking to become the client. Office of the Governor, *supra*.

14. Here, the holder of the privilege is the Borough of Bath (the “Borough”) and the Borough has not waived the privilege.

15. Bradford T. Flynn (“Flynn”) is an Open Records Officer for the Borough.

16. Flynn is also the Manager for the Borough.

17. On or around June 23, 2023, Flynn, in his capacity as a Borough Open Records Officer, asked me to review several potentially responsive emails that he located via his search on the Borough's server for emails between Bradford Flynn, Fiorella Mirabito, Michele Ehr Gott, Phyllis Andrews, Barry Fenstermaker, and me from September 20, 2021, to May 15, 2022, regarding the subject matters identified in the RTKL Request.

18. Based on my review of the potentially responsive emails that Flynn located via his search on the Borough's server, I identified only my email of December 3, 2021, from me to former Borough employee Marena Rasmus with copy to **Flynn**, Borough Engineer Madison, **Borough employee Lamparter**, Mayor Fiorella Mirabito and all Council members at that time (including, but not limited to, Michele Ehr Gott, Phyllis Andrews, and Barry Fenstermaker) (the "JFK Email of 12-3-21") as containing my legal advice regarding several parts of proposed Resolution #2021-012 including, but not limited to, Article 2.7(f) of proposed Resolution #2021-012.

19. Article 2.7 of proposed Resolution #2021-012 relates to the process to appoint a person to a vacated Council seat. Thus, Article 2.7(f) of proposed Resolution #2021-012 relates to the process to appoint a person to a vacated Council seat. Thus, my legal advice in the JFK Email of 12-3-21 related to the process to appoint a person to a vacated Council seat. **Also, while my Affidavit of July 24, 2023, states that "[b]ecause of that, my legal advice in the JFK Email of 12-3-21 regarding Article 2.7(f) of proposed Resolution #2021-012 ..., ..., ... related to the prospective appointment of Emmanuel Mirabito to the Council seat that was imminently being vacated by former Councilmember Mark Saginario[]", after further review, that statement is not correct because it was not until the January 2022 Regular & Reorganization Meeting email dated 12/29/2021 (Attachment 'B' to Bath's final response letter dated June 23, 2023, addressed to Mr. Long which response letter is attached hereto as Exhibit "C" which response letter included (a) then Councilmember Mark Saginario's resignation letter dated December 31, 2021 (Attachment 'B-1' to Exhibit "C" attached hereto) and (b) the Emmanuel Mirabito letter of interest dated December 13, 2021 (Attachment 'B-2' to Exhibit "C" attached hereto)) that I became aware of the possibility of Council possibly appointing Emmanuel Mirabito to the Council seat that was imminently being vacated by former Councilmember Mark Saginario and I was not asked**

to provide a legal opinion regarding the prospective appointment of Emmanuel Mirabito to said Council seat.

20. The JFK Email of 12-3-21 falls within the “between Bradford Flynn, Fiorella Mirabito, Michele Ehr Gott, Phyllis Andrews, Barry Fenstermaker, **and** James Kratz, from September 20, 2021, to May 15, 2022” stated in Mr. Long’s RTKL Request. Emphasis added.

21. The JFK Email of 12-3-21 was made to representatives of my client, the Borough, for purposes of providing legal advice, outside the presence of strangers, in response to a communication from **Borough employee Marena Rasmus**, outside the presence of strangers, for an opinion of law regarding any part of proposed Resolution #2021-012 and not for the purpose of committing a crime or tort.

22. The JFK Email of 12-3-21 is protected by the attorney-client privilege. Office of the Governor, *supra*; Gillard, *supra*; see also, RTKL Sections 102 (definitions of “privilege” and “public record”), 305(a)(2) and 506(c)(2).

23. **In response to Office of Open Records Appeal Officer Kelly Isenberg’s request of September 26, 2023, for the Borough to provide an Exemption Log, attached hereto as Exhibit “A” is the Borough’s Exemption Log.**

24. **I prepared the Borough’s Exemption Log and I have actual knowledge of the records identified in the Borough’s Exemption Log.**

25. **The JFK Email of 12-3-21 is identified as Record Number 1 on the Borough’s Exemption Log. See Exhibit “A”.**

26. On or around June 23, 2023, I also stated to Flynn that, as a precautionary measure, he should note in the Borough’s letter of June 23, 2023, to Mr. Long that emails from me to Flynn, Mayor Fiorella Mirabito and/or members of Council regarding my legal advice regarding the resignation of Mark Saginario from Council, the vacated Council seat following Mark Saginario’s resignation, the appointment of Emmanuel Mirabito to the Council seat¹ and the process to appoint a person to Council seat are attorney-client privileged and not subject to access per RTKL Section 102 (definitions of “privilege” and “public record”).

¹ On or around June 23, 2023, I mistakenly included the topic of the appointment of Emmanuel Mirabito to Council as I was not asked to provide a legal opinion regarding the appointment of Emmanuel Mirabito to Council and re-reviewing the content of the attorney-client privileged emails identified on the Borough Exemption Log made me realize that.

27. I stated “and/or” to Flynn (**as referenced in paragraph 26 above**) because (a) the JFK Email of 12-3-21 which falls within the “between Bradford Flynn, Fiorella Mirabito, Michele Ehr Gott, Phyllis Andrews, Barry Fenstermaker, **and** James Kratz” but also (b) I had/have the following email exchange for legal advice that does not fall within “between Bradford Flynn, Fiorella Mirabito, Michele Ehr Gott, Phyllis Andrews, Barry Fenstermaker, **and** James Kratz”:

(a) Email exchange in October 2021 (the “Email Exchange in October 2021”) with Flynn and Council President Ehr Gott regarding their request for legal advice regarding the resignation of then Councilmember Mark Saginario, the vacated Council seat following Mark Saginario’s resignation and the general process to appoint a Council person. The prospective appointment of Emmanuel Mirabito to the Council seat was not a part of this email exchange **and it was not part of the JFK Email of 12-3-21 either. As stated in paragraph 19 above, I was not asked to provide a legal opinion regarding the prospective appointment of Emmanuel Mirabito to said Council seat.**

28. **The Email Exchange in October 2021 is comprised of the emails identified as Record Numbers 2 thru 12 on the Borough’s Exemption Log attached hereto as Exhibit “A”.**

29. The Email Exchange in October 2021 was made **by and** to representatives of my client, the Borough, for purposes of **the Borough seeking and my providing legal advice to the Borough**, outside the presence of strangers, in response to emails from Flynn and Council President Ehr Gott, outside the presence of strangers, for an opinion of law and legal assistance regarding the resignation of then Councilmember Mark Saginario, the vacated Council seat following Mark Saginario’s resignation and the general process to appoint a Council person and not for the purpose of committing a crime or tort.

30. The Email Exchange in October 2021 is protected by the attorney-client privilege. **Office of the Governor, supra; Gillard, supra; see also, RTKL Sections 102 (definitions of “privilege” and “public record”), 305(a)(2) and 506(c)(2).**

31. I stated “and/or” to Flynn as stated in paragraph 26 above because I desired that Flynn inform Mr. Long that I did provide legal advice on the topics covered by the Email Exchange in October 2021 so Mr. Long is aware that Flynn **and** Council President Ehr Gott were

aware of my legal advice so Mr. Long may possibly find that he does not need to make another right-to-know law request on that topic/time period.

32. On or around June 23, 2023, I also searched my email records for the Borough and did not find any other email exchanges regarding Mr. Long's other subject matters during the relevant time frame so I informed Flynn that I didn't have other attorney-client privileged emails to note for Mr. Long.

33. In preparing **my Affidavit of July 24, 2023**, I performed another search to ensure my initial search was correct and I located the following email exchanges:

(a) Email exchange on April 21, 2022 (the "JFK 4-21-22 Email Exchange #1"), between Flynn and me wherein Flynn sought legal opinions regarding the prospective employment of Fiorella Mirabito as a part-time office clerk of the Borough and form of compensation and where I provided legal advice in response to same.

(b) Email exchange on April 21, 2022 (the "JFK 4-21-22 Email Exchange #2"), between Council President Ehrgott and me wherein Council President Ehrgott sought legal opinion regarding the prospective employment of Fiorella Mirabito as a part-time office clerk of the Borough and where I provided legal advice in response to same.

34. The JFK 4-21-22 Email Exchange #1 was made **by and** to a representative of my client, the Borough, for purposes of **the Borough seeking and my providing legal advice to the Borough**, outside the presence of strangers, in response to a communication from Flynn, outside the presence of strangers, for opinion of laws regarding the prospective employment of Fiorella Mirabito as a part-time office clerk of the Borough and form of compensation, **and not for the purpose of committing a crime or tort.**

35. **In my Affidavit of July 24, 2023, I inadvertently forgot to mention that the JFK 4-21-22 Email Exchange #1 was not made for the purpose of committing a crime or tort.**

36. The JFK 4-21-22 Email Exchange #1 is protected by the attorney-client privilege. Office of the Governor, *supra*; Gillard, *supra*; **see also, RTKL Sections 102 (definitions of "privilege" and "public record"), 305(a)(2) and 506(c)(2).**

37. **The JFK 4-21-22 Email Exchange #1 is identified as Record Numbers 13 thru 15 on the Borough's Exemption Log attached hereto as Exhibit "A".**

38. The “JFK 4-21-22 Email Exchange #2” was made **by and** to a representative of my client, the Borough, for purposes of **the Borough seeking and my providing legal advice to the Borough**, outside the presence of strangers, in response to a communication from Council President Ehr Gott, outside the presence of strangers, for an opinion of law regarding the prospective employment of Fiorella Mirabito as a part-time office clerk of the Borough, **and not for the purpose of committing a crime or tort.**

39. **In my Affidavit of July 24, 2023, I inadvertently forgot to mention that the JFK 4-21-22 Email Exchange #2 was not made for the purpose of committing a crime or tort.**

40. **The JFK 4-21-22 Email Exchange #2 is identified as Record Numbers 16 thru 18 on the Borough’s Exemption Log attached hereto as Exhibit “A”.**

41. The JFK 4-21-22 Email Exchange #2 is protected by the attorney-client privilege. Office of the Governor, *supra*; Gillard, *supra*; **see also, RTKL Sections 102 (definitions of “privilege” and “public record”), 305(a)(2) and 506(c)(2).**

42. While the JFK 4-21-22 Email Exchange #1 and JFK 4-21-22 Email Exchange #2 each fall outside of Mr. Long’s “between Bradford Flynn, Fiorella Mirabito, Michele Ehr Gott, Phyllis Andrews, Barry Fenstermaker, and [Solicitor Kratz]” designation via his RTKL Request and are attorney-client privileged, I **informed** Mr. Long of the existence of the JFK 4-21-22 Email Exchange #1 and JFK 4-21-22 Email Exchange #2 **via my Affidavit of July 24, 2023**, so Mr. Long is aware that Flynn and Council President Ehr Gott were aware of the legal advice that I provided so Mr. Long may possibly find that he does not need to make another right-to-know law request on those topics/time period.

43. **In preparing this Affidavit, I gathered the emails identified as Record Numbers 1 thru 18 and, in doing so, I located the following attorney-client privileged email exchange that relates to the JFK Email of 12-3-21:**

(a) **Email exchange on December 6, 2021 (the “12-6-21 Email Exchange”) between Flynn and me wherein Flynn sought follow up legal advice to the legal advice that I provided via the JFK Email of 12-3-21 regarding Article 2.7(f) of proposed Resolution #2021-012.**

44. **The 12-6-21 Email Exchange was made by and to a representative of my client, the Borough, for purposes of the Borough seeking and my providing legal advice to**

the Borough, outside the presence of strangers, in response to Flynn's email of 12-6-21, outside the presence of strangers, for follow up legal advice regarding the JFK Email of 12-3-21 regarding Article 2.7(f) of proposed Resolution #2021-012 and not for the purpose of committing a crime or tort.

45. The 12-6-21 Email Exchange is comprised of the emails identified as Record Numbers 19 and 20 on the Borough's Exemption Log attached hereto as Exhibit "A".

46. The 12-6-21 Email Exchange is protected by the attorney-client privilege. Office of the Governor, *supra*; Gillard, *supra*; see also, RTKL Sections 102 (definitions of "privilege" and "public record"), 305(a)(2) and 506(c)(2).

47. Via the Borough's final response dated June 23, 2023, addressed (and provided) to Mr. Long, the Borough provided Attachment 'D' to Mr. Long in response to the second part of his RTKL Request which was "[a] list of all employees hired by the Borough of Bath outside of Public Works Department since January 1, 2022 ..."

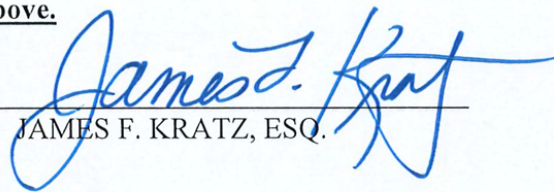
48. Attachment 'D' to the Borough's final response dated June 23, 2023, is the Employee Earnings Reports for Michael Kovach, Fiorella Mirabito and David Smith (who were hired by the Borough during the period January 1, 2022, to April 30, 2023) but with redactions that Mr. Flynn stated are the respective home address, social security number and date of birth for Michael Kovach, Fiorella Mirabito and David Smith that were redacted per RTKL Sections 706 and 708(b)(6)(i)(A).

49. Because the copy of Attachment 'D' attached to Mr. Long's appeal filed with the Office of Open Records on July 13, 2023, is not a true and correct copy of Attachment 'D' attached to the Borough's final response dated June 23, 2023, attached hereto as Exhibit "B" is a true and correct copy of Attachment 'D' that was attached to the Borough's final response dated June 23, 2023, addressed (and provided) to Mr. Long. For example, on page 6 of 8 of the copy that Mr. Long filed with the Office of Open Records, it states "Red# 83 SMITH, CAVIC". That is incorrect and may have been caused by software that Mr. Long uses. As you'll see, on page 6 of 8 of Attachment 'D' attached to the Borough's final response dated June 23, 2023, it states "Rcd # 83 SMITH, DAVID".

50. Attached hereto as Exhibit "C" is a true and correct copy of the Borough's final response dated June 23, 2023, addressed (and provided) to Mr. Long. See Attachmetn 'D' in Exhibit "C".

51. I have reviewed the Borough's unredacted copy of Attachment 'D' and, after comparing it to the redacted copy of Attachment 'D' attached to the Borough's final response dated June 23, 2023, Mr. Flynn did only redact the respective home address, social security number and date of birth for Michael Kovach, Fiorella Mirabito and David Smith per RTKL Sections 706 and 708(b)(6)(i)(A) on Attachment 'D' attached to the Borough's final response dated June 23, 2023, addressed (and provided) to Mr. Long.

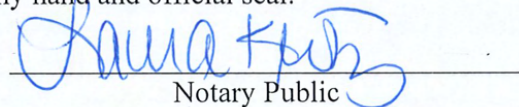
52. The redacted copy of Attachment 'D' to the Borough's final response dated June 23, 2023 is identified as Record Number 21 on the Borough's Exemption Log because of the redactions made by Flynn as discussed above.



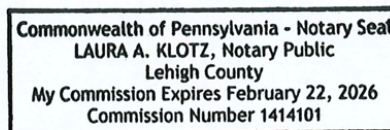
JAMES F. KRATZ, ESQ.

On this, the 4th day of October, 2023, before me a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared JAMES F. KRATZ, ESQ., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.



Notary Public



Exhibit

B

From: [Fiorella Reginelli-Mirabito](#)
To: [Bradford Flynn](#)
Cc: [Michele Ehr Gott](#); [Barry Fenstermaker](#); [Frank Hesch](#); [Mark Saginario](#); [Carol Bear-Heckman](#); [Phyllis Andrews](#); [Anthony Kovalovsky](#); [Marena Rasmus](#); [Tanya Lamparter](#)
Subject: Re: CONCERNS
Date: Thursday, October 28, 2021 8:13:03 AM

Brad...

Believe me I understand “conception” and “law” - again, for some reason I cannot shake the fact that it concerns me...that is all.

Safe travels home!

Fiorella Reginelli Mirabito

Mayor

Borough of Bath

121 South Walnut Street

Suite 111

Bath, PA 18014

610-837-6525 - Borough Office

610-837-8989 - Fax

484-281-3628 - Mayors Office

visit us at: www.bathborough.org

“Bath...History Nestled With Friendship”

“Believe you can, and you’re half way there...” - Theodore Roosevelt

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On Oct 28, 2021, at 8:00 AM, Bradford Flynn
<bradford.flynn@boroughofbath.org> wrote:

Understood. And as an objective fact, certain things must occur before the seat is filled.

Public knowledge of him resigning and the actual law on this is not aligned here. The Borough Code dictates what Council can do in this situation. Council accepts Marks resignation in public session. Which hasn't occurred yet. That sets the timetable for filling a seat, depending on the outgoing members tendered resignation date. A seat only opens when a member officially submits his/her resignation and Council accepts it.

We'll get it straightened out. Jamie has been guiding Michele and I. We can discuss further in executive session.

Brad

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Fiorella Reginelli-Mirabito <mayor@boroughofbath.org>
Sent: Thursday, October 28, 2021 3:54:12 AM
To: Michele Ehrgott <mehrgott@boroughofbath.org>
Cc: Barry Fenstermaker <bfenstermaker@boroughofbath.org>; Frank Hesch <fhesch@boroughofbath.org>; Mark Saginario <mark.saginario@boroughofbath.org>; Carol Bear-Heckman <checkman@boroughofbath.org>; Phyllis Andrews <pandrews@boroughofbath.org>; Anthony Kovalovsky <akovalovsky@boroughofbath.org>; Bradford Flynn <bradford.flynn@boroughofbath.org>; Marena Rasmus <marena.rasmus@boroughofbath.org>; Tanya Lamparter <tanya.lamparter@boroughofbath.org>
Subject: Re: CONCERNS

Thanks, Michele...

Although, I believe Brad has just made it clear on what the steps are and how Council is going to proceed. Again, in my humble opinion...it all concerns me.

Have a good day!

Fiorella Reginelli Mirabito
Mayor
Borough of Bath
121 South Walnut Street
Suite 111
Bath, PA 18014
610-837-6525 - Borough Office
610-837-8989 - Fax
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On Oct 27, 2021, at 6:56 PM, Michele Ehergott
<mehrgott@boroughofbath.org> wrote:

Next meeting November 8th council can discuss np

Sent from my iPhone

On Oct 27, 2021, at 5:15 PM, Fiorella Reginelli-Mirabito

<mayor@boroughofbath.org> wrote:

Good afternoon, everyone...

A quick message to you all, in reference to Mark's resignation on Council.

This weekend at the campfire I spoke to several people in reference to many things throughout our Borough. I listened closely, didn't really give any answers - just smiled and told them I would take their opinions under advisement. One of the items was Mark's resignation from Borough Council and how that is going to be handled. Also, Mr. Mike Long pulled me to the side and gave me his "dissertation" on how things should go; what we should do; what should've been done; available grants; etc. - and, lastly - and, most concerning his firm decision to run as a write-in on Council. Please know - ANYONE receiving the highest votes will get the seat. Those on the ballot really have no reason to worry - since voters usually don't take the time to "write-in". There are others who know of Mark's resignation since it's in the newspaper that he has taken the position in Tatamy, and others wanting to apply for that seat.

I want to go on record - I completely disagree with waiting for Mark's resignation to take effect in January 2022. I think the seat should be filled now. I realize, again, ultimately - the decision is Borough Councils and not mine. Although, I have a terrible feeling about the outcome if you wait to fill the seat. Manny has indicated interest in "applying" to fill the seat - to be honest, I'm not in agreement - but, not my decision either. He DOES NOT want ANY office on Council. He wants to just fulfill the two years and that's it. Michele - please do not be concerned that he wants to be President - or VP for the matter - NO interest at all.

Thank you for allowing me to express my concern... ultimately, as in all things I do - my concern is for the Borough...nothing more.

Best,
Fi

Fiorella Reginelli Mirabito
Mayor
Borough of Bath
121 South Walnut Street
Suite 111
Bath, PA 18014
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*"Believe you can, and you're half way there..." -
Theodore Roosevelt*

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Exhibit

C


DriveLocker LLC
 100 Cascade Drive
 Suite 210
 Allentown, PA 18109
 610.264.9100

Invoice

Date	Invoice #
5/31/2023	4531

Bill To
Borough of Bath Borough Manager 121 South Walnut Street Bath, PA 18014

Terms
Due on receipt

Description	Quantity	Rate	Amount
Right to Know work conducted per direction provided from both Attorney Kratz and Bradford Flynn from (04/11/23 - 05/31/23)	20	110.25	2,205.00
Thank you for your business.			Subtotal \$2,205.00

Sales Tax (6.0%)	\$0.00
Total	\$2,205.00



Exhibit D



Borough of Bath

*121 South Walnut Street, Bath, PA 18014
Phone: 610-837-6525 Fax: 610-837-8989*

May 5, 2023

VIA EMAIL ONLY

Mr. Michael Long
220 Creek Road
Bath, PA 18014

**RE: Right-to-Know Requests:
AORO Tracking #12.2023
AORO Tracking #14.2023
AORO Tracking #15.2023**

Dear Mr. Long,

As you know, I am an Open Records Officer for the Borough of Bath (the "Borough"). As you also know, I am the Manager for the Borough. On March 30, 2023, the Borough received your four (4) Right-to-Know Requests each dated March 30, 2023. The four requests were assigned to AORO Tracking #12.2023, #13.2023, #14.2023, and #15.2023, respectively. Via a separate letter dated May 3, 2023, I provided the final response to your Right-to-Know Request AORO Tracking #13.2023 wherein I granted access to the public records sought by that request.

Below (starting on page 3), I provide you with the final responses to your Right-to-Know Requests AORO Tracking #12.2023, #14.2023 and #15.2023. Before I provide the responses, I will provide some brief relevant background. On September 27, 2022, you submitted a Right-to-Know Request that contained a multitude of subparts. A lot of the subparts were denied, and you filed an appeal at OOR AP 2022-2675. A Final Determination was rendered on February 24, 2023 (**Attachment #1**).

During your appeal at OOR AP 2022-2675, you were made aware that the Borough has a small administrative staff consisting of me (full-time Manager), a full-time office secretary and a part-time office clerk. You also became aware that, during your appeal at OOR AP 2022-2675, the Borough produced over 900 pages of responsive documents and that it was a very time-consuming process. Further, you are also aware that, during your appeal at OOR AP 2022-2675, you taunted me on two (2) different occasions. On January 17, 2023, you sent me an *unsolicited* email (**Attachment #2**) containing a huge yellow smiley face on a black background. Also, on February 16, 2023, at the end of your email to Appeals Officer Hecker you stated "Did I mention how nice your hair looks today. [smiley face emoji] Just playing. But truly tank [sic] you. Hi Bradford." The "Hi Bradford" was your way of taunting me, however, the "Just playing" part also evidences how you treat the Right-to-Know Law process as a game which it is not.

"Bath, History Nestled With Friendship"

Mr. Long
Page 2 of 21
May 5, 2023

Prior to the November 2022 election, you ran a “write-in” campaign on Facebook to be elected to Borough Council. As you know, your “write-in” campaign was not successful. In any event, you stated during your campaign that your first order of business was first and foremost to get a new Borough manager (meaning have me terminated and replaced). You have complained on more than one occasion that I don’t live in the Borough and that the Borough shouldn’t be taking direction from a manager that lives outside of the Borough. You have also claimed on more than one occasion that I am overcompensated. Prior to your making that complaint, your mother also made verbal complaints directly to me claiming that I don’t care about the Borough because I don’t live in the Borough. The reason I raise the foregoing background is because I believe your conduct is an abuse of legal process because your conduct is based on where I live and that you do not have a good faith intention relative to your Right-to-Know Requests AORO Tracking #12.2023, #14.2023 and #15.2023. I believe that you are attempting to abuse the Right-to-Know Law (the “RTKL”) process by making multiple right-to-know requests on same day (some with multiple subparts) and certain insufficiently specific and/or overly broad and overly burdensome requests because you have personal animosity against me because I don’t live in the Borough, and you disagree with the compensation that Council authorized as my compensation. I believe you are also doing this to overload me with work, so I am not able to perform my existing job responsibilities, for which existing job responsibilities are substantial as I am an Open Records Officer for the Borough and the Manager of the Borough. On April 8, 2023 at 5:43 PM (eve of this past Easter Sunday), you sent me the attached *unsolicited* email (**Attachment #3**) wherein you, among other things, call me an “asshole”, reference Easter and my family, generally reference OOR AP 2022-2675 (your claim of “... [I] prefer to spend an absurd amount of money to withhold records intended for public consumption, while [you] manage all of it from [your] phone, even during a restroom break, each time ...”) and generally reference your Right-to-Know Requests AORO Tracking #12.2023, #13.2023, #14.2023 and #15.2023 (“... Perhaps we could address some of [your] RTK requests and reduce the amount of nonsense.”).

With that short background stated, the responses to your Right-to-Know Requests AORO Tracking #12.2023, #14.2023 and #15.2023 are below via this single letter because of said background and the fact that your Right-to-Know Requests AORO Tracking #12.2023, #14.2023 and #15.2023 are related because of said background and my belief that you are attempting to abuse the RTKL process as I stated above.

Response for AORO Tracking #12.2023

Your Request AORO Tracking #12.2023 states as follows:

“Pursuant to the Pennsylvania Right-to-Know Law, I am requesting information on user activity within the Borough of [Borough Name]’s QuickBooks accounting system related to the allocation of funds and recordings of transactions for the mayor’s insurance premium payments from December 2018 to December 2022. Please provide the following information:

1. Names of users responsible for recording transactions and allocating funds to specific accounts for the mayor’s insurance premium payments.
2. Timestamps of the allocation or recording activities related to the mayor’s insurance premium payments.
3. Changes made to accounts, including which accounts were affected and the amounts involved for the mayor’s insurance premium payments.

Additionally, please provide information on the destination of these funds after being deposited, such as:

1. Account names and numbers (redacted as necessary) where the funds were deposited or transferred to.
2. The purpose or use of the funds after being deposited.

If possible, please also provide a copy of the Audit Trail Report from QuickBooks for the specified time period, as it should contain this information.”

Your Request AORO Tracking #12.2023 is denied per RTKL Section 506(a)(1) because it is a repeated request for the same record and places an unreasonable burden on the Borough. In other words, your Request AORO Tracking #12.2023 is denied per RTKL Section 506(a)(1) because it is a disruptive request. As stated in the Final Determination for OOR AP 2022-2675 on pages 23 and 24, this was Request 5(a) and Request 5(a) was dismissed as moot because the records were provided. Pages 23-24 of the Final Determination, in relevant part, it states:

“Request 5(a) seeks “all digital records from 2019 to current [relating] to health insurance coverage issued to the position of mayor. As well as what dates this coverage was active and discounted. If and when this was reimbursed back to the boroughs general fund or what [became] of any repayment[.] ... In a good faith effort to respond to Request 5(a), the Borough provided (a) a letter dated October 15, 2018 which indicates the mayor’s enrollment, premium rates, and terms of reimbursement for the health insurance coverage; (2) reports of premium amounts paid by the Borough and then reimbursed by the mayor for the mayor’s Delaware Valley Health Trust for years 2018 thru October 31, 2022, and (3) **spreadsheets and cancelled checks demonstrating payments and reimbursements for the mayor’s health insurance for the years 2018 thru 2022. These records**

provided satisfy the portion of Request 5(a) seeking “the dates this coverage was active and discounted[,] ... [and] [i]f and when this was reimbursed [back to the boroughs [sic] general fund or what [became of any repayment[.]]”

Emphasis added.

You were given a copy of the Final Determination for OOR AP 2022-2675 via email from Appeals Officer Hecker, so you are aware of this. You are also aware that you stated to Appeals Officer Hecker that you were asking for the Audit Trail Report from Quickbooks prior to her rendering the Final Determination for OOR AP 2022-2675. See your email of February 16, 2023, to Appeals Officer Hecker which is attached hereto as **Attachment #4**. During your appeal at OOR AP 2022-2675, you were aware that Appeals Officer Hecker was informed on January 30, 2023, and February 23, 2023, that:

“It is impossible to obtain a single, accurate report from the Borough’s Quickbooks for each relevant time period. Why? The Borough’s bookkeeper has reported that, in past years, the previous bookkeepers had entered information into Quickbooks that was incorrect. For example, rather than entering individual [Delaware Valley Health Trust] bills as they were received, there are some months when multiple months of bills were entered as a single amount which made that entry incorrect with need for correction. Also, another barrier from being able to create a single, correct report from Quickbooks is that the Mayor’s health expenses were tracked in different accounts over multiple years. For example, both 2021 and 2022 have one (1) deposit each that were posted to an incorrect insurance reimbursement line which is where the Borough posts items such as PIRMA deposits. These payments are in a different account and so a single, correct Quickbooks report is not possible. Also, there were some deposits from payments from the Mirabitos that were posted to incorrect accounts. The Borough’s bookkeeper had to perform extensive research to reconcile entries and create the excel spreadsheets prepared and already provided to Mr. Long to provide a single, correct report for each relevant year.”

You were also aware that Appeals Officer Hecker was also informed in OOR AP 2022-2675 that:

“the Borough had the Excel Sheet labeled 2018-2022 Mirabitos Insurance Summary, Excel Sheet labeled 2018, Excel Sheet labeled 2019, Excel Sheet labeled 2020, Excel Sheet labeled 2021, and Excel Sheet labeled 2022 prepared and obtained the canceled checks (provided here via redaction per Section 708(b)(6)(i)(A) (personal financial information) of the Act) to be able to provide a final report on this point that included the cross-referenced canceled checks and other cross-referenced information on the excel sheets.”

Mr. Long
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May 5, 2023

Hence, the spreadsheets and cancelled checks demonstrating payments and reimbursements for the mayor's health insurance for the years 2018 thru 2022 were provided to you via OOR AP 2022-2675 and this matter was fully addressed in Final Determination for OOR AP 2022-2675. Your Request AORO Tracking #12.2023 is denied (as stated above) per RTKL Section 506(a)(1) because it is a repeated request (disruptive request) for the same records and places an unreasonable burden on the Borough. Further, because of OOR AP 2022-2675 and the Final Determination therein, I believe you are aware that Request AORO Tracking #12.2023 is a disruptive request and, therefore, made Request AORO Tracking #12.2023 in bad faith to create distraction and additional burden on the Borough in your attempt to overload me and my staff and create expense to the Borough because of my consulting with the Borough Solicitor regarding legal matters such as this disruptive request. I also believe you made Request AORO Tracking #12.2023 separately because you were aware that it was a disruptive request and would be denied as a disruptive request.

Finally, as a precautionary measure only, AORO Tracking #12.2023 is denied per RTKL Section 703 because the audit trail that you request does not exist and can't be created as explained to Appeals Officer Hecker in OOR AP 2022-2675 and stated again above.

Response for AORO Tracking #14.2023

Your Request AORO Tracking #14.2023 states as follows:

“Communications Mentioning Mike Long or Michael Long

Pursuant to the Pennsylvania Right-To-Know Law, I am requesting any and all email communications sent or received by any elected official, employee, or vendor of the Borough of Bath that include the name “Mike Long” or “Michael Long.” Please include communications from the following time periods:

September 26, 2022, to March 26, 2023

October 20, 2021, to October 22, 2021

Please include any emails related to the following topics:

Right-to-know requests
Dissertations
Elections
Facebook
Videos
Social media posts
Policy
Ordinance”

“Bath, History Nestled With Friendship”

Mr. Long
Page 6 of 21
May 5, 2023

As to your request relative to “Mike Long” or “Michael Long” during the period October 20, 2021, to October 22, 2021, your request is denied per Section RTKL 705 because no emails exist that include the name “Mike Long” or “Michael Long” during that time frame. Although outside of the period October 20, 2021, to October 22, 2021, attached (**Attachment #5**) is the email of October 27, 2021, at 5:15 PM that includes the name “Mike Long” and the word “dissertation”. While this email is outside of the period October 20, 2021, to October 22, 2021, since I recalled this email and was able to locate it, it is being provided to you.

As to your request relative to “Mike Long” or “Michael Long” and the period September 26, 2022, to March 26, 2023, your request is denied. Your request is denied because (a) it is insufficiently specific, (b) it is overly broad and overly burdensome and (c) in relevant part for RTKL Section 102 (attorney-work product and/or attorney-client privilege). See RTKL Sections 703 and 102; see also Pennsylvania Department of Education v. Pittsburgh Post-Gazette, 119 A.3d 1121 (Pa. Cmwlth. 2015); Mollick v. Township of Worcester, 32 A.3d 859 (Pa. Cmwlth. 2011); Montgomery County v. Iverson, 50 A.3d 281 (Pa. Cmwlth. 2012); Keystone Nursing & Rehab of Reading, LLC v. Simmons-Ritchie, 2020 WL 40042 (unpublished opinion); see also OOR Final Determinations at AP 2022-2110 and AP 2021-1129.

Your request does not identify any specific elected official, any specific employee, or any specific vendor. It also doesn't specifically identify a subject matter of Borough business. It only provides general terms. To start a good faith review, the first step taken was to have the Borough's IT Administrator search the Borough's server for any emails containing “Mike Long” or “Michael Long” for the period September 26, 2022, to March 26, 2023. That search has revealed 521 potentially responsive documents. In case any of the potentially responsive documents contain information that my limited staff should not be reviewing, I wasn't able to authorize my limited staff to review the 521 potentially responsive documents. Also, it was impossible for me to review the 521 potentially responsive documents because of my existing workload and legal requirement to answer your Right-to-Know AORO #12.2023, #13.2023, #14.2023 and #15.2023 requests within the time period required by the RTKL. Further, I estimate that it would take me 60 hours of dedicated time for me to review the 521 potentially responsive documents to identify and remove emails that are confidential per the attorney-client privilege. My engaging in such a process would materially adversely impact on the Borough because I would not be performing my existing job responsibilities and, therefore, not fulfilling my existing job responsibilities as the Manager of the Borough. By way of non-exhaustive example, residents desiring questions answered by the Manager, Bath Councilmembers desiring questions answered by the Manager, vendors of Bath desiring questions by the Manager would not be fulfilled in a timely manner and the Borough's management operation would be materially negatively impacted. This request #14.2023 is insufficiently specific and overly broad and overly burdensome.

This request would cause me to review potentially responsive emails to form a factual opinion whether they are responsive or not subject to access because of attorney-work product and/or attorney-client privilege which asks me to render either a legal or factual opinion on an issue in response to a RTK request which makes this request #14.2023 insufficiently specific. See Askew V. Pennsylvania Office of Governor, 65 A.3d 989 (Pa. Cmwlth. 2013). Also, this

Mr. Long
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May 5, 2023

request #14.2023 causes an overly broad and overly burdensome search that the RTKL does not intend. Mollick, supra; Montgomery County v. Iverson, supra; Keystone Nursing & Rehab of Reading, LLC v. Simmons-Ritchie, supra; see also OOR Final Determinations at AP 2022-2110 and AP 2021-1129.

On another note, the period September 26, 2022, to March 26, 2023, directly relates to your Right-Know Request of September 27, 2022, and its appeal at OOR AP 2022-2675 and the appeal period ending on March 27, 2023, for the Final Determination at OOR AP 2022-2675. Thus, there are attorney work product and/or attorney-client privileged emails by and between me and the Borough Solicitor which emails are not subject to access per RTKL Section 102 (attorney-work product and/or attorney-client privilege). Second, you are aware that there is an email or emails from me and/or the Borough Solicitor to the Appeals Officer Hecker re OOR AP 2022-2675 that you were copied on which emails are in your possession. You are also aware there are emails from the Borough Solicitor to Appeals Officer Hecker re OOR AP 2022-2675 that you were copied on which emails are in your possession. Moreover, you are aware that there are emails from Attorney Jeffery Ogren to the Appeals Officer Hecker re OOR AP 2022-2675 that you were copied on which emails are in your possession. Moreover, you are aware that there are emails from you to Appeals Officer Hecker re OOR AP 2022-2675 that you copied me on which emails are in your possession. Moreover, you are aware that there were emails from Appeals Officer Hecker to you which I was copied on which emails are in your possession. Also, you are aware that you emailed all seven (7) Council members during the subject period of time which is but one example as to why I expect there will be several duplicative emails. I believe you are also doing this request #14.2023 to overburden me because of your personal animosity against me. See requests #12.2023, #13.2023, #14.2023 and #15.2023 (which were made on same day). As stated above, this request #14.2023 is overly broad and overly burdensome. Mollick, supra; Montgomery County v. Iverson, supra; Keystone Nursing & Rehab of Reading, LLC v. Simmons-Ritchie, supra; see also OOR Final Determinations at AP 2022-2110 and AP 2021-1129.

Responses for AORO Tracking #15.2023

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

“Subject: Right to Know Request - Year-End Employee Compensation and Withholdings (2016-2022, Q1 2023)”

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting a detailed report of year-end employee compensation for Borough Manager Bradford T. Flynn of the Borough of Bath for the years 2016 through 2022 and the first quarter of 2023. The report should include the following information:

1. Total compensation from any and all sources within the borough’s budget.
2. A breakdown of the compensation, including base salary, overtime pay, bonuses, allowances, and any other forms of payment.
3. The specific source or budget line item associated with each part of the compensation.
4. A list of any and all withholdings, such as taxes, social security, health insurance, retirement contributions, or other deductions.”

The above referenced part of your Request AORO Tracking #15.2023 is denied, in part, and granted, in part. It is denied per RTKL Section 705 because the Borough doesn’t have a report that contains all of the information that you are looking for via a single report which also makes this request overly broad and overly burdensome in light of my workload, my staff’s workload limitations and the statutory time to act under the RTKL especially when viewed in light of my responding to your requests #12.2023, #13.2023, #14.2023 and #15.2023. Mollick, supra; Montgomery County v. Iverson, supra; Keystone Nursing & Rehab of Reading, LLC v. Simmons-Ritchie, supra; see also OOR Final Determinations at AP 2022-2110 and AP 2021-1129. However, this Request is granted to the redacted Employee Earnings Reports (**Attachment #6**) relative to me for the years 2016 through 2022 and the first quarter of 2023. I redacted my home address and social security number per RTKL Sections 706 and 708(b)(6)(i)(A). I believe the redacted Employee Earnings Reports contain all of the information that you are looking for except the budget line item associated with each part of the compensation. You were provided the budgets for 2016 thru 2022 in OOR AP 2022-2675 so you may compare the respective budget to the respective redacted Employee Earnings Report.

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

“Subject: Right to Know Request List of Borough Accounts

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting a copy of the complete list of all financial accounts maintained by the Borough of Bath. This should include the account names, account numbers (redacted as necessary to protect sensitive information), account types, and the purpose or description of each account.”

The above referenced part of your Request AORO Tracking #15.2023 is denied, in part, and granted, in part. It is denied as to where it asks “the purpose or description of each account” as that is asking a question rather than for a record. See Moll v. Wormleysburg Borough, OOR Dkt. AP 2012-0308. It is granted as to the attached list of all financial accounts (**Attachment #7**).

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

“Subject: Right to Know Request Treasurer’s Reports (2016-2022, Q1 2023)

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting copies of the Treasurer’s Reports for the years 2016 through 2022 and the first quarter of 2023 for Borough of Bath.

Please include the following information in each report:

1. Opening Balance
2. Revenues
3. Expenditures
4. Transfers
5. Ending Balance
6. Budget Comparison”

The above referenced part of your Request AORO Tracking #15.2023 is denied, in part, and granted, in part. It is denied because it is overly broad and overly burdensome in light of my workload, my staff’s workload limitations and the statutory time to act under the RTKL especially when viewed in light of my responding to your requests #12.2023, #13.2023, #14.2023 and #15.2023 and you asking for 6 years of Treasurer’s Reports which I estimate at around 216 (3 separate report forms x 12 months x 6 years) number of reports that I will have to locate and copy to a flash drive. Mollick, supra; Montgomery County v. Iverson, supra; Keystone Nursing & Rehab of Reading, LLC v. Simmons-Ritchie, supra; see also OOR Final Determinations at AP 2022-2110 and AP 2021-1129. However, this Request is granted to the Treasurer’s Reports for the years 2016 through 2022 and the first quarter of 2023, however, I believe it will take me until **June 16, 2023**, to gather these documents and copy the documents to

a flash drive which flash drive you must pay for the cost thereof **(\$4.99)** before the flash drive is released.

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

“Subject: Right to Know Request – Clarification on 2020 Audit Report

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting clarification on certain items related to the Borough of Bath’s 2020 audit report. In the auditors’ letter dated December 29, 2020, they mentioned decreased escrow revenue accounts and increased related escrow net asset accounts by \$13,089 to correct posting of custodial activity.

Additionally, the auditors mentioned that they requested certain representations from management that are included in the management representation letter dated December 7, 2022.

Please provide the following information:

1. A copy of the management representation letter dated December 7, 2022.
2. Any additional information or clarification on the decreased escrow revenue accounts and increased related escrow net asset accounts by \$13,089 mentioned in the audit report.
3. Any other information or communication related to the 2020 audit report that may be relevant or useful to understanding the audit findings.”

With respect to your September 27, 2022, Right-to-Know request at OOR AP 2022-2675, you were given a copy of the Borough’s 2020 audit report.

The above referenced part #1 of your request is denied to the management representation letter dated December 8, 2022. The date of December 7, 2022, for the reference to the subject management letter in the letter of Campbell, Rappold and Yurasits, LLP, dated December 7, 2022, that you were provided as a part of OOR AP 2022-2675 is incorrect. The management representation letter is dated December 8, 2022. Said management representation letter is a written communication with the auditor, Campbell, Rappold and Yurasits, LLP (Pennsylvania certified public accountants), and is not subject to access RTKL Section 102 (definition of “public record” and “privilege”) per the Pennsylvania accountant-client privilege at 63 P.S. Section 9.11a and said management letter is part of the underlying working papers of the audit and not part of the audit report per RTKL Section 102 (definition of “financial record”).

The above referenced part #2 of your request is denied because you are asking as question rather than a record. See Moll v. Wormleysburg Borough, OOR Dkt. AP 2012-0308. However, I'll answer the question. There were times when the Borough accounting person made certain payments from the Borough's General Fund relative to legal or engineering invoices belonging to professional service escrow accounts. The Borough's General Fund was expensed/reimbursed for certain developer escrows for which an invoice for legal or engineering services was paid. Developer escrow payments are not funds of the Borough; therefore, these transactions did not belong on the General Fund ledger. The auditors were pointing out that the developers escrow transactions totaling \$13,089 is a 'misstatement' and changes to the General Fund ledger were made to reclassify those payments to the correct developer's escrow account after discussion with the auditors.

The above referenced part #3 of your request is denied because you are asking as question rather than a record. See Moll v. Wormleysburg Borough, OOR Dkt. AP 2012-0308. It is also denied per RTKL Section 703 because it is insufficiently specific as it doesn't identify a sender or recipient of the communication or a time period. See RTKL Section 703; see also, Pennsylvania Department of Education v. Pittsburgh Post-Gazette, *supra*; Mollick, *supra*. It is further denied as to any and all written communications with the auditors, accountants and employees of Campbell, Rappold and Yurasits, LLP (Pennsylvania certified public accountants) because said communications are not subject to access per RTKL Section 102 (definition of "public record", "privilege" and "financial record") per the Pennsylvania accountant-client privilege at 63 P.S. Section 9.11a and such communications would be part of the underlying working papers of the audit.

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

**“Subject: Right to Know Request – Borough
Manager’s Dues and Subscriptions for 2022 and 2023”**

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting a copy of the complete and finalized list of dues and subscriptions paid by the Borough of Bath for the Borough Manager for the year 2022, as well as the list for 2023 up to the present date.

Please provide the following information:

1. A list of all dues and subscriptions paid by the Borough of Bath for the Borough Manager for the year 2022 and for 2023 up to the present date.
2. The amount of money spent on each individual dues and subscription for each year.”

The above referenced part of your request is granted to the attached list of dues and subscriptions paid by the Borough of Bath for the Borough Manager for the year 2022, as well as the list for 2023 up thru March 30, 2023 (see **Attachment #8**). The requestor's request was dated March 30, 2023, and received by the Borough on the same date.

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

**“Subject: Right to Know Request – Stevens & Lee
Invoices and Hours for Right to Know Requests (2022-2023)”**

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting a copy of all invoices and records of payment made to Stevens & Lee for services rendered related to right-to-know requests for the years 2022 and 2023.

Additionally, I would like to request a breakdown of the hours spent by Stevens & Lee handling each right-to-know request during the same time period.

Please provide the following information:

1. Copies of all invoices and records of payment made to Stevens & Lee for services rendered **related to right-to know requests for the years 2022 and 2023.**
2. A breakdown of the number of hours spent by Stevens & Lee handling **each right-to-know request for the years 2022 and 2023.**”

The above referenced part of your request is granted, in part, and denied, in part. It is granted to the attached redacted Invoices for Stevens & Lee for 2022 (**Attachment #9**) and January thru March 2023 (**Attachment #10**). AORO Tracking #15.2023 was received by the Borough on March 30, 2023, so the requestor’s request is limited up to March 30, 2023. The Stevens & Lee Invoices have been redacted per RTKL Sections 706 and 102 (definition of “public record” and “privilege”) because of attorney-work product and attorney-client privilege.

The invoices always contain matter 00001 because that matter is the Stevens & Lee’s billing code number for general and miscellaneous Solicitor legal services. The invoices sometimes also contain other matter numbers as separate matter numbers are initiated for professional service agreements, Bath Subdivision and Land Development Ordinance (“SALDO”) applications by developers and other matters when the Borough requests the billing for those services tracked to a new, separate matter number. Attached is the Affidavit of James F. Kratz, Esq., made on February 21, 2023 (**Attachment #11**), regarding the redacted Invoices for Stevens & Lee for 2022. The Affidavit was prepared and supplied in response to a right-to-know law request dated January 17, 2023, from Sheryl Reese requesting access to “*Copies of all invoices to the Borough of Bath from Borough Solicitor (Stevens & Lee) for years 2021 and 2022. As you’ll see by the Affidavit, parts of the invoices specific to matters 00210 (216 & 220-226 & 228-234 N. Chestnut Street Lot Line Adjustment Plan), 00209 (Bath View building #3 Land Development), 00212 (Bathwick, LLC, Land Development Application), 00213 (450 N. Chestnut Street – Moyer Properties – Feasibility Review) and 00216 (450 N. Chestnut Street – Preliminary/Final Subdivision Application) were not redacted because those parts of the respective invoices in 2022 were disclosed to the relevant third party for the reasons specified in Solicitor Kratz’s Affidavit of February 21, 2023. For the attached 2023 S&L Invoices, the parts of the invoices specific to matters 00209 (Bath View building #3 Land Development), 00215

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(Bathwick Hills Apartments Land Development), 00213 (450 N. Chestnut Street – Moyer Properties – Feasibility Review) and 00216 (450 N. Chestnut Street – Preliminary/Final Subdivision Application) were not redacted because those parts of the respective invoices in 2023 were disclosed to the respective applicant for his/its SALDO application in accordance with the SALDO and 53 P.S. Section 10503(1)(i) for the applicant to reimburse the Borough for the Borough’s legal fees and expenses as required by said laws.

Please also note that a Stevens & Lee invoice that is specific only to services rendered related to right-to-know requests for 2022 and January thru March 2023 does not exist. The Borough Solicitor provided legal work in 2022 and January 2023 thru March 2023 for general and miscellaneous Solicitor legal services unrelated to right-to-know requests and in some months in 2022 and January 2023 thru March 2023 legal services related to right-to-know requests. Both of those services fell under Stevens & Lee matter 00001 billing code. The monthly invoices from Stevens & Lee for matter 00001 do not breakdown services via separate subtotals or organize the time entries and descriptions of the work by right-to-know request(s) because those services historically have not been billed separately. The time entries and descriptions in matter 00001 for legal work related to right-to-know requests and legal work for unrelated matters within 00001 are interspersed. There is a grand total for matter 00001 on each invoice but not individual subtotals under matter 00001 as the legal work for matter 001 is part of general and miscellaneous Solicitor legal services. The time entries and descriptions of the work for matter 00001 are often on the same invoice for other certain matters like the SALDO applications known as developer matters or professional service escrow matters. Thus, the invoices and payments by the Borough for same do not provide a total of the number of hours spent by Stevens & Lee for each right-to-know request in 2022 and January 2023 thru March 2023 as it shows a total for “all” work (whether for legal work related to right-to-know requests or legal work unrelated to right-to-know requests) and then payment was made on the total. Thus, this Request is denied per RTKL Section 705 because the breakdown requested does not exist on the Stevens & Lee invoices. In addition, the Borough’s payment to Stevens & Lee for each of those invoices are payments for all work related to the respective invoice so copies of the payments are not responsive to your request and your request for same is denied per RTKL Section 705. That being said, attached is a Transactional List by Vendor reports for Stevens & Lee (**Attachment #12**) showing the payments by the Borough to Stevens & Lee in 2022 and January thru March 2023. That provides you with the payment amounts made by the Borough to Stevens & Lee in 2022 and January thru March 2023.

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

“Subject: Right to Know Request ARPA Funding Allocation Details (2021-2022)”

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting complete financial details regarding the allocation of American Rescue Plan Act (ARPA) funding for the Borough of Bath for the years 2021 and 2022.

Please provide the following information:

1. A breakdown of how the ARPA funding was allocated by the Borough of Bath in 2021 and 2022, including any amounts disbursed to individuals or businesses, if applicable.
2. Documentation related to the specific programs, projects, or initiatives funded by the ARPA funding, including budget reports, financial statements, and any other relevant materials.
3. Any communications, correspondence, or agreements related to the ARPA funding allocation process, including agreements with other entities or organizations.

Parts #1 and 2 above are granted, in part, and denied, in part. The Borough was issued two payments relative to the federal American Rescue Plan Act of 2021 (ARPA). The first payment in the amount of \$139,628.73 was deposited on July 7, 2021, into the Borough’s General Fund bank account. The second payment in the amount of \$140,070.20 was deposited on September 9, 2022, into the Borough General Fund bank account. The Borough has received a total ARPA funding in the amount of \$279,698.93. The Borough has submitted two annual reports with the US Department of Treasury, for the years 2021 and 2022 (**Attachment #13**). While the Borough has reported anticipated use of funding via the reports, the Borough is not able to give a final determination as to how all of the ARPA funds have or will be expended. The Borough advanced the funding for the projects listed as anticipated use of ARPA funding via the reports. The Borough did this so none of the ARPA funds allocated to the Borough would be spent as the Borough is pursuing a review and advice from an independent certified public accountant to ensure anticipated expenditures of the ARPA funds meet ARPA program guidelines. The Borough has through 2024 to issue any final report(s) to the US Department of Treasury on the actual use of its allocated ARPA funding. Because none of the ARPA funds allocated to the Borough have been spent, there aren’t financial records for actual use of the ARPA funding. Thus, the request is denied per RTKL Section 705 because such records on actual use of the ARPA funding do not exist. The request is also denied per RTKL Section 703 because “and any other relevant materials” is clearly insufficiently specific.

Part #3 of the above is denied per RTKL Section 703 because it is insufficiently specific. The request does not identify a sender or recipient of any writing or a time period. See RTKL Section 703; see also, Pennsylvania Department of Education v. Pittsburgh Post-Gazette, *supra*; Mollick, *supra*. Also, what does “related to the ARPA funding allocation process” mean? *Id.* Without waiving any of the foregoing denial, attached are the emails (**Attachment #14**) by and between the Borough and Northampton County and the Borough and Pennsylvania’s Department of Community and Economic Development. The request is also denied per RTKL Section 705 because no agreements for the ARPA funding allocation process exist. The allocated ARPA funds provided to Bath were established by the federal government and provided by the federal government. See Attachment #14.

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

“Subject: Right to Know Request Copies of Electric Bills for Borough Properties and Lighting (2019 – Current)”

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting copies of the Borough of Bath’s electric bills for all borough properties and lighting for the years 2019 to the present date.

Please provide the following information:

1. Copies of the electric bills for all borough properties and lighting for the years 2019 to the present date.
2. Any additional information related to the billing, including any surcharges, taxes, or fees related to the electricity usage.”

Part #1 above is denied because it is overly broad and overly burdensome. There are 23 electric meters for the various Borough properties. That means one master invoice can be between 8 and 12 pages in length x 12 months x 4 years. That is 576 pages of invoices for 2019 thru 2022. In addition, there are 36 (12 x 3 months) pages of invoices for January 2023 thru March 2023. This is conservative because the Borough is additionally charged separately and invoiced accordingly for holiday lighting from approximately November through February of each year requested (utility pole angels and snowflakes). Thus, that is conservatively 612 pages of invoices (for a period of 4 years and 3 months) that would need to be located and organized for production. I estimate that would take 24 hours of dedicated personnel time to recover and compile the documents. The scope of the request (4 years and 3 months on 23 electric meters) is clearly overly broad and overly burdensome. Mollick, *supra*; Montgomery County v. Iverson, *supra*; Keystone Nursing & Rehab of Reading, LLC v. Simmons-Ritchie, *supra*; see also OOR Final Determinations at AP 2022-2110 and AP 2021-1129.

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

“Subject: Right to Know Request – End of Year Profit and Loss Budget for 2022

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting a copy of the end of year profit and loss budget for the Borough of Bath for the year 2022.

Please provide the following information:

Profit/Loss end of year Budget for 2022”

The above referenced part of your request is granted to the attached 2022 end of year profit and loss actual versus budget (**Attachment #15**).

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

“Subject: Right to Know Request – Planning Studies and Surveys

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting any planning studies and surveys related to traffic studies on Creek Road and/or Old Forge Drive regarding potential Bathwick LLC Development Plans.

Please provide the following information:

1. Any reports related to traffic studies on Creek Road and/or Old Forge Drive regarding potential Bathwick LLC Development Plans.
2. Any planning studies or surveys related to stormwater management, housing, parks and open space guidelines, mass transit, traffic, community facilities, population and business development that were conducted in relation to the potential development plans of Bathwick LLC.”

Part #1 of your request is denied, in part, and granted, in part. Although, to my knowledge, not required to do so, the applicant for the proposed Bathwick LLC Development Plans did submit vehicle trip data by copying and submitting Pages 71 thru 75 (Multifamily Housing (Mid-Rise) (221)) from the Institute of Transportation Engineers Trip Generation Manual 10th Edition (the “ITE Trip Generation Report”) which I believe is a copyrighted work. A copy of the ITE Trip Generation Report is in the Borough’s hard copy land development file for the proposed Bathwick Land Development Plans (the “Bathwick Land Development File”) maintained at the Borough office. Since the ITE Trip Generation Report is a copyrighted work, the Borough will not make a copy of it for distribution to the public because of RTKL Section 102 (definition of “public record”) and the U.S. Copyright Act. 17 U.S.C. Sections 101 et seq.; see also Jihad Ali v. Philadelphia City Planning Commission, 125 A.3d 92 (Pa. Cmwlth. 2015). You may make arrangements with me for a mutually agreed upon date and time for you to visit the Borough office at 121 S. Walnut Street, Bath, PA 18014 for you to review the ITE Trip

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Generation Report but the Borough is not permitted to make a copy of the ITE Trip Generation Report and you are not permitted to take the Borough's copy of the ITE Trip Generation Report that was submitted by the applicant. The Borough's copy of the ITE Trip Generation Report will remain in the Borough's Bathwick Land Development File. You may inspect it, but you may not copy it.

Part #2 of your request is denied, in part, and granted, in part. The applicant's engineer has submitted stormwater management plans and a stormwater management report prepared by the applicant's engineer. I believe the applicant's engineer also submitted revised stormwater management plans and a revised stormwater management report prepared by the applicant's engineer. The stormwater management plans (initial and revised), and stormwater management report (initial and revised) appear to be original works of authorship of applicant's engineer and, if so, there is a likelihood that they are protected from copying by the Borough for distribution to the public relative to RTKL Section 102 (definition of "public record") and the U.S. Copyright Act. 17 U.S.C. Sections 101 et seq.; see also Jihad Ali v. Philadelphia City Planning Commission, *supra*. The Borough's position is that it will not make a copy of these documents for distribution to the public to ensure the Borough does not infringe on any copyright protection. That said, the stormwater management plans (initial and revised) and stormwater management report (initial and revised) are maintained in the Bathwick Land Development File. You may make arrangements with me for a mutually agreed upon date and time for you to visit the Borough office for you to review the stormwater management plans (initial and revised) and stormwater management report (initial and revised) but the Borough will not make a copy of these documents and you are not permitted to take the Borough's copy of same. The Borough's copy of these documents will remain in the Borough's Bathwick Land Development File. You may inspect said documents, but you may not copy said documents.

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

**“Subject: Right to Know Request – Deeds and Land
Records for 400 N Chestnut St, Bath, PA 18014**

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting copies of deeds and related land records for the municipal property located at 400 N Chestnut St, Bath, PA 18014.

Please provide the following information:

1. Copies of all deeds to the municipal property located at 400 N Chestnut St, Bath, PA 18014, including:
 - a. Date of deed.
 - b. Names of grantors and grantees.
 - c. Property description and location.
 - d. Amount of sale.
 - e. Conditions and terms of the deed.
 - f. Date recorded and signature of the Recorder.

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2. Copies of any related land records for the property located at 400 N Chestnut St, Bath, PA 18014.

With respect to Part #1 of your request, your request is granted to the attached Deed of Dedication and Confirmation dated February 22, 1995 (**Attachment #16**), for 400 N. Chestnut Street which deed was/is recorded at DBV 1995-1, Page 025138 in the county's public land records. Please note that a hard copy of said recorded Deed is maintained in the Borough's hard copy "Property File for 400 N. Chestnut Street".

With respect to Part #2 of your request for "any land records for the property located at 400 N. Chestnut Street, that part of your request is denied. It is denied per RTKL Section 703 because it is insufficiently specific because (a) I don't know what you mean by "any land record" and (b) you are asking me to review the Property File for 400 N. Chestnut Street and render either a legal or factual opinion on whether any document in the Property File for 400 N. Chestnut Street is responsive to your insufficiently specific request. I am not required to do that per the RTKL. See Askew v. Pennsylvania Office of the Governor, *supra*. That said, you may make arrangements with me for a mutually agreed upon date and time for you to visit the Borough office for you to review the Property File for 400 N. Chestnut Street. My office will give you yellow sticky tabs for you to identify any record in the Property File for 400 N. Chestnut Street that you desire a copy of. I will review the documents that you identify with a yellow sticky. If you identify a document that I believe is likely protected from the U.S. Copyright Act, the Borough will not make a copy of said document, but you had the ability of inspecting it. If you identify documents that I do not believe are subject to the U.S. Copyright Act, my office will calculate the cost of copying per the attached Fee Schedule (**Attachment #17**) and notifying you regarding the cost of same. After you pay for such costs, my office will make a copy for you and notify you to pick up the copies.

Your Request AORO Tracking #15.2023 states, in relevant part, as follows:

"Subject: Right to Know Request - Borough of Bath Solid Waste and Recycling Fund Financial Breakdown and Charge-off Policy"

Pursuant to the Pennsylvania Right-to-Know Law, I am requesting information related to the Solid Waste and Recycling Fund in the Borough of Bath since its inception in 2020, as well as the Borough's policy regarding charge-offs of delinquent accounts in this fund.

Please provide the following information:

1. A complete financial breakdown of the Solid Waste and Recycling Fund since its inception in 2020 till Current, including
 - a. Revenue and expense details for each fiscal year.

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- b. The audit trail associated with excess revenue generated from the amount of funds generated versus expenses related to sanitation between 2017-2019.
 - c. The amount of any charge-offs since 2020 to the current date.
 - d. The length of time these accounts were delinquent prior to the write-off.
2. The Borough of Bath's policy regarding charge-offs of delinquent accounts in the Solid Waste and Recycling Fund, including:
- a. The criteria for writing off these accounts.
 - b. The process for residents to have their accounts written off.
 - c. Whether residents with written-off accounts are still provided with sanitation services and, if so, under what conditions.”

With respect to part #1.a. of your above request, is granted, in part, and denied, in part. Your request is granted to the Budget versus Actual and Profit & Loss reports for the Municipal Solid Waste Fund for fiscal years 2022 and first quarter 2023 (**See Attachment #18**). The Borough has maintained a solid waste and recycling program since March 6, 1978, by Ordinance No. 1978-323. Since that time, the solid waste and recycling fund to operate that program was co-mingled with the Borough's General Fund until I recommended to Council that it be a separate fund and I was able to implement my recommendation after Council approved it. Thus, before I started as the Manager in 2015 and up thru 2021, the solid waste and recycling fund to operate that program was co-mingled with the Borough's General Fund. During that time, the Borough's practice was to combine property tax payments with solid waste bill payments in one bank account. These many thousands of transactions over 2020 and 2021 would take a massive undertaking to separate tax payments from solid waste bill payments to understand the full picture of the solid waste fund. I estimate such an undertaking would take 80 hours of my personnel time and 80 hours of other personnel time which would materially adversely impact the Borough because we would not be performing our existing job responsibilities and, therefore, not fulfilling our existing job responsibilities for the Borough. Thus, with respect to the part of the request for 2020 and 2021, said request is denied because it is overly broad and overly burdensome. Mollick, supra; Montgomery County v. Iverson, supra; Keystone Nursing & Rehab of Reading, LLC v. Simmons-Ritchie, supra; see also OOR Final Determinations at AP 2022-2110 and AP 2021-1129.

That said, as I stated previously, during my tenure, I have worked to separate the solid waste and recycling fund from the general fund. In many, what are called 'Act 101' mandated waste and recycling communities, the PA Department of Environmental Protection requires solid waste funds be separated from general fund accounting. While Bath is not an Act 101 mandated community, I recommended the two funds be separated and Council agreed. In doing so, the Borough positions itself for the added benefit of grant funding opportunities under Act 101. Unfortunately, due to personnel turnover within the Borough's accounting department, the transition to separate the funds was slow to occur. Migration of the funds began sometime in 2019 through 2020. Of course, the Covid-19 pandemic also interrupted Borough operations and getting the full migration completed. As of 2022, the solid waste fund was officially transferred

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into its own account, with its own accounting ‘company’, much like the general fund. My recommendation to separate the solid waste and general fund ultimately helps Council (and the public) to better understand the financial picture of the solid waste fund. For example, in prior years 2020 and 2021, if the Borough Solicitor worked on solid waste contracting issues, you would have to examine general fund general ledger line 404.31 ‘Legal Fees’ (outside of any general ledger lines associated with sanitation) then review individual invoices to see what matter number is associated with sanitation contracting. If there were any other outside general ledgers used for solid waste fund reasons, you would have to research those line items and pull invoices individually. So, I think you can understand the difficulty with tracking expenses and revenues associated with the solid waste fund as previously managed before my time.

With respect to part #1.b. of your above request, your request is denied per RTKL Section 705 because no such record exists and the Borough has no duty to create it.

With respect to part #1.c. of your above request, it is denied per RTKL Section 705 because no such records exist.

With respect to part #1.d. of your above request, it is denied per RTKL Section 705 because no such records exist.

With respect to part #2.a., 2.b., and 2.c. of your above request, it is denied per RTKL Section 705 because no such records exist.

Excepting the Treasurer’s Reports which will be located and copied to a flash drive by **June 16, 2023**, and then be made available, each document referenced herein as an Attachment has been copied to a flash drive. Before receiving the flash drive, you are required to pay **\$4.99** which was the cost of the flash drive. After you pay the cost of the flash drive, you may either pick up the flash drive at the Borough office or you may send me an email requesting that I mail the flash drive to your home address.


Subject to the penalties of 18 Pa.C.S. Section 4904, I certify that the facts set forth above on behalf of the Borough are true and correct to the best of my knowledge, information, and belief.

You have a right to appeal the above denials in writing to: Office of Open Records, 333 Market St., 16th Floor, Harrisburg, PA 17101-2234. Appeals can also be filed online at the Office of Open Records website, <https://www.openrecords.pa.gov>.

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If you choose to file an appeal, you must do so within 15 business days of the mailing date of this letter. See 65 P.S. § 67.1101. The mailing date of this letter is May 5, 2023. Please note that a copy of your original Right-to-Know requests, the Borough's extension notice, and this letter should be included when filing an appeal. The Act also requires that you state the reasons why the alleged record is a public record under the Act, and you must address each of the reasons the Borough denies your Requests. More information about how to file an appeal under the Act is available at the Office of Open Records website, <https://www.openrecords.pa.gov>.

Sincerely,



Bradford T. Flynn, Borough Manager
Borough of Bath

cc: James F. Kratz, Solicitor



Borough of Bath

*121 South Walnut Street, Bath, PA 18014
Phone: 610-837-6525 Fax: 610-837-8989*

Tuesday, December 12, 2023

VIA OPENGOV PORTAL

Mr. Michael Long
220 Creek Road
Bath, PA 18014

RE: Right-to-Know (AORO Tracking #38.2023; OpenGOV RTKL-23-16)

Dear Mr. Long,

The undersigned is an Open Records Officer for the Borough of Bath (the "Borough"). On November 3, 2023, the Borough received your Right-to-Know Request dated November 3, 2023 (RTK Request #38.2023). A true and correct copy of RTK Request #38.2023 is **enclosed**. For clarity, RTK Request #38.2023 is restated as follows:

“[You] respectfully request copies of the following [alleged] public records:

[Request #1] Mayor's Insurance Reimbursements ...:

- Given the Borough's previous disclosure regarding the challenges in generating accurate singular reports from QuickBooks due to past incorrect data entries, I am requesting a complete and unredacted audit trail for each individual mayor's insurance reimbursement payment. This should include monthly summary and detailed reconciliation reports for any accounts where these funds were deposited, except for the BOROUGH OF BATH – OPERATING "GENERAL" FUND, Account #100.00 • CASH-UNRESTRICTED (3107) and MSW & RECY #2892 specified in Category 1, for each payment separately (RTKL Section 506(d)(1)).
-

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[Request #2] Financial Interest Forms

- Complete and unredacted State Ethics Commission Statements of Financial Interest submitted by Borough Officials, Council members, and employees as required under the Public Official and Employee Ethics Act, January 2019 through [November 3, 2023 – the date of the Borough received RTK Request #38.2023]. Records should include names, positions, addresses, occupations, financial interests, and signatures . . .
- ...

[Request #3]. Request for Email Communications Regarding Specific Accounting Irregularities

- ...:

Time Period: January 1, **2019**, through December 31, **2019**

- **[Request #3(A)]** All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, **and** any representatives of Drivelocker concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- **[Request #3(B)]** For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000
 - Date discovered and by whom
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,
 - Dates actions implemented and by whom

[Request #4]. Request for Email Communications Regarding Specific Accounting Irregularities

- ...:

Time Period: January 1, [2020], through December 31, [2020]

- **[Request #4(A)]** All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, **and** any representatives of Drivelocker concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- **[Request #4(B)]** For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000
 - Date discovered and by whom
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,
 - Dates actions implemented and by whom

[Request #5]. Request for Email Communications Regarding Specific Accounting Irregularities

- ...:

Time Period: January 1, [2021], through December 31, [2021]

- **[Request #5(A)]** All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, **and** any representatives of Drivelocker concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- **[Request #5(B)]** For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000
 - Date discovered and by whom
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,
 - Dates actions implemented and by whom

[Request #6]. Request for Email Communications Regarding Specific Accounting Irregularities

- ...:

Time Period: January 1, [2022], through December 31, [2022]

- **[Request #6(A)]** All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, [Mayor/Office Clerk Fiorella Mirabito, Drivelocker representatives, Filomena Silvestri of FRS, **and** Julia Silvestri of FRS] concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- **[Request #6(B)]** For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000
 - Date discovered and by whom
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,
 - Dates actions implemented and by whom

[Request #7]. Request for Email Communications Regarding Specific Accounting Irregularities

- ...:

Time Period: January 1, [2023], through [November 3, 2023 – the date the Borough received RTK Request #38.2023]

- **[Request #7(A)]** All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, [Mayor/Office Clerk Fiorella Mirabito, Drivelocker representatives, Filomena Silvestri of FRS, **and** Julia Silvestri of FRS] concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- **[Request #7(B)]** For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000
 - Date discovered and by whom
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,

- Dates actions implemented and by whom

-

[Request #8]. Drivelocker Right-to-Know Invoices

- Complete and unredacted records related to Drivelocker Invoice #4531 dated 5/31/2023 for Right-to-Know work from 4/11/2023 to 05/31/2023, including:
 - Written documentation of tasks provided by the Borough to Drivelocker as stipulated under Section 7 of the IT Consulting Agreement dated 1st January, 2017.
 - Records of work performed and tasks completed by Drivelocker

- ...

[Request #9]. Certified Copies

- To ensure completeness and prevent improper redaction, I am requesting certified copies of all records disclosed in response to this request.

[Request #10]. Chain of Custody Documentation

- To account for the lifecycle of the requested records, I am requesting documentation including:
 - Name, position, and signature of the custodian(s), certifying the records.
 - Dates and times of access and reviews by each custodian.
 - How and by whom the records were retrieved.
 - The manner of copies produced.
 - Any transfers of the records.

- ...”

Emphasis added via bold typeface.

Response to Request #1

Again, Request #1 states:

[Request #1] Mayor's Insurance Reimbursements ...:

- Given the Borough's previous disclosure regarding the challenges in generating accurate singular reports from QuickBooks due to past incorrect data entries, I am requesting a complete and unredacted audit trail for each individual mayor's insurance reimbursement payment. This should include monthly summary and detailed reconciliation reports for any accounts where these funds were deposited, except for the BOROUGH OF BATH – OPERATING "GENERAL" FUND, Account #100.00 • CASH-UNRESTRICTED (3107) and MSW & RECY #2892 specified in Category 1, for each payment separately (RTKL Section 506(d)(1)).”

Request #1 is denied, in part, and granted, in part. Request #1 is denied, per RTKL Section 705, because neither a singular QuickBooks audit trail nor other type of singular audit trail exist for each individual mayor's insurance reimbursement payment. In AP 2023-1083 and AP 2022-2675, the Borough explained why such a singular QuickBooks audit trail can't be prepared. Also, the Borough is not required to try to prepare a singular non-QuickBooks audit trail. Request #1 is also denied because it is a repeated (this is the third request) and disruptive request that has placed and places an unreasonable administrative burden on the Borough as the Borough previously averred in AP 2023-1083 regarding the request designated as AORO Tracking #12.2023 and avers again here. The Final Determinations at AP 2023-1083 and AP 2022-2675 are incorporated herein by reference.

Please note the following:

- 1) Mirabito Insurance Summary Spreadsheets from 2018-2022 were previously provided to you via Solicitor Kratz's letter dated February 23, 2023, to OOR Appeals Officer Hecker (with copy to you) for AP 2022-2675.
- 2) Redacted copies of all checks provided by Mayor Fiorella Reginelli-Mirabito to the Borough to reimburse the Borough for the insurance premiums paid by the Borough were provided to you via Solicitor Kratz's letter dated February 23, 2023, to OOR Appeals Officer Hecker (with copy to you) for AP 2022-2675. The bank account numbers for the Mirabitos and the Borough were redacted per RTKL Sections 706 and 708(b)(6)(i)(A). Said redacted copies showed they were canceled checks.

Request #1 is granted to the following:

- 1) The Delaware Valley Health Trust Invoices from October 24, 2018 thru November 2022, showing the monthly insurance premium paid by the Borough with regard to Mayor Fiorella Reginelli-Mirabito as the insurance coverage terminated December 31, 2022.
- 2) The redacted copies of all checks provided by Mayor Fiorella Reginelli-Mirabito to the Borough to reimburse the Borough for the insurance premiums paid by the Borough. The bank account number for the Mirabitos will be redacted per RTKL Sections 706 and 708(b)(6)(i)(A). Said redacted checks will show that they are cancelled checks with information including, but not limited to, the Borough's bank account number where the checks were deposited. The checks will show that the monies were deposited into ESSA Bank account #0560223107 being the Borough's Operating "General" Fund (Cash-Unrestricted). Via Request #1, you specifically asked not to be provided the bank statements and reconciliations for this Borough bank account likely because you requested those public records via your RTKL Request #37.2023.

You are required to pay **\$35.25** (141 pages x \$.25 per page) to the Borough before the Borough will print copies of the public records referenced in #1 and #2 above for intended certification of said documents. Also, you are required to pay **\$470.00** (\$5 per record x 94 records) to the Borough before the Borough will certify the 94 public records referenced in #1 and #2 above. Upon receipt of payment, the Borough will certify and provide the responsive records to you.

Response to Request #2

Again, Request #2 states:

[Request #2] Financial Interest Forms

- Complete and unredacted State Ethics Commission Statements of Financial Interest submitted by Borough Officials, Council members, and employees as required under the Public Official and Employee Ethics Act, January 2019 through [November 3, 2023 – the date of the Borough received RTK Request #38.2023]. Records should include names, positions, addresses, occupations, financial interests, and signatures . . .

Request #2 is granted, in part, and denied, in part. Request #2 is granted to 115 PA State Ethics Commission Statements of Financial Interests for the stated time period which are the 2018, 2019, 2020, 2021 and 2022 completed forms as completed forms for the prior year are submitted in the following year. Thus, Request #2 is denied, per RTKL Section 705, as to completed forms for 2023 because they don't exist as they are not submitted to the Borough in 2023. Upon receipt of payment, the Borough will certify and provide the responsive records to you.

You are required to pay **\$45.25** (181 pages x \$.25 per page) to the Borough before the Borough will print or make copies, as the case may be, of the 115 PA State Ethics Commission Statements of Financial Interests for intended certification of said documents. Also, you are required to pay **\$575.00** (\$5 per record x 115 records) to the Borough before the Borough will certify the 115 public records.

Response to Request #3

Request #3 states:

“**[Request #3]**. Request for Email Communications Regarding Specific Accounting Irregularities

- ...:

Time Period: January 1, **2019**, through December 31, **2019**

- **[Request #3(A)]** All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, **and** any representatives of Drivelocker concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- **[Request #3(B)]** For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000
 - Date discovered and by whom
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,
 - Dates actions implemented and by whom”

Emphasis added via bold typeface.

Request #3(A) is denied, per RTKL 705, because no emails “between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, **and** any representatives of Drivelocker concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000” during the relevant time period exist.

Request #3(B) is denied, per RTKL Section 703, because it is insufficiently specific because Request #3(B) is based upon Request #3(A).

Response to Request #4

Request #4 states:

“**[Request #4]**. Request for Email Communications Regarding Specific Accounting Irregularities

- ...:

Time Period: January 1, **2020**, through December 31, **2020**

- **[Request #4(A)]** All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, **and** any representatives of Drivelocker concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- **[Request #4(B)]** For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000
 - Date discovered and by whom
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,
 - Dates actions implemented and by whom”

Emphasis added via bold typeface.

Request #4(A) is denied, per RTKL 705, because no emails “between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, **and** any representatives of Drivelocker concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000” during the relevant time period exist.

Request #4(B) is denied, per RTKL Section 703, because it is insufficiently specific because Request #4(B) is based upon Request #4(A).

Response to Request #5

Request #5 states:

“**[Request #5]**. Request for Email Communications Regarding Specific Accounting Irregularities

- ...:

Time Period: January 1, **2021**, through December 31, **2021**

- **[Request #5(A)]** All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, **and** any representatives of Drivelocker concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- **[Request #5(B)]** For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000
 - Date discovered and by whom
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,
 - Dates actions implemented and by whom”

Emphasis added via bold typeface.

Request #5(A) is denied, per RTKL 705, because no emails “between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, **and** any representatives of Drivelocker concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000” during the relevant time period exist.

Request #5(B) is denied, per RTKL Section 703, because it is insufficiently specific because Request #5(B) is based upon Request #5(A).

Response to Request #6

Request #6 states:

“**[Request #6]**. Request for Email Communications Regarding Specific Accounting Irregularities

- ...:

Time Period: January 1, [2022], through December 31, [2022]

- **[Request #6(A)]** All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, [Mayor/Office Clerk Fiorella Mirabito, Drivelocker representatives, Filomena Silvestri of FRS, **and** Julia Silvestri of FRS] concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- **[Request #6(B)]** For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000
 - Date discovered and by whom
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,
 - Dates actions implemented and by whom”

Emphasis added via bold typeface.

Request #6(A) is denied, per RTKL 705, because no emails “between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, [Mayor/Office Clerk Fiorella Mirabito, Drivelocker representatives, Filomena Silvestri of FRS, **and** Julia Silvestri of FRS] concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000” during the relevant time period exist.

Request #6(B) is denied, per RTKL Section 703, because it is insufficiently specific because Request #6(B) is based upon Request #6(A).

Response to Request #7

Request #7 states:

“**[Request #7]**. Request for Email Communications Regarding Specific Accounting Irregularities

- ...:

Time Period: January 1, [2023], through [**November 3, 2023 – the date the Borough received RTK Request #38.2023**]

- **[Request #7(A)]** All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, [Mayor/Office Clerk Fiorella Mirabito, Drivelocker representatives, Filomena Silvestri of FRS, **and** Julia Silvestri of FRS] concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- **[Request #7(B)]** For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000
 - Date discovered and by whom
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,
 - Dates actions implemented and by whom”

Emphasis added via bold typeface.

Request #7(A) is denied, per RTKL 705, because no emails “between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, [Mayor/Office Clerk Fiorella Mirabito, Drivelocker representatives, Filomena Silvestri of FRS, **and** Julia Silvestri of FRS] concerning the discovery, reporting, acknowledgement, discussion, or correction of specific accounting errors or irregularities exceeding \$1000” during the relevant time period exist.

Request #7(B) is denied, per RTKL Section 703, because it is insufficiently specific because Request #7(B) is based upon Request #7(A).

Response to Request #8

Request #8 states:

[Request #8]. Drivelocker Right-to-Know Invoices

- Complete and unredacted records related to Drivelocker Invoice #4531 dated 5/31/2023 for Right-to-Know work from 4/11/2023 to 05/31/2023, including:
 - o Written documentation of tasks provided by the Borough to Drivelocker as stipulated under Section 7 of the IT Consulting Agreement dated 1st January, 2017.
 - o Records of work performed and tasks completed by Drivelocker”

Request #8 is denied per RTKL Section 708(b)(27) and attorney-client privilege and/or attorney work product doctrine. As you know, Drivelocker, LLC (“Drivelocker”), is the Borough’s third party IT administrative service organization. The records and information relating to a communication between the Borough (not including Solicitor Kratz) and Drivelocker related to Drivelocker Invoice #4531 dated 5/31/2023 for Right-to-Know work from 4/11/2023 to 05/31/2023 are exempt from access per RTKL Section 708(b)(27). Also, the records and information relating to a communication between the Borough (including Solicitor Kratz) and Drivelocker related to Drivelocker Invoice #4531 dated 5/31/2023 for Right-to-Know work from 4/11/2023 to 05/31/2023 are exempt from access per RTKL Section 708(b)(27) and attorney-client privilege and/or attorney work product doctrine.

Response to Request #9

Request #9 states:

“[Request #9]. Certified Copies

To ensure completeness and prevent improper redaction, I am requesting certified copies of all records disclosed in response to this request.”

As I stated previously, you are required to pay \$5.00 per public record (that I identified above that access will be granted to) to the Borough before the Borough will certify any of the public records that the Borough provides to you.

Response to Request #10

Request #10 states:

“[Request #10]. Chain of Custody Documentation

- To account for the lifecycle of the requested records, I am requesting documentation including:
 - Name, position, and signature of the custodian(s), certifying the records.
 - Dates and times of access and reviews by each custodian.
 - How and by whom the records were retrieved.
 - The manner of copies produced.
 - Any transfers of the records.”

As to “Name, position, and signature of the custodian(s), certifying records”, Request #10 is denied, per RTKL Section 705, because no public records have been certified in response to RTK Request #38.2023.

As to “Dates and times of access and reviews by each custodian”, Request #10 is denied, per RTKL Section 705, because no such public records exist because dates and times of access or review of records or public records of the Borough were not kept. Request #10 is also denied because the email exchanges by and between me, Solicitor Kratz and/or Special Solicitor Schnee regarding legal services sought and/or given relative to RTK Request #38.2023 are not public records because they are protected by attorney-client privilege and/or attorney work product doctrine.

As to “How and by whom the records were retrieved”, since this part of Request #10 is asking questions, rather than seeking access to alleged public records, this part of Request #10 is denied per RTKL Section 703. See e.g., Varick v. Paupack Township, OOR Dkt. AP 2013-1348 (The presence or absence of a question mark is not determinative as to whether a request asks a question). This part of Request #10 is also denied per RTKL Section 703 because it is insufficiently specific as there are neither identified persons nor narrow timeframe. This part of Request #10 is further denied as to email exchanges by and between me, Solicitor Kratz and/or Special Solicitor Schnee regarding legal services sought and/or given relative to RTK Request #38.2023 as said emails are not public records because they are protected by attorney-client privilege and/or attorney work product doctrine.

As to “The manner of copies produced”, since this part of Request #10 is asking questions, rather than seeking access to alleged public records, this part of Request #10 is denied per RTKL Section 703. See e.g., Varick, *supra*. This part of Request #10 is also denied per RTKL Section 703 because it is insufficiently specific as there are neither identified persons nor narrow timeframe. This part of Request #10 is further denied as to email exchanges by and between me, Solicitor Kratz and/or Special Solicitor Schnee regarding legal services sought and/or given relative to RTK Request #38.2023 as said emails are not public records because they are protected by attorney-client privilege and/or attorney work product doctrine.

As to “Any transfers of the records”, since this part of Request #10 is asking questions, rather than seeking access to alleged public records, this part of Request #10 is denied per RTKL Section 703. See e.g., Varick, *supra*. This part of Request #10 is also denied per RTKL Section 703 because it is insufficiently specific as there are neither identified persons nor narrow timeframe. This part of Request #10 is further denied as to email exchanges by and between me, Solicitor Kratz and/or Special Solicitor Schnee regarding legal services sought and/or given relative to RTK Request #38.2023 as said emails are not public records because they are protected by attorney-client privilege and/or attorney work product doctrine.

Subject to the penalties of 18 Pa.C.S. Section 4904, I certify that the facts set forth above on behalf of the Borough are true and correct to the best of my knowledge, information, and belief.

You have the right to appeal the above denial(s) in writing to: Office of Open Records, 333 Market St., 16th Floor, Harrisburg, PA 17101-2234. Appeals can also be filed online at the Office of Open Records, website: <https://www.openrecords.pa.gov>.

If you choose to file an appeal, you must do so within 15 business days of the mailing of this letter. See 65 P.S. § 67.1101. The mailing date of this letter is December 12, 2023. Please note that a copy of your original Right-to-Know Request and this letter should be included when filing an appeal. The RTKL also requires that you state the reasons why the alleged record is a public record under the RTKL, and you must address each of the reasons the Borough denied(s) RTK Request #38.2023. More information about how to file an appeal under the RTKL is available at the Office of Open Records website, <https://www.openrecords.pa.gov>.

Sincerely,



Bradford T. Flynn, Borough Manager
Borough of Bath

Enclosure (RTK Request #38.2023)

cc: James F. Kratz, Borough Solicitor (via email only)
J. Chadwick Schnee, Special Borough Solicitor (via email only)



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Borough of Bath (Attn: AORO)

Date of Request: November 3, 2023

Submitted via: Email

PERSON MAKING REQUEST:

Name: Michael Long

Company (if applicable):

Mailing Address: 220 Creek Road

City: Bath

State: PA

Zip: 18014

Email:

michael.long479@gmail.com

Telephone: 6105073721

Fax:

How do you prefer to be contacted if the agency has questions? Telephone

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL request should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.*

NARRATIVE

Records request

DO YOU WANT COPIES? Yes, electronic copies preferred if available.

Do you want certified copies? Yes (may be subject to additional costs).

RTKL Requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than \$100? Yes

Please notify me if fees associated with this request will be more than (. . .)? Please specify for the Agency

ITEMS BELOW THIS SECTION FOR AGENCY USE ONLY

Tracking:

Date Received:

Response Due (5 Bus. Days):

30-Day Extension Required?:

If Yes, Final Due Date:

Actual Response Date:

Request was?:

Cost to Requestor:

Appropriate third parties notified and given an opportunity to object to the release of requested records?

NOTE: In most cases, a completed RTKL request form is public record.

More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Nov. 27, 2018

November 3, 2023

Borough of Bath
121 South Walnut Street
Bath, PA 18014

Re: Pennsylvania Right-to-Know Law Request

To Borough of Bath AORO:

Pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-67.3104, I respectfully request copies of the following additional public records:

1. Mayor's Insurance Reimbursements (Section 901):

- Given the Borough's previous disclosure regarding the challenges in generating accurate singular reports from QuickBooks due to past incorrect data entries, I am requesting a complete and unredacted audit trail for each individual mayor's insurance reimbursement payment. This should include monthly summary and detailed reconciliation reports for any accounts where these funds were deposited, except for the BOROUGH OF BATH - OPERATING "GENERAL" FUND, Account #100.00 • CASH-UNRESTRICTED (3107) and MSW & RECY #2892 specified in Category 1, for each payment separately (RTKL Section 506(d)(1)).
- If any records cannot be located, I request documentation of the Borough's efforts to obtain them from its financial system pursuant to Section 901.

2. Financial Interest Forms (Section 901):

- Complete and unredacted State Ethics Commission Statements of Financial Interest submitted by Borough officials, Council members, and employees as required under the Public Official and Employee Ethics Act, January 2019 through present. Records should include names, positions, addresses, occupations, financial interests, and signatures (Retention: 5 years under Section 1105(d)).
- If any requested forms cannot be located, I request documentation of the Borough's efforts to obtain them from its records management system pursuant to Section 901.

3. Request for Email Communications Regarding Specific Accounting Irregularities

- Pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-67.3104, and in alignment with the standards set forth in Pennsylvania Dep't of Educ. v. Pittsburgh Post-Gazette, 119 A.3d 1121 (Pa. Commw. Ct. 2015), I respectfully request the following records concerning the identification, discussion, and correction of accounting irregularities exceeding \$1000 within the Borough's financial transactions during the specified time periods:

Time Period: January 1, 2019, through December 31, 2019

- All email communications between Borough Manager Brad Flynn, Office Manager Marena Rasmus, Office Secretary Tanya Lamparter, and any representatives of Drivelocker concerning the discovery, reporting, acknowledgment, discussion, or correction of specific accounting errors or irregularities exceeding \$1000.
- For each qualifying error, emails covering the entire lifecycle from initial discovery through implementation of corrective actions, including:
 - The accounting error or irregularity exceeding \$1000,
 - Date discovered and by whom,
 - Dates reported/discussed, with whom, and content,
 - Planned corrective actions, dates, and by whom,
 - Dates actions implemented and by whom.

Subsequent Time Periods:

- The same communications as specified above for the following time periods:
 - January 1, 2020, through December 31, 2020,
 - January 1, 2021, through December 31, 2021,
 - January 1, 2022, through December 31, 2022—with the inclusion of Mayor/Office Clerk Fiorella Mirabito, Drivelocker representatives, Filomena Silvestri of FRS, and Julia Silvestri of FRS as correspondents,
 - January 1, 2023, through present—with the same correspondents as for 2022.

Please provide all responsive records, including any nonexempt attachments to emails. Only information protected under an enumerated RTKL exemption may be redacted, with explanation/citation provided as required under Section 706.

I am requesting expedited statutory review of these records within 30 days under Section 1101(b)(1), as they relate to evidence of possible fiscal impropriety.

I am willing to pay reasonable fees up to \$100 associated with this request. Please contact me concerning any estimated fees exceeding this amount.

4. Drivelocker Right-to-Know Invoices (Section 506):

- Complete and unredacted records related to Drivelocker Invoice #4531 dated 5/31/2023 for Right-to-Know work from 4/11/2023 to 5/31/2023, including:
 - Written documentation of tasks provided by the Borough to Drivelocker as stipulated under Section 7 of the IT Consulting Agreement dated 1st January, 2017.
 - Records of work performed and tasks completed by Drivelocker.
- As a contractor providing administrative services, Drivelocker's records are subject to disclosure under Section 506(d)(1) of the RTKL. If any responsive records cannot be located, I request documentation of the Borough's efforts to obtain them from Drivelocker pursuant to Section 901.

While greater exemptions may be claimed regarding these records, I believe the public interest favors transparency. Please cite any specific exemptions claimed and redact only the minimum necessary information.

Certified Copies (Section 901):

To ensure completeness and prevent improper redaction, I am requesting certified copies of all records disclosed in response to this request.

Chain of Custody Documentation (Section 901):

To account for the lifecycle of the requested records, I am requesting documentation including:

- Name, position, and signature of the custodian(s), certifying the records.
- Dates and times of access and reviews by each custodian.
- How and by whom the records were retrieved.
- The manner of copies produced.

- Any transfers of the records.

This requirement is supported by Section 901 of the RTKL.

Please provide the requested records within 5 business days as stipulated under Section 901. I am willing to pay reasonable fees up to \$100 associated with this request. Please notify me regarding any estimated fees over \$100.

Thank you for your prompt attention. I look forward to your response.

Sincerely,

Michael Long

Num	Entered/Last st Modified	Last modifi ed by	State	Date	Name	Memo	Account	Split
1695						FRM March Health Insurance Reimb [Couples Plan]	360.19 · EE Paid Insurance [Reimb.]	100.00 · CASH-...
1707						FRM April Insurance	389.30 Insurance Reimbursement	100.00 · CASH-...
1707						FRM April Insurance	300 ~ REVENUES:360.00 ~ CHARGES FOR S...	100.00 · CASH-...
1707						FRM April Insurance	300 · REVENUES:389.00 · ALL OTHER MISCELLANEOUS REVENUE:389.3...	100.00 · CASH-...
1679						FRM January Insurance	360.19 · EE Paid Insurance [Reimb.]	100.00 · CASH-...
						FRM & TRL	300 · REVENUES:360.00 · CHARGES FOR S...	100.00 CASH...
						FRM x2 & TRL	360.19 · EE Paid Insurance [Reimb.]	100.00 · ...
1845						FRM Insurance	360.19 ~ EE Paid Insurance [Reimb.]	100.00 ~ CASH-...
FRM								
FRM								
FRM								
1940						MIRABITO HEALTH INSURANCE - MARCH PAYMENT	401.02 - Health & Dental - Mayor	100.00 · CASH..

1940						MIRABITO HEALTH INSURANCE - MARCH PAYMENT	300 · REVENUES:360.00 · CHARGES FOR SERVICES:360.19 · EE Paid Ins...	100.00 · CASH-...
1940						MIRABITO HEALTH INSURANCE ...	300 · REVENUES:360.00 · CHARGES FOR SERVICES:360.19 · EE Paid Ins...	100.00 · CASH-...

1940	04/21/202	Admin	Prior	03/03/	Deposit	100.00 · CASH-	-SPLIT-	5,121.70
71962	2 13:52:42	Admin	Latest	2022	mirabito health	UNRESTRICTED (3107)	100.00 · CASH-... 100.00 · CASH-	1,646.65
04788146	10/07/202	Admin	Prior	03/24/	insurance march	300 · REVENUES:360.00 ·	... 100.00 · CASH-... 100.00 ·	250.00 -
14866	2 12:26:44	Admin	Latest	2022	payment	CHARGES FOR	CASH-...	1,907.40
Deposit	04/26/202			03/24/	KEGERREIS	SERVICES:360.19 · EE Paid	-SPLIT-	1,317.65
1950	2 15:29:06			2022	OUTDOOR	Ins... 300 ·	100.00 · CASH-...	3,834.05
04804677	10/07/202			04/22/	ADVERTISING	REVENUES:362.00 ·	100.00 · CASH-...	-
4462	2 12:26:20			2022	VERIZON - FEB	PUBLIC SAFETY:362.52 ·	100.00 · CASH-...	1,646.65
14888					NORTHAMPTON	Bus Shelter	100.00 · CASH-...	-
1950					COUNTY -	300 · REVENUES:342.00 ·	-SPLIT-	1,907.40
04804677					DISTRICT	RENTS AND	100.00 · CASH-... 100.00 · CASH-	30.00 -
4462					COURT FINES	ROYALTIES:342.53 ·	... 100.00 · CASH-... 100.00 ·	250.00
14888					Deposit	Monopole - 12... 300 ·	CASH-...	3,834.05
Deposit					MIRABITO -	REVENUES:331.00 ·	-SPLIT-	-
5361					FEBRUARY	FINES:331.10 · Fines from	100.00 · CASH-...	1,646.65
531					INSURANCE	District Court	100.00 · CASH-... 100.00 · CASH-	-
4247					VERIZON	100.00 · CASH-	... 100.00 · CASH-... 100.00 ·	1,907.40
1491					ASHWOOD	UNRESTRICTED (3107)	CASH-... 100.00 · CASH-... 100.00	-30.00
1961					CONSTRUCTION	401.02 · Health & Dental -	· CASH-... 100.00 · CASH-...	-250.00
1041					LLC COUNTY OF	Mayor	100.00 · CASH-... 100.00 · CASH-	2,198.87
27879583					NORTHAMPTON	342.53 · Monopole - 121	...	-20.00
713					Deposit	Center St Yard 321.00 ·		-20.00 -
					MIRABITO -	BUSINESS LICENSES &		20.00 -
					FEBRUARY	PERMITS 331.10 · Fines		427.22 -
					INSURANCE	from District Court		1,646.65
					VERIZON	100.00 · CASH-		20.00 -
					ASHWOOD	UNRESTRICTED (3107)		20.00 -
1961					MIRABITO	300 · REVENUES:360.00 ·	100.00 · CASH-...	-01,647.
					INSURANCE	CHARGES FOR		
					REIMBURSEMEN	SERVICES:360.19 · EE Paid		
					T	Ins...		

1961					MIRABITO INSURANCE REIMBURSEMEN T	300 · REVENUES:360.00 · CHARGES FOR SERVICES:360.19 · EE Paid Ins...	100.00 · CASH-...	-01,647.
1961					MIRABITO INSURANCE REIMBURSEMEN T	300 · REVENUES:360.00 · CHARGES FOR SERVICES:360.19 · EE Paid Ins...	100.00 · CASH-...	-01,647.
1970					MIRABITO INSURANCE	401.02 · Health & Dental - Mayor	100.00 · CASH-...	-01,647.
1970					MIRABITO INSURANCE	400 · EXPENDITURES:401.00 · MAYOR:401....	100.00 · CASH-...	-01,647.
1970						MIRABITO INSURANCE	300 · REVENUES:360.00 · CHARGES FOR SERVICES:360.19 · EE Paid Ins... 100.00 · CASH-...	
4100					MAYORS HEALTH INSURANCE REIMBURSEMEN T	300 · REVENUES:360.00 · CHARGES FOR SERVICES:360.19 · EE Paid Ins... 100.00 · CASH-...		-01,647.
4104					MIRABITO INSURANCE REIMBURSEMEN T	401.02 Health & Dental - Mayor 100.00 · CASH-...		-01,647.
4104						MIRABITO INSURANCE REIMBURSEMENT	300 . REVENUES:360.00 . CHARGES FOR SERVICES:360.19 . EE Paid Ins...	100.00 . CASH-...
1707						FRM April Insurance	389.30 Insurance Reimbursement	100.00 · CASH-..

1707						FRM April Insurance	300 ~ REVENUES:360.00 ~ CHARGES FOR S...	100.00 · CASH-...
1707						FRM April Insurance	300 · REVENUES:389.00 · ALL OTHER MISCELLANEOUS REVENUE:389.3...	100.00 · CASH-...
3942						F. Mirabito - purchase of one crook [25] and two mugs [15]	389.10 · Miscellaneous Revenue - Misc.	100.00 · CASH-...
						TRL & FRM	360.19 · EE Paid Insurance [Reimb.]	100.00 · ...
					FRM	389.30 · Insurance Reimbursement	100.00 · CASH-...	-01,576.
1927						MIRABITO - INSURANCE PAYMENT	300 · REVENUES:389.00 · ALL OTHER MISCELLANEOUS REVENUE:389.3...	100.00 · CASH-...
1970						MIRABITO INSURANCE	400 ~ EXPENDITURES:401.00 ~ MAYOR:401....	100.00 · CASH-...
1970						MIRABITO INSURANCE	300 · REVENUES:360.00 · CHARGES FOR SERVICES:360.19 · EE Paid Ins...	100.00 · CASH-...

2046					Mirabito Health Insurance- December 2022 check	400 · EXPENDITURES:401.00 · MAYOR:401.02 · Health & Dental - Mayor	100.00 · CASH-...
4095					FRM direct deposit correction	226 · Special Deduction	105.00 · PAYR...
4095					FRM direct deposit correction	300 · REVENUES:389.00 · ALL OTHER MISCELLANEOUS REVENUE:389.1...	105.00 · PAYR...
					FRM	360.19 · EE Paid Insurance [Reimb.]	100.00 · CASH-...
					FRM	360.19 · EE Paid Insurance [Reimb.]	100.00 · CASH-...
1707					FRM April Insurance	389.30 Insurance Reimbursement	100.00 · CASH..
1707					FRM April Insurance	300 ~ REVENUES:360.00 ~ CHARGES FOR S...	100.00 · CASH-...
1707					FRM April Insurance	300 · REVENUES:389.00 · ALL OTHER MISCELLANEOUS REVENUE:389.3...	
1927					MIRABITO - INSURANCE PAYMENT	300 · REVENUES:389.00 · ALL OTHER MISCELLANEOUS REVENUE:389.3...	100.00 · CASH-...
4176					MIRABITO INSURANCE	300 · REVENUES:389.00 · ALL OTHER MISCELLANEOUS REVENUE:389.3...	100.00 · CASH-...
4176					MIRABITO INSURANCE	300 · REVENUES:389.00 · ALL OTHER MISCELLANEOUS REVENUE:389.3...	100.00 · CASH-...

				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2019 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2019 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2019 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2019 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2019 [DVHT cvg eff. 12/1/18]	401.02 Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2019 [DVHT cvg eff. 12/1/18]	400 · EXPENDITURES:401.00 · MAYOR:401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2019 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2019 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2019 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...

				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020 [DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020]DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020]DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020]DVHT cvg eff. 12/1/18]	401.02 Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020]DVHT cvg eff. 12/1/18]	400 · EXPENDITURES:401.00 · MAYOR:401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020]DVHT cvg eff. 12/1/18]	401.02 Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020]DVHT cvg eff. 12/1/18]	400 · EXPENDITURES:401.00 · MAYOR:401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020]DVHT cvg eff. 12/1/18]	401.02 · Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020]DVHT cvg eff. 12/1/18]	401.02 Health & Dental - Mayor	200.00 · ACCO...
				Delaware Valley Heal...	FRM - Mayor Medical*Rx - 2020]DVHT cvg eff. 12/1/18]	400 · EXPENDITURES:401.00 · MAYOR:401.02 · Health & Dental - Mayor	200.00 · ACCO...

					Delaware Valley Heal...	FRM - Mayor Medical*Rx - [DVHT cvg eff. 12/1/18]	400 · EXPENDITURES:401.00 · MAYOR:401.02 · Health & Dental - Mayor	200.00 · ACCO...
					Delaware Valley Heal...	FRM - Mayor Medical*Rx - [DVHT cvg eff. 12/1/18]	400 · EXPENDITURES:401.00 · MAYOR:401.02 · Health & Dental - Mayor	200.00 · ACCO...
					Delaware Valley Heal...	FRM - Mayor Medical*Rx - [DVHT cvg eff. 12/1/18]	401.02 Health & Dental - Mayor	200.00 · ACCO...
					Delaware Valley Heal...	FRM - Mayor Medical*Rx - [DVHT cvg eff. 12/1/18]	400 · EXPENDITURES:401.00 · MAYOR:401.02 · Health & Dental - Mayor	200.00 · ACCO...
					Delaware Valley Heal...	FRM - Mayor Medical*Rx - [DVHT cvg eff. 12/1/18]	400 · EXPENDITURES:401.00 · MAYOR:401.02 · Health & Dental - Mayor	200.00 · ACCO...
1505						FRM Jan Health Ins reimb	401.02 · Health & Dental - Mayor	100.00 · CASH-...
						FRM Jan Health Ins reimb	401.02 · Health & Dental - Mayor	100.00 · CASH-...
1517						FRM February Pymt	401.02 · Health & Dental - Mayor	100.00 · CASH-...
1536						FRM March Health Ins Reimb	401.02 · Health & Dental - Mayor	100.00 · CASH-...
1548						FRM April Insurance	401.02 · Health & Dental - Mayor	100.00 · CASH-...
1560						FRM Insurance Reimb	401.02 · Health & Dental - Mayor	100.00 · CASH-...

1595						July Health Ins FRM	401.02 · Health & Dental - Mayor	100.00 · CASH-...
1609						FRM August Ins	401.02 · Health & Dental - Mayor	100.00 · CASH-...
1625						Sept Reimb for FRM	401.02 · Health & Dental - Mayor	100.00 · CASH-...
1940						MIRABITO HEALTH INSURANCE ...	300 · REVENUES:360.00 · CHARGES FOR SERVICES:360.19 · EE Paid Ins...	100.00 · CASH-...
1927						MIRABITO - INSURANCE PAYMENT	300 · REVENUES:389.00 · ALL OTHER MISCELLANEOUS REVENUE:389.3...	100.00 · CASH-...

2012						MIRABITO INSURANCE REIMBURSEMENT	401.02 . Health & Dental - Mayor	100.00 . CASH-...
2046						Mirabito Health Insurance- December 2022 check	401.02 Health & Dental - Mayor	100.00 . CASH..
2046						Mirabito Health Insurance- December 2022 check	400 . EXPENDITURES:401.00 . MAYOR:401.02 . Health & Dental - Mayor	100.00 . CASH-...
						FRM	360.19 . EE Paid Insurance [Reimb.]	100.00
						FRM & TRL	360.19 . EE Paid Insurance [Reimb.j	100.00- 2,983.58

Deposit	01/15/202	Admin	Prior	10/13/		REMOTE DEPOSIT	100.00 ~ CASH-UNRESTRICTED	49900 ~
Deposit	1 10:58:11	Admin	Latest	2020		COMM OF PA PA VENDOR	49900 ~ Uncategorized Income	Uncate...
Deposit	03/15/202	Admin	Prior	09/29/		CCD	100.00 · CASH-UNRESTRICTED	100.00 ~
Deposit	1 12:15:46	Admin	Latest	2020		COMM OF PA PA VENDOR	(3107) 355.65 · Non-Uniform	CASH-...
Deposit	01/15/202	Admin	Prior	09/29/		CCD	Pension State Aid	355.65 ·
Deposit	1 10:58:14	Admin	Latest	2020		COUNTY OF NORTHA	100.00 ~ CASH-UNRESTRICTED	...
Deposit	03/15/202	Admin	Prior	09/25/		PAYMENT PPD	49900 ~ Uncategorized Income	100.00 ·
Deposit	1 12:23:53	Admin	Latest	2020		COUNTY OF NORTHA	100.00 · CASH-UNRESTRICTED	...
	01/15/202	Admin	Prior	09/25/		PAYMENT PPD	(3107) 310.10 · REAL ESTATE	49900 ~
	1 10:58:17	Admin	Prior	2020		COMM OF PA PA VENDOR	TRANSFER TAX	Uncate...
	03/15/202	Admin	Latest	09/22/		CCD	100.00 ~ CASH-UNRESTRICTED	100.00 ~
	1 12:16:23	Admin	Prior	2020		COMM OF PA PA VENDOR	49900 ~ Uncategorized Income	CASH-...
	01/15/202	Admin	Latest	09/22/		CCD	100.00 · CASH-UNRESTRICTED	310.10 ·
	1 10:58:21	Admin	Prior	2020		REMOTE DEPOSIT	(3107) 355.99 · Volunteer Fire	...
	03/19/202	Admin	Latest	09/21/		REMOTE DEPOSIT	Relief State Aid	100.00 ·
	1 13:45:05	Admin	Prior	2020		FRM & TRL	100.00 ~ CASH-UNRESTRICTED	...
	03/19/202	Admin	Latest	09/21/		REMOTE DEPOSIT	49900 ~ Uncategorized Income	49900 ~
	1 11:23:25			2020		DEPOSIT BATH	100.00 · CASH-UNRESTRICTED	Uncate...
	01/15/202			09/21/		Huratiak Escrow Closure	(3107) 331.11 · Vehicle-Related	100.00 ~
	1 10:58:25			2020		DEPOSIT BATH	Violations 331.12 ·	CASH-...
	03/25/202			03/18/		DEPOSIT BATH	Ordinance/Criminal Violations	355.99 ·
	1 16:29:27			2020		Closure of Maula Prof Escrow	342.53 · Monopole - 121 Center St	...
	01/15/202			03/18/		Acct	Yard 362.41 · Building & Zoning	100.00 ·
	1 11:35:31			2020		DEPOSIT BATH	Permit Fees 362.39 · Bldg Permit	...
	03/24/202			03/18/		COUNTY OF NORTHA	UCC State Fee 331.12 ·	49900 ~
	1 20:18:52			2020		PAYMENT PPD COUNTY	Ordinance/Criminal Violations	Uncate...
	01/15/202			03/18/		OF NORTHA PAYMENT	100.00 ~ CASH-UNRESTRICTED	100.00 ~
						FRM x2 & TRL	360.19 · EE Paid Insurance	100.00 ·
							[Reimb.]	...
2033						November 2022 Mirabito	401.02 · Health & Dental - Mayor	100.00 ·
						Health I...		...
a1:k6473								

Exhibit

E



Borough of Bath

*121 South Walnut Street, Bath, PA 18014
Phone: 610-837-6525 Fax: 610-837-8989*

Attestation Regarding Borough Possession of Records

Name of Requestor: Michael Long

Appeal Caption: Michael Long v. Bath Borough / OOR Docket No.: AP 2023-1598

I, BRADFORD T. FLYNN, on this July 24, 2023, hereby declare, pursuant to 18 Pa.C.S. Section 4904, that the following statements are true and correct based upon my personal knowledge, information and belief:

- 1) I serve as an Agency Open Records Officer (“AORO”) for the Borough of Bath (the “Borough”) and am responsible for responding to Right-to-Know requests filed with the Borough.
- 2) In my capacity as an AORO, I am familiar with the records of the Borough.
- 3) The first part of the relevant alleged records requested by Mr. Long were as follows:

“All communications, including but not limited to emails, memos, notes, and text messages, between Bradford Flynn, Fiorella Mirabito, Michele Ehr Gott, Phyllis Andrews, Barry Fenstermaker, and James Kratz, from September 20, 2021, to May 15, 2022, regarding:

- The resignation of Mark Saginario
- The vacated council seat following Mark Saginario’s resignation
- The appointment of Emmanuel Mirabito to the council seat
- Borough Policy on a vacated council seat
- Any potential employment, position benefits, compensation of Fiorella Mirabito
- Advertisement of any new position within the Borough
- The resignation of Marena Rasmus
- Clerk positions within the Borough
- The hiring of any individual for a clerk position within the Borough
- Borough policy on hiring for new positions
- Any public announcement regarding the above topics

Please note that this request includes any relevant communications that are not covered by attorney-client privilege. Under the RTKL, attorney-client privilege does

“Bath, History Nestled With Friendship”

not apply to factual information or data, the application of law to fact, or legal strategy, among other things.”

- 4) After receipt of Mr. Long’s Right-to-Know Law request, I reviewed the Borough’s hard copy storage files to determine whether the Borough had a hard copy storage file for the following specific topics and found as follows:
 - a. The resignation of Mark Saginario;
 - i. Based on my review, I found the Councilmember file that the Borough has for Mark Saginario for when he was a Councilperson. I further found that it did not contain any emails, memos, notes, or text messages between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, and James Kratz, from September 20, 2021, to May 15, 2022.
 - b. The vacated council seat following Mark Saginario’s resignation;
 - i. Based on my review, I found that the Borough did not have a hard copy storage file for this topic.
 - c. The appointment of Emmanuel Mirabito to the council seat;
 - i. Based on my review, I found the Councilmember file that the Borough has for Emmanuel Mirabito since he was appointed a Councilperson in early January 2022. I further found that it did not contain any emails, memos, notes, or text messages between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, and James Kratz, from September 20, 2021, to May 15, 2022.
 - d. Borough Policy on a vacated council seat;
 - i. Based on my review, I found that the Borough did not have a hard copy storage file for this topic.
 - e. Any potential employment, position benefits, compensation of Fiorella Mirabito;
 - i. Based on my review, I found the hard copy personnel file for Fiorella Mirabito. However, the personnel file did not contain any emails, memos, notes, or text messages between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, and James Kratz, from September 20, 2021, to May 15, 2022.

- f. Advertisement of any new position within the Borough;
 - i. Based on my review, I found that the Borough did not maintain a hard copy storage file specific to advertisements of any new position with the Borough.
 - g. The resignation of Marena Rasmus
 - i. Based on my review, I found the personnel file for Marena Rasmus. I also found that it did not contain any emails, memos, notes, or text messages between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, and James Kratz, from September 20, 2021, to May 15, 2022.
 - h. Clerk positions within the Borough
 - i. Based on my review, I found that the Borough did not maintain a hard copy storage file specific to the general category of clerk positions within the Borough.
 - i. The hiring of any individual for a clerk position within the Borough.
 - i. Fiorella Mirabito was the only clerk (part-time office clerk) hired at a certain point during the period from September 20, 2021, to May 15, 2022. And, since I already found the hard copy personnel file for Fiorella Mirabito and found that it did not contain any emails, memos, notes, or text messages between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, and James Kratz, from September 20, 2021, to May 15, 2022, I ended my search on this topic there.
 - j. Borough policy on hiring for new positions.
 - i. Based on my review, I found the Borough's hard file containing the Borough's policy on hiring new positions. I also found that it did not contain any emails, memos, notes, or text messages between Bradford Flynn, Fiorella Mirabito, Michele Ehrgott, Phyllis Andrews, Barry Fenstermaker, and James Kratz, from September 20, 2021, to May 15, 2022.
- 5) Via my review described in #4 above, I denied Mr. Long's request for the alleged memos and notes as they do not exist.

- 6) After receipt of Mr. Long's Right-to-Know Law request, I checked my cell phone for any text messages between Bradford Flynn, Fiorella Mirabito, Michele Ehr Gott, Phyllis Andrews, Barry Fenstermaker, and James Kratz, from September 20, 2021, to May 15, 2022, regardless of subject matter to determine potentially responsive text messages. I didn't locate any because none exist. Hence, I denied Mr. Long's request for the alleged text messages because they do not exist.
- 7) After receipt of Mr. Long's Right-to-Know Law request, I worked with the Borough's IT vendor to conduct a thorough examination of emails in the possession, custody and control of the Borough for records responsive to the request underlying this appeal by performing a search on the Borough's server for emails between Bradford Flynn, Fiorella Mirabito, Michele Ehr Gott, Phyllis Andrews, Barry Fenstermaker, and James Kratz from September 20, 2021, to May 15, 2022, regardless of subject matter to determine potentially responsive emails.
- 8) From my search described in #7 above, I then reviewed the potentially responsive emails for whether they were responsive to the subject matters identified by Mr. Long in #3 above and to exclude any attorney-client privileged emails (if any existed) from the potentially responsive emails that I located.
- 9) Via my review described in #7 above, I located the following non-attorney-client privileged responsive emails:
 - a. '12_6_21 Meeting of Council' email dated 12/02/2021 from Marena Rasmus to Mayor Fiorella Mirabito and all Council members at that time (including, but not limited to, Michele Ehr Gott, Phyllis Andrews, and Barry Fenstermaker) with copy to me, Solicitor Kratz, Borough Engineer Madison and Borough office secretary Lamparter. This email is responsive because it references proposed Resolution #2021-012 (Articles of Decorum and Rules of Order for Public Meetings) which, at Article 2.7 (Filling Council Vacancies), is responsive to Mr. Long's request for Borough policy on a vacated council seat. I downloaded a copy of this email and marked it Attachment 'A'.
 - i. The above email (Attachment 'A') included an attachment (Council packet) that included Resolution #2021-012. I downloaded proposed Resolution #2021-012 and marked it Attachment 'A' - 1.
 - b. 'January 2022 Regular & Reorganization Meeting' email dated 12/29/2021 from me to Mayor Fiorella Mirabito and all Council members at that time (including, but not limited to, Michele Ehr Gott, Phyllis Andrews, and Barry Fenstermaker) with copy to Solicitor Kratz, former employee Rasmus and Borough office secretary Lamparter. This email is responsive because it references Mark Saginario's resignation from Council and a letter of interest from a borough resident (Emmanuel Mirabito) requesting to be appointed to the vacant Council

seat because of Mr. Saginario's resignation. I downloaded a copy of this email and marked it Attachment 'B'.

- i. The above email (Attachment 'B') included an attachment (Council packet) that included Mr. Saginario's resignation letter from Council. I downloaded Mr. Saginario's resignation letter from Council and marked it Attachment 'B' – 1.
 - ii. The above email (Attachment 'B') included an attachment (Council packet) that included a letter of interest from a borough resident (Emmanuel Mirabito) requesting to be appointed to the vacant Council seat because of Mark Saginario's resignation. I downloaded Mr. Mirabito's letter of interest and marked it Attachment 'B' – 2.
- c. 'March Meeting Minutes' email dated 04/04/2022 from me to Mayor Fiorella Mirabito and all Council members at that time (including, but not limited to, Michele Ehr Gott, Phyllis Andrews, and Barry Fenstermaker) with copy to Solicitor Kratz and Borough Engineer Madison. This email is responsive because it is my reporting that former Borough employee Marena Rasmus resigned from her position effective Sunday, April 3, 2022. I downloaded this email and marked it Attachment 'C'.

10) Via my review described in #7 above, I located the following attorney-client privileged email:

- a. 'RE: 12/6/21 Meeting of Council' email dated December 3, 2021, from Solicitor Kratz to former Borough employee Rasmus with copy to me, Borough Engineer Madison, Mayor Fiorella Mirabito and all Council members at that time (including, but not limited to, Michele Ehr Gott, Phyllis Andrews, and Barry Fenstermaker). This email contains Solicitor Kratz's legal advice regarding proposed Resolution #2021-012 (Articles of Decorum and Rules of Order for Public Meetings) including, but not limited to, legal advice regarding Article 2.7(f) of proposed Resolution #2021-012.
 - i. When I discussed Solicitor Kratz's above email with him on or around June 23, 2023, Solicitor Kratz informed me that, as a precautionary measure, I should note in the Borough's denial letter to Mr. Long that emails from Solicitor Kratz to me, the Mayor and/or members of Council regarding Solicitor Kratz's legal advice regarding the resignation of Mark Saginario from Council, the vacated Council seat following Mark Saginario's resignation, the appointment of Emmanuel Mirabito to the Council seat and the process to appoint a person to a vacated Council seat are privileged per attorney-client and not subject to access per RTKL Section 102 (definitions of "privilege" and "public record"). I believe

Solicitor Kratz stated that because of the email referenced in #7)a. above and certain other attorney-client privileged emails that he possesses.

- 11) Via my review described in #7 above, I determined that the potentially responsive emails did not contain any privileged or non-privileged emails from Solicitor Kratz regarding any potential employment, position benefits, compensation of Fiorella Mirabito, advertisement of any new position within the Borough, resignation of Marena Rasmus, clerk positions within the Borough, hiring of any individual for a clerk position with the Borough, Borough policy on hiring for new positions or any public announcements regarding the foregoing.
- 12) Via my review described in #7 above, I also determined that the potentially responsive emails did not contain any privileged or non-privileged emails from any of the other persons identified by Mr. Long's request regarding any potential employment, position benefits, compensation of Fiorella Mirabito, advertisement of any new position within the Borough, clerk positions within the Borough, hiring of any individual for a clerk position with the Borough, Borough policy on hiring for new positions or any public announcements regarding same but I forgot to state that in my letter of June 23, 2023 to Mr. Long.
- 13) Via the Borough's final response to Mr. Long's Right-to-Know Request, I granted him access to (and provided to him) the non-attorney-client privileged responsive records that I located and have identified in #9 above (Attachments 'A', 'A' – 1, 'B', 'B' – 1, 'B' – 2, and 'C' and identified in the Borough's final response of June 23, 2023, to Mr. Long.
- 14) The second part of the alleged records requested by Mr. Long were as follows:

“A list of all employees hired by the Borough of Bath outside of the Public Works Department since January 1, 2022. For each employee, please provide the following information:

- Full name
- Position title
- Date of hire
- Department
- Full-time or part-time status
- Salary or hourly wage
- Any additional compensation or benefits

Please note that personal identifying information such as home address, personal phone numbers, and social security numbers can be redacted for privacy reasons.”

- 15) While I am an AORO for the Borough, I am also the Manager of the Borough and have been the Manager of the Borough since circa May 2015.

- 16) As the Manager of the Borough, I knew and know that the Borough does not maintain a list containing all of the corresponding types of information requested by Mr. Long in #10 above because I conduct the hiring process for any prospective Borough employee whether full-time or part-time and I don't maintain such list.
- 17) As the Manager of the Borough, I am intimately familiar with the names and positions of all Borough employees.
- 18) As the Manager of the Borough, I knew that I participated in the hiring of the following persons on or after January 1, 2022:
 - a. Michael Kovach hired with a start date of March 30, 2022 as a part-time parking and code enforcement officer at an hourly rate of \$19.97. Mr. Kovach's hourly rate was increased to \$21.52 starting with the pay period starting December 10, 2022 when other Borough part-time employees were given raises.
 - b. Fiorella Mirabito hired as a part-time office clerk with a retroactive start date of April 1, 2022. Mrs. Mirabito started volunteering as an unpaid part-time office clerk starting April 4, 2022, because of the sudden and unexpected resignation of former Borough office administrator, Marena Rasmus, who resigned Sunday, April 3, 2022, effective immediately. Borough Council directed that Mrs. Mirabito's volunteer hours be tracked because Borough Council was considering whether the Borough should compensate Mrs. Mirabito for the office work that she offered to do on a temporary basis without compensation because Borough Council and I were considering the hiring of Mrs. Mirabito as a paid part-time office clerk. Per my duties, I have the ability of hiring part-time employees without obtaining Council approval, however, I discussed the issue with the officers of Borough Council, being the President, Vice-President, and President Pro-Tem. In or around late May 2022, Borough Council, after discussion with me, determined that Mrs. Mirabito would be compensated \$15 per hour as a part-time office clerk starting April 4, 2022, and continue in that position as an at-will employee like other part-time employees of the Borough. At the time other part-time employees were given a raise starting for December 10, 2022 pay period, the hourly rate for Mrs. Mirabito was increased to \$16.17 starting with that pay period.
 - i. For OOR Appeals Officer Isenberg's and Mr. Long's edification, Fiorella Mirabito has also been the Mayor of the Borough since January 1, 2018 (via the November 2017 election) and was reelected as the Mayor of the Borough in November 2021 for her succeeding four year term that started January 1, 2022.
 - c. David Smith hired with a start date of August 29, 2022, as a part-time parking and code enforcement officer at an hourly rate of \$18.42. Mr. Smith's hourly rate was increased to \$19.85 starting with the pay period starting December 10, 2022.

- 19) As the Manager of the Borough, I knew the Borough has the ability of providing an Employee Earnings report for each employee and that such report provides the start date, number of hours worked per weekly pay period, and gross pay for the respective period.
- 20) Because the Borough does not maintain the list requested by Mr. Long in #10 above, via the Borough's final response to Mr. Long's Right-to-Know Request, I granted him access to (and provided to him) the Employee Earnings report for Michael Kovach, Fiorella Mirabito and David Smith because I thought that may be helpful to Mr. Long because the Borough did not/does not maintain the list that he requested in #10 above but the Employee Earnings reports each contain most of the information that he was seeking.
- 21) It has come to my attention that the Employee Earnings reports (Attachment D to my letter of June 23, 2023) do not state the hourly rate of the respective employee so I provided those hourly rates above.
- 22) It has also come to my attention that the Employee Earning reports (Attachment D to my letter of June 23, 2023) state "Std Wrk Wk" of "40.00" for each respective employee's Employee Earnings report. Each of the subject employees is a part-time at-will employee. I did not create the format of the Employee Earnings report and I don't know how that field was created or populated. The report form is generated from the Borough's designated payroll servicing company, NCR payroll.

Sincerely,



Bradford T. Flynn, Borough Manager
Borough of Bath

Exhibit

F

Exhibit “A” – Exemption Log

**Records of Borough of Bath
OOR Dkt. No. AP 2023-1598**

Record Number	Date of Record	Type of Record	Author of Record	Recipient(s) of Record	General description of subject matter	Legal Basis for Exclusion
1	12-3-21	Email with 5 attachments	Borough Solicitor	Borough employee, Borough Manager, Borough Engineer, Borough employee, Borough Mayor, and all 7 Borough Council members	Legal advice regarding Article 2.7(f) of proposed Resolution #2021-012 (process to appoint a person to a vacated Council seat) and legal advice regarding other unrelated documents	Attorney-client privilege per <u>Office of the Governor v. Davis, Jr. and Gillard v. AIG Insurance Company</u> ; RTKL Sections 102 (definitions of “public record” and “privilege”) and 305(a)(2).
2	10-19-21 at 1:46 PM	Email with 1 attachment	Borough Solicitor	Borough Council President and Borough Manager	Legal advice in response to verbal question from Borough Council President regarding prospective resignation of Councilmember Mark Saginario, prospective vacated Council seat and general process to appoint a person to vacated Council seat.	Same as above.

OOR Dkt. No. AP 2023-1598
Exhibit "A" – Borough of Bath Exemption Log

Record Number	Date of Record	Type of Record	Author of Record	Recipient(s) of Record	General description of subject matter	Legal Basis for Exclusion
3	10-19-21 at 1:52 PM	Email	Borough Manager	Borough Solicitor and Borough Council President	Legal advice regarding prospective resignation of Councilmember Mark Saginario, prospective vacated Council seat and general process to appoint a person to vacated Council seat.	Attorney-client privilege per <u>Office of the Governor v. Davis, Jr. and Gillard v. AIG Insurance Company</u> ; RTKL Sections 102 (definitions of "public record" and "privilege") and 305(a)(2).
4	10-19-21 at 2:06 PM	Email	Borough Solicitor	Borough Manager and Borough Council President	Same as above.	Same as above.
5	10-3-21 at 3:38 PM	Email	Borough Council President	Borough Solicitor and Borough Manager	Same as above.	Same as above.

OOR Dkt. No. AP 2023-1598
Exhibit "A" – Borough of Bath Exemption Log

Record Number	Date of Record	Type of Record	Author of Record	Recipient(s) of Record	General description of subject matter	Legal Basis for Exclusion
6	10-19-21 at 4:55 PM	Email	Borough Manager	Borough Solicitor and Borough Council President	Legal advice regarding prospective resignation of Councilmember Mark Saginario, prospective vacated Council seat and general process to appoint a person to vacated Council seat.	Attorney-client privilege per <u>Office of the Governor v. Davis, Jr.</u> and <u>Gillard v. AIG Insurance Company</u> ; RTKL Sections 102 (definitions of "public record" and "privilege") and 305(a)(2).
7	10-19-21 at 5:11 PM	Email	Borough Council President	Borough Solicitor and Borough Manager	Same as above.	Same as above.
8	10-19-21 at 5:12 PM	Email	Borough Council President	Borough Solicitor and Borough Manager	Same as above.	Same as above.

OOR Dkt. No. AP 2023-1598
Exhibit "A" – Borough of Bath Exemption Log

Record Number	Date of Record	Type of Record	Author of Record	Recipient(s) of Record	General description of subject matter	Legal Basis for Exclusion
9	10-19-21 at 5:18 PM	Email	Borough Manager	Borough Solicitor and Borough Council President	Legal advice regarding prospective resignation of Councilmember Mark Saginario, prospective vacated Council seat and general process to appoint a person to vacated Council seat.	Attorney-client privilege per <u>Office of the Governor v. Davis, Jr.</u> and <u>Gillard v. AIG Insurance Company</u> ; RTKL Sections 102 (definitions of "public record" and "privilege") and 305(a)(2).
10	10-19-21 at 6:57 PM	Email with 1 attachment	Borough Solicitor	Borough Manager and Borough Council President	Same as above.	Same as above.
11	10-19-21 at 7:04 PM	Email	Borough Council President	Borough Solicitor and Borough Manager	Same as above.	Same as above.
12	10-19-21 at 7:10 PM	Email	Borough Solicitor	Borough Council President and Borough Manager	Same as above.	Same as above.

OOR Dkt. No. AP 2023-1598
Exhibit "A" – Borough of Bath Exemption Log

Record Number	Date of Record	Type of Record	Author of Record	Recipient(s) of Record	General description of subject matter	Legal Basis for Exclusion
13	4-21-22 at 2:29 PM	Email	Borough Manager	Borough Solicitor	Legal advice regarding the prospective employment of Fiorella Mirabito as a part-time office clerk for the Borough and form of compensation.	Attorney-client privilege per <u>Office of the Governor v. Davis, Jr.</u> and <u>Gillard v. AIG Insurance Company</u> ; RTKL Sections 102 (definitions of "public record" and "privilege") and 305(a)(2).
14	4-21-22 at 2:59 PM	Email	Borough Solicitor	Borough Manager	Same as above.	Same as above.
15	4-21-22 at 3:26 PM	Email	Borough Manager	Borough Solicitor	Same as above.	Same as above.
16	4-21-22 at 12:53 PM	Email	Borough Council President	Borough Solicitor	Legal advice regarding the prospective employment of Fiorella Mirabito as a part-time office clerk for the Borough	Same as above.

OOR Dkt. No. AP 2023-1598
Exhibit "A" – Borough of Bath Exemption Log

Record Number	Date of Record	Type of Record	Author of Record	Recipient(s) of Record	General description of subject matter	Legal Basis for Exclusion
17	4-21-22 at 2:16 PM	Email	Borough Solicitor	Borough Council President	Legal advice regarding the prospective employment of Fiorella Mirabito as a part-time office clerk for the Borough.	Attorney-client privilege per <u>Office of the Governor v. Davis, Jr.</u> and <u>Gillard v. AIG Insurance Company</u> ; RTKL Sections 102 (definitions of "public record" and "privilege") and 305(a)(2).
18	4-21-22 at 3:18 PM	Email	Borough Council President	Borough Solicitor	Same as above.	Same as above.
19	12-6-21 at 11:26 AM	Email	Borough Manager	Borough Solicitor	Seeking follow up legal advice regarding legal advice given regarding Article 2.7(f) of proposed Resolution #2021-012.	Attorney-client privilege per <u>Office of the Governor v. Davis, Jr.</u> and <u>Gillard v. AIG Insurance Company</u> ; RTKL Sections 102 (definitions of "public record" and "privilege") and 305(a)(2).

OOR Dkt. No. AP 2023-1598
Exhibit "A" – Borough of Bath Exemption Log

Record Number	Date of Record	Type of Record	Author of Record	Recipient(s) of Record	General description of subject matter	Legal Basis for Exclusion
20	12-6-21 at 11:36 AM	Email	Borough Solicitor	Borough Manager	Legal advice regarding legal advice given regarding Article 2.7(f) of proposed Resolution #2021-012.	Attorney-client privilege per <u>Office of the Governor v. Davis, Jr. and Gillard v. AIG Insurance Company</u> ; RTKL Sections 102 (definitions of "public record" and "privilege") and 305(a)(2).
21	Created 5-26-23 at 4:16 PM but partially redacted prior to 6-23-23.	Attachment 'D' to 6-23-23 Bath Final Response to Mr. Long.	Initially created by Borough Bookkeeper but the partial redactions made by Borough Manager	Mr. Long and Borough Solicitor received partially redacted Attachment 'D' to 6-23-23 Bath Final Response to Mr. Long.	Attachment 'D' was/is the earnings reports for 1-1-22 to 4-30-23 for Michael Kovach, Fiorella Mirabito and David Smith with their respective home address, birth date and social security number redacted.	The respective home address, respective birth date and respective social security number for Michael Kovach, Fiorella Mirabito and David Smith were redacted per RTKL Sections 706 and 708(b)(6)(i)(A).