



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**MICHAEL LONG,  
Requester**

**v.**

**BATH BOROUGH,  
Respondent**

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**Docket No: AP 2025-0522**

### **FACTUAL BACKGROUND**

On January 21, 2025, Michael Long (“Requester”) submitted a request<sup>1</sup> (“Request”) to Bath Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. Mayor’s Fund (Checking Account No. 0227700433) monthly bank statements from January 2016 to January 20, 2025.
2. QuickBooks Audit Trail (Both Excel & PDF format) for all general ledger accounts within the numeric range of #100.00 through #499.99, covering both active and inactive accounts, between January 1, 2018, and December 31, 2023.
3. A complete Chart of Accounts listing, including account number, account name, type (e.g., bank, expense, revenue, etc.) active/inactive status and any other standard fields QuickBooks includes by default when printing or exporting the Chart of Accounts.<sup>2</sup>

<sup>1</sup> Each Item of the Request was separated into sections; however, for clarity’s sake, the OOR combined the individual sections of each Item.

<sup>2</sup> Both PDF and Excel formats were also requested in the explanatory language accompanying Item 3.

On February 27, 2025, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Borough partially denied the Request, granting access to all records responsive to Item 1, as well as all audit trail reports responsive to Item 2 in PDF format. Regarding Item 2, the Borough further noted that its attempts to compile and reformat these reports into Excel format failed after multiple attempts and “that QuickBooks lacks the capability of creating the customized audit trail report for inactive accounts.” Finally, the Borough argued that Item 3 of the Request is insufficiently specific to enable it to adequately response, 65 P.S. § 67.703; however, after reading Item 3, in context of Items 1 and 2 of the Request, “the Borough interpreted the [R]equest as seeking records related to the Borough’s General Fund and the Mayor’s Fund, and then created four (4) customized reports[.]”

On March 4, 2025, the Requester appealed to the Office of Open Records (“OOR”), challenging the Borough’s response(s) to Items 2 and 3 of the Request relating to the “QuickBooks Audit Trail reports for specific General Ledger accounts” and “Complete Chart of Accounts[.]”<sup>3</sup> The OOR invited both parties to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On March 13, 2025, the Requester submitted a position statement, arguing, among other things, that the Borough improperly narrowed Item 2 of the Request to only apply to “General Fund” accounts rather than “all general ledger accounts[.]” The Requester further argues that the Borough’s production of the QuickBooks audit trail reports in PDF “has materially impaired [his] ability to access the information” because the printout “is not a true ‘export’ of the data but a static snapshot, meaning the underlying text beyond those limits is not accessible in the PDF.” The

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<sup>3</sup> The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

Requester notes that conducting a query to draw information from a database does not constitute the creation of a record for purposes of 65 P.S. § 67.705. Next, the Requester argues that information regarding inactive accounts can and should have been included in the audit trail reports. Finally, the Requester claims that the Borough failed to provide a “genuine audit trail” in violation of “established accounting standards for government entities[.]” More specifically, the Requester contends that the audit trail reports are missing “Double-Entry Information[.]” certain transaction types, metadata fields, and information for one or more critical accounts. In light of the foregoing, the Requester asserts that the Borough has acted in bad faith and asks the OOR to make such a finding.

On March 14, 2025, the Borough submitted a position statement, arguing that, despite doing so, the Borough was under no obligation to create customized reports responsive to Items 2 and 3 of the Request. The Borough further argues that it provided all reports responsive to Items 2 and 3 in PDF form and that it was not required to also provide them in Excel format. In support of its position, the Borough submitted attestations, made subject to the penalties set forth in 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, from Bradford Flynn (“Flynn Attestation”), the Borough’s Manager and Open Records Officer, and Julia Silvestri (“Silvestri Attestation”), the Borough’s Bookkeeper.

On March 15, 2025, the Requester made a supplemental unsworn submission, alleging that, based upon the Borough’s responses to a prior RTKL request, the Borough can generate detailed multi-year audit trail reports in QuickBooks, even for older/inactive transactions, and that Open Records Officer Flynn previously treated “General Ledger” and “General Fund” as two separate but related concepts. The Requester also describes what he perceives to be internal inconsistencies

within the Flynn Attestation. Finally, the Requester reiterates his belief that the Borough has and continues to act in bad faith.

On March 19, 2025, the Borough provided a supplemental submission, the factual contents of which were verified, under the penalty of perjury, by Open Records Officer Flynn. The Borough acknowledges that it was able to generate a smaller set of custom reports in response to a prior RTKL report; however, the Borough explains that the “sheer breadth of the instant Request prevented creating custom reports in Excel[,]” even though they were provided in PDF form. The Borough disputes the Requester’s claim that it previously distinguished the terms “General Ledger” from the General Fund Company” and reiterates that it has gone beyond the requirements of the RTKL to provide the Requester with customized reports in response to this and past RTKL requests.

Notably, the Borough argues that the Requester’s March 15, 2025 submission should not be made a part of the appeal record because the time for party submissions had expired at the end of the day on March 14, 2025. However, to further develop the record of the appeal, the OOR accepted the Requester’s March 15, 2025 submission and the Borough’s March 19, 2025 submission. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”). The parties were advised of the OOR’s decision to accept the submissions by correspondence dated March 19, 2025, which also explained that no further argument or evidence would be accepted unless specifically requested by the undersigned Appeals Officer.

On or about April 14, 2025, one month after the submission deadline had expired, the Requester attempted to submit a second supplemental submission by means of the OOR’s general email account. Because the OOR did not seek the submission, it was not considered during the

disposition of the appeal. See *UnitedHealthcare of Pa., Inc. v. Baron*, 171 A.3d 943, 953 (Pa. Commw. Ct. 2017) (“Requester is not entitled to rebuttal for the sake of having the last word”); *SERS v. Pennsylvanians for Union Reform*, 113 A.3d 9 (Pa. Commw. Ct. 2015) (explaining that requesters do not have a due process right to challenge agency submissions).

## LEGAL ANALYSIS

The Borough is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. See 65 P.S. § 67.305. As an agency subject to the RTKL, the Borough is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

### **1. The Borough reasonably interpreted the Request and provided responsive records.**

The Borough asserts that the audit trail and account listing records sought in Items 2 and 3 of the Request do not exist within the Borough’s possession, custody or control, and that the Borough is not required to create customized reports to respond to the Request. Notwithstanding this argument, the Borough asserts that it followed the instructions included in the Request to generate customized reports, copies of which were provided to the Requester.

In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the identified record[.]” 65 P.S. § 67.901.

While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining all potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff’d*, 243 A.3d 19 (Pa. 2020).

An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency’s records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep’t of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

Here, the Borough provided the Flynn Attestation, which affirms, in relevant part, as follows:

Upon receipt of the [R]equest, I conducted a review of all records within the Borough’s physical and electronics records to determine whether any responsive ... audit trail reports or chart of account reports exist.

My search also included inquiring with the Borough’s Bookkeeper Julia Silvestri to determine whether she had any responsive records in her possession.

...

My searches and inquir[ies] confirmed that the Borough did not have the specific reports responsive to Items 2 and 3 at the time of the Request.

Flynn Attestation, ¶¶ 5-6, 8. Additionally, the Silvestri Attestation provides:

I am the Bookkeeper for the Borough....

Based on my role with the Borough, I am very familiar with all financial records maintained by the Borough and regularly use QuickBooks on a daily basis.

...

Specifically, I am aware of this Request because Borough Manager Bradford Flynn asked me to create custom reports in QuickBooks.

QuickBooks lacks the ability to create audit trail reports for inactive accounts, and, accordingly, the Borough could not generate reports for inactive accounts.

I am aware that the Borough did not have any responsive custom reports in its physical or electronic possession at the time of the Request.

Silvestri Attestation, ¶¶ 27-28, 30-32.

Under the RTKL, a statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Borough has acted in bad faith or that additional responsive records exist, “the averments in [the Attestations] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

In this case, the Borough has provided competent evidence from Open Records Officer Flynn and its Bookkeeper, Ms. Silvestri, who attest that a search for the records sought in Items 2 and 3 was conducted and that reports responsive to these Items do not readily exist. Flynn Attestation, ¶¶ 7-8. Additionally, the Borough confirms that QuickBooks lacks the ability to create audit trail reports for inactive accounts. Silvestri Attestation, ¶ 31. Nevertheless, Mr. Flynn directed Ms. Silvestri to follow the instructions provided in the Request to generate the customized reports sought by the Requester. Flynn Attestation, ¶¶ 9-10. As a result, Ms. Silvestri successfully generated reports responsive to Items 2 and 3, in PDF format, copies of which were provided to Mr. Flynn and ultimately the Requester. Silvestri Attestation, ¶¶ 35-38; Flynn Attestation, ¶ 11.

Ms. Silvestri noted, however, that when she attempted to create Excel exports of the reports, the Borough's computer "crashed" and timed out; therefore, the reports could not be provided in Excel format. Silvestri Attestation, ¶ 38.

The Requester argues that the Borough improperly narrowed the scope of the Request from "general ledger" to "General Fund[,]" that inactive accounts can and should have been included in the responsive reports, and that the Borough should have provided the requested records in Excel format, in addition to the PDF reports.

Regarding the Borough's interpretation of the Request, the Flynn Attestation confirms that, in his capacity as Borough Manager, Mr. Flynn is "aware that the Borough does not maintain a separate "General Ledger" apart from the "General Fund...." Instead, Mr. Flynn views those terms synonymously and, therefore, he, as the Borough's Manager and Open Records Officer, interpreted the Request as seeking records related to the General Fund. Flynn Attestation, ¶¶ 13-14.

While an agency may interpret the meaning of a request for records, that interpretation must be reasonable. The OOR determines the reasonableness of the agency's interpretation from the text and context of the request alone, as neither the OOR nor the requester are permitted to alter the request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Commw. Ct. 2010). Here, the Flynn Attestation explains, and the Silvestri Attestation corroborates, that the Borough maintains an account entitled the "General Fund" but does not maintain separate "General Ledger" accounts apart from the "General Fund"; therefore, the Borough prepared and produced reports focusing on its General Fund when responding to Items 2

and 3.<sup>4</sup> Based upon our review of the text and context of Items 2 and 3, as well as the parties' submissions, we find the Borough's interpretation of the Request to be reasonable.

With respect to the Excel export of the reports, the Requester argues that QuickBooks has published size limitations when exporting to Excel and, because database queries do not constitute the creation of a record under Section 705 of the RTKL, the Borough should have split the larger report into smaller segments, either by date range or account groupings. While the Requester is correct that "drawing information from a database does not constitute creating a record," Section 705 of the RTKL "excuses an agency from creating a new record or reorganizing existing records." *Pa. Dep't of Env'tl. Prot. v. Cole*, 52 A.3d 541, 547 (Pa. Commw. Ct. 2012). Furthermore, Section 701 of the RTKL provides that "[a] record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists." 65 P.S. § 67.701. The RTKL does not define "medium"; however, the OOR has defined it "as the substance through which something is transmitted or carrier, a 'means,' such as on paper on the hard-drive or on a database or over the internet." *Acton v. Fort Cherry Sch. Dist.*, OOR Dkt. AP 2009-0926, 2009 PA O.O.R.D. LEXIS 786, *aff'd*, No. 2010-719 (Wash. Com. Pl. July 26, 2011), *aff'd*, 38 A.3d 1092 (Pa. Commw. Ct. 2012), *petition for allowance of appeal den'd*, 57 A.3d 72 (Pa. 2012). Here, the Requester asked for the responsive reports as PDFs and in Excel format (.xlsx, .csv, etc.). The Flynn and Silvestri Attestations affirm that the Borough generated the relevant PDF reports and provided them to the Requester as requested, but was unable to generate the Excel exports due multiple system failures when following the instructions

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<sup>4</sup> In his supplemental submission, the Requester argues that, in a response letter submitted in a previous RTKL appeal, the Borough distinguished the "General Ledger" from the "General Fund Company"; however, a review of the letter shows that the Borough identified "general ledger numbers" for certain revenue and expenses "*within* the General Fund Company..." (emphasis added). The Borough does not distinguish between the "General Fund Company" and other general ledger accounts as suggested by the Requester.

accompanying the Request.<sup>5</sup> Although the Requester alleges that the Borough should have known the size limitations baked into QuickBooks and, as a result, broken the export of the information into smaller segments, the Borough already provided the reports in PDF format and was under no obligation to provide the records in a separate electronic medium that could not be produced consistent with the detail provided in Items 2 and 3 of the Request.<sup>6</sup>

Finally, the Requester argues that inactive accounts, insofar as they have any transaction activity during the period of a report, would be included in the report generated by QuickBooks and the only way to exclude such accounts is to filter them, which would be improper. In addition, the Requester claims that one or more accounts are missing from the audit trail responsive to Item 2. However, the Borough has submitted the Flynn and Silvestri Attestations detailing the Borough's search for records, its production of the relevant reports, pursuant to the instructions provided in the Request, and explaining why certain information was not included in the report.<sup>7</sup> Borough Position Statement dated March 14, 2025, p.5; Silvestri Attestation, ¶ 31. Because the Requester has not submitted competent evidence to undermine the Borough's evidence regarding this account information, we find that the Borough has met its burden of proving that it provided

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<sup>5</sup> Notably, the Requester argues that the responsive audit trail "spanned 699 pages in PDF form" and "result[ed] in [an] unwieldy PDF...[,]" which was not a true "export" of data because "lengthy descriptions and notes were cut off beyond 96 characters on the transaction detail report." However, as noted above, the Borough generated the reports using the Requester's instructions and provided the reports in a format explicitly sought by the Requester. Based upon our review of the Requester's submissions, the fact that the reports were voluminous and might contain truncated information is something the Requester should have understood given his knowledge of the QuickBooks program, as demonstrated by his various references to Intuit/QuickBooks support documentation during this appeal.

<sup>6</sup> Insofar as the Requester argues that the Borough generated similar Excel export reports in response to prior RTKL requests, the Borough explains that the sheer volume of the information sought in the instant Request, as well as the explicit instructions provided by the Requester concerning the formulation of the customized reports, did not allow the Borough do split the information sought into smaller segments when generating the Excel export. Nothing in this Final Determination precludes the Requester from seeking the Excel exports of these reports in a separate RTKL request, which does not run afoul of the export capabilities of the QuickBooks program.

<sup>7</sup> For example, Mr. Flynn attests that "Account 259.00 is not a line in the General Fund or the Mayors Fund" because it is a developer's escrow account and is not, therefore, responsive to the Request. Flynn Attestation, ¶¶ 19-20.

the Requester with the responsive reports in its possession, custody or control.<sup>8</sup> *See Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022) (concluding that, in the absence of countervailing evidence suggesting that the requested records may exist, an agency may satisfy its burden of proof ... with “either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record”).

## **2. The OOR declines to make a finding of bad faith.**

The Requester asks the OOR to make a finding of bad faith, alleging the Borough deliberately misrepresented the Request, ignored established law, exhibited a pattern of obstructive behavior, intentionally omitted data from records, and submitted false technical claims. While the OOR may make findings of bad faith, only the courts have the authority to impose sanctions on agencies. *See generally* 65 P.S. § 67.1304(a). Under the RTKL, a finding of bad faith is appropriate where an agency refuses to comply with its statutory duties under the RTKL. *Uniontown Newspapers, Inc.*, 243 A.3d at 28-29; *California Univ. of Pa. v. Bradshaw*, 210 A.3d 1134 (Pa. Commw. Unpub. 2021), *appeal den'd*, 2019 PA LEXIS (Pa. 2019); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017). Here, the Borough reasonably interpreted the Request and conducted a good faith search for records based upon that interpretation, including the generation of customized reports consistent with the instructions provided in the Request. Thereafter, the Borough provided the reports in PDF format, as requested, and explained why it was unable to produce the Excel exports of the information contained in the

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<sup>8</sup> The Requester attaches audit trail documents provided in response to prior RTKL requests to suggest that information is missing from the responsive records; however, these records offer little to undermine the evidence submitted by the Borough. Furthermore, the Requester questions whether the responsive reports were prepared by Ms. Silvestri, as the Borough's Bookkeeper, based upon statements contained in the Attestations which he alleges demonstrate that Mr. Flynn attempted to prepare the reports in bad faith. We do not find the Requester's argument persuasive.

reports. Therefore, we find the Requester has failed to demonstrate that the Borough acted in bad faith in this case and decline to make such a finding.

### CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Borough is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Northampton County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per 65 P.S. § 67.1303, but as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>9</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: 30 April 2025**

*/s/ Joshua T. Young*

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SENIOR DEPUTY CHIEF COUNSEL

Sent via e-file portal to: Michael Long;  
J. Chadwick Schnee, Esq. and Bradford Flynn, AORO

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<sup>9</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).