

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Northampton

County

COPY

For Prothonotary Use Only:

Docket No:

C 48 CV 2025 10070

TIME STAMP

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FILED

SECTION A

Commencement of Action:

- Complaint
- Writ of Summons
- Petition
- Transfer from Another Jurisdiction
- Declaration of Taking

OCT 10 2025

HOLLY RUGGIERO
1:35 PM

CLERK OF COURT
CIVIL/PROTHONOTARY

Lead Plaintiff's Name:

Michael Long

Lead Defendant's Name:

Borough of Bath

Are money damages requested? Yes No

Dollar Amount Requested: (check one)

- within arbitration limits
- outside arbitration limits

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)

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.

SECTION B

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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MICHAEL LONG, : IN THE COURT OF COMMON PLEAS
Petitioner, : NORTHAMPTON COUNTY,
 : PENNSYLVANIA
v. : CIVIL DIVISION
 :
BOROUGH OF BATH, :
Respondent, : NO. C-48-CV-2025-10070

ORDER

AND NOW, this _____ day of _____, 20__, upon review of the Petition for Review of September 10, 2025 Final Determination, issued by Pennsylvania Office of Open Records at OOR Dkt. AP 2025-1943, and any responses thereto, it is hereby ORDERED and DECREED as follows:

The September 10, 2025 Final Determination in Michael Long v. Bath Borough, OOR Dkt. AP 2025-1943, is hereby Affirmed in part and modified as follows:

- (a) The Borough of Bath shall produce all records responsive to Petitioner's June 5, 2025 request in Microsoft Excel format exported directly from QuickBooks to ensure complete and accurate record production. The OOR's conclusion that such production constitutes database retrieval rather than record creation under Section 705 of the RTKL is affirmed.
- (b) The Court finds that the OOR erred in crediting conclusory affidavits submitted by the Borough.
- (c) The Court finds the Borough acted in bad faith in denying access to records subject to mandatory disclosure.
- (d) The Court may grant such other and further relief as may be just and proper.

BY: _____

J.

Michael Long, Pro Se
220 Creek Road,
Bath, PA 18014
(610) 507-3721
Michael.Long479@gmail.com

FILED

OCT 10 2025
1:38 PM
HOLLY RUGGIERO
CLERK OF COURT
CIVIL/PROTHONOTARY

MICHAEL LONG, : **IN THE COURT OF COMMON PLEAS**
Petitioner, : **NORTHAMPTON COUNTY,**
 : **PENNSYLVANIA**
v. : **CIVIL DIVISION**
 :
BOROUGH OF BATH, : **NO. C-48-CV-2025-10070**
Respondent, :

**APPEAL AND PETITION FOR REVIEW OF FINAL DETERMINATION
DATED SEPTEMBER 10, 2025, ISSUED BY PENNSYLVANIA OFFICE OF
OPEN RECORDS AT OOR DKT. AP 2025-1943**

AND NOW COMES Petitioner Michael Long ("Petitioner" or "Long"), *pro se*, who respectfully petitions this Honorable Court for review of the Final Determination issued September 10, 2025, by the Pennsylvania Office of Open Records ("OOR") in *Long v. Borough of Bath*, OOR Dkt. AP 2025-1943, pursuant to 65 P.S. § 67.1302(a). In support thereof, Petitioner avers as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this statutory appeal pursuant to 42 Pa.C.S. § 933(a)(3) and 65 P.S. § 67.1302(a).
2. Venue is proper in this Court as the Borough of Bath is located in Northampton County, Pennsylvania.
3. This Petition is timely, filed within thirty (30) days of the OOR's September 10, 2025 Final Determination.

4. Petitioner respectfully requests that the Court direct the OOR to transmit the certified record for OOR Dkt. AP 2025-1943 forthwith. See 65 P.S. § 67.1303(b).

II. PARTIES

5. Petitioner Michael Long is an adult individual residing at 220 Creek Road, Bath, PA 18014, Northampton County, Pennsylvania.
6. Respondent Borough of Bath ("Borough") is a municipal corporation and political subdivision subject to the Pennsylvania Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 et seq., with offices at 121 South Walnut Street, Bath, PA 18014.

III. NATURE OF ACTION

7. The Pennsylvania Office of Open Records ("OOR") is located at 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234.
8. This action is brought in this Court's appellate jurisdiction, seeking review of the September 10, 2025 Final Determination issued by the OOR in *Long v. Borough of Bath*, OOR Dkt. AP 2025-1943, which partially granted and partially denied Petitioner's appeal of the Borough's denial of a Right-to-Know Law request for electronic financial records, including QuickBooks audit trails and bank reconciliation reports.
9. The OOR's Final Determination is attached hereto as **Exhibit A**. The full supporting record is in the custody of the OOR and is incorporated by reference.

IV. STANDARD AND SCOPE OF REVIEW

10. In the context of appeals from a grant or denial of a petition for reconsideration by the Office of Open Records (OOR), such grant or denial "will only be reversed for an abuse

of discretion." *Campbell v. Pa. Interscholastic Athletic Ass'n (Off. of Open Recs.)*, 268 A.3d 502, 509 n.7 (Pa. 2021).

11. An abuse of discretion occurs when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable, where the law is not applied, or where the record shows that the action is a result of partiality, prejudice, bias, or ill will. *Pa. Tpk. Comm'n v. Elec. Transaction Consultants Corp.*, 230 A.3d 548, 560 (Pa. Commw. Ct. 2020).
12. Moreover, an abuse of discretion by the OOR exists where the OOR's determination rests on findings not supported by substantial evidence, fails to consider controlling precedent, or reflects arbitrary disregard of competent record evidence. See *Bowling v. Office of Open Records*, 75 A.3d 453, 468 (Pa. 2013); *Chambersburg Area Sch. Dist. v. Dorsey*, 97 A.3d 1281, 1287–88 (Pa. Commw. Ct. 2014).
13. This Court may consider evidence beyond the certified record where justice so requires, particularly where evidence of misconduct or bad faith arises after the record is closed. See *Chambersburg Area Sch. Dist. v. Dorsey*, 97 A.3d 1281, 1287-88 (Pa. Commw. Ct. 2014).

V. QUESTIONS PRESENTED

14. Whether the OOR erred by crediting conclusory affidavits lacking detail on search methodology or systems, contrary to *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) and *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)?

15. Whether the OOR erred in accepting sworn statements of "nonexistence" when, only four months prior, the Borough produced 699 pages of nearly identical records for a superset of the accounts at issue?
16. Whether the OOR erred by allowing PDF rather than Excel exports where only Excel would preserve all fields without truncation under *Commonwealth v. Cole*, 52 A.3d 541, 546 (Pa. Commw. Ct. 2012) and 65 P.S. § 67.701?
17. Whether denial of audit trail records is legally impossible in light of Borough Code and state statutory duties for accounting, records retention, and auditability?
18. Whether contradictory affidavits and shifting agency defenses require a finding of bad faith under *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 243 A.3d 19, 37–38 (Pa. 2020)?
19. Whether Petitioner should have the opportunity to supplement the record if further evidence of bad faith, retaliation, or non-compliance arises post-determination?

VI. FACTUAL AND PROCEDURAL BACKGROUND

20. Petitioner avers that, in March 2025 in AP 2025-0522, the Borough produced 699 pages of audit trails for all accounts numbered 100.00 through 499.99, and that the records sought in the present matter are a subset of those previously produced; yet the Borough's current affidavits deny existence of such records, without explanation—an irreconcilable contradiction. See attached Final Determination, Exhibit A.
21. Petitioner avers that the OOR's Final Determination recites this history, but did not reconcile the contradiction, nor require any explanation for the Borough's reversal in technical capability or record availability.

22. Petitioner avers that the Borough's Final Determination permitted production in PDF format, even though Petitioner requested, and Borough routinely uses, Excel format to avoid truncation and preserve audit fields.
23. Petitioner avers that the Borough's affidavits in AP 2025-1943 are conclusory, fail to identify search methodology, and are directly contradicted by prior sworn statements and the OOR's own findings in AP 2025-0522.
24. Petitioner avers that the Borough's denial of audit trail records is legally impossible in light of the Borough Manager's statutory and ordinance-based duties as Treasurer and Secretary, the Borough Code's inspection mandate, and the Municipal Records Act's retention requirements.
25. Petitioner avers that the OOR's Final Determination is the only exhibit attached, and that the full supporting record is in the custody of the OOR and is incorporated by reference.

VII. GROUNDS FOR REVERSAL

A. Legal Impossibility of Denial: Statutory, Ordinance, and Retention Duties

26. The Borough Manager's powers and duties are regulated by ordinance. 8 Pa.C.S. § 1142(a). Bath Borough Ordinance No. 372, Ch. 123, provides: "The Manager shall hold the office of Borough Treasurer and such other municipal offices or departments as Council may, from time to time, direct." *Bath Borough, Pa., Code of Ordinances ch. 123, § 6(B)(5)*.
27. As Treasurer, the Manager must "keep distinct and accurate accounts of all sums received from taxes and other sources, which accounts shall be open to the inspection of council and any citizen of this Commonwealth." 8 Pa.C.S. § 1106(b)(2).

28. As Secretary, the Manager must "preserve the records and documents of the borough..." 8 Pa.C.S. § 1111(b)(2), and ensure that "fiscal records and documents...shall be open in accordance with the...Right-to-Know Law." 8 Pa.C.S. § 1113.
29. The Municipal Records Act and its implementing regulations require that audit reports be retained permanently, audit workpapers for the current plus three prior audit cycles, and all records subject to audit or litigation be retained until all audits and findings are resolved. 53 Pa.C.S. § 1383; 46 Pa. Code § 15.51; 46 Pa. Code § 15.57.
30. Electronic records are valid and sufficient for these purposes if they are accurate and accessible. 73 P.S. § 2260.308.
31. The Borough's claim that audit trails or other financial records "do not exist" is irreconcilable with these duties and requirements.

B. Format: Excel as Used by Employees

32. The Commonwealth Court has held that agencies must provide records "in the same format that [they] would be available to agency personnel." *Commonwealth v. Cole*, 52 A.3d 541, 546 (Pa. Commw. Ct. 2012).
33. Borough employees use the native Excel export function in QuickBooks, which preserves all data fields and avoids truncation. The only legally sufficient response is to provide the Excel export, not a truncated PDF or paper copy.

C. Contradictory Affidavits and Legal Consequences

34. The Borough's affidavits are conclusory and directly contradicted by prior sworn statements and the Borough's own prior productions. In March 2025, Bookkeeper Silvestri swore she "successfully generated custom reports" for a superset of the currently

requested accounts, and the OOR found the Borough produced 699 pages of audit trails. Four months later, both Flynn and Silvestri swore that no such reports exist or could be generated, without any explanation of changed circumstances, data loss, or system migration.

35. Agency affidavits must be detailed and nonconclusory, describing what systems were searched, how, and by whom. *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011); *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013). Where affidavits are contradicted by "competent contrary evidence," they lose evidentiary weight. *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382–83 (Pa. Commw. Ct. 2014); *ACLU of Pa. v. Pa. State Police*, 232 A.3d 654, 670 (Pa. Commw. Ct. 2020).
36. The submission of contradictory affidavits under oath implicates 18 Pa.C.S. §§ 4903, 4904 (false swearing, unsworn falsification). Such contradictions, especially when used to deny access to records that must exist by law, are not only legally insufficient but also evidence of bad faith and possible statutory violation.

D. Legal Test for "Existence" and Database Retrieval

37. A record "exists" if the information is maintained in an agency's system and can be retrieved through ordinary means, even if not previously saved as a file. *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1125 (Pa. Commw. Ct. 2015).
38. The Supreme Court has held that data retrieved from an agency database using existing functionality is not "creating" a record. *Pa. State Police v. Grove*, 640 Pa. 1, 161 A.3d 877, 895–96 (Pa. 2017); *SWB Yankees LLC v. Wintermantel*, 615 Pa. 640, 45 A.3d 1029, 1042–43 (Pa. 2012).

E. Bad Faith, Statutory Non-Compliance, and Criminal Exposure

39. The Borough's pattern of contradictory affidavits, shifting explanations, and refusal to produce records required by law constitutes bad faith under *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 243 A.3d 19, 37–38 (Pa. 2020). The submission of contradictory affidavits under oath implicates 18 Pa.C.S. §§ 4903, 4904 (false swearing, unsworn falsification). Outreach to a third-party witness following record submissions constitutes potential witness intimidation and retaliation under 18 Pa.C.S. §§ 4952, 4958. These violations reinforce a pattern of bad faith and justify referral to prosecutorial authorities under 65 P.S. § 67.1305.

F. Request for Leave to Supplement the Record

40. Petitioner requests leave to supplement the record if further evidence of bad faith, retaliation, or non-compliance arises post-determination, as permitted by *Chambersburg Area Sch. Dist. v. Dorsey*, 97 A.3d 1281, 1287–88 (Pa. Commw. Ct. 2014).

VIII. CONCLUSION

41. The Borough's denial of access to audit trail and financial records is legally and factually impossible given the Manager's statutory and ordinance-based duties, the Borough Code's inspection mandate, the Municipal Records Act's retention requirements, and the RTKL's and *Cole's* format requirements. The Borough's internal election of which official performs these duties is irrelevant under Pennsylvania law and cannot justify denial of access to public records. The Borough's affidavits are not only conclusory but directly contradicted by prior sworn statements and the Borough's own prior productions, and are therefore entitled to no weight. The only legally sufficient response is to provide the

Excel export, as used by employees, and any other response is both factually and legally insufficient.

WHEREFORE, Petitioner respectfully requests that this Honorable Court enter an Order that:

A. Reverses the OOR's September 10, 2025 Final Determination to the extent it:

1. Credited conclusory, contradictory affidavits lacking factual detail required by *Hodges* and *Scolforo*;
2. Permitted PDF production where that format yields truncated records and Petitioner requested Excel format available through native QuickBooks functionality;
3. Declined to find bad faith despite documented pattern of contradictory attestations, false statements, witness intimidation, and non-compliance.

B. Finds the July 23, 2025 Flynn/Silvestri affidavits legally insufficient due to:

1. Their conclusory nature under *Hodges* and *Scolforo*;
2. Their direct contradiction with prior sworn statements;
3. The mathematical and logical impossibility of claiming inability to generate a 34-account subset when the Borough successfully generated a 400+-account superset four months earlier, absent evidence of changed circumstances;
4. The irreconcilable conflict with Flynn's statutory preservation duties as Treasurer under 8 Pa.C.S. § 1106(b).

C. Holds that QuickBooks Audit Trail and reconciliation exports via native functionality are database retrieval, not record creation, under *Pa. State Police v. Grove*, 640 Pa. 1, 161 A.3d 877, 895–96 (Pa. 2017), *SWB Yankees LLC v. Wintermantel*, 615 Pa. 640, 45 A.3d 1029, 1042–43 (Pa. 2012), and *Commonwealth v. Cole*, 52 A.3d 541, 546 (Pa. Commw. Ct. 2012).

D. Orders the Borough to produce all requested records (Items 1-9 as specified in June 5, 2025 request) in Microsoft Excel format, exported directly from QuickBooks, within fourteen (14) days of this Court's Order, pursuant to 65 P.S. § 67.701 and *Cole*.

E. Appoints, if necessary upon non-compliance, a Special Master authorized to access the Borough's QuickBooks installation, generate the Excel exports following the procedures documented in Petitioner's video demonstration, and provide them directly to Petitioner, with all fees taxed to the Borough. See 65 P.S. § 67.1304(b); *Phila. Inquirer v. Pa. Dep't of Educ.*, 122 A.3d 422, 431 (Pa. Commw. Ct. 2015).

F. Finds bad faith under 65 P.S. § 67.1305 based on the cumulative pattern of contradictory affidavits, false factual statements, witness intimidation, six-proceeding deny-then-produce cycle spanning 27 months, and continued non-compliance with OOR production order, and awards fees and costs.

G. Refers the record concerning (i) false swearing/unsworn falsification under 18 Pa.C.S. §§ 4903, 4904 and (ii) witness intimidation/retaliation under 18 Pa.C.S. §§ 4952, 4958 to the Northampton County District Attorney for review.

H. Supplements the certified OOR record with evidence of witness intimidation that emerged after record closure, including Mark Saginario's July 30, 2025 email and documentation of Borough workplace contact, pursuant to *Chambersburg Area Sch. Dist. v. Dorsey*, 97 A.3d 1281, 1287–88 (Pa. Commw. Ct. 2014).

I. Alternatively, orders production under 8 Pa.C.S. § 1106(b)(2), which independently grants every citizen an unqualified right to inspect Borough accounts, unaffected by RTKL exemptions.

J. Grants such other and further relief as this Court deems just and proper.

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

Respectfully submitted,

Date: October 10, 2025



MICHAEL LONG, *Pro Se*
220 Creek Road
Bath, PA 18014
michael.long479@gmail.com
610-507-3721

VERIFICATION

I, Michael Long, verify that the statements made in this Petition for Review are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to be the name 'Michael Long' written in a cursive style.

MICHAEL LONG

Date: October 10, 2025

Exhibit

A

1. Within the Quick[B]ooks company fund that contains: BOROUGH OF BATH–
DEVELOPERS’ ESCROW FUNDS

I request complete Audit Trails covering the years 2018 – 2024 for the following accounts:

- Account #100.00 – ESCROW-CHECKING (4141)
- Account #100.20 – ESCROW-CHECKING
- Account #230.01 – DUE TO GENERAL FUND
- Account #259.00 – BATHVIEW PHS II SECURITY
- Account #259.00 – HURATIAKSECURITY
- Account #259.00 – HURATIAK SECURITY

2. Within the Quick[B]ooks company files that contain: BOROUGH OF BATH –
NON-GENERAL FUND ESCROW ACCOUNTS (These are accounts identified from the “BOROUGH OF BATH - NON-GENERAL FUND ESCROWS Account Listing” dated February 24, 2025)

I request complete Audit Trails covering the years 2018 – 2024 for the following accounts:

- Account #100.50 – FD Building Improvement #2345
- Account #392.01 – Transfer from General Fund
- Account #492.00 – INTERFUND OPER’G TRANSFERS (TO)
- Account #492.30 – Capital Improvement Fund (correlating to “Transfer to Capital Fund” on COA)

3. Within the Quick[B]ooks company files that contain: BOROUGH OF BATH –
OPERATING GENERAL FUND ACCOUNTS

I request complete Audit Trails covering the years 2018 – 2024 for the following accounts:

- Account #101.70 – FIRE DEPT BLDG IMPROVEMENT FUND
- Account #106.00 – GF ESCROW CHECKING (0417)
- Account #107.00 – CAPITAL IMPROVEMENT FUND
- Account #12000 – Undeposited Funds
- Account #130.10 – DUE FROM DEVELOPER ESCROWS FUND
- Account #130.20 – DUE FROM SANITATION - MSW FUND
- Account #130.30 – DUE FROM CAPITAL IMPROVEMENTS
- Account #130.99 – DUE FROM OTHERS
- Account #230.10 – DUE TO DEVELOPER ESCROW FUND
- Account #250.00 – DEPOSITS RECEIVED
- Account #321.90 – Business Registrations
- Account #321.00 – BUSINESS LICENSES & PERMITS - Other
- Account #331.10 – Fines from District Court

- Account #331.12 – Ordinance/Criminal Violations
 - Account #331.14 – Parking Violation Fines
 - Account #342.00 – RENTS AND ROYALTIES
 - Account #342.20 – Park / Pavilion Rental
 - Account #342.21 – 121 Center Street (Ambul Dept)
 - Account #342.53 – Monopole - 121 Center St Yard
 - Account #362.41 – Building & Zoning Permit Fees
 - Account #404.00 – Legal Services
 - Account #404.317 – Legal Fees-RTK-Long
 - Account #405.15 – Office Secretary Health/Dental
 - Account #405.18 – Office Secretary - Health Ins.
 - Account #407.43 – IT - RTK
 - Account #427.10 – Contracted Services
 - Account #492.00 – INTERFUND OPER'G TRANSFERS (TO)
 - Account #492.40 – Waste & Recycling Fund
 - Account #492.96 – Transfer to Dev Escrow Fund
 - Account #493.00 – Fire Dept Bldg Imprv- Reserve
 - Account #66900 – Reconciliation Discrepancies
4. Within the Quick[B]ooks company fund related to BOROUGH OF BATH – ESCROW ACCOUNT Checking-XXXXX8414, I request the following:
- **Audit Trail:** Complete Audit trail covering all transactions in ESCROW ACCOUNT Checking-XXXXX84141 from January 1, 2019, through December 31, 2024.
 - **Bank Reconciliation Reports:** For ESCROW ACCOUNT Checking-XXXXX84141 for each month from January 2019 through December 2024.
5. Within the Quick[B]ooks company fund related to BOROUGH OF BATH – CAPITAL IMPROVEMENT FUND SAVINGS-XXXXX02064 Audit Trail and Reconciliation 2019-2023, I request the following:
- **Audit Trail:** All transactions in CAPITAL IMPROVEMENT FUND SAVINGS-XXXXX02064 from January 1, 2019 through December 31, 2023.
 - **Bank Reconciliation Reports:** For CAPITAL IMPROVEMENT FUND SAVINGS-XXXXX02064 for each month from January 2019 through December 2023.
6. Within the Quick[B]ooks company fund related to BOROUGH OF BATH – CAPITAL IMPROVEMENT PROJECT Checking - XXXXX00483 Audit Trail and Reconciliation 2019-2023, I request the following:
- **Audit Trail:** All transactions in CAPITAL IMPROVEMENT PROJECT Checking-XXXXX00483 from January 1, 2019 through December 31, 2023.

- **Bank Reconciliation Reports:** For CAPITAL IMPROVEMENT PROJECT Checking-XXXXX00483 for each month from January 2019 through December 2023.
7. Within the Quick[B]ooks company fund related to BOROUGH OF BATH – FIRST NORTHERN BANK AND TRUST ACCOUNT used as a resident payment location for Municipal Waste Payments - Audit Trail and Reconciliation 2018-Closed, I request the following:
- **Audit Trail:** All transactions in the First Northern Bank and Trust Account used as a resident payment location for Municipal waste payments, from January 1, 2018 through the account closure date.
 - **Bank Reconciliation Reports:** For the First Northern Bank and Trust Municipal waste payment account for each month from January 2018 through the account closure date.
8. BOROUGH MANAGER TRANSACTION REPORT (Across all QuickBooks Company Accounts/Funds 2018-2024):

I request a report detailing all financial transactions created, entered, or modified by the user “boroughmgr” or any user account associated with the Borough Manager position across all QuickBooks company files, funds, and accounts for the period January 1, 2018, through December 31, 2024.

9. Voided and Deleted Transaction Summary Reports:

For all QuickBooks company files, provide the Voided/Deleted Transaction Summary Report and Voided/Deleted Transaction Detail Report for January 1, 2018 through December 31, 2024.

Additional Notes:

The requested audit trails and reconciliation reports are standard features of QuickBooks Desktop and can be exported to Excel without creating a new record. Providing these records in Excel format ensures the integrity and completeness of the financial data, as PDF or image exports often result in truncated or incomplete information.

On July 7, 2025, following a thirty-day extension, 65 P.S. § 67.902(b), the Borough granted the Request in part, providing bank reconciliation reports responsive to Items 4, 5, 6, and 7. The Borough further directed the Requester to the Borough’s website for Reconciliation Summary & Detail digital worksheets for the Municipal Solid Waste fund beginning May 2023 through the

most recent month of account reconciliation, responsive to Item 7 of the Request. The Borough also denied Items 1, 2, 3, the remainders of Items 4-7, Item 8, and Item 9, asserting that responsive records do not exist, and production of the requested data would impermissibly require the Borough to create a record which does not currently exist or to compile, maintain, format, or organize a record in a manner in which it does not currently compile, maintain, format or organize a record. 65 P.S. § 67.705. The Borough also stated that Item 8 of the Request, seeking, in part, records detailing “any user account associated with the Borough Manager position” is also insufficiently specific.² 65 P.S. § 67.703. The final response was made under the penalty of perjury by the Borough’s Open Records Officer.

On July 11, 2025, the Requester appealed to the Office of Open Records (“OOR”), challenging the Borough’s denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On July 23, 2025, the Borough submitted a position statement reiterating its grounds for denial. Specifically, the Borough argues that for records provided that are responsive to Items 4-7 of the Request, it properly provided records in the format that it exists, *i.e.*, PDF files and was not required to provide records in a “Digital Microsoft Excel format” as sought by the Requester. The Borough also argues that the Request seeks to have the Borough provide customized reports using several parameters over different time periods that do not exist and would require the Borough to create a new record. 65 P.S. § 67.705. In support of its position, the Borough submitted the

² On appeal, Mr. Flynn, who serves as the Borough Manager, affirms that “the only user account associated with the Borough Manager position is “boroughmgr.” Flynn Attestation ¶ 7. Accordingly, because the Borough definitively confirms that there is no other user account attributed to the Borough Manager position, the question of whether this portion of Item 8 is insufficiently specific is not an issue because the Borough has confirmed that no other relevant user accounts exist for the Borough Manager.

attestations of Bradford Flynn (“Flynn Attestation”), Manager and Open Records Officer (“AORO”) for the Borough and Julia Silvestri (“Silvestri Attestation”), Bookkeeper for the Borough.³ The attestations also affirm that the facts provided in the Borough’s position statement are true and correct under the penalty of perjury.

On July 24, 2025, the Requester submitted correspondence, advising that his submission would be late due to technical difficulties. That same day, the agency acknowledged receipt of the correspondence, advising the OOR that it has no objection to extending the deadline for submissions, provided that both parties are permitted an opportunity to further supplement the record before the OOR and that no further submissions are permitted after the new deadline.

Also on July 24, 2025, the Requester submitted a supplemental position statement with exhibits, arguing, amongst other things, that the Borough has failed to provide sufficient and true evidence,⁴ the Borough’s argument concerning creation of a record fails due to the technicality of the QuickBooks software, and argues that the Borough’s conduct constitutes bad faith and requests that the OOR make a finding of bad faith.

On July 25, 2025, in response to the Requester, the Borough made an additional submission, first arguing that contrary to the Requester’s arguments, the Borough has submitted sufficient evidence to demonstrate that it conducted a good faith search for responsive records. The Borough further reiterates that although it has created custom reports using the Requester’s instructions in the past, it is not under a legal obligation to compile its data in a different manner and create the customized reports pursuant to Section 705 of the RTKL.

³ The Flynn Attestation and Silvestri Attestation are made subject to penalties under 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

⁴ The Requester argues that the signature of the Silvestri Attestation is questionable and defective. However, the subject Attestation appears to have been electronically signed using DocuSign software. Accordingly, the OOR finds this argument to be without merit.

On July 28, 2025, the Requester submitted an additional verified position statement, making various arguments and reiterating his arguments that the Borough's evidence is insufficient. The Requester further argues that the Borough misinterprets relevant case law fails to consider that drawing information from a database does not constitute creation of a record, and contends that the Borough mischaracterizes QuickBooks' report generation as "data manipulation" and "recompilation," arguing that the subject software would only require the Borough to utilize standard menu options and built-in dropdown menus, therefore only requiring the Borough to draw information from the database. It is important to note that in this submission, the Requester cites to a purported Commonwealth Court case to support that a claim that the Borough's argument regarding the creation of a record is barred by judicial estoppel and that it is a doctrine applicable to agency proceedings; however, a review of the citation provided reveals a completely different case than the one cited by the Requester. Further, there is no evidence that the Commonwealth Court case cited by the Requester even exists. Accordingly, it is unclear if this citation was gathered and summarized by using artificial intelligence ("AI"). AI routinely hallucinates the existence of case law or misrepresents the holdings of case law that exist to the user's detriment. The use of AI does not relieve parties of their obligation to present accurate facts and legal arguments to the OOR in good faith. Additionally, quotes from cases and court opinions submitted to the OOR should be accompanied with citations to the exact, actual page of said quote.

That same day, the Borough submitted correspondence, the facts of which were attested to under the penalty of perjury by Mr. Flynn. In this correspondence, the Borough accused the Requester of providing patently false information and claims. The Borough went on to explain past requests made by the Requester, and further reiterated that the Requester seeks records that

do not readily exist, and must therefore be created, which the Borough is not legally obligated to do.

On July 29, 2025, the OOR notified the parties that although the record officially closed on July 23, 2025, in order to fully develop the record, the OOR would accept the several additional submissions provided by each party. *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 OOR also sought an extension to issue a final determination in this matter.

That same day, the Borough made an additional supplemental submission, first asserting that contrary to the Requester’s arguments, the date of Ms. Silvestri’s hire as the Borough’s Bookkeeper is irrelevant as she has been at her position for several years and has personal knowledge of all records within her job responsibility as Borough Bookkeeper. The Borough reiterated its position that while the Borough potentially has the technical capabilities to extract data from its database, doing so would require it to manipulate the data and compile it in a manner and format specific to the Request, something that the Borough argues it is not legally required to do. Finally, the Borough accused the Requester of submitting⁵ a forged attestation from a former Borough Council member to support his position.

On July 30, 2025, in response to the Borough, the Requester made several supplemental submissions, first asserting that the Borough’s arguments are a sign of bad faith, accusing the Borough of witness intimidation. The Requester further clarified that the former Borough Council member did not accuse him of forging an attestation and explained that it was a clerical error that

⁵ On July 28, 2025, the Requester submitted correspondence into the portal, asking the OOR to reject an attestation that he attempted to submit into the record pending in the portal queue, citing that he was made “aware of an issue that needs to be corrected before being accepted on the record.” As a result, the OOR did not accept this attestation into the record.

ultimately was never accepted into the official record in this matter. The Requester went on to reiterate his prior arguments⁶ against the Borough.

That same day, the Borough also submitted multiple correspondences, the facts of which were attested to under the penalty of perjury by Mr. Flynn, raising additional arguments and accusations concerning the subject attestation that ultimately, was not accepted into the official record in this matter. The Borough additionally attempts to discredit past evidence submitted in past litigation involving the Requester and accuses the Requester of continually using AI, leading to misinformation. The Borough affirms that it has never wavered in its position regarding creation of the sought-after reports, and vows to actively seek an investigation into the Requester's alleged conduct.

On August 1, 2025, the OOR notified the parties that absent any objection from the Requester, the OOR extended the due date for the final determination in this matter. Additionally, the OOR notified the parties that the record was officially closed and that unless the OOR specifically sought clarification or evidence from a party, no additional submissions would be accepted or considered.

On August 4, 2025, the Requester attempted to submit an additional 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).

⁶ The Requester appeared to again, cite to a case that does not exist. *See* pg. 7 of final determination, cautioning against the use of AI.

Finally, it should be noted that both parties appear to reference and summarize mediation discussions of a past OOR appeal; however, because the mediation process is confidential and mediation discussions and communications may not be used as evidence in an appeal, the OOR has not considered or accepted such statements into the record.

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)). Likewise, “[t]he burden of proving a record does not exist...is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The Requester’s preliminary arguments are not persuasive

The Requester argues throughout his submissions that the Borough is judicially estopped from making any argument pursuant to Section 705 concerning creation of a record. Judicial estoppel prevents parties from “‘playing fast and loose’ with the judicial system by adopting whatever position suits the moment.” *Sunbeam Corporation v. Liberty Mutual Insurance Company*, 566 Pa. 494, 781 A.2d 1189, 1192 (Pa. 2001) (quoting *Gross v. City of Pittsburgh*, 686 A.2d 864, 867 (Pa. Commw. Ct. 1996)). The Commonwealth Court has explained:

“[a]s a general rule, a party to an action is estopped from assuming a position inconsistent with his or her assertion in a previous action, if his or her contention was successfully maintained.” Accordingly, judicial estoppel is properly applied only if the court concludes the following: (1) that the appellant assumed an inconsistent position in an earlier action; and (2) that the appellant’s contention was “successfully maintained” in that action.

Canot v. City of Easton, 37 A.3d 53, 60 (Pa. Commw. Ct. 2012) (quoting *Black v. Labor Ready, Inc.*, 2010 PA Super 72, 995 A.2d 875, 878 (Pa. Super. 2010)). In essence, judicial estoppel “prohibits parties from switching legal positions to suit their own ends.” *Sunbeam Corporation*, 781 A.2d at 1192. However, the OOR is not a judicial agency. Under the RTKL, a judicial agency is defined as “[a] court of the Commonwealth or any other entity or office of the unified judicial system.” See 65 P.S. § 67.102.

Assuming, *arguendo*, that the OOR was a judicial agency, for judicial estoppel to apply, the prior position must have been verified or sworn. *Marazas v. Workers’ Compensation Appeal Board (Vitas Healthcare Corporation)*, 97 A.3d 854, 860 (Pa. Commw. Ct. 2014). In addition, the prior position must have been “successfully maintained.” *Id.* The Commonwealth Court further explains:

Our courts interpret “successfully maintain” as different than litigating to conclusion. Settlement of a claim, despite binding the parties and ending an action, does not equal “successfully maintain.” Thus, our courts uphold the “successfully maintain” element of judicial estoppel based on the action of a decision-maker, not the actions of the parties.

Id. at 860-61 (internal citations omitted). Here, the Requester has not offered any viable evidence to demonstrate that the Borough has “successfully maintained” a prior position concerning creation of a record. Accordingly, the OOR is unpersuaded by the Requester’s argument that judicial estoppel applies.

The Requester also argues that the Borough expanded the “four corners” of the Request to impermissibly refer to the Requester’s subsequent emails to the Borough where the Requester

performed a “video demonstration” of how to use the QuickBooks software as “instructions” to support denying the Request. The record shows that the Requester sent two emails to the Borough during the processing of the Request, where the Requester is clearly attempting to provide further guidance and assistance in order to allow the Borough to grant the Request. *See* Appeal Filing. Here, it was reasonable for the Borough to believe that the Requester’s video demonstration of how to use the QuickBooks software to create the responsive reports was intended to be used as “instruction” to aid the Borough in providing responsive excel reports. It is not unusual for agencies to receive a request, and then receive further clarification or guidance from a requester to be used in consideration of responding to a request. Here, as argued by the Borough, it is unclear to the OOR how the Requester argues that the Borough was required to only look at the “four corners” of the Request, while also arguing that the Borough was provided clear guidance on how to process the Request. Accordingly, the OOR finds that this argument also has no merit.

2. The Borough has demonstrated certain records do not exist, but has not demonstrated that providing reports are creation of records under Section 705 of the RTKL

The Borough argues that a majority of the Request seeks to have the Borough create new records, and the Borough does not currently compile, maintain, format, or organize requested records such as Audit Trail Reports, Borough Manager Transactional Reports, or reports on voided or deleted transactions. In support of the Borough’s position, the Flynn Attestation states, in part:

3. Based on my roles with the Borough, I am very familiar with all records maintained by the Borough.
4. [I] am also familiar with the June 6, 2025 [RTKL] [Request] filed by [the Requester] that asked the Borough to create various reports using 10 different sets of criteria for various delineated time periods.
5. Upon my receipt of the [R]equest, I conducted a review of all records within the Borough’s physical and electronic records to determine whether any responsive records exist.

6. My search also included inquiring with the Borough's Bookkeeper Julia Silvestri to determine whether she had any responsive records in her possession.
7. Based on my searches and inquiry, I located existing reports responsive to Items 4-7 of the Request and provided them to the Requester in an electronic medium and PDF file format.
8. Based on my searches and inquiry, I did not locate any existing reports responsive to any other portion of the Request.
9. Specifically, with respect to Items 1-4 and 8-9 of the Request, my searches and inquires revealed that the Borough does not maintain the custom reports containing each of the 10 data fields and for the applicable timeframes sought by the Requester.
10. In order to create the custom reports sought by the Requester, the Borough would need to do far more than simply extract information using its financial software. Specifically, the Borough would have to recompile the data in order to collect each of the 10 different pieces of data for the specific time periods sought and then create a new report based on the recompilation of the data in order to satisfy the Request.
11. In other words, based on my experience as Borough Manager and as [AORO], the Request would require the Borough to create compile data in different manners in order to create records that do not currently exist.

...

14. I note that my response to the Request was signed under penalty of perjury.
15. I hereby affirm the factual content of the statements contained in the position statement submitted with this appeal.

Additionally, Ms. Silvestri, who serves as Bookkeeper for the Borough, affirms that she uses QuickBooks on a daily basis, and confirms that the Borough does not have any responsive custom reports in its physical or electronic possession at the time of the Request. *See, e.g.*, Silvestri Attestation.

Under the RTKL, an affidavit or statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa.

Commw. Ct. 2011); *Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Borough has acted in bad faith, “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 *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

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 record[.]” 65 P.S. § 67.901. The RTKL does not define the term “good faith effort.” However, the Commonwealth Court has concluded that:

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 potentially responsive records, an agency has the duty to review the record and assess their public nature under... the RTKL.

Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr., 185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff’d*, 243 A.3d 19 (Pa. 2020).

In *Pa. Dep’t of Health v. Mahon*, the Commonwealth Court discussed the evidence required to establish the absence of records, quoting its previous decision in *Hodges v. Pa. Dep’t of Health*, which held that 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.” *Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (quoting *Hodges*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011)); *see also Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a

preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a “more likely than not” inquiry).

Additionally, under Section 705 of the RTKL, when responding to a request, “an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705; *see also Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010) (holding that an agency cannot be made to create a record that does not exist). However, providing information from an agency database does not constitute the creation of a record. *See Commonwealth v. Cole*, 52 A.3d 541, 549 (Pa. Commw. Ct. 2012) (“[D]rawing information from a database does not constitute creating a record under the Right-to-Know Law”); *see also Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38, *21 (Pa. Commw. Ct. 2012) (“[P]ulling information from a database is not the creation of a record”). “To hold otherwise would encourage an agency to avoid disclosing public records by putting information into electronic databases.” *Cole*, 52 A.3d at 549. “An agency need only provide the information in the manner in which it currently exists.” *Id.* at 547. An agency is not required to create a list or spreadsheet containing the requested information; however, “the information...must simply be provided to request[er]s in the same format that it would be available to agency personnel.” *Id.* at 549, n.12.

Here, the Borough has provided sufficient evidence to demonstrate that relevant Borough personnel, specifically Mr. Flynn and Ms. Silvestri who each have relevant knowledge of the Borough’s records and the QuickBooks software system, conducted a search for responsive records and certain customized reports do not exist in the Borough’s possession, custody or control. However, the main issue in this appeal is whether the production of any Audit Trail

Reports, Borough Manager Transactional Reports, or reports on voided or deleted transactions in the requested excel format constitutes the creation of a record as the Borough argues, or, if production of these records, as the Requester contends, is simply extracting information from a database and is therefore *not* the creation of a record and must therefore be provided.

Notably, the Flynn Attestation notes that the facts provided in the Borough's final response have been attested as true and accurate under the penalty of perjury. A review of the Borough's final response provides additional facts for consideration. For example, Mr. Flynn first attests that "the Borough's QuickBooks software is considered a transactional database; a database designed to have data entered into it, but that is not designed for large amounts of data to be retrieved from it. In this way, a transactional database is designed to protect the integrity of the data." Mr. Flynn further explains that "[a] transactional database is different than a reporting database, which is a database that is designed to allow information to be easily retrieved from the database." *See* Borough Final Response, pgs. 4-5. The Borough attests that it "does not, in conducting its agency business, possess, maintain, or store Audit Trail Reports, Borough Manager Transaction Reports, or reports on Voided or Deleted Transactions." *See* Borough Final Response, pg. 7. Of note, the Borough further describes the steps in the video that the Requester provided to the Borough as guidance in order to respond to the Request, as follows:

The video demonstrates the following steps to create this report:

1. Select 'Reports.'
2. Select 'Accountant and Taxes.'
3. Select 'Audit Trail' to open an 'Audit Trail' window.
4. Select 'Customize Report.'
5. In the 'Modify Report: Audit Trail' and on the 'Display' menu tab, establish a 'Report Date Range.'
6. Set the Report Date range 'From' and 'To' a specific period.
7. In the 'Days Entered/Last Modified' section, select 'All.'
8. In the 'Modify Report: Audit Trail' and on the 'Filters' menu tab, under 'Accounts' select the account for the generated report. Then select 'OK.'

9. From the 'Audit Trail' window, select the 'Excel' tab.
10. From the 'Excel' tab, select 'Create new worksheet', then select 'Export.'

Then to repeatedly execute these instructions for multiple accounts over several years.

The video shows two examples of creating Audit Trail records from accounts in presumably a generic or dummy General Fund. The video does not show any other examples of how to export, generate, or create any of the other records requested in [the Request]. However, the Borough would be required to follow a similar procedure to generate customized reports requested in [the Request] outside of Audit Trail Reports.

See Borough Final Response, pgs. 6-7.

A recent case that is particularly instructive is *Ctr. for Investigative Reporting v. Pa. Dep't of Health*, where the request sought various data records related to cases of reported neonatal abstinence syndrome ("NAS") for the years 2020 and 2021. 2024 Pa. Commw. Unpub. LEXIS 298. In *Ctr. for Investigative Reporting*, the Commonwealth Court considers the same questions before the OOR of whether a response to a request requires the creation of a new record under Section 705, first requiring the Commonwealth Court to consider whether the responsive record exists. 2024 Pa. Commw. Unpub. LEXIS 298 at *24. The Commonwealth Court further explained that this question requires the Court to determine if the requested information exists in a database. If it is determined that such responsive records exist, the Court must then determine whether using a "custom query" to extract data from the database constitutes a new record for purposes of the RTKL. *Id.* The *Ctr. for Investigative Reporting* Court acknowledged that this second question is complicated by the electronic nature of modern record-keeping. Specifically, the Commonwealth Court pondered:

As explained *supra*, we have held that merely extracting records from an electronic database is not tantamount to the creation of a new record. [citation omitted]. We have, however, long held that an agency is not required to manipulate or reorganize existing data when responding to a records request. [citation omitted]. For purposes of this matter, we must determine which side of the line

running a “custom query” falls on. In other words, is a custom query of an existing database merely extracting data? Or is running a custom query the equivalent of manipulating and reorganizing existing data to create a new record?

Id. at *25.

In consideration of the first question, there is no dispute that the data from the Borough’s QuickBooks software that would be needed to make up the requested reports does exist, as the Borough explains that its data is held in a transactional database, as opposed to a reporting database. Accordingly, the required information clearly exists, and the OOR must now consider whether the use of a custom query to extract and export the data from the QuickBooks software as sought in the Request constitutes the creation of new records. In *Feldman v. Pa. Comm’n on Crime & Delinquency*, the Commonwealth Court set forth the limits on an agency’s duty to obtain database information as follows:

We note that in [*Cole*], 52 A.3d 541 [(Pa. Commw. Ct. 2012)], the requester sought information from the Department of Environmental Protection related to a rebate program that was contained in a computer database. *Id.* at 543-44. The Department argued that it could not be compelled to search through a computer database because that would constitute creating a record that did not exist, which was prohibited under section 705 of the RTKL. *Id.* In holding that the Department needed to provide the requested documents, we determined that although section 705 of the RTKL “excuses an agency from creating a new record or reorganizing existing records” and that “[a]n agency need only provide the information in the manner in which it currently exists . . . , drawing information from a database does not constitute creating a record” under the RTKL. *Id.* at 547. We explained that, “to the extent requested information exists in a database, it must be provided,” but that the Department was only required to provide information “in the format in which it [was] available.” *Id.* at 548. We further concluded that “pulling information from a database is not the creation of a record,” and that while an agency is not required to compile information in a certain way, “the information contained in databases that is subject to disclosure under the [RTKL] must simply be provided to request[ers] in the same format that it would be available to agency personnel.” *Id.* at 549 & n.12.

208 A.3d 167, 173-74 (Pa. Commw. Ct. 2019). Additionally, in *Fort Cherry Sch. Dist. v. Acton*, the Commonwealth Court endorsed the analysis of the Washington County Court of Common Pleas, which found that:

[T]he School District would only need to query the database and retrieve the electronic information that was requested and provide it in an electronic form. This can be accomplished in both the Pentamation and MUNIS systems. According to the uncontroverted report of [r]equester's expert Mr. Ardisson, "it is a simple matter to run a query for the relevant information, and the results are available 'instantaneously.'" This is the electronic equivalent of opening a file cabinet and retrieving specific folders. A query of the District's electronic database and the subsequent redaction does not require a reformatting, conversion, or creation of any new data....Nor does this Court find that providing the information electronically constitutes a "reformatting" or a "conversion."

38 A.3d 1092 (Pa. Commw. Ct. 2012). This analysis emphasized that when a database could be easily queried by an agency's employees to produce the desired data, that query could not constitute the creation of a new record. The Court thus endorsed a fact-intensive analysis of the process that would be required to obtain a desired record from a database to determine whether or not it violates Section 705 of the RTKL. *Id.* ("Therefore, it would appear that reconciling the need to redact electronically stored information with the proviso that it need not be "recompiled, reformatted or reorganized" requires a highly fact-sensitive balancing in each case.").

In *Ctr. for Investigative Reporting*, the Commonwealth Court concluded that in order for the department to comply with the request of providing more granular data than what was available in the 2020 NAS report, the relevant database would need to be "completely reconfigured" because the aggregate data of the information sought in the request was not collected and did not exist in *any available form* in the database and would require a custom query to manipulate existing records and compile it in a new form. As such, the Commonwealth Court disagreed with the requester that such actions would be the mere extraction of information from a database. Pa. Commw. Unpub. LEXIS 298 at *26-27.

In this instant matter, however, rather than finding that the Borough's QuickBooks program would require a "complete reconfiguration," the responsive information exists and can otherwise be exported from QuickBooks. Therefore, the information requested in this case is more analogous to the scenario explained in *Fort Cherry Sch. Dist.*, *i.e.*, more akin to the "electronic equivalent of opening a file cabinet and retrieving specific folders." 38 A.3d 1092. The Borough has not provided any evidence to demonstrate that exporting Excel reports from the QuickBooks program with the requested information for the specified accounts is not possible; instead, the Borough argues that it should not be legally obligated to do so. Moreover, the Borough acknowledges that the information, although potentially more difficult to extract as it is in a transactional database versus a reporting database, exists.

To that point, the difficulty of extracting information from the database is also not determinative in the analysis, as a requester may not be prejudiced by the agency's storage methods. *Unger v. Pa. Dep't of Labor & Indus.*, OOR Dkt. AP 2020-0940, 2020 PA O.O.R.D. LEXIS 2410 (finding that the department's storage of data within a 'transactional database' which would require additional steps to convert to a reportable form was not sufficient to deny the appeal). Accordingly, the OOR determines that production of the requested reports would not require the creation of new records, but rather, would require extraction from a database and therefore does not violate Section 705 of the RTKL. To the extent that responsive reports can be generated based upon the built-in functionality of the QuickBooks software, the OOR grants access to these reports. As such, the reports must be provided in the electronic medium in which they exist that does not run afoul of the export capabilities of the QuickBooks program. *See, e.g., Long v. Bath Borough*, OOR Dkt. AP 2025-0522, 2025 PA O.O.R.D. LEXIS 960, fn. 6.

3. The Borough is not required to provide records in specific electronic formats

The Borough argues that for records provided that are responsive to Items 4-7 of the Request, it properly provided records in the format that it exists, *i.e.*, PDF files and was not required to provide records in a “Digital Microsoft Excel format” as sought by the Requester.

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 carried, a ‘means,’ such as on paper or 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 denied*, 57 A.3d 72 (Pa. 2012). “Under the RTKL, ‘medium’ is a broad term, and ‘electronic medium’ encompasses all electronic formats.” *See Hahn v. Lawrence Cnty.*, OOR Dkt. AP 2020-0181, 2020 PA O.O.R.D. LEXIS 1893; *Cap v. Lehigh and Northampton Transp. Auth.*, OOR Dkt. AP 2013-0168, 2013 PA O.O.R.D. LEXIS 112.

The OOR has previously differentiated “medium” from “format.” In *Bowling v. Pa. Emgcy. Mgmt. Agency*, the requester sought copies of “electronic spreadsheets,” and the agency provided the documents in .PDF format rather than in Excel format. OOR Dkt. AP 2009-0128, 2009 PA O.O.R.D. LEXIS 607, *rev’d on other grounds*, *Bowling v. Office of Open Records*, 990 A.2d 813 (Pa. Commw. Ct. 2010), *aff’d*, 75 A.3d 453 (Pa. 2013). The OOR held that:

The RTKL provides requesters with the right to inspect and duplicate. Duplication is a snapshot, a static record that cannot be altered or modified, in other words, a “copy.” [Section 701(b) of the RTKL] specifically prevents access to an agency’s computer, evidencing intent to protect government records and files from any interference. By providing a pdf file, [the agency] complied with the RTKL by duplicating its spreadsheet and [the requester] received the “information” requested. It was provided in an electronic medium and there is no requirement to

provide records in a manner that would subject them to alteration or manipulation. [The requester] received the record, as defined by the RTKL, which he requested.

OOR Dkt. AP 2009-0128, 2009 PA O.O.R.D. LEXIS 607.

Here, the Request specified that records should be provided in an electronic medium, and certain records responsive to Items 4-7 of the Request were provided to the Requester in an electronic medium, in .PDF format. Under *Bowling*, the Borough's actions are permissible because the Request asked for the information in an electronic medium, and the Borough provided the records in an electronic medium. *See* 65 P.S. § 67.701(a). Accordingly, the Borough is not required to provide responsive records in an Excel format. *See Simmons-Ritchie v. Pa. Dep't of Cmnty. and Econ. Dev.*, OOR Dkt. AP 2017-0426, 2017 PA O.O.R.D. LEXIS 559, *11-12 (citing *Curry v. West Vincent Twp.*, OOR Dkt. AP 2013-0507, 2013 PA O.O.R.D. LEXIS 230 (denying an appeal where the township provided the records in PDF format even though the requester expressly requested, and the township possessed, the records in Word format)).

4. The OOR declines to make a finding of bad faith

The Requester has requested the OOR to make a finding of bad faith against the Borough, arguing that the Borough's conduct reflects a continued pattern of obstructive behavior, evidentiary failures, and advancing pretextual arguments. Although the OOR may make such a finding, only the courts have the authority to impose sanctions on agencies. *See generally* 65 P.S. § 67.1304(a) (noting that a court "may award reasonable attorney fees and costs of litigation...if the court finds...the agency receiving the...request willfully or with wanton disregard deprived the requester of access to a public record...or otherwise acted in bad faith..."); 65 P.S. § 67.1305(a) ("A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith"). Under the RTKL, a finding of bad faith may be appropriate where an

agency refuses to comply with its statutory duties under the RTKL. *See Uniontown Newspapers, Inc.*, 185 A.3d at 1172 (Pa. Commw. Ct. 2018), *aff'd*, 243 A.3d 19 (Pa. 2020).

In the instant matter, the OOR declines to make a finding of bad faith. The Borough timely and thoroughly responded to the Request, provided responsive records where possible, and has participated on appeal. Accordingly, the OOR declines to find that the Borough has acted in bad faith.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Borough is required to provide the information responsive to Items 1, 2, 3, the remainders of Items 4-7, and Items 8-9 in an electronic medium within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the 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 Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁷ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 10, 2025

/s/ Tope L. Quadri

TOPE L. QUADRI
APPEALS OFFICER

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

Sent via portal to: Michael Long
Bradford T. Flynn, AORO
J. Chadwick Schnee, Esq.

Exhibit

B

September 25, 2025

Kyle Applegate, Esq.
Chief Counsel
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

IN THE MATTER OF
MICHAEL LONG, Requester
v.
BOROUGH OF BATH, Respondent
Docket No: AP 2025-0522

PETITION FOR RECONSIDERATION OF FD AP 2025-1943

In accordance with 4 Pa. Code § 1.3 and the Office of Open Records' established procedures for reconsideration under GRAPP, 1 Pa. Code § 35.241, Michael Long ("Requester") respectfully submits this Petition for Reconsideration of the Final Determination entered in OOR Dkt. No. AP 2025-1943. A Petition for Reconsideration must be filed within fifteen (15) calendar days of the issuance of a Final Determination and must clearly state the specific grounds upon which reconsideration is sought. The Right-to-Know Law (RTKL), 65 P.S. § 67.101 et seq., unequivocally places the burden of proof on an agency to demonstrate, by a preponderance of the evidence, that responsive records either do not exist or are exempt from disclosure. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013). That burden may only be discharged through competent, detailed, and good-faith attestations providing objective evidence of the search performed. *See Pa. Dep't of Corr. v. St. Hilaire*, 210 A.3d 1183, 1190 (Pa. Commw. Ct. 2019); *Office of the Governor v. Scolforo*, 65 A.3d 1095 (Pa. Commw. Ct. 2013) (en banc). The Commonwealth Court has repeatedly emphasized that **conclusory** affidavits are inadequate, and an adjudicatory body's decision cannot stand if it represents a **capricious disregard** of competent evidence. *See Hodges v. Pa. Dep't of Corr.*, 153 A.3d 453 (Pa. Commw. Ct. 2017); *Mahon v. Pa. Dep't of Health*, 283 A.3d 929 (Pa. Commw. Ct. 2022); *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367 (Pa. Commw. Ct. 2013).

Here, the Borough of Bath failed to satisfy its statutory burden, and the OOR compounded the error by crediting affidavits that are **conclusory**, facially deficient, and directly contradicted by both prior sworn testimony and the OOR's own factual findings. This acceptance of legally

insufficient evidence constitutes a **capricious disregard** of the record. The OOR further erred by disregarding dispositive evidence of bad faith, including material misrepresentations and deliberate misinterpretations of the Request. The refusal to enter a finding of bad faith renders the Final Determination not only erroneous but unenforceable. This petition therefore seeks vacatur of the Final Determination, dismissal of the Borough's affidavits as incompetent and unreliable, recognition that no records have yet been produced, and entry of a finding of bad faith.

STATEMENT OF ISSUES PRESENTED FOR RECONSIDERATION

1. Whether the OOR erred in law and abused its discretion by crediting **conclusory**, facially deficient affidavits that conflict with binding precedent and the OOR's own evidentiary standards, and by failing to dismiss those affidavits as unreliable.
2. Whether the OOR **capriciously disregarded** dispositive record evidence by failing to reconcile the Borough's current sworn statements with its own prior Final Determination in AP 2025-0522, which confirmed the Borough's capacity to generate the very audit-trail reports at issue.
3. Whether the OOR erred by accepting the Borough's "custom report" defense under 65 P.S. § 67.705, despite incontrovertible video demonstrations and prior productions proving the reports are standard QuickBooks outputs, not newly created records.
4. Whether the OOR disregarded clear evidence of bad faith when it credited the AORO's sworn claim of compliance, despite proof that no records were produced, access was conditioned on an unlawful paper-copy fee, and outdated non-native records were substituted for live electronic data.
5. Whether the OOR failed to adjudicate or address the Borough's deliberate misinterpretation of Item 7, leaving the Final Determination internally inconsistent and unenforceable, and whether the OOR's refusal to enter a finding of bad faith—despite overwhelming evidence of misrepresentation, contradiction, and pretext—was reversible error undermining the integrity of the RTKL.

I. THE BOROUGH'S AFFIDAVITS ARE CONCLUSORY, CONTRADICTORY, AND LEGALLY INSUFFICIENT

The OOR committed clear legal error in accepting the Borough's affidavits as competent evidence of a good-faith search and nonexistence of records. The affidavits submitted by Borough Manager Bradford Flynn and Bookkeeper Julia Silvestri are paradigmatic examples of **conclusory** testimony: they lack factual specificity, omit fundamental details of the search process, and are contradicted by prior sworn statements.

The Commonwealth Court has repeatedly admonished that affidavits must be "detailed, nonconclusory, and submitted in good faith." *St. Hilaire*, 210 A.3d at 1190. To meet this standard, an attestation must provide objective evidence of the search, detailing the specific files, systems, and locations searched and the search terms employed. *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) (en banc). General assertions that records do not exist are legally insufficient. *Hodges*, 153 A.3d at 460; *Carey*, 61 A.3d at 373.

The OOR's own training materials (Ex. P) crystallize this principle: statements such as "The requested record does not exist" are identified as **conclusory** and incompetent.

Here, Flynn's affidavit merely declares that he "conducted a review of all records" and "did not locate any existing reports responsive" (Flynn Attest., ¶¶ 5, 8). Silvestri asserts only that she is "aware that the Borough does not have any responsive custom reports" (Silvestri Attest., ¶ 6). These statements provide none of the required factual detail: they do not identify the systems searched (e.g., the QuickBooks database), the parameters employed, the scope of repositories examined, or the retention policies applied. They fail to reference the standard audit trail functionality or the simple export procedures the Requester himself demonstrated. In short, they are devoid of the objective evidence necessary for the OOR to assess the adequacy of the search, as required by *Scolforo*.

Moreover, these affidavits directly contradict prior sworn statements. In AP 2025-0522, the OOR found as fact that Silvestri, under Flynn's direction, successfully generated the same category of reports. An affidavit that repudiates an agency's own prior sworn testimony is inherently unreliable and entitled to no deference. *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382–83 (Pa. Commw. Ct. 2014).

Accordingly, the Borough's affidavits must be deemed incompetent and unreliable. By crediting them, the OOR abdicated its role as an independent fact-finder, misapplied settled law, and disregarded its own evidentiary standards.

II. The Borough's Affidavits Are Irreconcilable with Prior OOR Findings and Statutory Mandates Requiring a Complete Audit Trail

The Appeals Officer committed reversible error by crediting the Borough's sworn attestations that responsive audit trail reports "do not exist" or are "not maintained." These affidavits are contradicted not only by the certified record of a prior OOR proceeding but also by the Borough's independent statutory duties under the Borough Code and the Municipal Records Act, which render any claim of "nonexistence" legally impossible. Acceptance of such affidavits constitutes both a capricious disregard of competent evidence and a clear error of law.

Prior OOR Findings Establish the Borough's Capability to Generate Audit Trail Reports

The OOR's own Final Determination in *Long v. Borough of Bath*, OOR Dkt. AP 2025-0522 (Apr. 30, 2025), conclusively established that the Borough's bookkeeper successfully generated Audit Trail reports for the Borough's General Fund accounts. The Final Determination recites:

"Mr. Flynn directed Ms. Silvestri to follow the instructions provided in the Request to generate the customized reports sought by the Requester. 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.” (AP 2025-0522 Final Determination at 7).

This finding was grounded in Ms. Silvestri’s own sworn attestation of March 14, 2025, wherein she admitted:

“I was able to successfully generate custom reports in response to Items 2 and 3 in PDF format, which I provided to Manager Flynn.” (Silvestri Attestation, AP 2025-0522, ¶ 37).

Thus, the OOR has already found as a matter of fact that Audit Trail reports for accounts in the #100.00–#499.99 range not only exist but were actually generated and produced by the Borough.

The Borough’s Current Attestations Are Irreconcilable with Its Prior Sworn Testimony

In the current proceeding, the Borough has radically altered its position. Borough Manager Bradford Flynn swore that “Based on my searches and inquiry, I did not locate any existing reports responsive to any other portion of the Request” and further asserted that producing such reports “would require the Borough to create records that do not currently exist.” (Flynn Attestation, July 23, 2025, ¶¶ 8, 11). Likewise, Bookkeeper Julia Silvestri swore that she is “aware that the Borough does not have any responsive custom reports in its physical or electronic possession.” (Silvestri Attestation, July 23, 2025, ¶ 6).

These statements are irreconcilable with both Silvestri’s March 14, 2025 sworn admission and the OOR’s own prior factual finding. An agency cannot, in one docket, attest that it successfully generated reports from QuickBooks, and then in another docket, attest that the very same reports “do not exist.” Such contradictory sworn statements cannot simultaneously be true. The Borough’s shifting narrative is dispositive evidence of bad faith and renders its current affidavits unreliable and unworthy of any evidentiary weight.

Statutory and Legal Mandates Render the Borough’s Claims of “Nonexistence” Impossible

Beyond evidentiary contradictions, the Borough’s assertions are foreclosed by black-letter law. Pennsylvania law imposes upon every borough an affirmative duty to maintain complete, verifiable financial records subject to independent audit and public accountability. This duty is impossible to satisfy absent the maintenance of a complete audit trail.

1. **Annual Audit Requirement under the Borough Code.** Section 1059.11(a) of the Borough Code mandates that independent auditors must conduct the annual audit “in accordance with generally accepted auditing standards” (GAAS). GAAS inherently require the presence and testing of a traceable audit trail to verify the accuracy and integrity of financial statements. Without an audit trail, the statutory mandate of an annual audit is incapable of being lawfully fulfilled.

2. **Retention of Source Documentation.** Section 1041(b.1) of the Borough Code explicitly provides that all “orders, vouchers and certificates of indebtedness which have been paid shall, on their presentation to the auditors, be canceled.” This requirement presupposes the maintenance of all source records forming the basis of each transaction. The cancellation process only has meaning if the records are retained for review as part of the audit trail.
3. **Public Records Duty under the Municipal Records Act.** The Municipal Records Act, 53 Pa.C.S. § 1382, defines “public records” to include all papers, books, maps, photographs, and “other documentary materials, regardless of physical form or characteristics, made or received by an entity under law.” This statutory definition encompasses electronic financial entries and audit logs generated by QuickBooks. Once created, these entries are legally defined as public records and must be retained.
4. **Judicial Enforcement through Surcharge.** Pennsylvania courts have repeatedly held that the surcharge mechanism—by which auditors hold public officials personally liable for the misuse of public funds—is predicated on the ability to trace every transaction from its summary entry back to its source. *See In re Appeal of E. Rockhill Twp. Supervisors*, 430 A.2d 1213 (Pa. Commw. Ct. 1981) (surcharge requires proof of actual loss through examination of financial records). Without a complete audit trail, the surcharge remedy collapses. To accept the Borough’s assertion that no audit trail exists is to accept that Pennsylvania’s statutory scheme for financial accountability is a nullity.
5. **Administrative Guidance.** The Department of Community and Economic Development’s *Fiscal Management Handbook* underscores this legal framework with unambiguous language: “You must leave an Audit Trail.” It identifies the audit trail as the “first and most important requirement” of any municipal accounting system, directly reflecting the duties imposed by statute and case law.

Taken together, these authorities demonstrate that the Borough’s sworn claim that audit trail reports “do not exist” is not merely contradicted by the record but is legally impossible. The Borough cannot evade statutory mandates by redefining or ignoring them, nor can the OOR credit affidavits that contradict both prior findings and binding law. The Borough’s affidavits must therefore be deemed unreliable and dismissed, and the OOR’s failure to so hold constitutes a capricious disregard of both competent evidence and controlling statutory requirements.

III. THE BOROUGH'S "CUSTOM REPORT" DEFENSE IS A BAD-FAITH PRETEXT

The Office of Open Records erred both legally and factually by endorsing the Borough's contention that the requested audit-trail reports were "custom" records whose generation would constitute impermissible "data manipulation" under 65 P.S. § 67.705. That contention is not a plausible construction of the Right-to-Know Law but a deliberate **bad-faith pretext** designed to obstruct access.

The Request expressly identified the Audit Trail report native to QuickBooks and specified that it should "include, but [is] not limited to" fields such as transaction type, date, memo,

account, and amount. This language merely describes the constituent fields of QuickBooks' standard audit-trail output; it does not require any reconfiguration or novel compilation. The Request thus tracked, verbatim, the format of reports the Borough has produced in prior matters.

The evidentiary record demonstrates beyond dispute that the Borough's defense is untenable. The Pennsylvania Supreme Court has held that retrieving and exporting data from an existing agency database does not constitute the "creation" of a new record. *Pa. State Police v. Grove*, 161 A.3d 877, 894 (Pa. 2017). This principle builds upon earlier Commonwealth Court precedent holding that data retrieval is not record creation. *See Commonwealth v. Cole*, 52 A.3d 541 (Pa. Commw. Ct. 2012). Video evidence (Ex. G) shows the report is generated by a routine selection of the "Audit Trail" command, entry of a date range, and export of the resulting file. This is classic data retrieval, which *Grove* and *Cole* confirm is required under the RTKL.

Equally dispositive, Exhibits E, H, and O establish that the Borough itself has repeatedly produced audit-trail reports in precisely this format: each contains the same ten standard columns—Num, Entered/Last Modified, Last Modified By, State, Date, Name, Memo, Account, Split, and Amount. These past productions foreclose any claim that the reports are "custom."

By disregarding both the demonstrative video evidence and binding Supreme Court precedent, the OOR credited a contention that is demonstrably false. Such acceptance constitutes **capricious disregard** of the record and reversible error. The "custom report" argument must be recognized for what it is: a **bad-faith pretext** advanced to evade the Borough's statutory duty of disclosure.

IV. THE AORO'S CLAIM OF COMPLIANCE WAS A MATERIAL MISREPRESENTATION MASKING A CONSTRUCTIVE DENIAL

The Office of Open Records erred by accepting as credible the Borough's attestations notwithstanding clear, record-based proof that the Agency Open Records Officer (AORO), Bradford Flynn, made a **material misrepresentation** designed to manufacture the appearance of compliance and to mask a constructive denial of the entire request.

In his sworn attestation, Flynn stated without qualification: "Based on my searches and inquiry, I located existing reports responsive to Items 4–7 of the Request and provided them to the Requester in an electronic medium and PDF file format." (Flynn Attestation, July 23, 2025, ¶ 7) (emphasis added). This assertion is demonstrably false and was calculated to mislead the OOR into believing the Borough had partially complied.

The Borough's own Final Response—also signed by Flynn under penalty of 18 Pa.C.S. § 4904—confirms that no records were provided. Instead, it conditioned any release on the Requester's payment of \$24.00 for "copied records." (Borough Final Response, p. 11). Such conduct, intended to "frustrate, rather than facilitate, the disclosure process," is evidence of bad faith. *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161 (Pa. Commw.

Ct. 2018), *aff'd*, 243 A.3d 19 (Pa. 2020). The Borough produced nothing; it withheld the entirety of Items 4–7 behind a pretextual paywall.

The Offer Was for the Wrong Medium and an Improper Format.

The Borough offered paper "photocopies" of electronic QuickBooks reports that were requested—and that exist—in an electronic medium. (Borough Final Response, p. 11). Video evidence in the record demonstrates that the reconciliation and audit-trail outputs at issue are standard, native QuickBooks reports (Exhibit G, Video Demonstration, 0:02–0:07). Forcing a requester to accept paper copies of native electronic records violates 65 P.S. § 67.701, which entitles requesters to records in the medium in which they exist.

The Offer Substituted an Outdated, Inferior Record for the Actual Record Used by Employees.

QuickBooks reports are dynamic outputs generated from the live database via user-selected parameters (e.g., date range, account). An employee seeking an accurate reconciliation would generate a current report from live data—not retrieve a years-old paper copy from a file cabinet. *Commonwealth v. Cole*, 52 A.3d 541 (Pa. Commw. Ct. 2012), confirms that the public is entitled to records "in the same format that [they] would be available to agency personnel." The Borough's choice to retrieve and photocopy old paper files—rather than perform a simple electronic export from live data—deviates so sharply from ordinary practice that it supports a strong inference of bad faith.

The OOR's Failure to Scrutinize this Multi-Layered Pretext Was a Capricious Disregard of the Evidence.

Flynn's statement that he "provided" records was a **material misrepresentation**. No records were provided; access was conditioned on an unlawful format and fee, yielding a constructive denial. The OOR's acceptance of this false assertion, without reconciling it against the Borough's own Final Response and the evidentiary record, constitutes **capricious disregard** and reversible error. This conduct is precisely the type of tactic designed to obstruct access that is condemned as bad faith in *Uniontown Newspapers*.

V. THE BOROUGH'S DELIBERATE MISINTERPRETATION OF ITEM 7 IS DISPOSITIVE EVIDENCE OF BAD FAITH

The Borough's treatment of Item 7 exemplifies a deliberate act of misdirection that cannot be reconciled with the RTKL's requirement of a good-faith search. Item 7 requested audit-trail and reconciliation records from the First Northern Bank and Trust account used as a resident payment location for municipal waste, covering the period 2018 until the account's closure. The request identified the account with precision—by bank, purpose, and temporal scope—meeting and surpassing the specificity standard of 65 P.S. § 67.703.

The AORO, however, did not attempt to locate records responsive to the account actually identified. Instead, in the Borough's Final Response, he unilaterally redefined the request to

refer to the "Municipal Solid Waste Fund," an entity not established until 2022. He then denied the request on the basis that no records could exist before that date. (Borough Final Response, p. 10). This maneuver was not a reasonable interpretation of ambiguous language; it was a calculated substitution that manufactured nonexistence where the request had clearly identified an account spanning 2018 through closure.

Such conduct violates the AORO's statutory duty under § 67.901 to make a good-faith effort to determine whether the requested records exist. The Commonwealth Court has held that agencies must construe requests liberally and in favor of access. *See Dep't of Env'tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012). By ignoring the plain language of Item 7, the Borough engaged in the opposite: a restrictive reinterpretation designed to obstruct access. This type of mischaracterization, meant to "frustrate, rather than facilitate, the disclosure process," is itself dispositive evidence of bad faith under *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018).

The OOR's failure to address this deliberate misinterpretation in its Final Determination compounds the error. By remaining silent, the OOR effectively sanctioned the Borough's tactic and left Item 7 unresolved, rendering the Final Determination internally inconsistent and practically unenforceable. A reconsideration order must correct this omission by making explicit findings: (1) that Item 7 was clear and specific, (2) that the Borough deliberately substituted a different fund to evade its obligations, and (3) that such conduct constitutes dispositive evidence of bad faith.

VI. CONCLUSION

For the foregoing reasons, the Requester respectfully submits that the Final Determination in AP 2025-1943 must be vacated in its entirety. The evidentiary record, considered under binding precedent, compels a singular conclusion: the Borough's affidavits are not credible, not competent, and must be expressly deemed unreliable and dismissed. They fail to satisfy the RTKL's burden of proof and are directly contradicted by the Borough's prior sworn statements and the OOR's own adjudicatory findings. It is equally clear that no responsive records have been produced to date. The Borough's offers of outdated paper copies conditioned on unlawful fees do not constitute compliance but amount to constructive denials. Every item requested—whether styled as "audit trail," "reconciliation," or otherwise—is in truth a standard QuickBooks report generated from live, electronic data. The Borough's refusal to generate and disclose these records from its current database frustrates the RTKL's core objective of transparency and accountability.

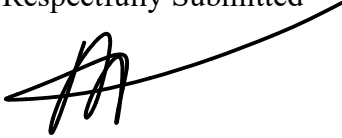
The Borough's deliberate misinterpretation of Item 7 provides dispositive proof of bad faith. By substituting a wholly different fund for the specific account actually identified, the AORO fabricated a basis for denial and evaded his statutory duty of a good-faith search. The OOR's failure to adjudicate this issue renders the Final Determination internally inconsistent and legally unenforceable.

Taken cumulatively, these defects—**conclusory** affidavits, contradiction with prior findings, pretextual defenses, material misrepresentations, and deliberate misinterpretations—require

one inescapable outcome. The OOR must vacate the Final Determination, clarify that all requested records are QuickBooks reports retrievable from live data, recognize that no records have been produced, and enter a formal finding of bad faith against the Borough. Anything less would sanction evasion, embolden obstruction, and erode the RTKL's mandate to facilitate public access to government records. The record admits of no alternative conclusion.

I verify that the statements made herein are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904.

Respectfully Submitted

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'ML' or similar initials, followed by a long horizontal stroke extending to the right.

Michael Long

September 25, 2025

Exhibit

C



OOOR RESPONSE TO PETITION FOR RECONSIDERATION

DATE ISSUED AND MAILED: September 30, 2025

IN RE: *Michael Long v. Bath Borough*, OOR Dkt. AP 2025-1943

On September 25, 2025, the Office of Open Records (“OOR”) received a petition for reconsideration (“Petition”) from Michael Long (“Requester”), pertaining to the above-referenced docket number. The Petition is **DENIED**. The Final Determination thoroughly addresses the issues, and we decline to grant reconsideration.

Further, the Petition contains multiple instances of citations or quotes that do not exist, making it inherently unreliable. For example, page 2 of the Petition contains an alleged quote from “*Pa. Dep’t of Corr. v. St. Hilaire*, 210 A.3d 1183, 1190 (Pa. Commw. Ct. 2019).” That citation is not correct¹, and instead leads to *Desamours v. State*, a 2019 case from the Supreme Court of Rhode Island. Notwithstanding that deficiency, the quote does not exist in *St. Hilaire*. The Petition also cites to “*In re Appeal of E. Rockhill Twp. Supervisors*, 430 A.2d 1213 (Pa. Commw. Ct. 1981)” for the proposition that “surcharge requires proof of actual loss through examination of financial records.” However, that citation leads to another 1981 Commonwealth Court case – *Bi-Lo Shop-N-Bag v. Workmen’s Compensation Appeal Bd.* – which has nothing to do with the cited proposition. The undersigned has been unable to find any case captioned “*In re Appeal of E. Rockhill Twp. Supervisors.*” As a final example, the Petition states: “The Pennsylvania Supreme Court has held that retrieving and exporting data from an existing agency database does not constitute the “creation” of a new record. *Pa. State Police v. Grove*, 161 A.3d 877, 894 (Pa. 2017).” However, the *Grove* opinion does not contain such a holding– while it contains analysis as to whether the redaction of a video record creates a new record, that analysis does not concern databases. Further, page 894 of the *Grove* opinion clearly concerns whether a video contains criminal investigative material and does not involve data or databases.

Based upon the above, it is likely that there are additional misstatements contained in the Petition. These misstatements are concerning. The Petition concludes with a verification stating: “I verify that the statements made herein are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904.” It is unclear whether the statements were intentionally made, or whether the statements were

¹ The correct citation is 128 A.3d 859.

generated through the use of artificial intelligence (AI) and not thoroughly vetted by the Requester. However, on page 7 of the Final Determination, the Appeals Officer warned the Requester, as follows:

It is important to note that in this submission, the Requester cites to a purported Commonwealth Court case to support that a claim that the Borough's argument regarding the creation of a record is barred by judicial estoppel and that it is a doctrine applicable to agency proceedings; however, a review of the citation provided reveals a completely different case than the one cited by the Requester. Further, there is no evidence that the Commonwealth Court case cited by the Requester even exists. Accordingly, it is unclear if this citation was gathered and summarized by using artificial intelligence ("AI"). AI routinely hallucinates the existence of case law or misrepresents the holdings of case law that exist to the user's detriment. The use of AI does not relieve parties of their obligation to present accurate facts and legal arguments to the OOR in good faith. Additionally, quotes from cases and court opinions submitted to the OOR should be accompanied with citations to the exact, actual page of said quote.

I again caution the Requester: parties have an obligation to present accurate facts and legal arguments to the OOR.

Issued by:
[/s/ Kyle Applegate](#)

CHIEF COUNSEL
Kyle Applegate

Sent to: Michael Long; Bradford Flynn; J. Chadwick Schnee, Esq.