pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MICHAEL LONG,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-2665**
	:	
BATH BOROUGH,	:	
Respondent	:	

FACTUAL BACKGROUND

On May 15, 2026,[1] Michael Long ("Requester") submitted a request ("Request") to Bath Borough ("Borough") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> 1. Tax Revenue Account Records
>
> Please provide the records identified below for the Tax Account held at First Northern Bank & Trust, account ending 0642, and for every other account in the Borough's records that is labeled, classified, or categorized by the Borough as a tax account, tax revenue account, real estate tax account, earned income tax account, local services tax account, per capita tax account, transfer tax account, or by any analogous term identifying the account as one used to receive, hold, reconcile, transfer, accrue, or disburse tax revenue. The records requested are:
>
> [a]. Monthly bank statements[;]
> [b]. General Journal Entry reports[;]
> [c]. Monthly reconciliation summaries[;]

[1] While the Request is dated May 14, 2026, the Request was received by the Borough on May 15, 2026. *See* Flynn Attestation ¶ 9.

[d]. Monthly reconciliation detail reports[;]
[e]. QuickBooks Voided/Deleted Transactions reports[; and]
[f]. QuickBooks Audit Trail reports.[]

2. Developer Escrow Account Records

Please provide the records identified below for every developer escrow account held by the Borough. The records requested are:

[a]. Monthly bank statements[;]
[b]. General Journal Entry reports[;]
[c]. Monthly reconciliation summaries[;]
[d]. Monthly reconciliation detail reports[;]
[e]. QuickBooks Voided/Deleted Transactions reports[; and]
[f]. QuickBooks Audit Trail reports.[]

This [Item] is not limited to developer escrow account numbers known to the [R]equester. It applies to the complete Developers Escrow QuickBooks company file, fund, or accounting-system file, and to every account in any Borough QuickBooks company file, fund, or accounting-system file that is labeled, classified, or categorized by the Borough as developer escrow, subdivision escrow, land-development escrow, SALDO escrow, project escrow, or by any analogous term in the Borough's own chart of accounts, account list, bank account list, reconciliation records, QuickBooks records, or accounting-system records. The universe of responsive accounts is defined by the Borough's own records and labeling, not by any functional analysis required of Borough staff.

3. Chart of Accounts/Account Lists

Please provide the QuickBooks Chart of Accounts, account list, fund list, bank account list, or other existing account list maintained in the Borough's accounting system showing account names, account numbers or last four digits, account types, fund/company file, active/inactive/closed status, and any parent/subaccount relationship for each QuickBooks company file, fund, or accounting-system file maintained by the Borough during the [R]equest period for the following account groups: MS4 Fund; Tax Account held at First Northern Bank & Trust, account ending 0642; Sanitation Fund/Municipal Solid Waste Fund; Fire Protection Fund/Fire Fund; Highway Aid Fund; Developers Escrow; and Capital Improvement Fund.

For Developers Escrow, I am requesting the Chart of Accounts/account list for the Developers Escrow QuickBooks company file, fund, or accounting-system file.

4. General Journal Entry Reports for Other Identified Accounts

Please provide General Journal Entry reports for all accounts found within the Chart of Accounts for the following Borough QuickBooks companies, funds, or company files, including accounts held at First Northern Bank & Trust and ESSA Bank & Trust: MS4 Fund; General Fund; Sanitation Fund; Fire Protection Fund; Highway Aid Fund; Developers Escrow; Non-Developers Escrow; and Capital Improvement Fund.

This includes accounts and funds with spending constraints or fund-balance classifications including restricted, committed, assigned, unassigned, and unrestricted fund balances, and any Borough QuickBooks company, fund, account, or company file that was open on January 1, 2017 or opened at any point during the timeframe of this [R]equest.

5. Developer Escrow Agreement/Escrow Letter

Please provide the standard developer escrow agreement, escrow letter, template agreement, form agreement, model agreement, or other standard document used by the Borough during the [R]equest period that sets out the responsibilities of the Borough and the developer regarding deposit, custody, management, use, reimbursement, accounting, or return of developer escrow funds.

6. Retained Earnings Reports

For each QuickBooks company file, fund, account register, subaccount, or accounting-system file maintained by the Borough during the [R]equest period, please provide Retained Earnings reports showing transactions involving any account labeled Retained Earnings.

7. Fiscal Year 2025 Audit/DCED Filing

Please provide the Borough's fiscal year 2025 Municipal Annual Audit and Financial Report, Form DCED-CLGS-30, filed with the Pennsylvania Department of Community and Economic Development [("DCED")], including the fiscal year 2025 DCED audit filing required to be made with the state as of April 1, 2026.

Please also provide the independent auditor's report and audited financial statements for fiscal year 2025, if maintained separately from the DCED filing.[2]

On June 19, 2026, following thirty-day extensions during which to respond, 65 P.S. § 67.902(b), the Borough partially granted the Request,[3] as follows:

[2] The Requester seeks records from January 1, 2017 through the date of the Request. *See* Request.

[3] The Borough's final response was made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, and authored by Bradford T. Flynn ("Flynn Statement"), the Borough's Manager.

Item 1a: The Borough located 288 responsive pages and seeks prepayment of $72.00 for duplication fees at $0.25 per page, for a total of $72.00.[4] Records from January 1, 2017 through December 31, 2017 do not exist.

Item 1b: The Borough granted Item 1b and provided responsive records under Item 4.

Item 1c and 1d: The Borough located 205 responsive pages for January 1, 2017 through December 31, 2023. The Borough seeks prepayment of $51.25. The Borough also provided a website link for responsive records, dated January 1, 2024 through April 30, 2026.[5]

Items 1e and 1f: The Borough granted Items 1e and 1f and provided responsive records in electronic format.

Item 2: The Borough identified 24 active and inactive developer escrow accounts.

Item 2a: The Borough denied a portion of Item 2a, claiming records were previously provided to the Requester on May 21, 2024, April 30, 2024, June 21, 2024. The Borough located 1,679 responsive pages and seeks prepayment of $419.75.

Item 2b: The Borough granted Item 2b and provided responsive records under Item 4.

Item 2c and 2d: The Borough denied a portion of Item 2c, claiming records, dated January 1, 2019 through December 31, 2024, were previously provided to the Requester. The Borough located 1,609 responsive pages and seeks prepayment of $402.25.

Item 2e and 2f: The Borough granted Items 2e and 2f and provided responsive records in electronic format.[6]

Item 3: The Borough granted Item 3 and provided responsive records in electronic format.

Item 4: The Borough partially granted Item 4 and provided redacted responsive records in electronic format. The Borough asserts the redacted material is exempt

[4] The Borough charges duplication fees of $0.25 per page.

[5] *See* https://bathborough.org/2024-monthly-treasurers-report/; *see also* https://bathborough.org/2025-monthly-treasurers-report/; https://bathborough.org/2026-monthly-treasurers-reports/ (last accessed by the OOR on August 26, 2026); 65 P.S. § 67.704(b)(1) (permitting an agency to respond to a request for records "by notifying the requester that the record is available through publicly accessible electronic means[.]").

[6] The Borough also charged $45.00 for two account research fees in order to provide records responsive to Item 2. Said fee was charged by the Borough's banking institution, ESSA Bank. *See* Borough submissions, dated August 4, 2026.

information related to underlying working papers of the Borough's auditor, 65 P.S. § 67.708(b)(17)(v).

Item 5: The Borough partially granted Item 5 and provided responsive records in electronic format, except for the Keeney Subdivision SALDO application. The Borough located 4 responsive pages and seeks prepayment of $1.00. The Borough also partially denied Item 5, claiming some of the Borough's escrow accounts do not maintain the requested records.

Item 6: The Borough partially granted Item 6 and provided redacted responsive records in electronic format. The Borough asserts the redacted material is exempt information related to underlying working papers of the Borough's auditor, 65 P.S. § 67.708(b)(17)(v).

Item 7: The Borough granted Item 7of the Request, and provided a website link for access to the responsive records.[7]

On July 2, 2026, the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial[8] and fees assessed by the Borough.[9] 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 this appeal. 65 P.S. § 67.1101(c).

On July 10, 2026, the Requester submitted a position statement, claiming the Borough has not met its burden in regard to the redactions made pursuant to Section 708(b)(17)(v).[10] The Requester also seeks *in camera* review of the redacted records.

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[7] *See* https://bathborough.org/borough-of-bath-budget/ (last accessed by the OOR on August 26, 2026).

[8] The Requester also appears to challenge the timeliness of the Borough's final response; however, said final response was timely issued. The Borough's extension letter was due within five business days of May 15, 2026, i.e., by May 22, 2026. 65 P.S. § 67.901. Based upon the thirty-day extension, the Borough's final response was due on June 22, 2026, as June 21, 2026 was a Sunday. 65 P.S. § 67.902(b). Thus, as the final response was issued on June 19, 2026, said final response was timely.

[9] The Requester granted the OOR a thirty-day extension to issue a Final Determination. *See* 65 P.S. § 67.1101(b)(1) ("Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).").

[10] The Requester cites to "*Off. of the Governor v. Scolforo*, 65 A.3d 1095 (Pa Commw. Ct. 2013)" noting "[p]ersuasive OOR authority applies AICPA/PCAOB-style definitions of audit workpapers as auditor-kept engagement materials recording procedures, tests, information, and conclusions, including analyses, memoranda, confirmations, abstracts, schedules, or commentaries prepared or obtained by the auditor." *See* Requester position statement p. 3. This is not accurate, as *Scolforo* does not contain this language, nor does *Scolforo* contain an analysis related to Section 708(b)(17) of the RTKL. Parties to a RTKL appeal have an 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.

On July 13, 2026, the Borough submitted a position statement, asserting that no additional records responsive to the Request exist in the Borough's possession, custody or control. Additionally, the Borough argues that the redactions within the responsive records also represent exempt internal, predecisonal deliberative information, 65 P.S. § 67.708(b)(10), and accountant-client privileged information, 63 P.S. § 9.11a. Lastly, the Borough argues that the fees assessed are permissible and in accordance with the Borough's copying fees, which were adopted by Borough Resolution 2025-011.[11] In support of its position, the Borough submitted an attestation, made under the penalty of perjury, 18 Pa.C.S. § 4902, authored by Bradford T. Flynn ("Flynn Attestation").

On July 17, July 21 and August 1, 2026, the Requester made a total of 21 submissions, reiterating the arguments made at the time of and during the appeal.[12]

On August 4, 2026, the Borough submitted a second position statement,[13] correcting the Borough's previously noted page count. In support of the correction, the Borough submitted an attestation, made under the penalty of perjury, 18 Pa.C.S. § 4902, authored by Bradford T. Flynn ("Flynn Second Attestation"). The Borough also submitted two letters from ESSA Bank, detailing the account research fees charged to the client, and a Log, detailing the records produced in response to the Request.

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[11] *See* https://ecode360.com/BA3787/document/753234101.pdf (last accessed by the OOR on August 26, 2026).

[12] The Requester asserts multiple times in these submissions that the Borough failed to produce responsive metadata; however, the Request does not seek metadata. The original Request, as written, includes an introductory page including paragraphs labeled as "Production Note[s]" The Request includes a paragraph explaining direct email delivery is sought in order to "preserve the integrity of the responsive records," including metadata. The Request does not seek the actual metadata. The OOR has repeatedly held that a requester may not modify, explain or expand a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Dep't of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that "where a requestor requests a specific type of record … the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request"). Thus, the Requester's assertion that the Borough has not produced responsive metadata will not be further addressed in this Final Determination.

[13] The factual statements contained in the Borough's second position statement are affirmed to be true. *See* Flynn Second Attestation ¶ 9.

On August 4, 2026, the Requester submitted a final position statement, objecting to the Borough's August 4, 2026 submissions as untimely and requesting that the OOR disregard the submissions. On July 17, 2026, the OOR provided an evidentiary submission extension to the Borough through July 31, 2026. Both parties submitted evidence after this date,[14] and to develop the record, all of the submissions were considered. *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").

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).

[14] Of note, a requester in a RTKL appeal does not have the right to rebut an agency's submission. *UnitedHealthcare of Pa., Inc. v. Baron*, 171 A.3d 943, 952 (Pa. Commw. Ct. 2017) ("Requester is not entitled to rebuttal for the sake of having the last word"); *Jensen v. Pa. Dep't of Corr.*, No. 317 C.D. 2023, 2024 Pa. Commw. Unpub. LEXIS 108, *8 (finding that a requester did not have a due process right to respond to the agency's position statement).

While the Requester sought an *in camera* review of the redacted records, the OOR has the information and evidence before it to properly adjudicate the matter. Therefore, the request for *in camera* review is denied.

1. The Borough demonstrated the responsive records contain material that is exempt pursuant to Section 708(b)(17) of the RTKL

Section 708(b)(17) of the RTKL exempts from disclosure records of an agency "relating to a noncriminal investigation," including "[w]ork papers underlying an audit[.]" 65 P.S. § 67.708(b)(17)(v). In order for this exemption to apply, an agency must demonstrate that "a systematic or searching inquiry, a detailed examination, or an official probe" was conducted regarding a noncriminal matter. *See Pa. Dep't of Health v. Off. of Open Records*, 4 A.3d 803, 810 11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination, or probe must be "conducted as part of an agency's official duties." *Id*. at 814; *see also Johnson v. Pa. Convention Ctr. Auth*., 49 A.3d 920 (Pa. Commw. Ct. 2012).

In *Pa. Dep't of Public Welfare v. Chawaga*, the Commonwealth Court held that "importantly, the RTKL specifically exempts the work papers underlying an audit without exempting the actual audit." 91 A.3d 257, 259 (Pa. Commw. Ct. 2014); *see also Governor's Off. of Admin. v. Purcell*, 35 A.3d 811, 816 (Pa. Commw. Ct. 2011) ("[S]pecific inclusion of some items of the same class is presumed to exclude all other items of the same class."). The RTKL does not define the "working papers underlying an audit," but the OOR has relied on the definition promulgated by the American Institute of Certified Public Accountants ("AICPA"), which defines "working papers" as records of "the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in the engagement." *See Harmon v. Londonderry Twp*., OOR Dkt. AP 2017-2276, 2018 PA O.O.R.D. LEXIS 140 (citing *Kelly & Assoc. v. NEIU*,

36 Pa. D. & C. 5th 300, 316 (Lackawanna Cnty. C.C.P. 2014)). Further, the Public Company Accounting Oversight Board AU Section 339A provides:

> Working papers are records kept by the auditor of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in the engagement. Examples of working papers are audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the auditor. Working papers also may be in the form of data stored on tapes, films, or other media.[15]

As noted in the Borough's position statement, the Borough has the legislatively-granted ability to appoint an independent auditor to conduct audits of the Borough's accounting records. 8 Pa.C.S. § 1005(7). Accordingly, the Borough possesses the statutory power to conduct audits and to be audited. The Borough has an independent appointed auditor. Flynn Attestation ¶ 40.[16] The Borough redactions consist of limited narrative descriptions or explanatory notes associated with auditor-directed journal entries or audit adjustment documentation. Flynn Attestation ¶ 38. The redactions reflect communications between the Borough and its auditor for the purpose of performing an audit. Flynn Attestation ¶ 40.

The Borough's evidence demonstrates that through its auditor, a noncriminal investigation, i.e., an audit, was performed pursuant to the Borough's legislatively granted authority. The redacted material represents the actual notes and comments of the Borough's auditor provided during the audit of the Borough's accounting records. Thus, the Borough appropriately redacted "[w]ork papers underlying an audit" as contemplated by 65 P.S. § 67.708(b)(17)(v). *See Cash v.*

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[15] *See* https://pcaobus.org/oversight/standards/archived-standards/details/AU339A (last accessed by the OOR on August 26, 2026).

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

Wheatfield Township, OOR Dkt. AP 2026-1092, 2026 PA O.O.R.D. LEXIS 1813 (finding "information obtained" and "conclusions" of an auditor are exempt pursuant to Section 708(b)(17)(v)).[17]

2. The Borough has demonstrated some responsive records do not exist

The Borough argues that a portion of the responsive records do not exist in its possession, custody or control and a portion of the responsive records were provided to the Requester in response to previous RTKL requests. 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. While the RTKL does not define the term "good faith effort," in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, the Commonwealth Court stated:

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

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

In support of the Borough's position, the Flynn Statement indicates the Borough conducted

[17] Because the Borough has demonstrated that the redacted material is exempt pursuant to Section 708(b)(17)(v), the OOR need not reach the Borough's alternative grounds for denying access to this information. *See Jamison v. Norristown Bor. Police Dept.,* OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

a comprehensive review of records maintained in its physical and electronic files, including consultation with Borough financial and administrative personnel to review historical accounting records, bank accounts, escrow accounts, QuickBooks company files, and archived records. Flynn Statement p. 1. Further, the Flynn Statement indicates that records responsive to the instant Request were provided to the Requester in response to previous RTKL requests, which occurred on May 21, 2024, April 30, 2024, June 21, 2024. *See generally* Flynn Statement. Lastly, the Flynn Statement provides the following additional details regarding the Borough's search for responsive records:

> Item [1]: The Borough's search for responsive records included the following: [r]eview of available physical and electronic accounting records maintained by the Borough related to account ending in 0642; [i]nquiry by Borough administrative staff to First Northern Bank and Trust regarding whether archived bank statements remained available through the financial institution; and On May 27, 2026, Anthony Capone, Assistant Branch Manager of First Northern Bank and Trust, advised Borough staff via email that, according to Deposit Operations and bank-wide retention practices, bank statements beyond a seven-year period are unavailable.[18]
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> Following this good faith search and inquiry, the Borough has determined that responsive bank statements for the requested period are no longer maintained or otherwise available.
>
> …
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> Responsive reports were produced using existing report functions and formats available within the Borough's accounting system.[19]
>
> …
>
> Item 5…
>
> …Please note the Borough conducted a good-faith search of physical records, electronic accounting records, and subdivision and land development files reasonably likely to contain responsive records related to Item []5.

[18] Requester appeal p. 27; Flynn Statement p. 2.
[19] Requester appeal p. 5; Flynn Statement p. 30.

> The Borough identified and is providing copies of standard documents maintained by the Borough that establish or govern developer review escrow requirements, including standard escrow provisions contained within Borough subdivision and land development application materials and any separately maintained Developer Escrow Agreements or Professional Services Agreements where such records exist.
>
> For certain escrow accounts identified by the Borough's accounting records, no separate project-specific Developer Escrow Agreement, Escrow Letter, or Professional Services Agreement was located or maintained by the Borough. The existence of an escrow account within the Borough's accounting records does not necessarily establish the existence of a separate project-specific escrow agreement, escrow letter, or other standalone escrow document maintained by the Borough.[20]
>
> …
>
> Borough staff reviewed each of the physical and digital files related to the accounts referenced above[21] and could not find Developer Escrow Agreements, Escrow Letter, or Professional Services Agreements associated with those accounts.[22]

In further support of the Borough's position, the Flynn Attestation provides the following additional details:

> 11. Processing [the Request] required the identification, review, and organization of more than 4,666 pages of responsive material, consisting of approximately 3,785 photocopied pages and 881 pages of electronically produced PDF records.
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> …
>
> 13. The Borough's search was not limited to records immediately available within active files, but also included historical paper records, archived accounting records, inactive escrow accounts, prior RTKL productions, and consultation with Borough personnel familiar with the requested records.
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> …
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> 14. The search included reviews of both physical and electronic Borough records.
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> …
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> 16. Physical files searched included banker box files located within the Borough's record storage room.

[20] Requester appeal p. 58; Flynn Statement p. 33.
[21] The Accounts include 321 Spyglass Fire Escrow, Bathview/Huratiak Security, 616 E. Main St. Fire Escrow, 129 Old Forge Drive Fire Escrow and Acquisition Management. P. 58; p. 33.
[22] Requester appeal p. 59; Flynn Statement p. 34.

17. Electronic records searched included prior RTKL [r]eques files submitted by [the Requester], related email correspondence maintained by the Borough, and the Borough's QuickBooks accounting system.

18. The search included consultation with Borough Bookkeeper Julia Silvestri regarding Borough accounting records maintained within QuickBooks.

19. Historical accounting records were also reviewed by Administrative Coordinator Mary Beth Finnerty and Senior Administrative Coordinator Tanya Larnparter under my supervision.

20. The search included review of archived paper files maintained by the Borough.

21. The search included review of historical bank accounts and accounting company files maintained by the Borough.

22. Where necessary, Borough staff reviewed inactive accounts and historical escrow records.

…

26. With respect to historical bank statements, the Borough searched its physical records and electronic records.

27. In addition to searching Borough records, Borough staff contacted First Northern Bank & Trust to determine whether historical bank statements unavailable in Borough files remained available from the financial institution.

28. First Northern Bank & Trust advised the Borough that statements older than the institution's retention period were no longer available. The Borough relied upon that information in concluding that certain requested historical statements no longer existed within the Borough's possession, custody, or control.

…

30. Responsive QuickBooks reports were generated using standard report functions available within the Borough's accounting software.

…

32. All QuickBooks reports produced were existing reports generated through ordinary software functionality.

33. The Borough did not alter software functionality or create customized reports not otherwise maintained in the ordinary course of business.

> 34. Bookkeeper Julia Silvestri reviewed and generated existing QuickBooks reports using the software's standard reporting functions and provided those reports in the formats maintained by the Borough.

The Borough has demonstrated that a good faith search of the Borough's records was performed, which included consultation with Borough financial and administrative personnel to review historical accounting records, bank accounts, escrow accounts, QuickBooks company files, and archived records. There has been no sufficient evidence provided that otherwise contradicts the statements offered by the Borough in the submitted statement and attestations. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). However, "nothing in the RTKL excuses an agency from responding to a request for records because the records were previously provided in response to a prior request for records." *Tomasic v. Forest Hills Volunteer Fire Dep't*, OOR Dkt. AP 2015-1436, 2015 PA O.O.R.D. LEXIS 1214 (internal citations omitted); *see also Mercer v. Saucon Valley School Dist*., OOR Dkt. AP 2026-2468, 2026 PA O.O.R.D. LEXIS 2496. Therefore, the Borough must provide the records responsive to the instant Request that were previously provided to the Requester, as outlined in the Flynn Statement. *See Hodges*, 29 A.3d at 1192; *Mahon* 283 A.3d at 936; *see also* Additionally, an agency is not required to provide the records to a requester without receiving the applicable fees. *See, e.g., Bowen v. Pa. Dep't of Corr*., OOR Dkt. AP 2021-0709, 2021 PA O.O.R.D. LEXIS 732. As a result, the Borough may charge and obtain payment of the fees from the Requester before providing these records responsive to the Request. *See, e.g., Boyer v. Wyoming Borough*, OOR Dkt. AP 2018-1110, 2018 PA O.O.R.D. LEXIS 1100 (finding that under no circumstances is an agency required to provide records to a requester without receiving the payment for applicable fees); *see also Grega v. Weatherly Area*

Sch. Dist., OOR Dkt. 2025-0167 (consolidated), 2025 PA O.O.R.D. LEXIS 462.

3. The Borough has partially assessed appropriate duplication fees

In the instant matter, the Borough has imposed a prepayment for the duplication of records in the amount of $991.25 for 3,785 pages of responsive records, which was revised during the course of the appeal. Flynn Attestation ¶ 49; Flynn Second Attestation ¶ 9. The Requester argues that the Borough should not have charged copying fees since he requested electronic records. The permissibility of fees is properly before the OOR on appeal. *See* 65 P.S. § 67.1307(b); *Prison Legal News v. Off. of Open Records*, 992 A.2d 942 (Pa. Commw. Ct. 2010). Section 1307 permits an agency to charge duplication fees according to the fee schedule set by the OOR[23] if the agency is required to do so in order to fulfill the request. 65 P.S. § 67.1307.

As explained by the Borough, any records in existence prior to 2022 were maintained in paper format and it was not until approximately April 2022 that the Borough began retaining digital copies of reports and records. *See* Borough second position statement; *see also generally* Flynn Attestation. Accordingly, the Borough has met its burden of proving that a portion of the responsive records do not exist in its possession, custody or control in electronic format. *Mahon*, 283 A.3d at 936 (finding that in the absence of countervailing evidence establishing that the agency acted in bad faith or that the agency records exist, averments of nonexistence should be accepted as true); *Campbell* ,268 A.3d 502 (noting that the preponderance of the evidence standard applies, which is the lowest evidentiary standard, which is tantamount to a more likely than not inquiry).

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

[23] *See* https://www.openrecords.pa.gov/RTKL/FeeStructure.cfm.

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, as noted, 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(a).

The Requester argues that the Borough should be required to provide electronic records; however, the Borough has provided evidence that a portion of the records responsive to the Request only exist in paper format. Therefore, as an agency is not required to create electronic records if the records do not exist in electronic medium, the Borough is not required to create electronic copies if those electronic copies do not exist. *See* 65 P.S. § 67.705; *see also e.g. Ayoob v. Glenfield Borough*, OOR Dkt. AP 2021-1513, 2021 PA O.O.R.D. LEXIS 1516 (acknowledging that the agency was not required to create electronic copies of records that existed only as hard copies); *Juric v. West Chester Area Sch. Dist.*, OOR Dkt. AP 2022-2469, 2022 PA O.O.R.D. LEXIS 2747.

While the Borough is not required to convert the responsive records into an electronic medium, the Borough must provide the records in the format in which they exist. The Township is under no obligation to convert the records into a new medium to satisfy the Request. *See* 65 P.S. §§ 67.701(a), 67.705. Accordingly, based on the appeal record and the evidence presented, the Borough demonstrated that the records responsive to the Request do not exist in electronic format and that it may require the Requester to pay for the responsive records prior to creating any copies. *See* 65 P.S. § 67.701(a).

Further, the Borough's fee includes $45.00 in banking fees incurred for the Borough's banking institution to research its files for responsive records. This fee is also challenged by the Requester. It is not disputed by the Borough that it was necessary to inquiry with third parties,

i.e., its banking institutions, for responsive records.[24] Because the actual costs for banking research fees are not governed by any of the regular fee provisions, the OOR turns to Section 1307(g), which provides that the miscellaneous costs an agency necessarily incurs for complying with a request may be imposed upon a requester provided that such costs are reasonable. 65 P.S. § 67.1307(g); *see also SERS v. Office of Open Records*, 10 A.3d 358, 363 (Pa. Commw. Ct. 2010); *Mezzacappa v. Colonial Intermediate Unit 20*, OOR Dkt. 2019-1922, 2020 PA O.O.R.D. LEXIS 2018. Two charges totaling $45.00 to research records within a banking institution is reasonable and is not excessive.

However, the copying fees were not appropriately calculated by the Borough, as the OOR has approved copying fees of up to $0.25 cents per page for the first 1,000 pages and $0.20 per page thereafter, not $0.25 per page when responsive records exceed 1,000 pages, as calculated by the Borough. Thus, the Borough must recalculate this fee. Further, if the Requester desires to inspect the records in person, the Requester must schedule an appointment with the Borough during normal business hours, as opposed to paying for and receiving copies of the responsive records.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**. The Borough is required to provide the Requester with the records in the Borough's possession that were not provided in response to this Request, as described above, within thirty days of the payment of duplication fees. To the extent those records do not exist in electronic form, the Borough is

[24] Under the RTKL, two groups of records are accessible--those records in an agency's actual or constructive possession reached directly under Section 901 of the RTKL and records in the possession of third parties that are indirectly accessible through Section 506(d) of the RTKL. *See Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 938-39 (Pa. Commw. Ct. 2014) (*citing Honaman v. Lower Merion Twp.*, 13 A.3d 1014 (Pa. Commw. Ct. 2011)), aff'd by, 124 A.3d 1214 (2015).

authorized to charge and collect a copying fee prior to duplication, as outlined herein, if the Requester does not choose to review the responsive records in-person. 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; 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.[25] 65 P.S. § 67.1303. 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 8, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

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

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