**RESOLUTION NO. 2026-012**

**A RESOLUTION URGING THE GENERAL ASSEMBLY OF PENNSYLVANIA TO CLARIFY THE TREATMENT OF PRIVILEGED ATTORNEY-CLIENT COMMUNICATIONS UNDER THE PENNSYLVANIA RIGHT-TO-KNOW LAW, AND URGING THE PENNSYLVANIA STATE ASSOCIATION OF BOROUGHS TO INCLUDE THIS CLARIFICATION IN ITS LEGISLATIVE AGENDA**

***Whereas***, boroughs and other local agencies depend upon candid, confidential legal advice from their solicitors in order to comply with the law, manage risk, and conduct the public business responsibly; and

***Whereas***, the attorney-client privilege exists to permit that candor, and the General Assembly expressly preserved it in the Right-to-Know Law, 65 P.S. §§ 67.101 et seq.; and

***Whereas***, Section 305(a)(2) of the Right-to-Know Law provides that a record protected by a privilege is not presumed to be a public record; and

***Whereas***, Section 102 of the Right-to-Know Law defines "privilege" to include the attorney-client privilege and any "other privilege recognized by a court interpreting the laws of this Commonwealth"; and

***Whereas***, the redaction provisions provided for within Section 706 of the Right-to-Know Law apply to "a public record, legislative record or financial record" that contains information that is subject to and not subject to access; and

***Whereas***, notwithstanding that structure, local agencies have been directed to examine privileged communications with their own solicitors and to extract purely factual information from within those communications for public release, applying a principle believed to be drawn from federal civil discovery practice; and

***Whereas***, it is believed that the rationale for the above-referenced principle in the discovery context is that a fact remains reachable by other means, including deposition of the person who knows it, so that protecting the communication does not conceal the fact; and

***Whereas***, a Right-to-Know request affords no such alternative route, because the record itself is the object of the request, with the result that the discovery principle does not preserve the privilege but instead requires an agency's own counsel to parse privileged legal advice and determine how much of it becomes public; and

***Whereas***, the Supreme Court of Pennsylvania, in *Gillard v. AIG Insurance Co.*, 15 A.3d 44 (Pa. 2011), held that the attorney-client privilege operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice and expressly declined to require "surgical

separations" of attorney advice from client input, citing the "inordinate practical difficulties" such a requirement would create and observing that "client communications and attorney advice are often inextricably intermixed"; and

***Whereas***, the Supreme Court in *Gillard* likewise recognized that the privilege "does not extend to business advice or protect clients from factual investigations," consistent with the settled principle that a party may not shield a fact from inquiry merely by communicating that fact to counsel; and

***Whereas***, that principle presumes the existence of an alternative means of inquiry, including deposition of the person possessing the fact, and does not require that a privileged communication itself be dissected and its contents produced, a distinction that loses its force where, as under the Right-to-Know Law, no alternative means of inquiry exists; and

***Whereas***, no controlling appellate authority has resolved how these principles apply under the Right-to-Know Law, with the result that local agencies throughout the Commonwealth may be asked to perform this parsing exercise and have no settled answer to give; and

***Whereas***, a borough served by a part-time solicitor and a small administrative staff cannot reasonably carry such a question to the Commonwealth Court, so that a matter of statewide importance is left to be resolved, in practice, by the agencies least able to litigate it; and

***Whereas***, if written legal advice to a borough council is subject to line-by-line parsing for public release, solicitors may be inclined to more often advise verbally and boroughs will create fewer written records, a result that serves neither government transparency nor sound public administration; and

***Whereas***, the Borough of Bath respectfully suggests that the legislature proceed with clarifying the provisions of the Right-to-Know Law to clearly state that the redaction duty and the redaction provisions of Section 706 of the Right-to-Know Law do not reach privileged records.

***BE IT RESOLVED***, this 14th day of September, 2026, that the Council of the Borough of Bath, Northampton County, Pennsylvania, calls upon the members of the Senate and House of Representatives of the General Assembly of Pennsylvania to amend the Right-to-Know Law to accomplish the following:

1. Clarify that the redaction duty does not reach privileged records — providing that the obligation under Section 706 to segregate and release accessible information applies to records that are otherwise public, and does not require an agency to extract or produce content contained within a record protected by a privilege under Section 305(a)(2); and,

2. Confirm that underlying facts remain accessible — stating plainly that nothing in this clarification shields a fact from disclosure, and that invoices, minutes, reports, financial records, and other non-privileged records containing such facts remain fully subject to the Right-to-Know Law.

***BE IT FURTHER RESOLVED***, that the Borough of Bath urges the Pennsylvania State Association of Boroughs to support these clarifications and to include them in the Association's Legislative Agenda for consideration by the voting delegates at its Annual Conference; and

***BE IT FURTHER RESOLVED***, that the Secretary is directed to transmit a certified copy of this Resolution to Senator Nick Miller, 14th Senatorial District; to Representative Zachery Mako 138th Legislative District; to the Pennsylvania Office of Open Records; and to the Pennsylvania State Association of Boroughs, with the request that it be considered for inclusion in the Association's policy resolutions.

***RESOLVED*** and ADOPTED this 14th day of September 2026.

**Attest:**

**By:** _____
Bradford T. Flynn, Secretary

**BOROUGH COUNCIL OF THE BOROUGH OF BATH**

**By:** _____
Frank J Hesch III, Council President

**Duly approved this** 14 **day of** September **2026**

**By:** _____
Fiorella Reginelli-Mirabito, Mayor