



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**DAWN PERLMUTTER,  
Requester**

**v.**

**YARDLEY BOROUGH,  
Respondent**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Docket No: AP 2022-2098**

### **FACTUAL BACKGROUND**

On August 2, 2022, Dawn Perlmutter (“Requester”) filed a request (“Request”) with Yardley Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking electronic copies of:

1. Records of Amazon purchases between August 2019 – August 2022 the purchase history as it appears on Amazon.
2. Records evidencing purchase cards, debit cards, credit cards, gift cards and petty cash transactions between May 2022 – August 2022.
3. Barry Isett & Associates invoices from April 2022 – August 2022.
4. Wes Foraker, time sheets, status reports, and other records evidencing pay rate, payments, hours worked, locations where worked was performed or descriptions of work performed from April 2022 – August 2022.
5. Yardley Borough Hourly Employees Payroll schedules (i.e. records matching days worked to pay day or check) from January 2020 – August 2022.
6. Records regarding item 7 on February 1, 2022 Managers Report under General Government regarding January 24<sup>th</sup> visit from State.

7. Records of Bills Lists from January 2021 – August 2022.

On August 8, 2022, the Borough invoked a thirty-day extension to respond. *See* 65 P.S. § 67.902(b). On September 7, 2022, the Borough partially denied the Request, arguing that “[t]he preparation of, printing all documentation of Amazon purchases (approximately 132) will cost \$33.00.” The Borough noted that the redacted records would be available upon the payment of \$33.00.

On September 9, 2022, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the duplication fee imposed by the Borough.<sup>1</sup> Specifically, the Requester argues that the Borough “is withholding records until [she] pay[s] 33.00 for the redactions and printing of all documentation of Amazon purchases” and that the Borough “has purchased Adobe Acrobat Pro software ... [that] allows Yardley borough to save these records to PDF format and to redact them using the Adobe Acrobat Pro software.” The OOR invited both parties to supplement the record and directed the Borough to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On September 19, 2022, the Borough filed a position statement arguing that “converting electronic records requested by Dr. Perlmutter to paper was necessary in order to perform redactions required by law.” In support of its argument, the Borough submitted the affidavit of Paula Johnson, the Borough’s Manager and Open Records Officer.

That same day, the Requester filed a position statement arguing that the Borough should be able “to save [the records] to a PDF format instead of printing them onto paper” in order to “perform these redactions electronically.” The Requester also “question[s] why there is a need for redactions at all.”

---

<sup>1</sup> Attached to the appeal packet were over 200 pages of records responsive to the Request.

On September 20, 2022, the OOR contacted the parties asking the Borough 1) if the Borough has Adobe Acrobat Pro, and 2) to allow the Borough the opportunity to address converting the Amazon purchase history to a PDF format and whether this is possible or, in the alternative, to further explain why the Borough “cannot make these redactions electronically and must print.” The OOR provided both parties the opportunity to submit additional argument or evidence.

On September 26, 2022, the Borough submitted a supplemental position statement explaining that the Borough “owns a license for Adobe Acrobat Pro,” that Ms. Johnson does not know how to use Adobe Acrobat Pro to perform redactions from an online cite, and that “[p]rinting not only captured the formatting as it appeared on [www.amazon.com](http://www.amazon.com), but it also allowed Ms. Johnson to perform manual redactions as she knew how. In support of its position, the Borough also submitted the supplemental affidavit of Ms. Johnson.

In response, that same day, the Requester submitted a supplemental position statement arguing that the Borough does “have the Adobe Acrobat Pro software that can save and redact pdf files” and the Borough’s attestation “is still insufficient because the standard is that the agency should be able to redact.”

## LEGAL ANALYSIS

### **1. The Borough may not charge fees for printing and redaction.**

The Requester argues that the Borough should not have charged her fees when she requested electronic records and that the Borough should be able to redact the electronic records using Adobe Acrobat Pro. 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). Under the OOR’s fee structure, an agency is not entitled to charge duplication fees for

electronic records, unless it must print the records for permissible redaction. See [Official RTKL Fee Schedule](#); *Mollick v. Worcester Twp.*, OOR Dkt. AP 2015-0678, 2015 PA O.O.R.D. LEXIS 797. See *State Employees' Ret. Sys. v. Office of Open Records*, 10 A.3d 258, 363 (Pa. Commw. Ct. 2010) (holding that an agency is not entitled to duplication fees for creating records that it was not required to create); *Harderer v. Pa. Dep't of Transp.*, OOR Dkt. AP 2014-0878, 2014 PA O.O.R.D. LEXIS 848 (finding that the agency was not required to electronically redact records where the agency's Acting Chief Information Security Officer attested that it was his opinion that electronic redaction was not secure where the requester provided no evidence refuting the agency's position); *but cf. Bush v. Little Britain Twp.*, OOR Dkt. AP 2019-2356, 2020 PA O.O.R.D. LEXIS 1843 (holding that, where the agency acknowledged the existence of responsive records in electronic format, as requested, but did not demonstrate that redactions are permissible, the agency was not entitled to duplication fees).

Here, the Borough indicated that it needed to print the records in order to securely redact them. In support of this argument, Ms. Johnson attests as follows:

1. The Borough owns a license for Adobe Acrobat Pro.
2. The Borough specifically purchased a license for Adobe Acrobat Pro to create fillable forms.
3. I have used Adobe Acrobat Pro to create fillable forms.
4. I have used Adobe Acrobat Pro [to] add text to a document already in .pdf file format; to convert other file formats, like Microsoft Word documents, into .pdf file format; and to convert .pdf files into other file formats, like Microsoft Word documents.
5. I cannot recall using Adobe Acrobat Pro for other functions.
6. I am not familiar with the full functionality of Adobe Acrobat Pro.
7. I have never used Adobe Acrobat Pro to perform redactions.

8. I have always manually redacted information or data from records when personally performing redactions.
9. I was not aware that Adobe Acrobat Pro could be used to perform redactions.
10. If a redaction function exists on Adobe Acrobat Pro, I do not know how to use it.
- ...
14. The Borough has an Amazon account maintained at [www.amazon.com](http://www.amazon.com).
15. The Borough's Amazon account is only accessible via user name and password.
16. The Borough does not export its Amazon purchase history to a Microsoft Excel spreadsheet or any other type of database.
17. The only verification of the Borough's Amazon purchase history is the digital log maintained at [www.amazon.com](http://www.amazon.com).
18. Drawing on my experience as the Borough's Open Records Officer, I determined that printing the documents was the best way to provide Dr. Perlmutter with the records she requested.
19. Printing was the best way to capture the formatting of the document as Dr. Perlmutter phrased her specific request.
20. Printing was the only way I understand how to perform any necessary redactions.

Under the RTKL, a 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. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Borough acted in bad faith, "the averments in [the affidavit] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Item 1 of the Request seeks "[r]ecords of Amazon purchases between August 2019 – August 2022 the purchase history as it appears on Amazon" and the Requester specified that she

wanted electronic copies. Ms. Johnson attests that she “is not familiar with the full functionality of Adobe Acrobat Pro” and that she “never used Adobe Acrobat Pro to perform redactions.” Finally, Ms. Johnson candidly attests that she “was not aware that Adobe Acrobat Pro could be used to perform redactions.” The Borough has admitted that it owns the software Adobe Acrobat Pro, which enables electronic redaction. See [Removing sensitive content from PDFs in Adobe Acrobat](#).<sup>2</sup> Accordingly, since the Borough can obtain electronic copies of the Amazon purchase history and has the software necessary to electronically redact that list, it is not necessary to print the list in order to make redactions. Therefore, while the Borough can provide redacted paper copies if it so chooses, the Borough is not entitled to charge \$33.00 since it can produce the records in electronic format. Upon reviewing the records, the Requester may appeal the redactions to the OOR. See *Buehl v. Pa. Dep’t of Corr.*, No. 198 C.D. 2015, 2015 Pa. Commw. Unpub. LEXIS 552 (holding that that a requester could timely file an appeal both from the date of an agency's response and the date when an agency mailed responsive records).

### CONCLUSION

For the foregoing reasons, the Requester’s appeal is **granted**, and the Borough is not entitled to charge the \$33.00 fee, as outlined above, and the Borough is required to provide the responsive records 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 Bucks 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

---

<sup>2</sup> The OOR notes that in her September 30, 2022 submission, the Requester sets forth the steps to save the records to PDF format instead of printing. The Request seeks information that is maintained electronically, and Section 701 of the RTKL, 65 P.S. § 67.701(a), is clear that records shall be provided in the medium in which it exists.

not a proper party to any appeal and should not be named as a party.<sup>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: October 11, 2022**

*/s/ Lyle Hartranft*  
Lyle Hartranft, Esq.  
Appeals Officer

Sent via email to: Dawn Perlmutter, Sarah Steers, Esq., and Paula Johnson

---

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