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**Bedillion v. Bucks County Free Library; OOR Dkt. AP 2022-2853**  
**Requester Petition for Reconsideration**

**Introduction:**

I, the Requester in the above-referenced matter, am respectfully requesting reconsideration and modification of the Final Determination issued and mailed on January 23, 2023.

This Petition is filed pursuant to *1 Pa. Code § 35.241* as an application for reconsideration and modification of the Final Determination in the above-referenced matter. The Final Determination is attached for reference.

Specifically, I believe that the Office of Open Records (OOR) Appeals Officer made several inadvertent errors in their legal analysis and application of the relevant case law (*Pysher v. Clinton Twp. Volunteer Fire Co.*, 209 A.3d 1116 (Pa. Commw. Ct. 2019) and *Appeal of Hadley*, 83 A.3d 1101, 1108 (Pa. Commw. Ct. 2014) with respect to the Bucks County Free Library (“BCFL”). By ignoring the governmental nature of the BCFL, the proportion of government funding received by the BCFL, the governmental control of the BCFL as evidenced by the County Commissioner’s appointment of the BCFL’s entire Board of Directors, and other applicable facts presented in evidence (some of which the OOR Appeals Officer seems to not take into account), the OOR Appeals Officer inadvertently erred in their Final Determination that the BCFL does not meet the definition of a “similar governmental agency.” Additionally, the legal analysis used in the instant appeal is inconsistent from that used in other OOR appeals involving public libraries, such as *Susan Longnaker v. Hellertown Area Library Association; OOR Dkt. AP 2022-2541*, where, using the same case laws (*Pysher* and *Hadley*), the OOR ruled that the Library does, in fact, meet the definition of a “similar governmental agency” and is therefore a local agency under the Right to Know Law (RTKL), or *Walsh v. Carnegie Library; OOR Dkt. AP 2009-1150*, where the OOR also evaluated whether the Library’s Board is “appointed by a government entity or official” in determining if the Library met the definition of a “similar governmental agency.”

Reconsideration and modification of the Final Determination is both permissible and appropriate pursuant to *1 Pa. Code § 35.241(b)* because the inadvertent errors in the legal analysis and ruling are in direct opposition to the referenced case law and also contradict final determinations made by the OOR in previous appeals involving public libraries.

As set forth more fully below, I am respectfully requesting that the OOR reconsider the Final Determination and that the Appeals Officer provide a new Final Determination ruling that the BCFL meets the definition of a “similar governmental agency” and, therefore, is legally required to respond to my lawfully submitted Open Records Request pursuant to RTKL.

**Discussion:**

1. I submitted an Open Records Request on November 23, 2022 to BCFL pursuant to RTKL, 65 P.S. 65 P.S. §§ 67.101 et seq., seeking email communications “to/from any Bucks County Free Library... Board Members.”

2. I did not receive the Library's response with five business days and contacted the Library. On December 15, 2022, John J. Doran II, the Chief Financial Officer and AORO of the BCFL denied the request, stating that the OOR "*has repeatedly and consistently held that public libraries are not an 'agency' within the meaning of that statute and are therefore exempt from that law.*"
3. In the instant appeal, the sole issue presented before the OOR was whether the BCFL falls within the definition of a local agency under the RTKL. Because the RTKL definition of the term "local agencies" includes the phrase "any similar governmental entity" along with municipalities and authorities, non-profit entities, such as the BCFL, may qualify if they are sufficiently governmental in nature. It is important to note here that, contrary to the statements made by the BCFL, the OOR has recently found, in *Longnaker v. Hellertown Area Library Association OOR Dkt. AP 2022-2541* (also included as an attachment), that a Library meets the definition of a "similar governmental entity" and is, therefore, a local agency under the RTKL. This Final Determination relied on the same case law (*Pysher* and *Hadley*) utilized by the Appeals Officer in the instant appeal.
4. In the case law utilized by the OOR Appeals Officer in the instant appeal (*Pysher* and *Hadley*), the Court "*evaluated whether a regional alliance of businesses, industry and tourism, which was a private nonprofit, was a 'similar governmental entity' to be considered a 'local agency' under RTKL.*" *Pysher*, 209 A.3d at 1123. In *Hadley*, the Commonwealth Court set forth several factors to be considered when assessing whether an organization is considered a "similar governmental entity[.]" including:

- (1) the degree of governmental control,
- (2) the nature of the organization's functions, and
- (3) financial control.

*Id.*; see also *Hadley*, 83 A.2d at 1109. The Court explained that, with respect to the first factor, a court should review the "*organizational structure, purposes, powers, duties and fiscal affairs*" of the organization, noting that "cooperation with the government is insufficient to establish control." *Id.* Regarding the second factor, the Court held that "[t]he function an entity performs weighs heavily in a local agency assessment. The function must be governmental, but it need not be.... essential"; rather, "*the function must be a substantial facet of a government activity.*" *Id.* Finally, with respect to financial control, the Court noted that "the less government financing, the less likely it was that there was governmental control." *Id.*

5. In the Final Determination of the instant appeal, the OOR Appeals officer relied on *Vyonder v. Bucks Co. Free Library*, OOR Dkt. AP 2022-2757, wherein the OOR determined, based on the same evidence provided by the Library in the instant appeal, that the Library is not an agency subject to the RTKL. In that matter, and in the instant appeal, the OOR undertook an analysis pursuant to *Pysher* and *Hadley*, using the same three factors mentioned above to determine whether the BCFL meets the definition of a "similar governmental entity." However, the OOR made several inadvertent errors in the legal analysis pursuant to *Pysher* and *Hadley*, and the Final Determination in the instant appeal contradicts the Final Determination made in *Longnaker* and legal analysis used in other OOR appeals such as *Longnaker* and *Walsh*.
6. Regarding the second factor (the nature of the organization's functions), the OOR Appeals Officers in both *Vyonder*, and in the instant appeal, inadvertently made **no determination** as to whether

the BCFL is, in fact, “governmental” in nature. In comparison, the OOR Appeals Officer in *Longnaker* stated “*there appears to be no dispute that the nature of the function at issue in this appeal - the provision of library services - constitutes a ‘substantial facet of government.’*” In the instant appeal, the OOR Appeals Officer should have made a similar finding since the BCFL did not dispute this fact, but should have also acknowledged that, in my position statement, I specifically make this argument. Because the OOR Appeals Officer did not make any determination on the extent to which the BCFL is a “substantial facet of government activity”, which is one of the three factors outlined in the case law (*Pysher* and *Hadley*) utilized in the Final Determination, the OOR Appeals Officer inadvertently did not provide a full legal assessment of whether the BCFL meets the definition of a “similar governmental entity.”

7. Regarding the first factor (degree of government control), the OOR Appeals Officer in *Vyonder* and in the instant appeal did not take into account the degree of government control through several factors considered in *Pysher* and *Hadley* such as Board representation and where the assets go if the BCFL were to dissolve. In the case of the BCFL, the entire 7-person Board, which controls and governs the BCFL system, is appointed by the Bucks County Commissioners. Since the Board governs the day-to-day operations of the BCFL, and the County controls the entire Board, the County inherently exercises government control over the BCFL. In *Hadley*, the Court specifically examined “board representation” with respect to the degree of government control and noting in this case that “*private sector representatives have a clear majority at 21 members.*” Similarly, in *Longnaker*, the OOR noted that “*the Borough has the power to appoint a majority of the Library’s Board of Directors*” and that the Board has “*the power to plan for, implement, and management all library services, programs and activities...*” Additionally, in *Walsh v. Carngie*, OOR Dkt. AP 2009-1150, the OOR in assessing degree of government control, noted that “*the Library’s Board is not appointed by a government entity...*” The OOR Also considered government control of the Board in *Donahue v. Hazleton Area Public Library*, OOR Dkt. AP 2010-0414, noting “*the Library’s Board is not controlled by any municipality or local government.*” Regarding assets, the BCFL presented evidence that “*Upon dissolution of the library system, all assets will be distributed to the County.*” In *Pysher*, the Court specifically examined where the assets would go upon dissolution of the Fire Company, noting “*if the Fire Company were to dissolve, its assets would not go to the Township[.]*” In *Donahue*, the OOR also found that “*there is no evidence of any governmental control over the Library’s assets...*” In the instant appeal, the OOR Appeals Officer, by not taking into account the complete appointment of the BCFL Board by the County, the County control of assets upon dissolution of the BCFL as well as most of its buildings, and other factors presented in evidence, did not provide a full legal assessment of the degree of government control and therefore whether the BCFL meets the definition of a “similar governmental entity.”
8. Regarding the third factor (financial control), the OOR Appeals Officer in *Vyonder*, and in the instant appeal, solely relied on the fact that, “*the Library receives funding from various sources*”, including the government, and that “*this fact alone is not enough to transform a private nonprofit organization into a local agency under the RTKL.*” While the mere receipt of government funding doesn’t transform a public library into a local agency, the Court is clear in *Hadley* that it, when assessing financial control, it is the proportion of government funding that determines the likelihood of governmental control. In *Hadley*, the Court noted, “*the government financing of the Alliance is ‘proportionally small’. The trial court reasoned that receipt of such a small amount of government funds is not tantamount to governmental control.*” One can infer

that the opposite would be true, and the OOR Appeals Officer appears to have made an inadvertent error in the instant appeal by not taking into account the proportion of government funding that the BCFL receives, which is almost the entirety of the funding that the Library receives. Simply put, but for the government funding, the BCFL could not function as a library. The evidence presented in appeal demonstrated that this was also by design when setting up the BCFL (they state they don't do major fundraising programs and rely mainly on government funding), and that the BCFL maintains its operations through government funding and use of government-owned facilities. In contrast, the Court in *Pysher* noted that the "*Fire company maintains its operations through fundraising, rentals and donations.*" By ignoring the question of proportion and ability to operate without government funding and facilities, the OOR Appeals Officer inadvertently erred by not conducted a full legal assessment of whether the government has financial control over the BCFL and therefore whether the BCFL meets the definition of a "similar governmental entity."

In conclusion, I respectfully request reconsideration of the January 23, 2023 Final Determination and request that the OOR rule that the BCFL meets the definition of a "similar government entity," subject to RTKL and grant my original and legally submitted Open Records Request in its entirety.

Respectfully Submitted,

David Bedillion