

# Supreme Court of Pennsylvania

Court of Common Pleas

Civil Cover Sheet

Northampton

County

For Prothonotary Use Only:

Docket No:

C-48-CV-2023-736

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

## Commencement of Action:

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

Lead Plaintiff's Name:

Hellertown Area Library Association

Lead Defendant's Name:

Susan Longnaker

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits  
☐ outside arbitration limits  
(check one)

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☐ No

Name of Plaintiff/Appellant's Attorney: Jason G. Bates, Esquire

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

**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.

### 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:

### MASS TORT

- ☐ Asbestos  
☐ Tobacco  
☐ Toxic Tort - DES  
☐ Toxic Tort - Implant  
☐ Toxic Waste  
☐ Other:

### PROFESSIONAL LIABILITY

- ☐ Dental  
☐ Legal  
☐ Medical  
☐ Other Professional:

### CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff  
☐ Debt Collection: Credit Card  
☐ Debt Collection: Other  
☐ Employment Dispute:  
Discrimination  
☐ Employment Dispute: Other  
☐ Other:

### REAL PROPERTY

- ☐ Ejectment  
☐ Eminent Domain/Condemnation  
☐ Ground Rent  
☐ Landlord/Tenant Dispute  
☐ Mortgage Foreclosure: Residential  
☐ Mortgage Foreclosure: Commercial  
☐ Partition  
☐ Quiet Title  
☐ Other:

### CIVIL APPEALS

- Administrative Agencies  
☐ Board of Assessment  
☐ Board of Elections  
☐ Dept. of Transportation  
☒ Statutory Appeal: Other  
65 P.S. §67.1302  
☐ Zoning Board  
☐ Other:

### MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration  
☐ Declaratory Judgment  
☐ Mandamus  
☐ Non-Domestic Relations  
Restraining Order  
☐ Quo Warranto  
☐ Replevin  
☐ Other:

COPY

IN THE NORTHAMPTON COUNTY COURT OF COMMON PLEAS

HELLERTOWN AREA LIBRARY  
ASSOCIATION

Petitioner,

v.

SUSAN LONGNAKER

Respondent.

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CASE NO. C-48-CV-2023-

736

STATUTORY APPEAL

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, upon review of the  
Petition for Review, and any response thereto, it is hereby ORDERED and DECREED that the  
Appeal is GRANTED and the January 6, 2023 Final Determination of the Office of Open  
Records is REVERSED.

SO ORDERED

\_\_\_\_\_  
J.

COPY

IN THE NORTHAMPTON COUNTY COURT OF COMMON PLEAS

HELLERTOWN AREA LIBRARY  
ASSOCIATION

Petitioner,

v.

SUSAN LONGNAKER

Respondent.

CASE NO.: C-48-CV-2023- 736

**APPEAL OF AND PETITION FOR REVIEW OF HELLERTOWN AREA  
LIBRARY ASSOCIATION OF THE FINAL DETERMINATION,  
DATED JANUARY 6, 2023, OF THE PENNSYLVANIA OFFICE OF OPEN RECORDS  
AT OOR DKT. AP 2022-2541**

AND NOW comes Petitioner, Hellertown Area Library Association, by and through its counsel, Connor, Weber & Oberlies, and files this Petition for Review and Appeal of the Pennsylvania Office of Open Records' Final Determination, dated January 6, 2023, pursuant to 65 P.S. §67.1302 and 1 Pa. Code §35.241, and avers as follows:

**I. JURISDICTION**

1. Appellant/Petitioner, Hellertown Area Library Association, timely appeals the January 6, 2023 decision of the Office of Open Records pursuant to 65 P.S. §67.1302.

**II. PARTIES**

2. Appellant, Hellertown Area Library Association, is a public library and non-profit entity organized and existing under the laws of the Commonwealth of Pennsylvania with a business address of 404 Constitute Avenue, Hellertown, Pennsylvania 18055.

3. Appellee, Susan Longnacker, upon information and belief, is a paralegal, who had filed a request under the Pennsylvania Right to Know Law ("RTKL"), 65 P.S. §§67.101 *et. seq.*, which is, along with the January 6, 2023 decision of the OOR, is the subject matter of this statutory

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COURT OF COMMON PLEAS  
NORTHAMPTON COUNTY, PA



appeal. (A true and correct copy of the January 6, 2023 decision of the OOR is attached hereto as Exhibit “A”.)

### III. SCOPE AND STANDARD OF REVIEW

4. This Petition for Review is being filed pursuant to Section 1302(a) of the RTKL, 65 P.S. §67.1302(a).

5. Section 1302 of the RTKL Provides as follows:

(a) General rule – Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency issued under section 1101(b) or of the date a request for access is deemed denied, a requestor or local agency may file a petition for review or other document as required by rule of court with the court of common pleas for the county where the local agency is located. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

(b) Stay – A petition for review under this section shall stay the release of documents until a decision under subsection (a) is issued.

65 P.S. §67.1302.

6. Appeals from decisions of the Office of Open Records are reviewed *de novo* by the appropriate Court. Bowling v. OOR, 75 A.3d 476-77 (Pa. 2013).

7. The reviewing Court’s scope of review is broad and plenary, and it may consider evidence in addition to the administrative record as it deems necessary. Id.

8. In the present matter, because the OOR failed to conduct any substantive review, conduct any additional fact finding and did not engage in an evidentiary hearing and reached a decision inapposite to the RTKL, Petitioner requests a full evidentiary hearing in this matter.

#### **IV. PROCEDURAL POSTURE**

9. In the present matter, the OOR failed to gather any evidence or conduct any substantive review or hearing and reached a decision inapposite to the RTKL. Petitioner requests a full evidentiary hearing in this matter.

10. Hellertown Area Library is a non-profit organization organized as a non-profit public library under the Laws of the Commonwealth of Pennsylvania and the Pennsylvania Library Code, 24 Pa. C.S.A. §93, and provides library services to the residents of the Borough of Hellertown and the Township of Lower Saucon. (See Affidavit of Ken Solt; a true and correct copy of which is attached hereto as Exhibit "B".)

#### **V. BACKGROUND**

11. Hellertown Area Library has a business address of 409 Constitution Avenue, Hellertown, PA 18055.

12. This action involves a Right to Know request by Requester, Susan Longnacker, seeking a litany of business and financial records of Hellertown Area Library.

13. On October 17, 2022, Requester, Susan Longnacker, through her counsel, Eckert Seamans, sent, via email to Appellee, Hellertown Area Library Association, 22 Requests for records seeking the following information:

1. All communications - including but not limited to emails, letters, text messages, voicemails and memos - from January 1, 2020, through the present date regarding Lower Saucon Township residents' use of the Hellertown Library.

2. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Library and the Office of Commonwealth Libraries ("OCL") from January 1, 2020, through the present date pertaining to the use of the Hellertown Library by Lower Saucon Township residents.

3. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the use of the Hellertown Library by Lower Saucon Township residents.
4. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the use of the Hellertown Library by Lower Saucon Township residents.
5. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to any dispute between Hellertown Borough and Lower Saucon Township regarding the Hellertown Library.
6. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to any dispute between Hellertown Borough and Lower Saucon Township regarding the Hellertown Library.
7. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to any dispute between Hellertown Borough and Lower Saucon Township regarding the Hellertown Library.
8. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to the management of the Hellertown Library.
9. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the management of the Hellertown Library.
10. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the management of the Hellertown Library.

11. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to the funding of the Hellertown Library.
12. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the funding of the Hellertown Library.
13. All communications- including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the funding of the Hellertown Library.
14. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to the Hellertown Library's service area.
15. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the Hellertown Library's service area.
16. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the Hellertown Library's service area.
17. All internal communications pertaining to any dispute between Hellertown Borough and Lower Saucon Township from January 1, 2020, through the present date.
18. All internal communications pertaining to the funding of Hellertown Library from January 1, 2020, through the present date.
19. All internal communications pertaining *to* the service area of the Hellertown Library from January 1, 2020, through the present date.
20. All memorandum, reports, files, etc. pertaining to the use of the Hellertown Library by Lower Saucon Township residents from January 1, 2020, through the present date.
21. All memorandum, reports, files, etc. pertaining to the funding of the Hellertown Library from January 1, 2020, through the present date.

22. All memorandum, reports, files, etc. pertaining to the service area of the Hellertown Library from January 1, 2020, through the present date.

(See October 17, 2022 Letter of Requester Longnacker; a true and correct copy of which is attached hereto as Exhibit “C”.)

14. Hellertown Area Library did not respond to these onerous and unduly burdensome requests given that the Library is not a local agency under the Right to Know Law.

15. Appellee, Susan Longnacker, through her counsel, then filed an appeal with the OOR on November 7, 2022.

16. Pennsylvania’s Right to Know Law (“RTKL”), 65 P.S. §67.101 *et. seq.*, however, never contemplated application to the independent, nonprofit, libraries like Hellertown Area Library.

17. Requester’s Right to Know request was reviewed by the Pennsylvania Office of Open Records (“OOR”), which issued a Determination, on November 10, 2022, dismissing Requester, Susan Longnacker’s request.

18. On November 23, 2022, Requester Longnacker filed a Petition for Reconsideration seeking the OOR to reopen the record to permit the submission of evidence as to whether the Library is an agency under the RTKL.

19. The OOR vacated its ruling of November 10, 2022 and then issued a Final Determination on January 6, 2023.

20. The OOR abused its discretion and erred both factually and on the law in granting the appeal of the Requester without developing a factual record and in the finding that the Hellertown Area Library Association is a local agency under the RTKL.



## VI. ORDER IN QUESTION

21. On January 6, 2022, without conducting an evidentiary hearing, the OOR stated as follows: “For the foregoing reasons, the appeal is **granted** and the Library is required to provide responsive records within thirty days.” (See January 6, 2022 Final Determination; a true and correct copy is attached hereto as Exhibit “A”)(emphasis in original).

22. The OOR also proved the parties with the right to appeal to the Northampton County Court of Common Pleas pursuant to 65 P.S. §67.1302(a). (Id.)

## VII. ARGUMENT/REASONS FOR APPEAL

23. Hellertown Area Library is not an agency under Pennsylvania’s Right to Know Law and does not have public records subject to disclosure under the Right to Know Law.

24. Pennsylvania’s Right to Know Law (“RTKL”) sets forth the framework for accessing public records in Pennsylvania. See 65 P.S. §67.101, *et. seq.*

25. The RTKL, which became effective on January 1, 2009, replaced Pennsylvania’s prior public records access statute known as the Right to Know Act.

26. The RTKL, as compared to the Right to Know Act, “provided for significantly broadened access to public records.” Bowling v. Office of Open Records, 75 A.3d 453, 457 (Pa. 2013).

27. The purpose of the RTKL is “to promote **access to official government information** in order to prohibit secrecy, to **scrutinize public official’s actions** and to make them accountable for their actions.” Bowling v. Office of Open Records, 990 A.2d 813 (Pa. Cmwlth. 2010), appeal granted, 15 A.3d 427 (Pa. 2011)(emphasis added).

28. Under the RTKL, “agency records are presumed to be public records, accessible for inspection and copying by anyone requesting them, and must be made available to a requestor unless they fall within specific, enumerated exceptions or are privileged.” Bowling, 75 A.3d at 457; see also 65 P.S. §67.305.

29. Before determining whether a specific, enumerated exception or privilege applies to a record, the preliminary threshold question that must first be determined is whether the information requested constitutes a “public record”. Office of Governor v. Bari, 20 A.3d 634, 640 (Pa. Cmwlth. 2011). “The burden of proving that a requested piece of information is a ‘public record’ lies with the requestor.” Id.

30. The RTKL defines a “public record” in pertinent part, as a “record ... of a Commonwealth or **local agency**.” See 65 P.S. §67.102 (emphasis added). The Right to Know Law defines “agency” as a “Commonwealth agency, a local agency, a judicial agency or a legislative agency.” See 65 P.S. §67.102. Hellertown Area Library is not a Commonwealth, judicial or legislative agency.

31. In addition, Hellertown Area Library is not a “local agency” under the Right to Know Law. Section 102 of the RTKL defines “local agency” as follows:

- (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
- (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

See 65 P.S. §67.102.

32. The “agency” definition under the RTKL does not expressly include nonprofit public libraries like Hellertown Area Library which is neither a political subdivision, intermediate unit, charter school nor public trade or vocational school.

33. Further, Hellertown Area Library is not a local, intergovernmental, regional or municipal agency, authority, council, board or commission or other similar governmental entity. To the contrary, Hellertown Area Library is a non-profit library.

34. A thorough review of the definitions of each of the four types of agencies further confirms that a nonprofit public library like Hellertown Area Library was never intended to be an “agency” whose records are subject to the RTKL.

35. Thus, both a strict construction and an interpretation of the RTKL require a finding that the RTKL does not apply to nonprofit public libraries like Hellertown Area Library.

36. The OOR has repeatedly and consistently held that public libraries are not an “agency” within the meaning of the RTKL and are, therefore, exempt from it. See Walsh v. Carnegie Library, OOR Dkt. AP 2009-1150, 2010 WL 2128741 (Pa. Off. Open Rec. 2010); MacNeil v. Sharon Hill Borough Library, OOR Dkt. AP 2021-1015, 2021 WL 3710409 (Pa. Off. Open Rec. 2021); Boyer v. Wyoming Free Library, OOR Dkt. AP 2018-1276, 2018 WL 4404635 (Pa. Off. Open Rec. 2018); Mahon v. Plymouth Public Library, OOR Dkt. AP 2015-1045, 2015 WL 4910213 (Pa. Off. Open Rec. 2015); Wolf v. Lancaster Public Library, OOR Dkt. AP 2011-1587, 2011 PA O.O.R.D. LEXIS 1325; Donahue v. Hazleton Public Library, OOR Dkt. AP 2010-0414, 2010 WL 2801315 (Pa. Off. Open Rec. 2010).

37. In Walsh v. Carnegie Library, OOR Dkt. AP 2009-1150, 2010 PA O.O.R.D. LEXIS 111, the OOR considered whether the Carnegie Library (“Carnegie”) was a “similar government entity,” and, thus, a “local agency” subject to the RTKL.

38. In concluding that Carnegie was not a local agency subject to the RTKL, the OOR considered a number of factors, including whether the evidence showed control of Carnegie by

any governmental entity and whether Carnegie's assets or operations were managed by any governmental entity.

39. Finally, the OOR found that the mere acceptance of governmental funding alone did not convert an otherwise private entity into a public entity for purposes of the RTKL. Thus, the OOR concluded that Carnegie was not a local agency subject to the RTKL. See Id.

40. In fact, the Borough of Hellertown does not approve the Library's Budget. (See Affidavit of Borough Manager, Cathy Hartranft; a true and correct copy of which is attached hereto as Exhibit "D".)

41. The Library first approves its budget and then submits it to the Borough on a yearly basis along with the Library's funding request. The Library's budget allows the Borough to determine the yearly operating costs that the Borough will contribute to the Library as party of approving the Borough's overall budget. The Library's expenditures must be included as a line item in the Borough's own budget. (See Exhibit "D", Hartranft Affidavit.)

42. The Borough makes no decisions about the operations of the Library or how the monetary funds are to be allocated within the Library's budget. (See Id.)

43. The Brough also does not control the Library's expenditures of funds. (Id.)

44. The Borough is not involved in either the implementation of or the managing of the services that the Library offers to the public. (Id.) Further, the Borough is not involved in the development of the programs or in the scheduling of the Library's activities. (Id.)

45. The Library's independence is further underscored as the Borough does not hire any of the Library's employees. (Id.) The Library makes its own hiring decisions. In addition, the Library has its own independent legal counsel – not appointed or assigned by the Borough. (Id.)

46. The Borough of Hellertown and the Hellertown Area Library entered into an Agreement wherein the Library agreed to “make library services available to all residents of the Borough of Hellertown without regard to increases or decreases in population.” (See February 1, 2022 Library Services Agreement, p. 3; a true and correct copy is attached hereto as Exhibit “E”.)

47. As noted, the Borough of Hellertown does not control the day-to-day services of the Library. In fact, the Office of Commonwealth Libraries has more control over what services the Library provides and to whom those services are provided.

48. Although the Agreement provides that the Borough of Hellertown has the ability to appoint a majority of the Library Board of Directors, there is nothing in the Agreement to suggest that the Borough of Hellertown would exercise direct control over the operations of Library through the Board of Directors. In fact, once appointed, the Library board members cannot be removed by the Borough; only the Library can remove a member of the Board of Directors. (See Exhibit “D”, Hartranft Affidavit.)

49. The Library Board of Directors always have been independent and have not been influenced by the Borough Council. (See Exhibit “B”, Affidavit of Ken Solt.)

50. The Board of Directors for the Library consists of 7 individuals. Two (2) of the members are residents of Saucon Valley School District (encompassing Hellertown Borough and Lower Saucon Township) who are chosen and appointed solely by the Library Board. (See Id.) The other five (5) members are residents of Hellertown Borough. (Id.) As part of these 5 members, Hellertown Borough selects one member of Borough Council to serve on the Library Board of Directors and to act as a liaison between the Borough and the Library. (Id.)

51. The remaining four (4) members of the Board of Directors serving as Hellertown Borough Residents have always been of the Library Board's choosing which are then confirmed by Borough Council. (Id.)

52. With the exception of the member of Borough Council, the Board of Directors interviews and selects all of the members of the Board, not Borough Council. (Id.)

53. Presently, there are two (2) Council members of the Borough of Hellertown on the Library Board of Directors. This second Council member had been a member of the Library Board of Directors prior to being elected to Borough Council.

54. As indicated in the Library's By-Laws, which were specifically drafted in response to this situation, this individual has been allowed to complete his term on the Board and is stepping down from his position as member of the Board of Directors in January 2023. (Id.) Accordingly, under the factors enunciated by the OOR in Walsh v. Carnegie Library, there is no control by the Borough over the Library.

55. The Library's By-Laws provide as follows as to the powers and duties of the Library's Board of Directors (as opposed to the Hellertown Borough Council):

Article 4 B:

B. Duties of the Board

1. Determines all policies for the Hellertown Area Library.
2. Approves the budget.
3. Authorizes capital expenditures.
4. Approves all contracts.
5. Reviews and approves all work of committees.



6. Evaluates all potential Board members; and nominates and approves Board members to be appointed by the Board of Directors.

7. Reviews and accepts the annual audit and selects the auditor from time to time.

8. Files required reports, including but not limited to tax reports, to the local, State, and Federal

(See Hellertown Area Library Association By-Laws, a true and correct copy of which is attached hereto as Exhibit "F".)

56. These duties and responsibilities of the Library's Board of Directors further underscores the independent nature of the Library. As such, the Library cannot be construed as an "agency" under the Right to Know Law.

57. Although the By-Laws are approved by the Borough, the Borough has not input in the creation or drafting of them and the Borough only approved of the By-Laws after the Library's Board first approves of them. (See Exhibit "D", Hartranft Affidavit.)

58. In addition, even though the Borough provides financial support to the Library, the mere acceptance of governmental funding alone does not convert the Library into a "local agency" for purposes of the RTKL. See Walsh, supra. Further, all assets of the Library are solely owned by the Library itself and controlled by the Library Board.

59. The extent of the Borough of Hellertown's involvement is as follows:

a month payment to [the Library] to assist it with its operational [sic] costs; cutting the grass for the Library in the spring and summer; and during the Borough budget season, holding one meeting the a [Library] representative to review the [Library] budge to assist the Borough in determining how much it can allocate to [the Library] to assist [the Library] with its operation cost for the next year.

(See Exhibit "D"; Hartranft Affidavit.)

60. Further, requiring nonprofit libraries like Hellertown Area Library to comply with RTKL requests will create a significant administrative burden, including time, costs and/or attorney's fees, to libraries that already are struggling with financial burdens.

61. These administrative and financial burdens placed upon libraries like Hellertown Area Library will likely result in the dissolution of many nongovernmental nonprofits that provide our communities with critical services.

62. To further underscore the independence of the Library from any municipality control, the current Director of the Library, Noelle Kramer, replaced the prior Director who had retired three years ago.

63. Hellertown Borough had no knowledge or input of that decision. As a result, Hellertown Borough Council had not input into the hiring of the Director who is responsible for controlling the day-to-day operations of the Library.

64. On the same day that the OOR rendered its Final Determination in this matter, the OOR decided another matter reaching the exact opposite outcome. Specifically, in Jordan Vyonder v. Bucks County Free Library, Docket No. AP 2022-2757, the OOR determined that "based on the evidence submitted, the Library has established that, while its Board members are appointed by the County Commissioners, as required by the Public Library Code, the Library itself is not under government control as the day to day activities, governance and administration of the Library is controlled by the Board members, without County oversight." Id. at p. 5. (A true and correct copy of the Vyonder v. Bucks County Free Library decision is attached hereto as Exhibit "G".)

65. In Vyonder, the OOR also noted that the Bucks County Free Library prepared its own budget and was responsible for its own yearly audit which it forwarded to the County.

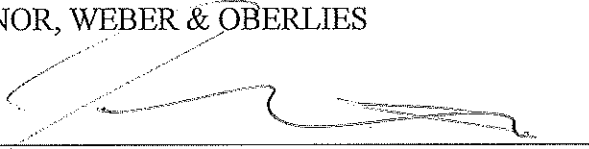
## VIII. CONCLUSION

66. For the reasons set forth above, Petitioner/Appellant requests that this Honorable Court vacate the January 6, 2023 Final Determination of the Office of Open Records in this matter and re-open the record for development of the factual records and for a hearing on the issues.

67. Because independent, nongovernmental nonprofit libraries, like Hellertown Area Library, were never intended to be “agencies” under the RTKL, it is respectfully submitted that this Court vacate and reverse the January 6, 2023 Final Determination of the Office of Open Records and find in favor of Hellertown Area Library.

CONNOR, WEBER & OBERLIES

Date: February 6, 2023

By:   
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Attorney for Petitioner/Appellant,  
Hellertown Area Library Association

# EXHIBIT “A”



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

SUSAN LONGNAKER,  
Requester

v.

HELLERTOWN AREA LIBRARY  
ASSOCIATION,  
Respondent

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Docket No: AP 2022-2541

## FACTUAL BACKGROUND

On October 17, 2022, Susan Longnaker (“Requester”) submitted a request (“Request”) to the Hellertown Area Library Association (“Library”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. All communications – including but not limited to emails, letters, text messages, voicemails and memos – from January 1, 2020, through the present date regarding Lower Saucon Township residents’ use of the Hellertown Library.
2. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Library and the Office of Commonwealth Libraries (“OCL”) from January 1, 2020, through the present date pertaining to the use of the Hellertown Library by Lower Saucon Township residents.
3. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the use of the Hellertown Library by Lower Saucon Township residents.

4. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the use of the Hellertown Library by Lower Saucon Township residents.
5. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to any dispute between Hellertown Borough and Lower Saucon Township regarding the Hellertown Library.
6. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to any dispute between Hellertown Borough and Lower Saucon Township regarding the Hellertown Library.
7. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to any dispute between Hellertown Borough and Lower Saucon Township regarding the Hellertown Library.
8. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to the management of the Hellertown Library.
9. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the management of the Hellertown Library.
10. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the management of the Hellertown Library.
11. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to the funding of the Hellertown Library.
12. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Borough and OCL from



January 1, 2020, through the present date pertaining to the funding of the Hellertown Library.

13. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the funding of the Hellertown Library.
14. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to the Hellertown Library's service area.
15. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the Hellertown Library's service area.
16. All communications – including but not limited to emails, letters, text messages, voicemails and memorandums – between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the Hellertown Library's service area.
17. All internal communications pertaining to any dispute between Hellertown Borough and Lower Saucon Township from January 1, 2020, through the present date.
18. All internal communications pertaining to the funding of Hellertown Library from January 1, 2020, through the present date.
19. All internal communications pertaining to the service area of the Hellertown Library from January 1, 2020, through the present date.
20. All memorandum, reports, files, etc. pertaining to the use of the Hellertown Library by Lower Saucon Township residents from January 1, 2020, through the present date.
21. All memorandum, reports, files, etc. pertaining to the funding of the Hellertown Library from January 1, 2020, through the present date.
22. All memorandum, reports, files, etc. pertaining to the service area of the Hellertown Library from January 1, 2020, through the present date.

The Library did not respond within five business days of receiving the Request, and the Request was therefore, deemed denied. *See* 65 P.S. § 67.901.

On November 7, 2022, the Requester appealed to the Office of Open Records (“OOR”), stating grounds for disclosure.<sup>1</sup> The OOR invited both parties to supplement the record and directed the Library to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On December 16, 2022, the Requester submitted a position statement, reiterating its argument that the Library is an agency under the RTKL, as well as copies of meeting minutes, correspondence from the Pennsylvania Department of Education, and Library Services Agreements between the Library and Hellertown Borough (the “2022 Agreement”) and the Library, Hellertown Borough and Lower Saucon Township (the “2016 Agreement”). In support of her position, the Requester submitted the statement, made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities, of B. Lincoln Treadwell, Jr., Esq., the Solicitor for Lower Saucon Township.

On the same day, the Library submitted a position statement, the contents of which were verified, subject to the penalties of 18 Pa.C.S. § 4904, by Jason Bates, Esq., legal counsel for the Library. The Library also submitted a statement, made subject to the penalties of 18 Pa.C.S. § 4904, from Ken Solt, the President of the Library’s Board of Directors, as well as a copy of the

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<sup>1</sup> The Requester granted the OOR a 30-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).”). Furthermore, on November 10, 2022, the OOR dismissed the instant appeal, concluding that the Library was not an agency under the RTKL. On November 23, 2022, the Requester filed a Petition for Reconsideration, asking the OOR to reopen the record to permit the submission of evidence proving the Library is, in fact, an agency. By Order dated November 30, 2022, to ensure the parties had a meaningful opportunity to present arguments, the OOR vacated the original final determination and established case deadlines.

2022 Agreement and various organizational documents concerning the Library's Board of Directors, including by-laws and a list of Board Directors.

### LEGAL ANALYSIS

Records in the possession of local agencies 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. Local agencies are 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)).

The sole issue before the OOR is whether the Library falls within the definition of a local agency under the RTKL, which defines "local agency" as:

- (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
- (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

65 P.S. § 67.102. As the Library notes in its position statement, the OOR has, on numerous occasions, found public libraries to fall outside the definition of an agency under the RTKL. *See, e.g., Mahon v. Plymouth Public Library*, OOR Dkt. AP 2015-1045, 2015 PA O.O.R.D. LEXIS 1094; *Hanover Twp. Board of Supervisors v. Bethlehem Area Public Library*, OOR Dkt. AP 2012-2053, 2012 PA O.O.R.D. LEXIS 1477; *Wolf v. Lancaster Public Library*, OOR Dkt. AP 2010-0414, 2010 PA O.O.R.D. LEXIS 381.

In *Pysher v. Clinton Twp. Volunteer Fire Co.*, the Commonwealth Court provided guidance as to the types of information needed to determine whether an agency—in that case, a volunteer fire department—constitutes a local agency subject to the RTKL. 209 A.3d 1116 (Pa. Commw. Ct. 2019); *see also Bohman v. Clinton Twp. Volunteer Fire Co.*, 212 A.3d 145 (Pa. Commw. Ct. 2019). The Court set forth several factors to be considered when assessing whether an organization is considered a “similar governmental entity,” including the degree of governmental control, the nature of the organization’s functions, and financial control. *Pysher*, 209 A.3d at 1123 (citing *Appeal of Hadley*, 83 A.3d 1101, 1108 (Pa. Commw. Ct. 2014)). The Court explained that, with respect to the first factor, the factfinder must 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.* (quoting *Hadley*, 83 A.3d at 1109). 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.*

As a preliminary matter, 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 activity,” particularly where the Library meets the definition of a public library under the Pennsylvania Library Code of 2012 (“Library Code”), 24 P.S. §§ 9301 *et seq.*, and, as noted in the Solt statement, was organized as a “non-profit public library under the Laws of the Commonwealth of Pennsylvania and the Pennsylvania Library Code” and makes “library services available to all residents of the Borough of Hellertown....” *See also* 22 Pa. Code § 141.21

(providing that local libraries “shall be an integral part of general local government”). Instead, the Library focuses on whether the Borough exercises financial and governmental control over the Library.

Regarding financial control, the Solt statement<sup>2</sup> affirms as follows:

All of the assets of the [Library] are solely owned by the Library itself and are not controlled by Borough Council.

The Board of Directors creates a budget which is provided to the ... Borough Manager to share with Borough Council. Neither Borough Council nor the Borough Manager have ever provided for or have been ask[ed] for input.

*Solt* Statement, ¶¶ 10-11. Furthermore, in its position statement, the Library argues that, even though the Borough provides financial support to the Library, “the mere acceptance of governmental funding alone does not convert the Library into a ‘local agency’ for purposes of the RTKL.” To do so, the Library contends, “will create a significant administrative burden, including time, costs and/or attorney’s fees, to libraries that already are struggling with financial burdens” and would “likely result in the dissolution of many nongovernmental nonprofits that provide our communities with critical services.”

While we agree that the receipt of government funding does not automatically transform a non-profit public library into a local agency under the RTKL, *see Pysher*, 209 A.3d at 1123 (“...the less government financing, the less likely it was that there was government control”); *see also Mooney v. Bd. of Trs. of Temple Univ.*, 292 A.2d 395, 399 (Pa. 1972), the 2022 Agreement, which became effective on February 1, 2022, establishes that “[t]he Borough shall pay to the Library a yearly sum to cover the operating costs of the Library” and, “[i]n 2022, ... a one-time supplemental emergency appropriation of \$75,000 ... to be utilized for Library operating expenses at the

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<sup>2</sup> Under the RTKL, a statement made under the penalty of perjury is competent evidence to sustain an agency’s burden of proof. *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).

discretion of the Library Board of Directors.” 2022 Agreement, ¶¶ 4A-B. The 2022 Agreement further reads that this yearly operating amount is “subject to the presentation of a library budget to the Borough Council, and an *approval* of the operating costs for each subsequent year *by that Council*.” 2022 Agreement, ¶ 4A (emphasis added). Finally, the Library is obligated to meet with the Borough Manager in preparing the budget “to discuss funding and operational costs,” and the Borough has the right to inspect the Library’s financial books and records and, once every two years, may “conduct its own independent audit of review of the Library’s financial books and records.” 2022 Agreement, ¶¶ 6-7.

With respect to governmental control, the 2022 Agreement provides that the Borough has the power to appoint a majority of the Library’s Board of Directors and that “Library Board shall have the power to plan for, implement, and manage all library services, programs and activities in accordance with its By-Laws, rules and regulations.” 2022 Agreement ¶¶5A-B. Notably, however, the Library’s amended By-Laws may only be adopted by the Library Board “with the approval of Hellertown Borough” and “no amendments may be made to the powers granted to the Borough in the By-Laws to appoint Board members as provided in the By-Laws without the prior approval of the Borough.” 2022 Agreement, ¶5B. The amended By-Laws, which were adopted on March 22, 2022, provide that five of the seven Board members must be appointed by the Hellertown Borough Council<sup>3</sup> and at least one of the Borough’s appointments must serve on the Hellertown Borough Council.<sup>4</sup> Hellertown Library Association By-Laws, Article IV, Section A, Subsections 1 and 2.

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<sup>3</sup> The Public Library Code provides that “[t]he municipal officers of the municipality in which the local library is established shall appoint any members of the board and fill any vacancies on the board....” 24 Pa.C.S. § 9318(b)(1).

<sup>4</sup> In his statement, Mr. Solt explains that there are presently two members of the Hellertown Borough Council serving on the Library Board of Directors. *Solt Statement*, ¶7.



The Library argues that the Borough does not have control over the day-to-day services of the Library and that “there is nothing in the Agreement to suggest that the Borough ... would exercise direct control over the operations of the Library through the Board of Directors.” While this may be true, the fact remains that the 2022 Agreement and the amended Library By-Laws permit the Borough to exercise financial and governmental control over the Library. The Borough, which is contractually obligated to cover the annual operating costs of the Library, must be consulted on<sup>5</sup> and presented with the Library’s annual budget and must approve the Library’s yearly operating expenses. The Borough is also granted the authority to appoint a majority of the Library’s Board of Directors, to include at least one of its own Council members, and approve the amendment of the Library’s By-Laws as it pertains to the appointment of more than two-thirds of the Library’s Board of Directors. *Cf. Appeal of Hadley, supra* (concluding that a business, industry and tourism alliance was not a “similar governmental entity” where there was no governmental control over the alliance’s operations, including its organizational structure, purposes, powers, duties and fiscal affairs and the government’s financing of the alliance was “proportionally small”); *Phila. Indus. Dev. Corp. v. Ali*, 2011 Pa. Commw. Unpub. LEXIS 317 (Pa. Commw. Ct. 2011) (holding that the PIDC was not a “similar governmental entity” where, among other things, it was not created by a political subdivision pursuant to a specific statutory power, its members were not appointed exclusively by the governing body of a political subdivision, it did not require the delegation of authority from a political subdivision to perform its function).<sup>6</sup> Accordingly, the Library meets the definition of a “similar governmental entity” and is, therefore, a local agency under the RTKL.

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<sup>5</sup> The Library’s Director is obligated to meet with the Borough Manager “to discuss funding and operational costs” on an annual basis.

<sup>6</sup> An unreported opinion of the Commonwealth Court may be cited for its persuasive value. 210 Pa. Code § 69.414.

Furthermore, because the Library has neither raised nor supported with evidence any additional grounds for withholding the requested records, it has failed to meet its burden of proof under the RTKL. *See* 65 P.S. § 67.305; 65 P.S. § 67.708(a).

### **CONCLUSION**

For the foregoing reasons, the appeal is **granted**, and the Library is required to provide all 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 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.<sup>7</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: 6 January 2023**

*/s/ Joshua T. Young*

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JOSHUA T. YOUNG  
DEPUTY CHIEF COUNSEL

Sent via email to: Susan Longnaker;  
Tricia Springer, Esq.;  
Jason Bates, Esq.

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

# EXHIBIT “B”

**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF OPEN RECORDS**

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**SUSAN LONGNAKER,**

**Requester,**

**v.**

**HELLERTOWN AREA LIBRARY  
ASSOCIATION**

**Respondent.**

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**Docket No. AP 2022-2541**

**AFFIDAVIT OF KEN SOLT**

I, Ken Solt, being duly sworn according to law, hereby depose and state as follows:

1. I am an individual and serve as the President of the Hellertown Area Library Board of Directors. Hellertown Area Library is located at 409 Constitution Avenue, Hellertown, PA 18055.

2. In my position as President of the Hellertown Area Library Board of Directors, I am familiar with the operations and functions of the Hellertown Area Library Association ("Library").

3. The Library is a non-profit organization organized as a non-profit public library under the Laws of the Commonwealth of Pennsylvania and the Pennsylvania Library Code.

4. Presently, the Library provides services to the residents of both the Borough of Hellertown and the Township of Lower Saucon.

5. The Board of Directors for the Library currently consists of 7 individuals. One (1) of the members is a resident of Lower Saucon and is a Saucon Valley School District resident (encompassing Hellertown Borough and Lower Saucon Township) who is chosen and appointed solely by the Library Board. There are five members who are residents of Hellertown. Hellertown Borough selects one member of Borough Council to serve on the Library Board of Directors and to act as a liaison between the Borough and the Library.

6. Presently, there is one (1) Council member of the Borough of Hellertown on the Library Board of Directors.

7. The Board of Directors act independently of the Hellertown Borough Council and are not influenced by Hellertown Borough.

8. The Library Board of Directors does not have regular contact with Hellertown Borough Council aside from the liaison and the current second Borough Council member.

9. All of the assets of Hellertown Area Library Association are solely owned by the Library itself and are not controlled by Borough Council.

10. The Board of Directors creates a budget which is provided to the Hellertown Borough Manager to share with Borough Council. Neither Borough Council nor the Borough Manager have ever provided for or have been ask for input.

11. I hereby verify that the facts within this this Affidavit are true and correct to the best of my knowledge, information and belief and I understand that false statements herein are made subject to the penalties prescribed in 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.



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Ken Solt  
President, Board of Directors  
Hellertown Area Library Association

# EXHIBIT “C”





Eckert Seamans Cherin & Mellott, LLC  
213 Market St  
8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL: 717 237 7174  
FAX: 717 237 6019

Susan E. Longnaker  
717-237-6094  
slongnaker@eckertseamans.com

October 17, 2022

**VIA US MAIL**

Hellertown Area Library Association  
409 Constitution Avenue  
Hellertown, PA 18055

Re: Right to Know Law Request

Dear Open Records Officer:

I am writing to request the following records from the Hellertown Library Association (the "Library"):

1. All communications - including but not limited to emails, letters, text messages, voicemails and memos - from January 1, 2020, through the present date regarding Lower Saucon Township residents' use of the Hellertown Library.
2. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Library and the Office of Commonwealth Libraries ("OCL") from January 1, 2020, through the present date pertaining to the use of the Hellertown Library by Lower Saucon Township residents.
3. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the use of the Hellertown Library by Lower Saucon Township residents.
4. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the use of the Hellertown Library by Lower Saucon Township residents.
5. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to any dispute between Hellertown Borough and Lower Saucon Township regarding the Hellertown Library.

6. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to any dispute between Hellertown Borough and Lower Saucon Township regarding the Hellertown Library.

7. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to any dispute between Hellertown Borough and Lower Saucon Township regarding the Hellertown Library.

8. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to the management of the Hellertown Library.

9. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the management of the Hellertown Library.

10. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the management of the Hellertown Library.

11. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to the funding of the Hellertown Library.

12. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the funding of the Hellertown Library.

13. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the funding of the Hellertown Library.

14. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Library and OCL from January 1, 2020, through the present date pertaining to the Hellertown Library's service area.

15. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and OCL from January 1, 2020, through the present date pertaining to the Hellertown Library's service area.

16. All communications - including but not limited to emails, letters, text messages, voicemails and memorandums - between Hellertown Borough and Hellertown Library from January 1, 2020, through the present date pertaining to the Hellertown Library's service area.

17. All internal communications pertaining to any dispute between Hellertown Borough and Lower Saucon Township from January 1, 2020, through the present date.

18. All internal communications pertaining to the funding of Hellertown Library from January 1, 2020, through the present date.

19. All internal communications pertaining to the service area of the Hellertown Library from January 1, 2020, through the present date.

20. All memorandum, reports, files, etc. pertaining to the use of the Hellertown Library by Lower Saucon Township residents from January 1, 2020, through the present date.

21. All memorandum, reports, files, etc. pertaining to the funding of the Hellertown Library from January 1, 2020, through the present date.

22. All memorandum, reports, files, etc. pertaining to the service area of the Hellertown Library from January 1, 2020, through the present date.

Thank you for your attention to this matter.

Sincerely,

*Susan E. Longnaker*

Susan E. Longnaker

# EXHIBIT “D”

**AFFIDAVIT OF BOROUGH MANAGER CATHY HARTRANFT**

I, Cathy Hartranft am the duly appointed Borough Manager for the Borough of Hellertown.

1. Hellertown Borough entered into a 2022 Library Services Agreement between the Borough and the Hellertown Area Library Association (HAL) which is a non-profit corporation, Hellertown has provided yearly financial assistance to HAL since 1994.

2. The Borough makes annual financial contributions to financially assist HAL based on a per capital contribution formula. Payments are made in twelve monthly installments. The payments do not fund HAL's entire operational budget. The funds provide financial assistance and support to offset some of HAL's operating costs.

3. The Borough does not approve HAL's budget. HAL's approved budget is submitted to the Borough on a yearly basis with HAL's annual funding request. HAL's budget allows the Borough to determine the yearly operating costs that the Borough will contribute to HAL as part of approving the Borough's overall budget. The HAL expenditure must be included as a line item in the Borough's own budget.

4. The Borough appoints five of seven of HAL's board members. Once appointed the HAL board members cannot be removed by the Borough. Members can only be removed by the Board. The Borough approves the By-laws but has no input in the drafting and creating of the By-laws and only approves them after HAL's Board has approved them.

5. The Borough is not involved with the implementation of or the managing of the services the library offers to the public, in the development of programs nor in scheduling HAL's activities. The Borough makes no decisions about the operation of the Library nor how monetary funds are allocated within HAL's budget. The Borough has no involvement with the day-to-day operations of HAL. The Borough does not control HAL's expenditure of funds.

6. The Borough does not hire HAL's employees. The Borough does not set the meeting schedule or advertise the meetings. The decisions of the HAL Board of Directors are not subject to Borough oversight.

7. The Borough has a right to review the annual HAL budget and to request an audit every two years because the Borough makes financial contributions of public funds to assist HAL in the operation of the library. Since the Borough has no control over the exercise or discretionary use of these monetary funds the Borough has requested the contractual right to review the HAL approved budget and its expenditures and to request an audit if needed. This is not to control HAL's budget but to make sure the Borough's donated tax payer funds were put to proper use.

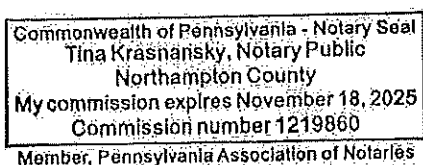
8. Hellertown Area Library has its own independent legal counsel.

9. In sum, the Borough's yearly involvement with HAL, absent a Board vacancy, essentially consists of the following: a monthly payment to HAL to assist it with its operational costs; cutting the grass for the Library in the spring and summer; and during Borough budget season, holding one meeting with a HAL representative to review the HAL budget to assist the Borough in determining how much it can allocate to HAL to assist HAL with its operational costs for the next year. A HAL representative usually appears once per year during budget hearings to make a request for funding.

SWORN TO AND SUBSCRIBED  
before me this 3<sup>RD</sup> day of  
February, 2023.

Tina Krashansky  
Notary Public

Cathy Hartung  
Cathy Hartung, Borough Manager



# EXHIBIT “E”

LIBRARY SERVICES AGREEMENT

BETWEEN

BOROUGH OF HELLERTOWN  
NORTHAMPTON COUNTY, PENNSYLVANIA

AND

THE HELLERTOWN AREA LIBRARY ASSOCIATION



**THIS LIBRARY SERVICES TRANSITIONAL AGREEMENT** (the "Agreement") is entered into with an effective date of February 1, 2022 by and between the **BOROUGH OF HELLERTOWN**, Northampton County, Pennsylvania, a Municipal Corporation, validly organized and existing pursuant to the laws of the Commonwealth of Pennsylvania (the "Borough") and the **HELLERTOWN AREA LIBRARY ASSOCIATION**, a public library and nonprofit corporation organized and existing pursuant to the laws of the Commonwealth of Pennsylvania (the "Library").

**WHEREAS**, the Library currently operates a public library, located within the Borough of Hellertown, that provides library services to the residents of that municipality; and

**WHEREAS**, the Borough and the Library desire to provide for library services for the residents of the Borough of Hellertown pursuant to the provisions of Section 46202 of the Pennsylvania Borough Code and the Pennsylvania Library Act; and

**WHEREAS**, the Library is a public library as that term is defined in the Pennsylvania Library Code of 2012 [see 24 Pa. C.S.A. Chapter 93] and is authorized to provide library services to the residents of Hellertown Borough pursuant to the provisions of the Act; and

**WHEREAS**, the Borough has identified the current and future needs and interests of the Borough and its citizens relative to library services, and the Borough has determined that the resources of the Library are reasonably sufficient and satisfactory to provide the services, facilities, and equipment necessary to meet the aforesaid needs of the Borough; and

**WHEREAS**, the Borough has determined that entering into this Agreement with the Library is consistent with the public interest; and

**WHEREAS**, the Borough and the Library have reached agreement on the terms and conditions set forth herein, and the parties have agreed to be bound by those terms and conditions as of the Effective Date.

**NOW, THEREFORE**, in consideration of the promises and undertakings contained herein and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

**THE PARTIES DO HEREBY AGREE AS FOLLOWS:**

1. **PURPOSE**

The purpose of this Agreement is to establish the terms and conditions for the provision of library services to the residents of Borough by the Library; and to memorialize the agreement of the parties hereto relative to the financial support to be provided by the Borough, and the organizational, budgetary, and operational structure of the Library.

2. **GRANT OF AUTHORITY; TERM AND CONSTRUCTION**

A. *Grant of Authority:* Subject to the terms and conditions of this Agreement and applicable laws and regulations, the Borough hereby contracts with the Library and

the Library contracts with the Borough to provide library services to the residents of the Borough of Hellertown.

- B. *Term:* This Agreement shall become effective and in full force on February 1, 2022. The initial term of this Agreement shall be Two (2) years from the Effective Date unless this Agreement is extended or lawfully revoked as provided herein.
- C. *Extension of Agreement:* At the conclusion of the initial term, this Agreement may be extended by the Parties by mutual assent. The Borough shall notify the Library prior to September 1 of the second year of the initial term of its desire to extend the term, in writing, which writing shall then be promptly countersigned by the Library if the Library consents to the extension of this Agreement.
- D. *Withdrawal from Agreement:* Either party may terminate this Agreement, during the initial term, or any extension thereof, by providing written notice to the other party prior to September 1 of any calendar year. The termination shall then be effective for the subsequent calendar year.
- E. *Agreement Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Agreement is subject to and shall be governed by all applicable provisions of federal and state law to the extent not in conflict with federal law.
- F. *Construction of Agreement:* The parties agree that this Agreement contains all terms and conditions applicable to this Agreement. In the event of a conflict between any prior understanding, ordinance or agreement and this Agreement, this Agreement shall prevail. Specifically, this Agreement supersedes and takes the place of that certain Library Services Agreement signed by the Borough on November 15, 2021 and recognized by the Borough and the Library to be in effect between them from January 1, 2022 to January 31, 2022 (the "HB 2022 Agreement"). By signing this Agreement below, the Borough and Library terminate the HB 2022 Agreement.

3. **PROVISION OF LIBRARY SERVICE**

- A. *Borough Residents:* Library shall during the term of this Agreement make library services available to all residents of the Borough without regard to increases or decreases in population.
- B. The Borough and Library desire that library services continue for minors 18 and under, and veterans residing in Lower Saucon Township. However, the Library shall make the final decision on what Library services may be made available to citizens of Lower Saucon Township including minors, and veterans and under what terms of use, subject to applicable federal and state law and as determined by the Library to be in the best interest of the Library (which shall include such considerations as the Library shall deem appropriate, including without limitation the cost and work load of any such services and the sustainability of such services).
- C. *Availability of Library Service:* Library shall make library services available to all residents of the Borough in conformance with Section 3A and Library shall not

discriminate between or among any individuals in the availability of library services.

- D. *Library Cards for Service.* Borough residents as set forth in Section 3A wishing to use the library services contemplated herein shall apply for a library card by showing proof of residence within the Borough issuance of which shall not be unreasonably withheld by the Library. All Borough residents possessing library cards shall be eligible to receive and participate in all available library services.

4. **BOROUGH FINANCIAL SUPPORT FOR LIBRARY**

- A. *Yearly Operating Support Guidelines:* The Borough shall pay to the Library a yearly sum to cover the operating costs of the Library. In 2022, the sum shall be \$59,174.00 per year paid in installments of \$4,931.16 per month (which is based upon the Borough population as determined by the 2020 U.S. Census and a per capita amount of \$9.66). Thereafter, the yearly operating cost to be paid by the Borough is estimated to be the same amount, subject to the presentation of a library budget to the Borough Council, and an approval of the operating costs for each subsequent year by that Council. The Library may at any time during the term of this Agreement request in a writing delivered to the Borough additional funding to cover operating costs and/or capital improvements. The Borough may, but shall not be legally obligated to, agree to any such request. Notwithstanding any provisions contained herein, the yearly operating amount to be paid by the Borough to the Library is specifically conditioned upon approval by the Borough Council of the amount to be paid to the Library in the Borough's annual budget. If the Borough anticipates it will not or may not approve the yearly operating amount, it shall provide written notice to the Library by no later than July 1 of each year so that the Library has advance notice and time to pursue alternate funding sources.
- B. In 2022, the Borough shall provide a one-time supplemental emergency appropriation of \$75,000 which shall be paid to the Library on or before February 8, 2022 to be utilized for Library operating expenses at the discretion of the Library Board of Directors.
- C. The Borough has in the past provided yearly property services and maintenance at no cost to the Library. At the absolute and sole discretion of the Borough, the Borough is expected to continue the property services and maintenance during the term of this Agreement. The Library may at any time during the term of this Agreement request in a writing delivered to the Borough additional in-kind services from the Borough. The Borough may, but shall not be legally obligated to, agree to any such request.

5. **HELLERTOWN AREA LIBRARY BOARD OF DIRECTORS**

- A. *Appointment of Board Members, Terms:* The Library shall promptly after the

Effective Date amend its By-Laws so that the Borough has the power to appoint a majority of the Library Board of Directors. The By-Laws shall also be promptly amended so that Lower Saucon Township does not have the power to appoint Library Board members. The Library shall promptly reorganize the Board so that the composition of the Board matches the composition of the Board as provided for in the amended By-Laws.

- B. *General Powers of the Library Board:* The Library Board shall have the power to plan for, implement, and manage all library services, programs and activities in accordance with its By-Laws, rules, and regulations. The amended By-Laws shall be adopted by the Board with the approval of Hellertown Borough which approval shall not be reasonably withheld, conditioned or delayed. During the term of this Agreement, no amendments may be made to the powers granted to the Borough in the By-Laws to appoint Board members as provided in the By-Laws without the prior approval of the Borough. The Library shall provide prompt written notice to the Borough of any changes to the By-Laws not subject to this restriction.
- C. *Audit:* At its expense, the Hellertown Area Library Association shall annually conduct a financial review of the Library's financial records and provide an audit conducted by a qualified outside auditor to the Borough every two years.

6. **LIBRARY BUDGET**

The Library Board shall prepare and submit a budget for the Library, along with an annual funding request, to Hellertown Borough by September 1 of each calendar year for the next succeeding calendar year. As part of the budget preparation, the Director of the Library shall meet with the Borough Manager to discuss funding and operational costs, no later than July 1 of each calendar year.

7. **REPORTS AND RECORDS**

*Open Books and Records:* Upon thirty (30) days' written notice to Library, the Borough shall have the right to inspect the Library's financial books and records. The Borough may conduct its own independent audit or review of Library's financial books and records at its own cost no more than once every two (2) years during the term of this Agreement. All records reasonably necessary for any such audit shall be made available by Library to the Borough. Library shall provide copies of such records to the Borough upon written request.

8. **INSURANCE AND INDEMNIFICATION**

- A. *Insurance:* Library shall maintain in full force and effect, at its own cost and expense, during the term of this Agreement, the following insurance coverage:
  - a. Commercial General Liability Insurance and Property Insurance in the amount of one million dollars (\$1,000,000) combined single limit for

property damage and bodily injury.

- b. Business Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.
- c. Workers' Compensation Insurance meeting all legal requirements of the Commonwealth of Pennsylvania.
- d. Commercial Liability for officers and directors and employees - (general aggregate \$2,000,000), (personal injury \$1,000,000).
- e. Borough shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation and Employer's Liability Insurance.
- f. Library shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement and upon request of the Borough pursuant to subsection h below or extension of this Agreement, shall confirm replacement of such insurance.
- g. Each of the required insurance policies shall be with sureties qualified to do business in the Commonwealth of Pennsylvania, with an A-minus VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.
- h. Upon written request, Library shall deliver to the Borough certificates of insurance showing evidence of the required coverage within sixty (60) days.

*B. Indemnification:*

- a. Library agrees to indemnify, save, hold harmless, and defend Borough, its elected and appointed officials, officers, agents, boards, and employees acting in their official capacities, from and against any and all claims for injury, loss, liability, cost or expense to the extent arising in whole or in part from, incident to, or connected with any act or omission of Library, its officers, agents, or employees, including the acts or omissions of any contractor or subcontractor of Library, arising out of the construction, operation, upgrade, or maintenance of the Library. The obligation to indemnify, save, hold harmless, and defend Borough shall include the obligation to pay judgments, injuries, liabilities, damages, penalties, court costs, and Library's own attorneys' fees. Borough shall give Library timely written notice via certified mail, return receipt requested, of Borough's request for indemnification within (a.) ten (10) days of receipt of a claim or action pursuant to this subsection, or within (b.) ten (10) days following service of legal process on Borough or its designated agent of any action related to this subsection. Borough agrees that it will take all necessary action to avoid a default judgment and that it will not enter into any

settlement or other resolution of any such claim or action without prior written notice to and the consent of the Library which consent shall not unreasonably be withheld, conditioned or delayed. Notwithstanding the foregoing, Library shall not indemnify Borough for any damages, liability, or claims to the extent resulting from, and Borough shall be responsible for, Borough's own acts of willful misconduct, Borough's breach of obligation under this Agreement, or negligence of Borough, its elected and appointed officials, officers, agents, boards, and employees.

- b. The Borough shall hold harmless and defend Library and its officers, board members, employees and agents from and against, and shall be responsible for damages, liability, or claims to the extent resulting from or arising out of, the willful misconduct or negligence of the Borough, its elected and appointed officials, officers, agents, boards, and employees acting in their official capacities.
- c. The Borough shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation, including any acts, negligence or breach of its elected and appointed officials, officers, agents, boards, and employees acting in their official capacities subject to any and all defenses and limitations of liability provided by law. The Library shall not be required to indemnify the Borough for acts of the Borough that constitute willful misconduct or negligence on the part of the Borough, its elected and appointed officials, officers, employees, agents, attorneys, consultants, independent contractors, or third parties.

## 9. MISCELLANEOUS PROVISIONS

- A. *Preemption:* In the event that a change in federal or state law or regulation preempts or limits the enforceability of a provision of this Agreement, the provision shall be read to be preempted or limited, but only to the extent and for the time required by such law or regulation. In the event such federal or state law or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision hereof that had been preempted or limited is no longer preempted or limited, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of Borough.
- B. *Force Majeure:* Library shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, order of governmental authority having jurisdiction over the Library or the parties to this Agreement, sudden legal changes or act of nature such as a hurricane, tornado, flood, blizzard or other catastrophic event.

- C. *Notices:* Unless otherwise expressly stated herein, notices required under this Agreement shall be mailed first class, postage prepaid, or by prepaid overnight delivery by a nationally recognized overnight delivery service to the addressees below. Each party may change its designee by providing written notice to the other party.

Notices to Borough shall be mailed to:

685 Main Street, Hellertown, PA 18055.

Attention: Cathy Hartranft, Borough Manager

Notices to the Library shall be mailed to:

409 Constitution Ave, Hellertown, PA 18055.

Attention: Noelle Kramer, Library Director

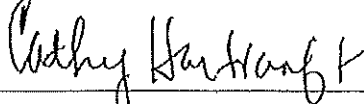
- D. *Entire Agreement:* This Agreement and the Exhibits hereto, if any, constitute the entire agreement between the Borough and the Library and supersedes all prior or contemporaneous agreements, ordinances, representations, or understanding (written or oral) of the parties regarding the subject matter hereof.
- E. *Amendments:* Amendments to this Agreement shall be mutually agreed to in writing by the parties.
- F. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.
- G. *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of this Agreement.
- H. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.
- I. *Certain Exceptions:* The Borough and Library each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

- J. *Counterparts:* This Agreement may be executed in counterparts, each of which when combined together, shall constitute the entire agreement among the parties. Any party executing or delivering this Agreement electronically shall be legally bound by this Agreement notwithstanding its electronic execution or delivery of this Agreement.

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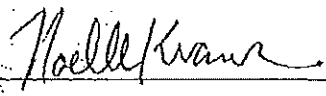
ATTEST:

  
Cathy Hantrauft, Secretary

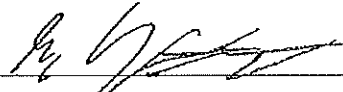
BOROUGH OF HELLERTOWN

  
Thomas J. Rieger, Council President

ATTEST:

  
Noelle Kramer, Library Director

HELLERTOWN AREA LIBRARY  
ASSOCIATION

  
Ken Solt, Board President

# EXHIBIT “F”

## **HELLERTOWN AREA LIBRARY ASSOCIATION BY-LAWS**

### **ARTICLE I: NAME, ADDRESS AND FISCAL YEAR**

- A. The name of this organization shall be the Hellertown Area Library Association, hereinafter referred to as the "Association".
- B. The principle office of the Hellertown Area Library Association shall be at 409 Constitution Avenue in the Borough of Hellertown, Commonwealth of Pennsylvania.
- C. The fiscal year for the Association shall commence on January 1 and conclude on December 31 of each year.

### **ARTICLE II: MUNICIPALITIES SERVED**

The Association operates a free public non-sectarian library for the residents and taxpayers of the Borough of Hellertown. The library may also serve (but may not always serve) the residents and taxpayers of Lower Saucon Township under terms and conditions as determined by the Association Board from time to time.

### **ARTICLE III: PURPOSE**

The Association is a Pennsylvania non-profit, non-stock corporation granted recognition under Section 501(c)(3) of the Internal Revenue Code as a charitable organization. The Association operates a library containing a collection of currently useful educational, informational and recreational materials for the use of residents of the Borough of Hellertown and for the use of any other then authorized persons. In addition, the library provides programs and services to encourage the broadest use of its resources by the community.

### **ARTICLE IV: BOARD OF DIRECTORS**

- A. The Board of Directors, hereinafter referred to as the "Board", shall consist of a total of seven (7) members, five (5) appointed by Hellertown Borough Council and two (2) appointed by the Association Board of Directors as more fully described just below, all of whom shall serve as follows.
  - 1. Five (5) Board members will be appointed by Hellertown Borough Council. All appointees shall be residents of Hellertown Borough. Two (2) Board members will be appointed by the Association Board of Directors and shall be residents of the municipalities that are included in Saucon Valley School District, Northampton County.
  - 2. One (1) of the Board members appointed by Hellertown Borough shall at all times be a then-serving member of the Hellertown Borough Council. This individual shall be a full voting member of the Board and shall also act as the liaison between the Association and the Hellertown Borough Council. In the event that the Council member appointed by Hellertown Borough is at any point in time relieved of such member's position on the Council (by loss of

election, resignation, death or otherwise) or relieved of such member's position on the Board of Directors by the Council prior to the end of such member's term on the Association Board of Directors, then the Council shall provide written notice to the Library Director of the removal of such member from the Board of Directors and the Council may replace any such removed person by any person then serving on the Council, who shall be appointed in such writing or in a subsequent writing to take such former Council member's place on the Board. Hellertown Borough shall not at any time appoint more than one (1) member of its Council to the Association Board of Directors, except that any person who has been appointed to the Board by the Hellertown Borough Council when not a member of the Council may if subsequently elected or appointed to the Council continue to serve on the Board until that member's then current term of Board service expires.

3. Term of office: Each member of the Board shall serve for a term of three (3) years from the January board meeting of the year in which he/she takes office and extends to the third year following the commencement of the term or until his/her successor has been appointed and qualified except that (i) a member of the Board who has been appointed to the Board as a member of Hellertown Borough Council may serve a term of less than three (3) years if such Board member is relieved of such member's position on the Council as provided in subsection 2 just above; (ii) a member may serve a term of less than three (3) years as provided in the second sentence of subsection 4 just below; and (iii) a member may serve a term of less than three (3) years due to a vacancy as provided in subsection 6 just below.
4. Terms shall be staggered so that the terms of approximately one-third ( $\frac{1}{3}$ ) of the Directors shall expire in each year. A Director's term may be designated by the Board to be less than three (3) years to establish or maintain the staggering of the terms as described herein. When a Board member's term is about to expire (and such Board member was appointed by the Borough Council and is eligible for re-appointment under subsection 5 just below), the remainder of the Board may vote on whether to recommend to the Borough Council that the Borough re-appoint such Board member to the Board to serve the next term. The Secretary of the Board and/or Library Director shall report the result of any such vote in writing to the Council. While the Borough Council shall not be bound by such vote of the remainder of the Board, the Council shall take the vote of the Board into consideration.
5. Directors are limited to serving no more than two (2) consecutive terms for a maximum of six (6) years, except that a partial or incomplete term of less than three (3) years pursuant to subsections 2 or 4 just above, or subsection 6 just below shall not count toward the two (2) consecutive terms for a maximum of six (6) years limit. After a Board member shall have served a second consecutive term of three (3) years, said Board member is required to leave the Board for a minimum of one (1) year, after which such former Board member may be reappointed to the Board subject anew to the term limits set forth herein.
6. Vacancies on the Board, which may occur as a result of resignation, removal, death or other cause, will be filled by the body that appointed the prior occupant of that Board position. To avoid any doubt, the Hellertown Borough Council shall fill a vacancy in any Board position previously appointed by the Hellertown Borough Council and the Association Board of Directors shall fill a vacancy in the Board position previously appointed by the Association Board of Directors. Any candidate for appointment to fill a vacancy on the Board shall meet with the Board prior to appointment. The Board shall promptly notify the Borough Council of any concerns Board members may have regarding the appointment of any candidate to be appointed by the Council. While the Council shall not be bound by any such reported concerns, the Council shall take any such reported concerns into consideration. The vacant Board position

shall remain vacant until the appointing body exercises its privilege to appoint a replacement Board member. A midterm vacancy on the Board shall be filled for the remainder of the unexpired term.

7. The Board members appointed by the Association Board of Directors shall be appointed at the end of each successive 3-year term of such Board member (subject to any earlier vacancies) during the reorganization meeting of the Board following the seating of all the Board members appointed by the Hellertown Borough Council. The candidate(s) for such appointment shall be identified by the Association Board of Directors through its own nominating process.
8. The Library Director is the senior employed staff member of the Library. The Library Director shall report to the Board and the Board shall have the power to hire and remove the Library Director. The Library Director shall assume responsibility for implementation of policies adopted by the Board as they affect the Hellertown Area Library. The Library Director shall be an ex-officio member of the Board and of all Board committees, without voting power. The Library Director is authorized to sign documents on behalf of the Library which are related to the conduct of the day-to-day operations of the Library including but not limited to documents relating to vendors, employees and volunteers.
9. The names of the members of the Board of Directors as of the date of adoption of these By-Laws as amended on March 22, 2022, the body appointing each such Board member, the current terms of such Board members and the remaining terms for which all such Board members are eligible are as provided on the schedule attached to these By-Laws as Exhibit A. This Schedule shall be maintained by the Board and updated annually but the updated version while available to the Board of Directors need not be attached to these By-Laws. Any person appointed to the Board of Directors by Lower Saucon Township and serving on the Board of Directors as of February 6, 2022 shall be deemed to have immediately resigned from the Board as of the adoption of these By-Laws as of February 6, 2022 (whether or not any such Board member shall have submitted a formal resignation from the Board). The Board may in its discretion from time to time invite the Lower Saucon Township Council and/or the Saucon Valley School District to appoint a representative to the Association Board of Directors. Any such representative may attend Association Board of Directors meetings and may speak at such meetings but shall not be a member of the Association Board of Directors and shall not have a vote or the other prerogatives of a member of the Association Board of Directors. This invitation may be revoked by the Board at any time by written notice to the Lower Saucon Township Council and/or the Saucon Valley School District as applicable, whereupon any such representative shall no longer have the privileges described just above.

#### B. Duties of the Board

1. Determines all policies for the Hellertown Area Library.
2. Approves the budget.
3. Authorizes capital expenditures.
4. Approves all contracts.
5. Reviews and approves all work of committees.
6. Evaluates all potential Board members; and nominates and approves Board members to be appointed by the Board of Directors.
7. Reviews and accepts the annual audit and selects the auditor from time to time.
8. Files required reports, including but not limited to tax reports, to the local, State, and Federal

government agencies having jurisdiction over the Association or the Library.

- C. No member of the Board may be a regularly paid employee of the Hellertown Area Library. No member of the Board shall receive any salary or other compensation from the Association for his/her service on the Board, provided, however, that members of the Board may be entitled to reimbursement of reasonable expenses incurred on behalf of the Association.
- D. All Board members are expected to be present at every meeting of the Board in accordance with the Board Attendance Policy (see Appendix I). If a Board member is unable to attend a Board meeting for good cause, the Board member shall notify the Library Director prior to the Board meeting of the Board member's absence from the meeting and the reason for the absence.
- E. Meetings of the Board shall be conducted monthly; the date and time to be at the discretion of the Board.
  - 1. Special meetings of the Board may be called at any time by the President and shall be called promptly upon request of any three (3) Board members. Minutes of such meetings shall be submitted to the Board.
  - 2. Attendance of seventy-five percent (75%) of the Board members shall constitute a quorum at any regular or special meeting. A decision approved by a majority of the Board members at a meeting at which a quorum is present shall constitute a decision of the Board.
- F. No notice need be given of any reorganizational or regular meeting of the Board of Directors beyond announcement at a prior Board meeting. Notice of a special meeting of the Board shall be given by delivery to each Director in person, by electronic means, or by delivering the same to him/her by overnight mail at his/her post office address as it appears upon the books of the Association at least three (3) days before the date designated for such meeting specifying the place, date and hour of the meeting. Whenever all of the Directors shall have waived notice of any meeting either before or after such meeting, such meeting shall be valid for all purposes. A Director who shall be present at any meeting and who shall not have protested, prior to the meeting or at its commencement, the lack of notice to him or her, shall be deemed to have waived notice of such meeting. In any case, any acts or proceedings taken at a Directors' meeting not validly called or constituted may be made valid and fully effective by ratification at a subsequent Directors' meeting that is legally and validly called. Except as otherwise provided in these By-Laws, notice of any Directors' meeting or any waiver thereof need not state the purpose of the meeting, and, at any Directors' meeting duly held as provided in these Bylaws, any business within the legal province and authority of the Board may be transacted.
- G. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or any such committee consent orally or in writing, including by telephone, on-line meeting tools, email or other means of electronic communication, to the adoption of a resolution authorizing the action (to use this procedure of taking formal action without a meeting of any kind, the vote must be unanimous). The resolution and the consents thereto by the members of the Board or any such committee shall be filed with the minutes of the proceedings of the Board or such committee.
- H. Any one or more or all of the members of the Board or any committee thereof may participate in a meeting of the Board or such committee by means of a conference telephone or similar communications equipment (including on-line meeting tools) allowing all persons participating in the meeting to hear each other and speak to each other. Participation by such means shall constitute attendance in person at a meeting.
- I. In addition to removal of a member of the Board of Directors pursuant to the Board Attendance

Policy attached to these By-Laws as Appendix I, the Board of Directors may declare vacant the office of a Director who has been judicially declared of unsound mind, who has acted in a manner which is damaging to the Association or to its public reputation (which may include but is not limited to malfeasance or criminal conduct) or when otherwise deemed by the Board of Directors to be in the best interest of the Association, provided, however, removal shall require the affirmative vote of two-thirds of the Directors present at a duly called meeting at which a quorum is present. Notice of the meeting shall include notice of the vote to remove a Director. The Director shall have the opportunity to present his/her case at the meeting (subject to reasonable time and manner limitations as determined by the President in his/her reasonable discretion) but shall not be permitted to vote on the removal proposal.

J. Personal Liability and Indemnification of Trustees. (See Appendix II)

## ARTICLE V: OFFICERS AND THEIR DUTIES

- A. The officers shall be elected by the Board at the Board's annual reorganization meeting which shall be in January of each year. The term of office shall be one (1) year or until his/her successor has been appointed and qualified. If there are any circumstance beyond the reasonable control of the Board causing substantial uncertainty regarding the composition of the reorganized Board or officers, the Board may delay the re-organizational meeting up to sixty (60) days. The re-organizational meeting shall occur as scheduled by the Board and the term shall start from the date of that meeting and extend to the reorganizational meeting in the first year following the commencement of the term.
1. The President shall preside at all meetings of the Board of Directors. He/She shall be an ex-officio member of all committees. In addition, the President shall appoint chairpersons and members of committees as needed, subject to the approval of the Board. The President shall be a full voting member of the Board of Directors and shall sign all contracts and other documents on behalf of the Association provided the Board may also authorize the Library Director to sign contracts and other documents on behalf of the Association supplementing the document signing authority granted to the Library Director above.
  2. The Vice President shall perform the duties of the President in the absence of the President and such other duties as are assigned by the Board of Directors.
  3. The Recording Secretary shall keep the minutes of all meetings of the Board and report at all meetings. He/she shall notify members of special meetings of the Board. He/she shall attest to all contracts executed by the President on behalf of the Association. In the absence of the Secretary, the President will appoint a secretary pro tem.
  4. The Treasurer shall be responsible for reviewing, verifying and recording the Association's financial transactions. He/she shall present a written financial report at each meeting of the Board. He/she shall in close cooperation with the Library Director and the Finance Committee draft the annual budget and prepare the documents for the annual audit. He/she shall oversee the custody of all Association funds. He/she shall keep accurate records of all receipts and disbursements in accordance with Board directives.
- B. Officer Vacancies – Elected officers' unexpired terms shall be filled by Board appointment.
- C. Officer's Bonds – Any officer shall be bonded for the faithful discharge of his/her duties in such sum, if any, and with such surety or sureties as the Board shall require.

## ARTICLE VI: COMMITTEES AND THEIR RESPONSIBILITIES

- A. Finance – Shall consist of the Treasurer, Vice-President, one other Director and such other members as are appointed in accordance with these By-Laws. The committee shall:
1. Prepare the annual budget of the Association along with the Director and present same to the Board and recommend revisions as necessary.
  2. Protect the organization's financial resources and recommend appropriate action by the Board.
  3. Shall review the annual Audit.
  4. Shall review all contracts for financial feasibility and recommend action by the Board.
  5. The Treasurer, President, and Vice President shall complete bank signature cards and be available to sign checks requiring two signatures.
  6. In the event the Treasurer is not available to make deposits any of the individuals described in subsection 5 just above may handle that duty.
- B. Building and Grounds – Shall consist of at least one (1) Director and such other members as are appointed in accordance with these By-Laws. They shall review any proposed repairs, changes in structure, rehabilitation or replacement of the organization's building and grounds and recommend action to the Board.
- C. Personnel – Shall consist of three Directors and such other members who are appointed in accordance with these By-Laws who will perform the following:
1. Review and update the personnel policy for staff and volunteers.
  2. Annually evaluate the Library Director and participate in the evaluations of other employees.
  3. For new employees, follow the evaluation schedule set forth in the Personnel Policy.
- D. Development – Shall consist of one (1) Director and such other members who are appointed in accordance with these By-Laws. Committee shall recommend fundraising activities to enhance the operation budget.
- E. Ad-hoc committees may be appointed from time to time by the President, with the approval of the Board, or by the Board as the need arises. Committees may include appointees who are not Board members.

## ARTICLE VII: AMENDMENTS

These By-Laws may be amended at any meeting of the Board by a two-thirds (2/3) majority of those present, provided a written description of all proposed changes shall have been provided to each member of the Board not less than seven (7) days prior to the meeting and provided further, that so long as Hellertown Borough is a party to an agreement with the Association designating the Hellertown Area Library as the "home library" or the Borough's agent for library services, no amendments may be made to the powers granted to Hellertown Borough in these By-Laws to appoint Board members without the prior approval of the Hellertown Borough Council. The Library shall provide prompt written notice to the Borough of any changes to these By-Laws not subject to this restriction.



## ARTICLE VIII: PARLIAMENTARY AUTHORITY

The rules in the most recent addition of Roberts Rules of Order shall govern the Association where applicable and where they are consistent with these By-Laws.

Revised & Adopted: March 22, 2022

# EXHIBIT A

## Exhibit A

	2022	2023	2024	2025	2026
Hellertown Resident	3 yr Term / Year 2 - Beth Bloss	3 yr Term / Year 3 - Beth Bloss	3 yr Term / Year 1 - Open	3 yr Term / Year 2 - TBD	3 yr Term / Year 3 - TBD
Hellertown Resident	3 yr Term / Year 1 - Ken Solt	3 yr Term / Year 2 - Ken Solt	3 yr Term / Year 3 - Ken Solt	3 yr Term / Year 1 - Open	3 yr Term / Year 2 - TBD
Hellertown Resident	2 yr Term / Year 2 - Andrew Hughes	3 yr Term / Year 1 - Open	3 yr Term / Year 2 - TBD	3 yr Term / Year 3 - TBD	3 yr Term / Year 1 - Open
Hellertown Resident	2 yr Term / Year 1 - Pam Hahn	2 yr Term / Year 2 - Pam Hahn	3 yr Term / Year 1 - Open	3 yr Term / Year 2 - TBD	3 yr Term / Year 3 - TBD
Saucon Valley Resident	3 yr Term / Year 1 - Jasdeep Ahluwalia	3 yr Term / Year 2 - Jasdeep Ahluwalia	3 yr Term / Year 3 - Jasdeep Ahluwalia	3 yr Term / Year 1 - Open	3 yr Term / Year 2 - TBD
Saucon Valley Resident	3 yr Term / Year 3 - Jane Slyer	3 yr Term / Year 1 - Open	3 yr Term / Year 2 - TBD	3 yr Term / Year 3 - TBD	3 yr Term / Year 1 - Open
Hellertown Council Member	Matt Marcincin	Matt Marcincin	Matt Marcincin	TBD	TBD

## APPENDIX I

### BOARD ATTENDANCE POLICY

The Board of Directors of the Hellertown Area Library Association adopts the following policy with respect to Directors' unexcused absences from regularly scheduled Board meetings.

- A. All members of the Board of Directors should make a diligent effort to attend all regularly scheduled meetings or to report their inability to attend such meeting to the Library Director.
- B. In the event, the Board receives no reasonable explanation of the absence of a Director from two (2) consecutive regularly scheduled meetings, a notice shall be sent on behalf of the Board by the President indicating to the Director that his/her status as a Director has been placed under review for possible action. If such Director has been appointed to the Board by Hellertown Borough Council, a copy of such notice shall be sent to Hellertown Borough Council.
- C. In the event, a Director is absent for a third (3<sup>rd</sup>) consecutive regularly scheduled meeting of the Board without reasonable explanation, the remaining Directors may, upon motion by any Director seconded by another Director, conduct a vote to remove the Director from the Board. If the Board votes to remove the Director from the Board, the President, Secretary, and/or Library Director shall provide written notice of the removal to the affected Board member and to the Hellertown Borough Council. The Hellertown Borough Council shall have the opportunity to appoint a replacement Board member pursuant to Article IV, A, 6 of the By-Laws if the removed Board member was an appointee of the Hellertown Borough Council.

## APPENDIX II

### **LIMITATION OF PERSONAL LIABILITY OF DIRECTORS, INDEMNIFICATION OF DIRECTORS, OFFICERS, AND OTHER AUTHORIZED REPRESENTATIVES**

A. Limitation of Personal Liability of Directors. A Director of the Association shall not be personally liable for monetary damages as such for any action taken, unless:

1. The Director has breached or failed to perform the duties of his/her office as defined in Section B below; and
2. the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

The provisions of this Section shall not apply to (a) the responsibility or liability of a Director pursuant to any criminal statute; or (b) the liability of a Director for the payment of taxes pursuant to local, state, and/or federal law.

B. Standard of Care and Justifiable Reliance.

1. A Director of the Association shall stand in a fiduciary relationship to the Association, and shall perform his/her duties as a Director, including his/her duties as a member of any committee of the Board upon which he/she may serve, in good faith, in a manner he/she reasonably believes to be in the best interests of the Association, and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his/her duties, a Director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared and presented by any of the following:

- (a) One or more officers or employees of the Association whom the Director reasonably believes to be reliable and competent in the matters presented;
- (b) Counsel, public accountants or other persons as to matters which the Director reasonably believes to be within the professional or expert competence of each person.
- (c) A committee of the Board upon which he/she does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.

A Director should not be considered to be acting in good faith if he/she has knowledge concerning the matter in question which would cause his/her reliance to be unwarranted.

2. In discharging the duties of their respective positions, the Board, committees of the Board and individual Directors may, in considering the best interests of the Association, consider the

effects of any action upon employees, upon persons with whom the Association has business and other relations and upon communities in which the offices or other establishments of or related to the Association are located, and other pertinent factors. The consideration of those factors shall not constitute a violation of subsection (1.) of this Section.

3. Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a Director or any failure to take any action shall be presumed to be in the best interests of the Association.

- C. Indemnification in Third Party Proceedings. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he/she is or was a Director, officer or other representative of the Association, or is or was serving at the request of the Association as a representative of another organization, against expenses (including attorney's fees), judgements, fines and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit or proceeding if he/she acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit or proceeding by judgement, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner which he/she reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was unlawful.
- D. Indemnification in Derivative Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgement in its favor by the fact that he/she is or was a Director, officer or other representative of the Association, or is or was serving at the request of the Association as a representative of another organization against expenses (including attorney's fees) actually and reasonably incurred in connection with the settlement of such action or suit if he/she acted in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall be judged to be liable for negligence or misconduct in the performance of his/her duty to the Association unless and only to the extent that the Court of Common Pleas of Northampton County or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Common Pleas or such other court shall deem proper.
- E. Mandatory Indemnification. Notwithstanding any contrary provision of the articles or these by-laws, to the extent that a representative of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in either Section C. or Section D. above, he/ she shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him/her in connection therewith.

- F. **Determination of Entitlement to Indemnification.** Unless ordered by a court, any indemnification under Section C. or D. above shall be made by the Association only as authorized in the specific case upon the determination that indemnification of the representative is proper in the circumstances because he/she has met the applicable standard of conduct set forth in such paragraph. Such determination shall be made:
1. by the Board by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding; or
  2. if such a quorum is not obtainable, or, even if obtainable, a majority vote of a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.
- G. **Advancing Expenses.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in a specific case upon receipt of an undertaking by or on behalf of the representative to repay such amount unless it shall ultimately be determined that he/she is entitled to be indemnified by the Association as authorized in paragraphs A through C above.
- H. **Indemnification of Former Representatives.** Each such indemnity shall continue as to a person who has ceased to be a representative of the Association and may inure to the benefit of the heirs, executors and administrators of such person.
- I. **Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Association or is serving at the request of the Association in another organization against any liability asserted against such person and incurred by such person in any capacity or arising out of such person's status as such, whether or not the Association would otherwise have the power to indemnify such person against such liability.
- J. **Reliance on Provisions.** Each person who shall act as an authorized representative of the Association shall be deemed to be doing so in reliance upon the rights of indemnification provided by this Article.

# EXHIBIT “G”



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

JORDAN VYONDER,  
Requester

v.

BUCKS COUNTY FREE LIBRARY,  
Respondent

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Docket No.: AP 2022-2757

## FACTUAL BACKGROUND

On December 7, 2022, Jordan Vyonder (“Requester”) submitted a request (“Request”) to the Bucks County Free Library (“Library”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking: “all [e]mails to this library system and any of its member libraries that are identified as or can be construed as complaints. From 1/1/22 to 12/7/22.” Also on December 7, 2022, the Library notified the Requester that it would not be responding to the Request because the Library is not an agency under the RTKL.

On December 7, 2022, the Requester appealed to the Office of Open Records (“OOR”). The OOR invited both parties to supplement the record and directed the Library to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On December 16, 2022, the Library submitted a position statement arguing that it is not an agency subject to the RTKL. In support of its position, the Library submitted the affidavit of John



Doran, III, Chief Financial Officer for the Library.<sup>1</sup> The Library also submitted supporting documents, including, an Internal Revenue Service document indicating that the Library is a 501(c)(3) organization, financial statements for 2021, the Library's 2021 Operating and Capital Budget, the Bucks County Comprehensive Financial Report, and the Bucks County 2023 Preliminary Budget.

On December 8, 2022 and December 16, 2022, the Requester submitted a total of ten position statements, arguing that the Library is an agency subject to the RTKL.

### LEGAL ANALYSIS

The RTKL defines a "local agency" as any of the following:

- (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
- (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

65 P.S. § 67.102.

Here, the Library is a nonprofit corporation and not a "political subdivision, intermediate unit, charter school, or public trade or vocational school[,...]local, intergovernmental, regional or municipal agency, authority, council, board, [or] commission..."<sup>2</sup> *Id.* Therefore, the question becomes whether the Library is a "similar governmental entity."

In *Pysher v. Clinton Twp. Volunteer Fire Co.*, 209 A.3d 1116 (Pa. Commw. Ct. 2019), the Commonwealth Court discussed its decision in *Appeal of Hadley*, 83 A.3d 1101 (Pa. Commw. Ct. 2014), wherein the Court "evaluated whether a regional alliance of businesses, industry, and

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<sup>1</sup> Under the RTKL, a sworn affidavit or statement made under the 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).

<sup>2</sup> The Library submitted a Department of Treasury, Internal Revenue Service document dated December 26, 1991, which indicates that the Library is a 501(c)(3). Additionally, the Doran Affidavit provides that the "[Library] system is a tax-exempt 501(c)(3) non-profit organization under the Internal Revenue Code." See Doran Affidavit, ¶ 8.

tourism, which was a private nonprofit, was a ‘similar governmental entity’ to be considered a ‘local agency’ under the 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 government entity[.]” including the degree of governmental control, the nature of the organization’s functions, and financial control. *Id.*; *see also Hadley*, 83 A.2d at 1108. 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. *Id.* The Court also noted 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. To qualify as governmental, 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.*

In the instant matter, the Doran affidavit affirms that the Library system consists of seven branches throughout Bucks County (“County”) and that the primary purpose of the Library is “to provide to the general public access to books, information, and other materials and other resources for educational, recreational and other informational needs” and that it is governed by a seven-member Board of Directors that operates independently from the County and any other government entity. *See Doran Affidavit*, ¶¶ 9-10. Members of the Board of Directors are appointed by the County Commissioners pursuant to the Public Library Code, 24 Pa.C.S. § 9318(b)(1), but the Board members do not consist of any County officials.<sup>3</sup> *Id.* at ¶ 14. Additionally, the Doran affidavit provides that the Library’s administration consists of a Chief

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<sup>3</sup> The Public Library Code provides that “[t]he municipal officers of the municipality in which the local library is established shall appoint any members of the board and fill any vacancies on the board....” 24 Pa.C.S. § 9318(b)(1).

Executive Officer who is hired by Library's Board of Directors, as well as a Chief Operations Officer, a Chief Financial Officer, a Public Services Director, a Collections Management Director, an Access Service Manager and a District Consultant, all of whom are hired by the Chief Executive Officer. *Id.* at ¶ 11. No County Commissioner or County official is involved in the day-to-day administration, governance or activities of the Library. *Id.* at ¶ 16.

The Doran affidavit further provides that the Library maintains its own website and domain that is separate from the County and that it maintains its own Informational Technology Department, servers and equipment that is all separate from the County. *Id.* at ¶ 12. The Library does not participate in the County's pension or health benefit plans and provides its own benefit plans to library employees, and does not observe the same holidays County government. *Id.* at ¶¶ 22, 24.

Regarding financing, the Doran affidavit affirms that "[the Library] prepares its own yearly budgets and is responsible for its own yearly audit which it forwards to the County. The County, in turn, accepts [the Library's] audit for incorporation into its financial statements concerning the use of taxpayers' monies."<sup>4</sup> *Id.* at ¶ 18. Further, "operations of [the Library] are primarily funded by the County through tax dollars, followed by state aid provided by the Commonwealth of Pennsylvania, as well as by charitable donations, grants, endowments and fines and fees." *Id.* at ¶ 15. While six of the seven Library branches are in County buildings and are provided rent-free, the Library "solely maintains and upkeep[s] the buildings and grounds without involvement or assistance by the County or its service employees, unless there is an emergency[.]" and Library employees provide cleaning and landscaping services to the Library buildings and grounds, and engages in its own contracts with outside companies. *Id.* at ¶ 21. Additionally, the Library

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<sup>4</sup> On appeal, the Library submitted a copy of the County's Annual Financial Report for 2021, which identifies the Library as a "component unit," which the Report defines as "legally separate entities."

submitted a copy of the County's 2023 Preliminary Budget, which lists the Library under the "miscellaneous" category rather than under its list of County Departments.

The Requester argues that the fact that the Library previously considered itself an agency under the RTKL and has participated in appeals before the OOR, supports a finding that the Library is a local agency subject to the RTKL. While the Requester is correct in that the Library has, in the past, considered itself an agency subject to the RTKL, and has also been a party in previous appeals before the OOR, the Library did not previously raise the issue of jurisdiction and the OOR did not make a finding that the Library is in fact an agency. *See Dearmond v. Bucks Cnty. Free Library*, OOR Dkt. AP 2022-0954, 2022 PA O.O.R.D. LEXIS 1470; *Marcovitz v. Bucks Cnty. Free Library*, OOR Dkt. AP 2013-1041, 2013 PA O.O.R.D. 575. Further, the fact that the Library previously responded to RTKL requests and did not raise the issue of jurisdiction in previous appeals before the OOR, does not prevent the Library from now presenting evidence that it is not a local agency, nor does it preclude a finding by the OOR that the Library is not a local agency pursuant to the RTKL. *See Scott v. Del. Valley Reg'l Planning Comm'n*, 56 A.3d 40, 44 n.4 (Pa. Commw. Ct. 2012); *Boyer v. Wyoming Free Library*, OOR Dkt. AP 2018-1276, 2018 PA O.O.R.D. LEXIS 1143.

Here, based on the evidence submitted, the Library has established that, while its Board members are appointed by the County Commissioners, as required by the Public Library Code, the Library itself is not under government control as the day to day activities, governance and administration of the Library is controlled by the Board members, without County oversight. Further, the Library receives funding from various sources, and while it receives government funding, this fact alone is not enough to transform a private nonprofit corporation into a local agency under the RTKL. *See Hadley, supra*. Therefore, as there is no evidence before the OOR

of any governmental control that would make the Library a “similar governmental entity,” the Library is not a local agency, and thus, not subject to the RTKL and the OOR lacks jurisdiction over this appeal. *See MacNeil v. Sharon Hill Boro. Library*, OOR Dkt. AP 2021-1015, 2021 PA O.O.R.D. LEXIS 1472 (a public library is not a local agency under the RTKL); *Boyer, supra*.

### CONCLUSION

For the foregoing reasons, the appeal is **dismissed for lack of jurisdiction**, and the Library is not required to take any further action. 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. 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.<sup>5</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: January 6, 2023**

*/s/ Kathleen A. Higgins*

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KATHLEEN A. HIGGINS  
DEPUTY CHIEF COUNSEL

Sent to: Jordan Vyonder (via email only);  
John Doran (via email only);  
Karen A. Diaz, Esq. (via email only)

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

**VERIFICATION**

I, Ken Solt, President of Hellertown Area Library Association Board of Directors hereby verify that I am authorized to take this verification on behalf of Petitioner/Appellant, Hellertown Area Library Association; and that the statements and responses made in the foregoing Appeal are true and correct to the best of my knowledge, information and belief; and I understand that false statements herein are made subject to the penalties prescribed in 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: February 5, 2023

A handwritten signature in black ink, appearing to read 'Ken Solt', written over a horizontal line.

Ken Solt, President, Board of Directors  
Hellertown Area Library Association

IN THE NORTHAMPTON COUNTY COURT OF COMMON PLEAS

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HELLERTOWN AREA LIBRARY ASSOCIATION	:	
	:	
Petitioner,	:	CASE NO.: _____
	:	
v.	:	
	:	STATUTORY APPEAL
SUSAN LONGNAKER	:	
Respondent.	:	

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CERTIFICATE OF SERVICE

I, JASON G. BATES, ESQUIRE, hereby certify that on February 6, 2023, a true and correct copy of the foregoing was mailed to the following Counsel of Record before the Office of Open Records pursuant to the Pennsylvania Rules of Civil Procedure as well as mailed to the Office of Open Records pursuant to Section 1303 of the Right To Know Law, 65 P.S. §67.1303:

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Kevin M. Skjoldal, Esquire  
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Date:

2/6/2023

CONNOR, WEBER & OBERLIES

By:

  
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