



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

**IN THE MATTER OF**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**BOB RYAN,  
Requester**

**v.**

**: Docket No.: AP 2026-1213**

**RIEGELSVILLE BOROUGH,  
Respondent**

**FACTUAL BACKGROUND**

On February 26, 2026, Bob Ryan (“Requester”) submitted a request (“Request”) to Riegelsville Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Opinion email from Scott MacNair to Gary Chase and/or Rodney Scott regarding the ability to collect attorney fees in a possible legal malpractice action against former Riegelsville Borough Solicitor William T. Dudeck. This email is referenced by Borough Solicitor Scott MacNair’s invoice #130235 dated Feb. 21, 2025 - the invoice line item for email is dated Feb. 11, 2025.

On March 16, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Borough denied the Request, stating that the opinion email sought is protected by the attorney-client privilege.

On March 26, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial of the Request and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Borough to notify the OOR if any third parties

have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On April 6, 2026, the Borough submitted position statements, reiterating its grounds for denial that the opinion letter sought is protected under the attorney-client privilege and the doctrine of attorney work product. In support of its position, the Borough submitted the attestation of Scott MacNair, Esq., counsel for the Borough (“MacNair Attestation”).

On April 8, 2026, the Requester submitted argument that the opinion email is not protected under the attorney-client privilege because a Borough Councilman has stated at public Borough meetings that he was going to ask the Borough solicitor for his opinion on possible legal malpractice action regarding “bad advice” from the prior solicitor.

### **LEGAL ANALYSIS**

The Borough is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Borough is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The RTKL’s definition of privilege includes the attorney-work product doctrine and the attorney-client privilege, and the presumption that records in the possession of local agencies are public records does not apply to records that are privileged. *See* 65 P.S. §§ 67.102 and 305(a)(2). In order for the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted

holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client. *See Bousamra v. Excelsa Health*, 210 A.3d 967, 983 (Pa. 2019). When waiver is at issue, the burden of proof shifts to the requester. *See Bagwell v. Pa. Dep't of Educ.*, 103 A.3d 409, 420 (Pa. Commw. Ct. 2014). An agency may not rely on a bald assertion that the attorney-client privilege applies; instead, the agency must establish the first three prongs of the privilege for it to apply. *See, e.g., Mezzacappa v. Northampton Cnty.*, OOR Dkt. AP 2022-2617, 2023 PA O.O.R.D. 240.

The attorney-work product doctrine, on the other hand, prohibits disclosure “of the mental impressions of a party’s attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories.” Pa.R.C.P. 4003.3. “The purpose of the work product doctrine is to protect the mental impressions and processes of an attorney acting on behalf of a client, regardless of whether the work product was prepared in anticipation of litigation.” *Bousamra*, 210 A.3d at 976 (*see also Heavens v. Pa. Dep't of Env't Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. Ct. 2013) (“[U]nder the RTKL the work-product doctrine protects a record from the presumption that the record is accessible by the public if an agency sets forth facts demonstrating that the privilege has been properly invoked”)). While the attorney-client privilege is waived by voluntary disclosure, *Bousamra*, 210 A.3d at 978 (internal citation omitted), the work product doctrine is not primarily concerned with confidentiality, as it is designed to provide protection against adversarial parties. *Id.* at 979 (internal citations and quotation omitted). Work product

immunity is only waived by disclosure to an adversarial party or by disclosure “to third persons in circumstances in which there is a significant likelihood that an adversary or potential adversary in anticipated litigation will obtain it.” *Id.* at 978 (internal quotation omitted).

The MacNair Attestation states, in relevant part:

1. I am the Riegelsville Borough Solicitor and have served in that capacity since the beginning of 2024.
2. I am a licensed attorney of the Pennsylvania Bar with an attorney identification number of 83314.
3. I reviewed the email dated February 11, 2025 that was requested by Bob Ryan in his February 26, 2026 Right to Know Law [R]equest.
4. I sent the email to Gary Chase and Rodney Scott who are Council members of Riegelsville Borough.
5. I copied the email to Sherry Mastellar who is an administrative assistant for Riegelsville Borough.
6. The email was not provided to anyone other than these Borough officials and employee.
7. The email contains a legal opinion and legal advice concerning a potential litigation matter involving Riegelsville Borough.
8. Riegelsville Borough did not waive the attorney-client privilege with respect to the matter contained in the Solicitor’s email.
9. Riegelsville Borough did not waive the attorney work-product privilege with respect to the matters contained in the Solicitor invoices.

See MacNair Attestation ¶¶ 1-9.<sup>1</sup>

Based on the evidence submitted by the Borough, the legal opinion email from the Borough solicitor to members of Borough Council relating to potential litigation contains the mental impressions of counsel in response to a request for legal advice; thus, it is protected by attorney-client privilege and as attorney work product. The Requester argues that a Borough councilman’s public announcements “describing the use of Borough solicitor for legal advice regarding legal malpractice precludes the use of attorney-client privilege in this appeal.” Thus, it appears that the

---

<sup>1</sup> Under the RTKL, a statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Borough has acted in bad faith, “the averments in the [attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Requester is arguing that the Borough has waived attorney-client privilege by publicly discussing that the Borough was seeking the legal opinion of the current solicitor relating to the actions and advice of the prior solicitor. The decision of a member of Borough Council to discuss the subject-matter for which a legal opinion was sought does not constitute a waiver of attorney-client privilege as to the actual content of the opinion email authored by the Borough solicitor.

In *Bagwell v. Pa. Dep't of Educ.*, the Commonwealth Court discussed various types of waiver of privilege—subject matter versus selective—in the RTKL context. *Bagwell v. Pa. Dep't of Educ.*, 103 A.3d 409 (Pa. Commw. Ct. 2014). If subject-matter waiver applied, then the waiver of the privilege with respect to one communication about a subject results in waiver of the privilege as to all other communications on the same subject. *Id.* at 418. In selective waiver, only the disclosed communication loses the privilege. In *Bagwell*, the Court declined to apply subject-matter waiver in an RTKL matter, noting that it applies where the parties seeking disclosure are adversaries in litigation or in a discovery dispute. The Court also stated that “[i]n assessing waiver, the context and content of disclosure are material. . . . The circumstances here weigh in favor of selective or limited waiver, retaining the privileged nature of the records where they contain mental impressions.” 103 A.3d at 420. Consistent with the Court's holding in *Bagwell*, the OOR declines to apply subject-matter waiver of attorney-client to this appeal. Accordingly, the OOR finds that a Borough Councilman generally discussing the nature of an inquiry made to the Borough solicitor which resulted in the legal opinion email does not waive privilege as to detailed contents of the legal opinion email.

The MacNair Attestation states that the opinion email sought contains legal opinion and advice concerning a potential litigation matter involving the Borough, and the Borough does not expressly waive privilege, nor do the general statements of a Borough Councilman relating to the

topic of the email waive privilege. See MacNair Attestation ¶¶ 7-8. Accordingly, the OOR finds the Borough has demonstrated that the email opinion of the Borough solicitor sought in the Request is protected under the attorney-client privilege, and the OOR cannot order the Borough to produce such records. See *Joe v. Prison Health Services, Inc.*, 782 A.2d 24 (Pa. Commw. Ct. 2001) (both requests for legal advice and information disclosed to obtain that legal advice is privileged); *Yoder v. Lancaster Cnty. Solid Waste Management Auth.*, OOR Dkt. AP 2016-0796, 2017 PA O.O.R.D. LEXIS 636 (mental impressions of attorneys are privileged material).

### CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Borough 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 according to court rules as per 65 P.S. § 67.1303, but 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>2</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: April 28, 2026**

*/s/ Catherine R. Hecker*

---

CATHERINE R. HECKER  
APPEALS OFFICER

Sent via portal to:     Bob Ryan  
                              Sherry Masteller  
                              Scott MacNair, Esq.

---

<sup>2</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).