pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
RANDY GARBIN,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-2023**
	:	
JENKINTOWN BOROUGH,	:	
Respondent	:	

FACTUAL BACKGROUND

On April 7, 2026, Randy Garbin ("Requester") submitted a request ("Updated Request 1") to Jenkintown Borough ("Borough") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking the following records in PDF format:

> All legal invoices (including bills, statements, or fee statements) received by the Borough, and all records showing that those invoices were paid by the Borough, during the calendar years 2025 and 2026 (January 1, 2025 through December 31, 2026)[1] that relate in any way to:
>
> • the appeal of any Pennsylvania Labor Relations Board (PLRB) decision(s), order(s), or ruling(s)
>
> • in the Edward Titterton furlough case/grievance/litigation (including, but not limited to, any un-fair labor practice charge or related proceedings).
>
> This [R]equest specifically includes all invoices from Kilkenny Law and the law firm OBERMAYER REBMANN MAXWELL & HIPPEL LLP, as well as any

[1] Although the timeframe in the Updated Request 1 is listed as January 1, 2025 through December 31, 2026, that Request can only seek records up until April 7, 2026, the date of the Updated Request 1. *See Pa. Dep't of Labor & Indus. v. Tabor*, No. 525 C.D. 2015, 2016 Pa. Commw. Unpub. LEXIS 251 (Pa. Commw. Ct. Mar. 31, 2016) (indicating that a request can only seek records that exist as of the date of the request); *see also* 65 P.S. § 67.705.

> other law firm or attorney representing the Borough in connection with the above matter[.]
> ….

See Requester Appeal, p. 11 (emphasis in original) (internal footnote added).[2]

On April 23, 2026, the Requester submitted a third RTKL request ("Request 3") to the Borough, seeking the following records "in electronic format (PDF preferred) where possible[:]"

> All invoices, billing statements, and any accompanying detailed time entries, supporting documentation, or itemized descriptions submitted by The Law Offices of Sean Kilkenny to the Borough … for services provided between November 1, 2024 and November 30, 2025, inclusive.
>
> Specifically, I am seeking any and all such invoices or records that highlight, itemize, or otherwise identify charges incurred for communications, consultations, meetings, emails, telephone calls, correspondence, legal advice, or any other interactions between:
>
> • Kilkenny Law (or its attorneys/staff),
> • the Law Offices of Campbell (or its attorneys/staff), and
> • any official, employee, council member, or representative of [the] Borough
>
> concerning the investigation of the October 2024 Police Vote of No Confidence for Chief Tom Scott (including any related personnel, workplace, or administrative matters).

See July 13, 2026 Borough Submission, pp. 6-7.

[2] The Requester initially submitted an original Request 1 ("Original Request 1") to the Borough on April 7, 2026, the language of which slightly differs from the Updated Request 1, but seeks essentially the same records. *See* July 13, 2026 Borough Submission, p. 4. That same day, the Requester also submitted another Request ("Request 2"), which is referred to in the Borough's May 13, 2026 Final Response as the "second request," and sought all invoices received by the Borough, and all records showing that those invoices were paid by the Borough, between October 16, 2025 and April 7, 2026, from either the Kilkenny Law Firm or the Law Office of Campbell Durrant, P.C. "that pertain in any way to the investigation of the vote of no confidence against Jenkintown Police Chief Thomas Scott (including the related hostile-work-environment investigation conducted by Campbell Durrant, P.C. into the Police Department)." *Id.* at p. 2. However, on July 2, 2026, the Requester clarified that based on the submission of the Updated Request 1, the Borough "was to ignore [his] previous submissions and use only [that] new version." *See* Requester July 2, 2026 Correspondence. On July 8, 2026, the Requester further clarified that he only intended for this appeal to pertain to the Updated Request 1 and Request 3. *See* July 8, 2026 Requester Submission. As such, the Requester has waived all issues concerning the Original Request 1 and Request 2, and those Requests will not be further addressed in this Final Determination. *See Pa. Dep't of Corr. v. Off. of Open Records*, 18 A.3d 429 (Pa. Commw. Ct. 2011). However, nothing in this Final Determination prevents the Requester from submitting a new RTKL request to the Borough for the same information sought in the Original Request 1 and Request 2, and, if necessary, filing a new appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

On May 13, 2026, following thirty-day extensions during which to respond, 65 P.S. § 67.902(b), the Borough issued a single Final Response, partially denying the Requests, asserting that all responsive Campbell Durrant, P.C. legal invoices from May to October 2025 where previously provided to the Requester, with redactions, in response to a separate RTKL request. It further indicated that 119 pages of legal invoices from Kilkenny Law, LLC, and 57 pages of legal invoices from Obermeyer Rebmann Maxwell & Hippel, LLP, were redacted under the attorney-client privilege. The Borough also stated that to the extent the Requester seeks separate invoices for the time spent only on the topics identified in the Requests, no such records exist, and that the Borough is not obligated to create records under the RTKL. *See* 65 P.S. § 67.705. In addition, the Borough stated that an additional 31 pages of responsive records, constituting Borough payments or drafts for legal invoices, were redacted under 65 P.S. §§ 67.708(b)(3) and (b)(4) to remove account information. Finally, the Borough asserted that the copying costs for the 207 pages of responsive records was "$51.75, at a rate of $0.25 per page," and that the records could be picked up at the Borough Hall or mailed to the Requester for an additional postage fee.

Between May 13-14, 2026, the parties exchanged email correspondence, in which the Requester sought an explanation as to why the Borough could not provide the responsive records in PDF format, and indicated, in part, that he was willing to "photo-scan each page of th[o]se documents" in-person or receive them via email or a thumb drive. *See* Requester Appeal, pp. 4-7.

On May 21, 2026, the Requester appealed to the Office of Open Records ("OOR"), limiting the appeal to the Borough's assessment of duplication fees and its alleged failure to produce the responsive records in PDF format. Specifically, the Requester argued that such fees are improper, that the Borough can redact the records electronically and that he should have been notified of any

fees in advance.[3] 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 June 9, 2026, the OOR notified the parties that we had not received a submission in support of the Borough's position on appeal, and we extended the submission period for both parties until June 18, 2026.

On June 18, 2026, the Borough submitted a position statement, arguing, in part, that the accessed duplication fees were permissible because the responsive records could not be securely redacted electronically. In support of its position, the Borough submitted the attestation of its Agency Open Records Officer ("AORO"), George Locke ("Locke Attestation I").

On July 2, 2026, the Requester filed correspondence,[4] reiterating his previous arguments and further asserting, in part, that the Borough's and Kilkenny Law's assertions on appeal are disingenuous and/or in violation of the Sunshine Act.[5]

On July 7, 2026, the OOR sought clarification from the Requester and directed the parties to provide copies of the Borough's extension notices to respond to the Requests. As already noted above, on July 8, 2026, the Requester made a responsive submission, clarifying, in part, that the Updated Request 1 and Request 3 are at issue in this matter.

[3] On appeal, the Requester did not challenge the Borough's action of directing him to a prior final response for the Campell Durrant, P.C. legal invoices, or any of the Borough's grounds for redacting the records responsive to the Updated Request 1 or Request 3. Therefore, all such issues have been waived by the Requester, and they will not be further addressed in this Final Determination.

[4] The Requester's July 2, 2026 Correspondence was received after the deadlines imposed by the OOR; however, it was still considered to further develop the appeal record. *See* 65 P.S. § 67.1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").

[5] Although the OOR is responsible for providing annual trainings on the Sunshine Act, *see* 65 P.S. § 67.1310(a)(3), the Requester's claims regarding alleged violations of that Act are outside the scope of the appeal, as the OOR lacks the authority to adjudicate such claims. *See* 65 Pa.C.S. § 715.

On July 13, 2026, the OOR sought clarification from the Borough concerning the timeliness of the Final Response, its position with respect to Request 3 and how many pages of records were redacted in response to each of the Requests.

That same day, the Borough filed copies of the Requests, its April 13 and 29, 2026 extension notices, and the second attestation of Mr. Locke ("Locke Attestation II"), which confirmed that the extension notices and Final Response were all timely issued.

On July 20, 2026, the Borough filed the third attestation of Mr. Locke ("Locke Attestation III"), which reiterated the Borough's previous arguments and further indicated, in part, that 43 pages of the responsive records do not contain any redactions.

In response, that same day, the Requester made a submission, renewing his previous arguments and relying, in part, on information available online, including the Adobe and Foxit websites.[6,7]

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

[6] All three of Mr. Locke's attestations and the Requester's July 2 and 20, 2026 submission were made subject to penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

[7] The OOR extended the deadline for the issuance of the Final Determination in this matter on two occasions, ultimately to August 28, 2026, upon the agreement of and/or after receiving no objection from the Requester. *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)").

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)).

As previously noted, the only issues on appeal are whether responsive records must be provided in PDF format and whether the Borough is entitled to assess a duplication fee of $51.75 for the 207 pages of responsive records, as set forth in the Final Response.

Section 701 of the RTKL states that "[a] record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists." 65 P.S. § 67.701. The OOR has previously differentiated "medium" from "format," and determined that an agency is not required to provide records in a specific format or file type. *See, e.g., Noel v. West Goshen Police Dep't*, OOR Dkt. AP 2025-2659 (consolidated), 2025 PA O.O.R.D. LEXIS 2772 (finding that, despite the requester arguing that the native format of emails is .msg files and the native format of call logs is a database export (e.g., .csv or .xlsx), the department's evidence established that it provided the records in an electronic medium, i.e., .pdf format, as requested). Further, if records only exist in paper hard copy, an agency is not required to convert those records into an electronic medium. *See* 65 P.S. § 67.705.

Pursuant to the OOR's authority under 65 P.S. § 67.1307(b)(1)(i), the OOR has created a fee schedule, capping the maximum amount that a Commonwealth or local agency may charge for duplication.[8] For black and white copies, the Official RTKL Fee Schedule permits a $0.25 per page charge for the first 1,000 pages. This Fee Schedule does not permit an agency to impose any fees for the time and labor spent making redactions. However, where an agency is unable to securely redact the records by electronic means, the Fee Schedule permits the agency to charge the above-mentioned copying fees for any copying or printing necessary to securely redact records,

[8] *See* Official RTKL Fee Schedule, https://www.openrecords.pa.gov/RTKL/FeeStructure.cfm (last accessed Aug. 20, 2026).

even when inspection is sought. *See* Official RTKL Fee Schedule; *see also DeBartola v. Cambria Co. Dist. Attorney's Off.*, OOR Dkt. AP 2017-0050, 2017 PA O.O.R.D. LEXIS 1019.

Here, the Borough argues that it does not possess software capable of making the requisite secure electronic redactions. In support of this argument, Mr. Locke, who is familiar with the Borough's records, attests that "[b]ecause the three [R]equests sought related records, the Borough consolidated them for processing and issued the single" Final Response. Locke Attestation I, ¶ 2; Locke Attestation III, ¶¶ 3-5. He further asserts that he interpreted the Requests to seek "copies of the final invoices reflecting payment[,]" and that "as a part of processing the [legal] invoices for payment, the Borough prints them[,stamps them,] and writes notes on them." Locke Attestation I, ¶¶ 7-9; Locke Attestation III, ¶¶ 7(d). As such, Mr. Locke attests that at the time of the Requests, the responsive legal invoices "only exist[ed] as one copy in printed form[,]" and that "the Borough had to duplicate th[at] copy so that [its] Solicitor's Office could provide a legal review." *Id.*

Mr. Locke further explains that the 207 pages of responsive records consist of the following:

> a) For the April 23, 2026 [R]equest, the Borough located 119 pages of legal invoices from Kilkenny Law, LLC and 16 pages of Borough payment records (copies of checks), all of which required review and redaction as appropriate. Of the 119 pages of Kilkenny Law invoices, 30 pages ultimately contained no redactions. ….
>
> b) For the [U]pdated April 7, 2026 [R]equest, the Borough located 57 pages of legal invoices from Obermayer Rebmann Maxwell & Hippel LLP and 15 pages of Borough … copies of checks, which likewise required review and redaction as appropriate. Similarly, of the 57 pages of Obermayer Rebmann Maxwell & Hippel LLP invoices, 13 pages ultimately required no redactions. ….

Locke Attestation III, ¶¶ 7(a)-(c). In addition, Mr. Locke asserts that the aforementioned 43 pages of invoices that were not redacted "were interspersed throughout the complete set of invoices[,]"

and "could not be separated without altering the original sequence of the documents." Locke Attestation III, ¶¶ 7(a)-(b).

Mr. Locke also attests that the Solicitor's Office "utilizes Foxit PDF software for document processing" and redaction, and that "it receives information technology support from Colletti Tech." Locke Attestation I, ¶ 11; Locke Attestation III, ¶ 8. He further states that "[p]rior to producing the records, the Solicitor consulted with David Colletti, owner of Colletti Tech, regarding the reliability of Foxit's native electronic redaction function[,]" who "advised that relying solely on the software's native redaction features could present security concerns because electronically redacted information might remain recoverable under certain circumstances." Locke Attestation III, ¶ 8; *see also* Locke Attestation I, ¶¶ 11-12.[9]

According to Mr. Locke, "[t]o ensure that all exempt information was permanently and irreversibly removed before disclosure, the Borough employed a print-and-scan process after completing the redactions." Locke Attestation III, ¶ 9; *see also* Locke Attestation I, ¶ 13. He also states that "[t]his additional step was necessary to eliminate any possibility that underlying redacted content could be electronically recovered." *Id*. In addition, Mr. Locke asserts, that "[as] a result, all 207 pages were required to be printed, scanned, and reproduced before they could be provided to the Requester." Locke Attestation III, ¶ 10. He further indicates that because the "Requester specifically requested notification of any invoice exceeding $50.00" in the Updated Request 1,[10] he was notified of the total duplication cost in the Final Response. Locke Attestation

[9] The Borough also submitted a copy of a January 27, 2025 email correspondence from Mr. Colletti to the Borough's Solicitor, Kailie J. Melchior, Esq. of Kilkenny Law, LLC, which states, in part that:
FoxitPDF v8.3 was released April 2017 which is no longer supported by the manufacture and now end of life. This version presents significance [sic] security risk when using redaction as it has vulnerabilities in the software that are no longer addressed leading to being potentially exploited. If you need software that has secure redaction features, I would be glad to provide you a quote for Adobe Acrobat Pro for teams.

[10] The Borough's extension requests notified the Requester that "a copying charge of $0.25 per page, black & white, single sided," may be due. *See* Borough July 13, 2026 Submission, ¶¶ 3, 5, 8.

I, ¶ 14. Additionally, Mr. Locke attests that said cost "reflects the actual and necessary costs incurred in producing the requested records[;]" that the $51.75 duplication fee "was assessed in good faith and in accordance with the RTKL[;]" and that "[t]he responsive records have be[en] prepared and remain available for [the] Requester to obtain, either through pickup or mailing, at [the] Requester's direction." Locke Attestation I, ¶¶ 15-16.

Generally, 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. 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 [attestations] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. 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)).

On appeal, the Requester argues that based on past RTKL requests, he is aware that the Borough's legal invoices exist in an electronic medium. *See* Requester Appeal, p. 3. He further contends that the "Foxit PDF Editor Pro and Adobe Acrobat Pro are industry-standard tools that, when their dedicated Redact and Sanitize/Remove Hidden Information functions are used correctly, permanently delete underlying text and metadata so that redacted information cannot be recovered through ordinary electronic means." July 20, 2026 Requester Submission; *see also* July 2, 2026 Requester Correspondence. He also states that "[b]ecause reliable electronic redaction is available and widely used, the Borough's decision to employ a labor-intensive print-and-scan process for all pages, including those that required no redaction, represents a discretionary workflow choice rather than a legal requirement under the" RTKL. July 20, 2026 Requester Submission. Additionally, the Requester asserts, among other things, that "the Borough could

have securely redacted and produced [the] [responsive] records as electronic files using its existing Foxit PDF software, at significantly lower cost, while still fully protecting exempt information." July 20, 2026 Requester Submission.

However, the evidence presented by the Borough affirms that because of its payment process, at the time of the Requests, the 176 pages of responsive invoices, including the 43 pages that were not redacted, only existed in a hard copy, paper medium. *See* Locke Attestation III, ¶¶ 7(a)-(b), (d). Therefore, despite the Requester's arguments, the Borough was not required to convert and provide those invoices to the Requester in an electronic medium, such as PDF format, as sought in the Requests. *See* 65 P.S. §§ 67.701, 705.

The Borough's evidence also establishes, by a preponderance of the evidence, that to ensure the secure redaction of the 31 pages of responsive checks, a print-and-scan method was required to be utilized because the version of the Foxit PDF program used by the Solicitor's Office is no longer supported by the manufacture, and its electronic redaction function presents a significant security risk due to vulnerabilities in the software.[11] *See Conroy-Smith v. Haverford Twp.*, OOR Dt. AP 2025-0361, 2025 PA O.O.R.D. LEXIS 897. Further, contrary to the Requester's arguments, it was permissible for the Borough to notify the Requester about the duplication costs in the Final Response, and there is no indication in the appeal record that the Borough or its Solicitor's Office actually has access to Adobe Acrobat Pro or a version of the Foxit PDF program that would ensure secure redactions.

[11] The OOR makes no affirmative ruling that Foxit PDF is incapable of performing secure redaction in all cases. Whether or not the Solicitor's Office's decision to utilize outdated software is prudent, based on the present appeal record, including the email from the Solicitor's IT consultant, the OOR is constrained to find that the Borough has submitted sufficient evidence in this instance to show why the responsive records could not be securely redacted electronically.

Accordingly, pursuant to 65 P.S. § 67.1307 and the Official RTKL Fee Schedule, the Borough was permitted to charge a duplication fee of $0.25 per page for the 176 pages of legal invoices and the 31 pages of checks, totaling $51.75, prior to providing the Requester with access to those records;[12] regardless of whether the Requester decides to pick up the records or "photo-scan" them himself.[13] Further, if the Requester now seeks to have the responsive records either mailed to him or scanned onto a flash drive, the Borough may charge up to the actual cost of postage or the flash drive, respectively. *See* 65 P.S. § 67.1307(a); *see also* Official RTKL Fee Schedule.[14]

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 Montgomery 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.[15] All documents or communications following the issuance of this Final Determination shall be sent to oor-

[12] While the RTKL favors a contemporaneous exchange of fees for records, under no circumstances is an agency required to provide the records to a requester without receiving the applicable fees. *See Durk v. Lawrence County*, OOR Dkt. AP 2024-2462, 2024 PA O.O.R.D. LEXIS 2420; *see also* 65 P.S. § 67.901 ("All applicable fees shall be paid in order to receive access to the record requested.").

[13] *See* Official RTKL Fee Schedule (stating that "[if] redaction is required prior to the requester being granted access to photograph records" using their own camera, "and the agency is unable to securely redact the records by electronic means, an agency may copy or print the records to provide for secure redaction" and "charge the fees … for either B&W or color copies, as appropriate.")

[14] The OOR is conducting its biannual fee review, which will give extensive consideration to the use and impact of outdated redaction software.

[15] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

postfd@pa.gov. This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: August 27, 2026

/s/ Megan Burns

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MEGAN BURNS
APPEALS OFFICER

Sent via OOR Portal to: Randy Garbin; Greg Locke, AORO; and Kailie Melchior, Esq.