BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS

MICHAEL LONG, Requester AP 2026-2665

v.

BOROUGH OF BATH, Respondent

Petition for Reconsideration

Requester seeks reconsideration of the September 8, 2026 Final Determination ("FD") under OOR Procedural Guideline VIII and 1 Pa. Code § 35.241. The principal error is the failure to decide the original $1.00 fee-notification instruction before sustaining a payment condition on a request selecting electronic records. The remaining grounds address the related fee, record, redaction and delivery findings. Requester asks that those errors be corrected on the admitted record, while preserving the favorable copying-rate, repeat-production and inspection rulings.

The FD admitted all submissions, p. 7. Sections 1102(a)(2) and 1101(b)(3) require review of the filed information and written reasons for the decision. The requested corrections concern material contradictions left unresolved in that decision; each ground identifies the affected ruling, the error and the relief it warrants.

Record references. "Initial packet" means the 70-page initial appeal attachment, using its printed pagination. "July 21 reply" includes its Supplemental Declaration and separately marked appendices. "August 4 reply" means Requester's ten-page Consolidated Final Response. "Flynn" refers to the affidavit accompanying the Borough's July 17 submission. Other references use the document's own marked pages.

I. The OOR erred by approving the fee condition without deciding the original $1.00 notification instruction.

FD pp. 15–17 correct the copying rate but leave the payment condition in place without deciding the separate objection to incurring the charges. The original completed form selects electronic copies and requests notification above $1.00. Requester did not authorize charges exceeding $1.00. Initial packet, p. 15. The May 19 extension gives no amount; Requester's June 18 reminder expressly raises the unanswered $1.00 instruction; Flynn's answer addresses only timing. Id., pp. 13, 62, 66. The June 19 response then demands $991.25 before physical or digital distribution, p. 38. The July 21 Supplemental Declaration, ¶ 5, denies any prior record-specific election or authorization of the paper production.

Macioce v. Ringgold School District, AP 2022-0308, pp. 4–6 (Feb. 28, 2022), is directly pertinent. After considering *Department of Education v. Bagwell*, 131 A.3d 638 (Pa. Cmwlth. 2016), OOR limited copying charges to the requester's selected notification threshold despite sworn evidence that copying had occurred. The excess copies were made at the agency's risk. *Ferrara v. Pine Creek Township*, AP 2024-1690, p. 6 & n.7 (July 31, 2024), applied that principle to an electronic-preference request with a $0.20 threshold: unaccepted paper copying did not become compulsory debt or a future access barrier.

Bagwell, 131 A.3d at 652–54, rejects automatic fee waiver merely because the initial extension lacked an estimate. That differs from ignoring an express, triggered notification instruction. Macioce, p. 6, gives the selected notice threshold effect under § 1102(b)(3). The Borough's later bill cannot itself supply Requester's missing authorization. Read together, the electronic-copy selection and $1.00 notice instruction required the Borough to contact Requester before undertaking a chargeable paper production beyond that amount. Selecting electronic records was not an election to purchase paper copies if the Borough preferred that means of access. The notice instruction provided an opportunity to resolve medium, inspection or copying before expense was incurred; the $991.25 demand came afterward. Correcting a per-page rate does not cure that omission.

Correction requested: Limit the total recoverable charge under this request to no more than $1.00. Apply Macioce to disallow costs incurred beyond that amount without the requested notice and opportunity to elect. Ferrara further supports treating unaccepted paper copying as undertaken at the Borough's risk. Vacate the separately unsupported bank charges as addressed in Ground III. No authorization of a higher charge should be inferred from this request or appeal.

II. The OOR erred by extending a general paper-retention explanation to the charged records without resolving contrary electronic evidence.

FD p. 15 infers electronic nonexistence from a general explanation about records predating 2022; pp. 16–18 then authorize copying and payment without identifying the supported quantities. The error is the unsupported extension from a retention practice to particular charged records. The August 4 matrix asserts 1,814 reconciliation pages alone, originally charged at $453.50. Correcting the rate does not decide whether those pages lawfully require paid duplication.

The admitted record supplies specific counterexamples: electronic reconciliation reports for account 4141 include January 2019, 2020 and 2021, July 21 Appendix C, Exhibit V9-A, C-6, C-30 and C-54; the April 30, 2024 response encloses account 0417 statements for 2019–2022, with the twelve 2021 face pages at Appendix E, Exhibit V9-H, E-132–E-143. Supplemental Declaration ¶¶ 6, 9 confirms receipt of the identified electronic productions. Four accounts opened after the asserted April 2022 transition—5893, 5869, 6708 and 4022—also account for 52 charged reconciliation pages. June 19 response, pp. 12–13, 16, 21–22, 24; August 4 matrix, rows 2-3.3, 2-3.4, 2-3.6 and 2-3.16. These facts require a category-specific finding rather than an undifferentiated inference from age.

The FD also fails to distinguish a separately saved PDF from information maintained in the accounting database. Flynn ¶¶ 30, 32–34 describes existing QuickBooks reports generated through standard functions; FD pp. 13–14 reproduces that evidence. Items 1.3–1.4 and 2.3–2.4 request existing monthly reconciliation Summary and Detail reports. Under § 701(a) and *Department of Environmental Protection v. Cole*, 52 A.3d 541, 547–49 & n.12 (Pa. Cmwlth. 2012), ordinary retrieval of existing database information is not necessarily record creation under § 705. The decision needed to determine whether the charged reconciliation information is available that way. Absence of a saved PDF does not answer that question.

Department of Health v. Mahon, 283 A.3d 929, 936 (Pa. Cmwlth. 2022), permits reliance on nonexistence averments absent countervailing evidence of bad faith or existence. Here, the counterevidence is the Borough's own prior production and current report-generation account. Prior delivery does not conclusively establish present custody or the ability to reconstruct every historical snapshot. It does require resolving the identified conflict before treating the charged categories as paper-only.

Correction requested: Vacate the aggregate copying authorization, apply Cole to the existing reconciliation information, and disallow unsupported copying quantities. Identify any narrower, supported paper-only or necessarily printed subset before applying the corrected tiers. No new accounting analysis, custom dataset or reconstruction of unmaintained historical information is sought.

III. The OOR erred by treating the $45 bank charge's reasonableness as sufficient proof of necessity.

FD pp. 16–17 approves two bank charges totaling $45 as reasonable and not excessive. Section 1307(g) separately requires that costs be necessarily incurred. State Employees' Retirement System v. Office of Open Records, 10 A.3d 358, 363 (Pa. Cmwlth. 2010). The omitted necessity finding is consequential: the $10 letter combines retrieval of account 0417's entire 2021 year with February 2023, while the June 19 response, p. 12, acknowledges prior production of the identical 2019–2022 statements. Those 2021 statements are themselves in the admitted exhibit identified in Ground II.

The decision does not explain why retrieving the 2021 statements again was necessary or what part of the combined $10 concerned February 2023. The $35 letter likewise does not establish the matrix's allocation of $17.50 to each account. Proof that a bank assessed a charge does not, by itself, resolve the necessity and allocation objections. *Brown v. Colwyn Borough*, AP 2023-1059, pp. 5–6 (June 13, 2023), also requires proof that no other recourse existed and an opportunity to elect before outside bank expense. Bath supplied sworn assertions and bank letters, but those must answer the actual conflict, including the original notice instruction.

Correction requested: Vacate the $45 approval; disallow the unsupported combined $10 charge; and decide the $35 component's necessity and recoverability on the admitted evidence, including the notice and election objection. Disallow any component not established as recoverable.

IV. The OOR erred by equating an audit association with proof that the redacted accounting fields are protected workpapers.

FD p. 9 finds that the withheld information consists of the auditor's actual notes and comments. Flynn ¶ 38, however, describes limited narratives or explanatory notes associated with auditor-directed journal entries or adjustment documentation; ¶ 40 identifies communications for an audit. The decision turns those general descriptions into a finding about the actual contents without explaining how they establish the protected information in each disputed field. The

Borough bears that burden under § 708(a)(1); its characterization of material as workpapers does not itself establish the § 708(b)(17)(v) exemption.

Brian T. Kelly & Associates v. Northeastern Educational Intermediate Unit, 36 Pa. D. & C.5th 300 (Lackawanna C.P. 2014), reproduced slip pp. 14–16, protected actual communications concerning adjustments presented and posted. Accordingly, posting an entry in Borough software does not automatically make every associated communication public. But Kelly does not supply missing content evidence here. *Cash v. Wheatfield Township*, AP 2026-1092, pp. 7–9, 14–15 (May 28, 2026), distinguishes substantive audit communications from generic emails ordered disclosed after examination. The necessary inquiry concerns the withheld content, not audit association alone.

The disputed items seek the Borough's standard QuickBooks reports, including journal entries, reconciliation reports and Audit Trail reports, not the auditor's engagement files. Request narrative, pp. 1, 3–4. The distinction is between the Borough's record of a correction and any protected auditor communication reproduced within it. A staff-entered account of what changed, when and by whom does not become an auditor workpaper solely because an auditor recommended the adjustment. Conversely, staff entry does not remove protection from actual audit communications. The decision must identify which content is withheld and explain why factual accounting information cannot be separated. Requester raised that distinction at July 21 reply, pp. 27–28, and August 4 reply, p. 6. The present record does not establish who entered each disputed field; the FD cannot resolve that gap merely by calling the fields the auditor's actual notes.

The requested accounting reports document receipts and disbursements and fall within § 102's financial-record definition. Section 708(c) preserves qualifying (b)(17) redactions while excluding reliance on (b)(10) for financial records. Section 706 requires disclosure of the nonexempt remainder. The separate CPA-law defense was reserved, FD p. 10 n.17, and cannot silently substitute for deficient proof under the ground actually decided. Requester preserved this distinction at July 21 reply, pp. 27–28; August 1 memorandum, pp. 23–25; and August 4 reply, p. 6.

Correction requested: Withdraw the unsupported content finding, reverse redactions not established as exempt, and order segregable accounting information. Decide any necessary reserved defense on its own elements and admitted proof. If limited inspection is exceptionally necessary under Guideline VIII(e), confine it to the disputed content and claimed protection.

V. The OOR erred by excluding existing original-file properties without construing the production instructions together.

FD p. 6 n.12 acknowledges Production Note 3 but treats it solely as an integrity/transmission instruction and rejects actual metadata as an expanded request. Notes 1–3, however, jointly request electronic/native records where available, original electronic copies and transmission of original exported files under "Metadata integrity." Request narrative, pp. 1–2. The decision should first determine what existing files and embedded properties those combined instructions

encompass. A prohibition on expanding a request does not replace construction of its original terms. See Pennsylvania State Police v. Office of Open Records, 995 A.2d 515 (Pa. Cmwlth. 2010), slip pp. 1–4.

Counsel's separate preservation and receipt descriptions do not cure that omission. The July 16 position addresses original-file metadata at p. 24 and Appendix A p. 37. July 21 footnote 53, p. 26, concerns derivative metadata in an older AP 2023-1083 bank-profile exhibit; it does not concede receipt of this request's electronic production. August 4 reply, pp. 7–8. These corrections do not alone defeat the FD's scope rationale, but they preclude treating the original instruction as abandoned or satisfied on those grounds.

Correction requested: Construe Notes 1–3 together and require existing responsive original electronic files with their existing embedded properties, subject to lawful redactions, or identify the supported nonexistence or delivery finding. No separate forensic report or recreated metadata is sought. Also expressly decide Note 4's existing Report Criteria pages for Items 1.6 and 2.6, rather than leave that identified component within a general search conclusion. Request narrative, p. 2; August 1 memorandum, p. 22.

VI. The previously corrected footnote does not diminish the substantive grounds for reconsideration.

FD p. 5 n.10 identifies a misplaced Scolforo reference and adds an admonition about accuracy, good faith and exact citations. Requester acknowledges the source-note displacement: body callout 8 on the original motion's p. 3 intended *Warnock v. City of Scranton*, AP 2025-0413, pp. 4–5 (Apr. 22, 2025), printed at source note 7. Scolforo was displaced into note 8 and does not contain that definition. Warnock does, although it upheld the particular auditor spreadsheet at p. 7. The attached clarification supplies that precise locator and qualification.

The July 16 position, p. 28 n.84, already stated that the submission corrected citation or footnote mismatches in the earlier motion. The FD did not acknowledge that correction notice. Its treatment is also incomplete because it singles out this mistake without comparable acknowledgment of errors in counsel's filings:

The Borough's July 17 submission twice cites § 1009.11(a) instead of § 1059.11(a), pp. 5–6; invokes Item 3's language in an exemption argument concerning Items 4 and 6, p. 6; misdescribes Resolution 2025-011's RTKL rate as flat rather than tiered, p. 7 (compare resolution p. 6); and uses 3,965 pages despite Flynn ¶ 11's 3,785, later expressly corrected in the August 4 supplement, p. 2 n.1. The August 4 supplement, p. 2, also overlooks the July 16 metadata discussion at p. 24 and Appendix A p. 37, and misattributes acknowledgment of current metadata receipt to July 21 n.53, which concerns an older AP 2023-1083 exhibit. The July 17 submission further presents an altered Gorol quotation, p. 4 (compare AP 2019-0329, p. 2 n.1), and reproduces Andorn's incorrect Accounts/AICA name, p. 5. FD pp. 8 and 17 supply the correct professional-body name and fee tiers without a comparable admonition.

The FD itself contains comparable errors. Its p. 14 cites Mercer as AP 2026-2468, although its official docket is AP 2026-2428; the erroneous number appears in Mercer's own decision. FD p.

12 labels Flynn's reasonable-search paragraph 14 when it is ¶ 15. FD p. 15 uses an incomplete Campbell citation without a pinpoint; its lowest-standard formulation appears in the agency's argument at slip p. 25, before the court's analysis at pp. 26–27. FD p. 10 n.17 cites Jamison, AP 2011-1233, which addresses accident-report access and fees but does not state the alternative-grounds proposition attributed to it. FD p. 6 also dates the Borough's July 17 position July 13, while pp. 16–17 contain the Township and "$0.25 cents" drafting errors.

These examples distinguish inherited errors, corrected mistakes and inaccurate locators from the merits. Requester does not seek separate relief because attorneys also made mistakes. Rather, Requester, proceeding without counsel, asks that the same distinction govern his explained footnote displacement. That clerical mistake does not establish bad faith or supply a reason to discount the record evidence and substantive grounds presented here. Reconsideration should be decided on those grounds. The favorable repeat-production and rate rulings remain expressly preserved.

VII. The OOR erred by leaving delivery and fee status unresolved while allowing a blanket 30 days after payment.

FD pp. 17–18 conditions production on payment and allows thirty more days. Yet counsel's July 17 submission, p. 7, expressly represents that the Borough printed the paper records for Requester to access. Flynn ¶¶ 47, 49 likewise asserts access, and the June 19 response, p. 38, represented that release following payment was expected during the week of June 22. These are the Borough's representations; actual preparation and delivery remain to be resolved. The August 4 reply's verification, p. 10 ¶ 6, states that Requester had not received the current production comprising approximately 3,785 charged pages or 881 digital pages. The FD's completed-production descriptions and exclusion of records already provided leave that material access conflict unresolved.

The error is not that OOR lacks discretion to set a compliance period. It is the failure to distinguish records represented as already available from records newly ordered produced. The favorable repeat-production ruling may require additional work for omitted records. That does not explain another thirty days for an unchanged, prepared set. Guideline VII(a)(5)–(6) calls for reasoned findings and a clear compliance direction.

Section 905 reinforces the need to identify actual availability: its sixty days run from an agency response stating that copies are available for delivery at its office, and it concerns uncollected copies. It does not expressly supply a fresh sixty days after appeal or itself prove that copies were made. A prospective estimate under § 1307(h) likewise does not establish an incurred copying debt. *Brown v. Department of Corrections*, No. 22 C.D. 2017, slip pp. 7–9 & n.9 (Pa. Cmwlth. Dec. 15, 2017) (unreported), required further proof where preparation and availability underlying claimed debt were not established. Here, the corrected decision should resolve that status rather than leave an estimate capable of becoming an unexplained outstanding balance.

The July 7 OOR notice, p. 3, already directs preservation during these proceedings and subsequent court appeals. The corrected direction should apply that obligation to the prepared

copies and responsive electronic files. Requester alleges no actual disposal and does not rely on an unstated statutory reset of § 905.

Correction requested: Resolve actual delivery and identify any lawful surviving fee as an estimate or established incurred obligation. Exclude disallowed charges from any outstanding applicable balance under § 901 and *Department of Transportation v. Drack*, 42 A.3d 355, 363 (Pa. Cmwlth. 2012). Require a corrected invoice and undelivered electronic records within five business days, subject only to an expressly sustained fee condition. Make the already prepared set available upon satisfaction of that condition, without another thirty-day production period; separately identify any newly required work and its supported deadline. Preserve the existing inspection option and July 7 preservation direction.

Relief requested

Requester asks the OOR to grant reconsideration, make each supported correction identified above, and enter a revised disposition specifying the lawful fee, affected record categories and access deadlines. The favorable portions of the FD should remain effective. The accompanying proposed order states the requested relief; the errata clarifies the single workpaper-definition reference addressed by FD n.10. Any exceptional reopening under Guideline VIII(e) should permit a confined response before new proof is relied upon.

Requester seeks expedited action before October 8, 2026, the separate judicial-review deadline following the stated September 8 mailing date. Under Guideline VIII(d), neither filing nor granting reconsideration tolls that deadline.

The cited OOR decisions and Kelly are persuasive authority. Ferrara was appealed at Clinton County No. 620-2024; the judicial disposition remains unverified. Brown, No. 22 C.D. 2017, is offered for persuasive value under 210 Pa. Code § 69.414.

Respectfully submitted,



Michael Long, Requester

September 10, 2026