



FINAL DETERMINATION

IN THE MATTER OF

**ALBERT PRICKETT,
Requester**

v.

**IVYLAND BOROUGH,
Respondent**

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Docket No: AP 2026-2261

FACTUAL BACKGROUND

On April 27, 2026, Albert Prickett (“Requester”) submitted a request (“Request”) to Ivyland Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*,¹ stating, in part, as follows:

... I respectfully request access to inspect the following public records maintained by the Borough:

1. SPECIFIC EMAIL CHAINS - All emails, including attachments, drafts, redlines, forwards, and replies, sent or received between **July 9, 2024 and August 5, 2024** concerning:

- 1060 Greeley Avenue
- zoning permit application (place of worship)
- parking requirements
- site plan review
- denial or draft denial letters

Including communications involving:

- Mark Freed
- Matt Hollowell

¹ Although the Request is dated Sunday, April 26, 2026, it was not received by the Borough until Monday, April 27, 2026.

- Matthew Piotrowski
- Janet Pacchioli
- Salvatore DiPaolo
- Christopher Peterson
- Any Borough engineer, consultant, or third-party reviewer

2. PERSONAL / NON-BOROUGH EMAIL ACCOUNTS - This [R]equest specifically includes **any communications conducted on personal, private, or third-party email accounts** used to conduct Borough business, including but not limited to:

- Matthew Piotrowski (including mvparchitect.com or any professional/architect email)
- Any Borough official using Gmail, AOL, or other non-Borough accounts

Records are requested **regardless of the device or account used**, if they relate to Borough business.

3. COMPLETE THREAD REQUIREMENT (NO PARTIAL PRODUCTION) - For each responsive email, please produce:

- The **entire email thread**, including all prior messages
- All replies, forwards, and attachments
- All recipients, including CC and BCC

Partial production of email chains will be considered a denial under the RTKL.

4. REQUESTER-SENT EMAILS - This [R]equest **does not seek copies** of emails sent by or received from [the Requester] and/or Kim Prickett.

However, the Borough shall not exclude or withhold otherwise responsive records solely because [the Requester] and/or Kim Prickett appear as senders or recipients. To the extent such emails are part of broader communications, threads, attachments, or internal discussions, those records shall be produced with only the [R]equester-sent portions omitted as necessary.

Any exclusion of records on this basis must be narrowly applied and shall not result in the omission of responsive content.

5. DOCUMENT DUMPING / ORGANIZATION REQUIREMENT - To ensure meaningful access as required by the RTKL:

- Records shall be produced in a **reasonably organized manner**
- Emails shall be grouped by thread or subject where possible
- Attachments shall be clearly associated with their parent emails
- The Borough shall not obscure responsive records through excessive, disorganized, or duplicative production

Any production that materially impairs the ability to identify responsive records may be deemed a constructive denial.

6. NON-PRIVILEGED MATERIAL WITHIN EMAILS - For any record withheld under a claim of privilege, I request:

- **All segregable non-privileged portions**, including:
 - o factual statements
 - o site plan discussions
 - o parking calculations
 - o draft edits and redlines
 - o attachments
- **A detailed privilege log** identifying:
 - o date
 - o sender and all recipients
 - o subject matter
 - o specific privilege claimed
 - o explanation of how the privilege applies

7. DRAFT DOCUMENTS AND REDLINES - All draft versions, edits, and redlined copies of:

- zoning letters
- denial letters
- review comments

including those circulated internally or to third parties.

8. THIRD-PARTY COMMUNICATIONS - All communications between Borough officials and:

- engineers
- consultants
- architects
- outside reviewers regarding 1060 Greeley Avenue.

9. METADATA - For all responsive emails, please include:

- date and time sent
- sender and all recipients (including CC/BCC)
- subject line
- attachment names

10. CERTIFICATION OF SEARCH - If the Borough asserts that no additional responsive records exist, I request a written certification from the Open Records Officer stating:

- The **specific locations searched**, including:
 - o Borough email systems
 - o personal email accounts used for Borough business
 - o phones and text messaging platforms (if applicable)
 - o document storage systems and files
- The **individuals whose records were searched**
- That the search was conducted in **good faith and was reasonably calculated to locate all responsive records**

Failure to conduct or certify a good-faith search, including of personal or third-party accounts used for Borough business, shall be considered a denial under the RTKL.

11. RECORD PRESERVATION / SPOILIATION NOTICE - Please preserve all records responsive to this request, including:

- emails
- text messages
- attachments
- drafts and redlines
- metadata

This includes records located on:

- Borough systems
- personal devices
- private email accounts

The destruction, deletion, alteration, or failure to preserve responsive records after receipt of this request may constitute **spoliation of evidence** and may subject the Borough and/or individuals to legal sanctions.

12. PRIVILEGE LIMITATIONS NOTICE

Please note:

- Communications involving **non-attorneys, consultants, or third parties** are not automatically privileged
- **Factual and administrative content must be disclosed** even within emails involving counsel
- The Borough must produce all **segregable non-privileged material**

I request these records in **electronic format (PDF or native email format)**.

....

Requester Appeal, pp. 27-38 (emphasis in original).²

² Although the Request includes twelve paragraphs, only paragraph 1 actually seeks records. The remaining paragraphs expand on such, include requirements of how the Request should be fulfilled and contain legal argument. Insofar as paragraph 5 seeks to have disclosed records organized in a specific matter, such is not a requirement under the RTKL. Further, to the extent that paragraph 6 seeks a privilege log and paragraph 10 seeks a certification of search, the Borough was not required to produce evidence at the response stage of the RTKL process. See 65 P.S. §§ 67.901, 903; see also *Levin v. Pa. Dep't of Educ.*, OOR Dkt. AP 2023-2588, 2025 PA O.O.R.D. LEXIS 1017, *19 (explaining that "[t]he language in Section 903 does not include a requirement that the agency link a basis for denial with a specific record"). Additionally, while paragraph 11 indicates, in part, that text messages must be preserved, and the Requester argues on appeal that the Borough failed to produce such records, based on the context and plain language of the Request, it does not actually seek any text messages. Therefore, the Requester cannot modify or expand the Request on appeal to seek such records. See, e.g., *McKelvey v. Off. of the Att'y Gen.*, 172 A.3d 122, 125 (Pa. Commw. Ct. 2017); *Michak v. Pa. Dep't of Pub. Welfare*, 56 A.3d 925, 930 (Pa. Commw. Ct. 2012). However, nothing in this Final Determination prevents the Requester from submitting a new RTKL request to the Borough for text messages, and, if necessary, filing a new appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

On June 3, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Borough partially denied the Request (“Final Response”), providing 336 pages of responsive records that were partially redacted under 65 P.S. § 67.708(b)(6)(i)(A) and the constitutional right to privacy. The Borough further stated that it is not required to create records under 65 P.S. § 67.705, and that certain records were withheld under the attorney-client privilege and 65 P.S. § 67.708(b)(10)(i)(A). In addition, the Borough indicated that it may deny the Requester’s future RTKL requests “for these or virtually identical records” under 65 P.S. § 67.506(a)(1) because this is the third time that the Requester, members of his household or individuals associated with his businesses have requested records, including emails, attachments and other documents, pertaining to the Property in the calendar year 2024.

On June 9, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the partial denial and stating grounds for disclosure. Specifically, he argued that the Borough failed to prove that a good faith search was conducted, and that additional responsive records must exist, based, in part, on the disclosed records and on documents that the Requester obtained through previous RTKL requests. In addition, he asserted, in part, that the Borough failed to show that the attorney-client privilege and internal, predecisional deliberations exemption, 65 P.S. § 67.708(b)(10)(i)(a), apply.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 15, 2026, the Borough sought clarification regarding the notice of deadlines, which the OOR responded to that same day.

³ Because the Requester did not specifically challenge the redactions made to the disclosed records under 65 P.S. § 67.708(b)(6)(i)(A) or the constitutional right to privacy, he has waived all issues regarding such on appeal, and they 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).

On June 29, 2026, the Requester filed his Comprehensive Motion for an Order for In Camera Review, System-Wide Search and Directed Disclosure, reiterating his previous arguments and further asserting, in part, that the Borough acted in bad faith and that the attorney-client privilege has been waived.⁴

On June 20, 2026, the Borough filed an extension request, seeking additional time to supplement the record and to respond to the Requester's submission. Over the objection of the Requester, the OOR granted that request, extending the Borough's submission period to July 16, 2026.⁵ On July 2, 2026, the Requester sought an opportunity to respond to the Borough's submission by July 20, 2026, which was granted by the OOR

On July 16, 2026, the Borough submitted additional responsive records and a position statement, reiterating its grounds for denial and further asserting that the appeal is moot, in part, that a good faith search was conducted and that no additional responsive records exist. The Borough also argued that it did not act in bad faith and that responsive records were also withheld under the attorney-work product doctrine. In addition, the Borough asserted, in part, that the Requester, his wife and businesses must be declared as disruptive requesters under 65 P.S. § 67.506(a)(1).⁶ In support of its position, the Borough submitted the sworn affidavit of Janet Pacchioli ("Pacchioli Affidavit I"), Borough Secretary, Treasurer and Agency Open Records Officer ("AORO").

In response, on July 20, 2026, the Requester filed his Comprehensive Response, Factual Rebuttal, and Motion to Strike the Submissions of the Borough with exhibits, reiterating his

⁴ The Requester's submission also included matrixes identifying the twenty-two emails and six attachments that he alleges that the Borough failed to produce, as well as copies of those emails and the Annotated Plot Plan Map.

⁵ See 65 P.S. § 67.1102(b)(3) ("In the absence of a regulation, policy or procedure governing appeals under this chapter, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute").

⁶ Contrary to the Requester's arguments, it was permissible for the Borough to raise new grounds for denial on appeal. See *Levy v. Senate of Pa.*, 619 Pa. 586, 621 (Pa. 2013).

previous arguments and challenging, among other things, the sufficiency and veracity of the Pacchioli Affidavit I, partly because it was executed on June 17, 2026.^{7,8}

On July 21, 2026, the Borough filed correspondence, seeking additional time to supplement the record. Over the objection of the Requester, the OOR extended the submission period to July 31, 2026, and directed the Borough to submit a privilege log and supplemental evidence regarding its search. That same day, the Requester filed an additional submission, reiterating, in part, his previous arguments.

On July 22, 2026, in response to additional correspondence from the Requester, the OOR informed the parties that if the Borough raised new issues or arguments in its forthcoming submission that the Requester would have until August 7, 2026, to address such.⁹

On July 31, 2026, in response to the OOR's inquiry, the Borough filed a supplemental position statement, reiterating its previous arguments and addressing the points made in the Requester's supplemental submissions. It also submitted a Privilege Log¹⁰ and two sworn affidavits authored by Ms. Pacchioli ("Pacchioli Affidavit II") and Sarah A. Steers, Esq. ("Steers

⁷ The Requester also raised arguments regarding August 23 and September 6 and 26, 2024 briefs, an August 21, 2024 Affidavit authored by Ms. Pacchioli and a September 5, 2024 Affidavit authored by Mark L. Freed, Esq.; however, such affidavits and briefs were not actually submitted with the Borough's July 16, 2026 submission. Rather, the Requester filed said documents, or excerpts of such, with his July 20, 2026 submission. To the extent that the Requester is now attempting to challenge previous Final Determinations and evidence presented by the Borough in prior appeals, including the ones docketed at OOR Dkt. AP 2024-2121 and 2025-3876, such is impermissible, as the Requester was not a party to those matters, and the OOR has no authority to reopen any previous appeals at this docket. Further, the Requester's additional claims concerning conflicts of interest; alleged violations of ordinances, the Municipal Records Act and the Pennsylvania Rules of Professional Conduct; and his request to disqualify counsel are all outside the purview of the OOR.

⁸ The Requester's motions to strike the Borough's July 16, 2026 position statement and the Pacchioli Affidavit I are denied.

⁹ The OOR extended the deadline for the issuance of the Final Determination in this matter on two occasions, ultimately to September 28, 2026, upon the agreement of 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)").

¹⁰ The Privilege Log provides a brief description of the thirty-eight records that were partially redacted under 65 P.S. § 67.708(b)(6)(i)(A) and the thirty-two withheld emails/threads and their associated attachments; identifies those records by date, senders/recipients, file type and subject line/file name; and lists the Borough's basis for withholding each record.

Affidavit”), Assistant Borough Solicitor, who is employed by Curtin & Heefner LLP. In addition, the Borough disclosed several previously withheld emails and attachments.

In response, on August 7, 2026, the Requester filed two submissions, reiterating his previous arguments and challenging, in part, the sufficiency of the Borough’s supplemental affidavits.

On August 20, 2026, the Borough submitted a third position statement, reiterating its previous arguments and further asserting, in part, that some of the Requester’s submissions include copies of records that were withheld as privileged and should be removed from the appeal docket.¹¹

That same day, the OOR issued correspondence, informing the parties that the appeal record was closed and that no further submissions would be accepted.¹²

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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-

¹¹ Said records remain a part of the appeal record, however, they are marked confidential by the OOR. *See* June 29, 2026 Requester Submission, Appendix A-B; July 20, 2026, Requester Submission, Ex. E-2, p. 15.

¹² Both parties were provided ample opportunity to address the arguments raised on appeal; therefore, any arguments regarding alleged violations of due process would be without merit.

know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (citing 65 P.S. § 67.708). Although parties asked the OOR to conduct an *in camera* review, the OOR declines to do so because it has the necessary information and evidence before it to adjudicate this matter. *See* 65 P.S. § 67.1102(a)(2).

Preliminarily, we note that the Requester’s appeal submissions contain various inaccurate arguments, which may be based, at least in part, on information gathered and summarized through the use of artificial intelligence (“AI”), which routinely hallucinates the existence of case law or misrepresents the holdings of case law that exist to the user’s detriment. However, the use of AI does not relieve parties of their obligation to present accurate facts and legal arguments to the OOR in good faith. Continued utilization of AI by any party to generate legal filings in appeals before the OOR, without checking the accuracy of the information contained therein, may result in those submissions being stricken from the record and a finding of bad faith against that party.

1. The appeal is dismissed in moot as part

On July 16, 2026, the Borough disclosed additional responsive records, which included a copy of the Annotated Plot Plan Map and five emails from July 11, 12, 29 and 30, 2026. On July 31, 2026, the Borough also provided the Requester with copies of July 16 and August 1, 2024 emails and the attachments identified as the “Ivyland_Medical Marijuana Exhibit Packet (Proposed Zoning Ordinance Amendment Exhibit Packet),” “As-Built Plans submitted by Requestor” and the “Borough Comprehensive Plan.” Additionally, the Requester filed nonredacted copies of twenty-two emails that the Borough identified in the Privilege Log as being withheld as privileged and/or under the 65 P.S. § 67.708(b)(10)(i)(A) exemption, which the Requester alleges that he received from a third party, whom he did not identify. *See* June 29, 2026 Requester Submission, ¶¶ 9-34; *see also* Privilege Log, pp. 7-11.

Accordingly, as it pertains to the information provided by the Borough during the pendency of this matter and the nonredacted responsive records uploaded by the Requester, the appeal is dismissed as moot.¹³ See, e.g., *Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records and, thus, “the controversy has been mooted”); *Mollick v. Methacton Sch. Dist.*, OOR Dkt. AP 2021-0401, 2021 PA O.O.R.D. LEXIS 711 (finding the appeal to be partially moot because the requester submitted twenty-nine screenshots with his position statement, which represented unredacted versions of some of the redacted slides that were disclosed by the agency in response to the request); *Cook v. Fox Chapel Sch. Dist.*, OOR Dkt. AP 2019-2478, 2020 PA O.O.R.D. LEXIS 1188 (during the course of the appeal, the requester obtained access to the withheld record rendering the controversy moot).

2. The Borough failed to show that the Request is disruptive under 65 P.S. § 67.506(a)(1)

On appeal, the Borough argues that the Requester, his wife and their businesses must be declared as “disruptive requesters.” Pursuant to Section 506(a) of the RTKL, “[a]n agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.” 65 P.S. § 67.506(a)(1); see also *Pa. Off. of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011); *Slate v. Pa. Dep’t of Env’tl. Prot.*, OOR Dkt. AP 2009-1143, 2010 PA O.O.R.D. LEXIS 97, *6 (“A repeated request alone is not enough to satisfy § 506(a)(1)”). Repeated requests for the same records, although phrased differently, may be denied as disruptive. See e.g., *Cohen v. Pa. Dep’t of Labor and Indus.*, OOR Dkt. AP 2009-0296, 2009 PA O.O.R.D. LEXIS 159; *Dougher v.*

¹³ Because the Requester uploaded unredacted copies of said records, the OOR needed not address the parties’ arguments concerning whether they are exempt under 65 P.S. § 67.708(b)(10)(i)(A), the attorney-client privilege or the work product doctrine.

Scranton Sch. Dist., OOR Dkt. AP 2009-0798, 2009 PA O.O.R.D. LEXIS 318, *8 (“Slight differences in phraseology do not preclude application of [Section 506(a)]”). However, a request must be repeated more than once to constitute a “repeated request” under this section. *See Moscatiello v. Crafton Borough*, OOR Dkt. AP 2025-1246, 2025 PA O.O.R.D. LEXIS 2154, *28 (citing *Borough of W. Easton v. Mezzacappa*, No. C-48-CV-2012-7973 (North. Com. Pl. Jan. 9, 2013), *aff’d* 74 A.3d 417 (Pa. Commw. Ct. 2013)).

Here, the Borough’s affidavits affirm that the Requester; his wife, Kim Prickett; and/or their businesses, Ivy Mill LLC and/or Ivy Mill Botanical LLC, have submitted at least seventeen RTKL requests to the Borough since 2024, and that the instant Request is the third time that they “have requested records, including emails, specifically pertaining to [the Property] or its associated T.M.P. No. 17-003-021.” Pacchioli Affidavit I, ¶¶ 16, 20, 24, 62.¹⁴ The affidavits further reflect that because of those past requests, they are in the possession of over 1,000 pages of responsive records and “are now so familiar with the responsive records that they recognize when even individual emails are inadvertently missing from the Borough’s official response.” *Id.* at ¶¶ 46-47. In addition, the affidavits affirms that “the Borough has now spent at least...\$27,681 [from 2024-2026] on legal fees associated with” all of the above-mentioned requests. *Id.* at ¶¶ 59-30.

While the evidence presented by the Borough reflects that the Requester, his wife and their businesses collectively have requested emails pertaining to the Property since 2024, Ms. Prickett and those businesses are not parties to this appeal and they were not named as requesters in the instant Request. Further, the Borough’s affidavits are insufficient to demonstrate that the

¹⁴ 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 [affidavits] 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 has made repeated requests for these same emails. As such, the OOR cannot conclude that the Request is disruptive under 65 P.S. § 67.506(a)(1). However, because the Requester references emails that he gained access to in response to his wife's or businesses' requests, continued action by the Requester to seek the same records or emails could result in the OOR reaching a different conclusion in the future.

3. The Borough demonstrated that no additional responsive records exist

The Borough asserts that a good faith search was conducted and that no additional responsive records exist, other than the disclosed records and the withheld documents identified in the Privilege Log, which include the twenty-two emails that the Requester identified and uploaded in his June 19, 2026 Submission, Appendix A-B, as well as the attachments he argued that the Borough failed to produce.¹⁵ The Requester argues, in part, that Borough's search was inadequate and that personal devices or email addresses were not searched.

In response to a request for records, "... an agency shall make a good faith effort to determine ... whether the agency has possession, custody or control of the identified record[.]" 65 P.S. § 67.901. While the RTKL does not define the term "good faith effort," in *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency's physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted) (*Uniontown Newspapers I*), *aff'd*, 243 A.3d 19 (Pa. 2020) (*Uniontown Newspapers II*). An agency must show, through detailed

¹⁵ The Requester also identified some of the same records in Requester Appeal, Ex. A.

evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

In support of its position, the Borough's affidavits affirm that Ms. Pacchioli, who is familiar with its records and has "extensive experience and familiarity with the Borough's government and operations," conducted the search by examining physical files, which consist of RTKL Files and History Files that "are property files for ... which applications ... (e.g., zoning, building, etc.) [or] plans may have been submitted, permits ... [or] code enforcement notices may have been issued, liens may have been filed, or other bureaucratic documents of similar nature." Pacchioli Affidavit I, ¶¶ 1-6, 8-9, 26; Pacchioli Affidavit II, ¶¶ 2-5, 8-9, 19, 21-23. "Any documents, or copies of documents, provided by outside contractors ... to the Borough are put in the History File as well." Pacchioli Affidavit II, ¶ 20. The affidavits also reflect that because Ms. Pacchioli has "receive[d] so many RTKL [r]equests pertaining to [the Property] and/or its associated T.M.P. Number 17-003-021, [she] keep[s] the physical RTKL files and the History File for that [P]roperty together in the Borough's file room." Pacchioli Affidavit II, ¶¶ 24-25, 28.

The Borough's affidavits further affirm that Ms. Pacchioli also searched hard drives and all electronically stored records, as well as "emails and email attachments maintained by the account info@ivylandborough.org[.]" Pacchioli Affidavit I, ¶¶ 26-28; Pacchioli Affidavit I, ¶ 29. In addition, she inquired with the other most likely custodians and directed them to "search for any documents in their possession related to this [R]equest[.]" which included Anthony Judice, Borough Mayor; Matt Hallowell, who served as the Borough's Zoning Officer during the timeframe of the Request; Richard O'Brien, a Building Code Officer and Co-Owner of the

Borough's former Code Enforcement Official, Keystone Municipal Services, also known as Keystone Municipal Engineering; Chris Peterson, who serves as the Borough Engineer and is employed by Carroll Engineering Corp.; Salvatore DiPaolo, Borough Council President; Matthew Piotrowski, Borough Council Member; Attorney Steer and Attorney Mark Freed, the Borough's Solicitor, who is employed by Curtin & Heefner LLP. Pacchioli Affidavit I, ¶ 29; Pacchioli Affidavit II, ¶ 31-33, 36, 41-44, 45-50, 51-53; Privilege Log, p. 7.

As a result of those inquiries, Mr. Hallowell informed Ms. Pacchioli that he does not have or maintain any emails or documents from the time of his service as the [] Zoning Officer." Pacchioli Affidavit II, ¶ 35. Additionally, while the Requester challenges the veracity of the Borough's statements that Mr. O'Brien informed her "that he only ever had verbal conversations with the Borough pertaining to" the Property, the affidavits further demonstrate that Mr. O'Brien and Keystone Municipal Services are no longer retained by the Borough and that Mr. O'Brien also reported that he "did not have any documents, emails, or printed records associated with" the Property. Pacchioli Affidavit II, ¶¶ 38-39. The Borough's affidavits further explain that Ms. Pacchioli did not contact Barry Isett & Associates, which "currently serves as the Borough's Building, Zoning, and Code Administrator[,]" because they were not retained by the Borough during the timeframe of the Request, and thus, would not possess any responsive records. Pacchioli Affidavit II, ¶¶ 54-55.

Based on the above-mentioned searches, Ms. Pacchioli only located the 336 pages of responsive records that were disclosed with the Final Response, the above-mentioned map, emails and attachments that were disclosed on appeal and the thirty-two withheld records identified in the Privilege Log, which also included all of the responsive records possessed by the above-identified

custodians. *See* Pacchioli Affidavit I, ¶¶ 30, 34-35, 52-53, 57; Pacchioli Affidavit II, ¶¶ 60, 69; *see also* Requester Appeal, pp. 41-376.

Additionally, despite the Requester's arguments concerning search parameters that were used by the Borough in response to prior RTKL requests, the Borough's affidavits in this appeal demonstrate that Ms. Pacchioli did not merely rely on those previous searches, but instead conducted a new search in response to this Request. *See* Pacchioli Affidavit II, ¶¶ 57-59. The Borough's affidavits also explain that because Ms. Pacchioli bases her search parameters on the language of each individual request and does not simply provide the same records packet to Mr. Prickett, Ms. Prickett or their businesses each time a request is made, she inadvertently did not initially provide the Requester with the emails and attachments that the Borough disclosed on appeal. Pacchioli Affidavit I, ¶¶ 37-52.

Contrary to the Requester's additional arguments, no evidence has been presented to demonstrate that the Borough has actually destroyed records in response to this Request. Further, the Borough's affidavits reflect that Ms. Pacchioli did not abdicate her AORO duties to counsel in this matter, and they also show that her search was not limited to "@ivylandborough.org servers." Instead, she examined all physical and electronic records where responsive records would be stored and directed the above-identified custodians to search all documents within their possession for responsive records. Moreover, we note that the RTKL does not require the Borough to design a search that includes everything that the Request might conceivably encompass. Rather, the Borough must instead conduct a search reasonably calculated to uncover all relevant documents, which the Borough's affidavits reflect occurred in this matter.

Accordingly, the Borough has established, by a preponderance of the evidence, that a good faith search was conducted and that no additional responsive records exist within the possession,

custody or control of the Borough.¹⁶ See *Roberts v. City of Erie*, OOR Dkt. AP 2026-1091, 2026 PA O.O.R.D. LEXIS 1787, *7 (explaining that “[e]vidence of a reasonable search and contact with the correct custodians is sufficient to show that records do not exist in the agency’s possession”) (citation omitted); see also *Pa. Dep’t of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (explaining that “[i]t is questionable to what degree additional detail and explanation are necessary to establish the nonexistence of a record rather than its exemption from disclosure”) (quoting *Hodges*, 29 A.3d at 1192); *Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a “more likely than not” inquiry). Further, pursuant to 65 P.S. § 67.705 the Borough is not required to create records that do not exist currently exist.

4. The Borough demonstrated that certain records are privileged

The Borough argues that it was permitted to withhold the remaining fifteen emails/email threads and fourteen attachments identified in the Privilege Log, some of which are duplicative, under the attorney client-privilege and the work product doctrine. It further asserts that communications involving Curtin & Heefner LLP, which is the Borough Solicitor, Carroll Engineering Corp., which is the Borough Engineer, and Keystone Municipal Services, which was the former Borough Code Official, are privileged because the Borough Council had the power to appoint them to those roles under the Pennsylvania Borough Code, 8 Pa.C.S. §§ 101 *et. seq.* See July 16, 2026 Borough Submission, pp. 13-16; see also 8 Pa.C.S. § 1005(a)(1).

¹⁶ The OOR makes no determination as to whether any additional responsive records *should* exist, as our inquiry is limited to whether the records are “in existence and in possession of the ... agency at the time of the right-to-know request.” *Moore*, 992 A.2d at 909.

The Requester contends that the attorney-client privilege does not apply to “[f]actual auditing of an automatic zoning application[,]” routine administrative transmittals, operational checklist tallies and scheduling updates. He further argues that said privilege has also been waived as to any records shared with external contractors and Council Members. In addition, he asserts that the Borough’s recent RTKL history and the OOR’s finding in a separate appeal docketed at *Kim Privkett v. Ivyland Borough*, OOR Dkt AP 2026-0639, that certain records were not privileged in that matter, warrants heightened scrutiny of the privilege claims in this appeal.

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) (internal citations omitted). “[A]fter an agency establishes the privilege was properly invoked under the first three prongs, the party challenging invocation of the privilege must prove waiver under the fourth prong.” *Off. of the Governor v. Davis*, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2015) (citations omitted). The attorney-client privilege protects only those disclosures necessary to obtain informed legal advice, where the disclosure might not have occurred absent the privilege, and where the client’s goal is to obtain legal advice. *See Joe v. Prison Health Services, Inc.*, 782 A.2d 24 (Pa. Commw. Ct. 2001).

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. It applies “regardless of whether the work product was prepared in anticipation of litigation.” *Bousamra*, 210 A.3d at 976. 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 (citation omitted).

The Borough’s Privilege Log affirms that the above-mentioned records were only exchanged between various Borough personnel and officials, including the Mayor, AORO, Council Members, the former Borough Zoning Officer, attorneys employed by the Borough’s Solicitor and/or the appointed Borough Engineer and Code Enforcement Official. As such, because Carroll Engineering Corp. and Keystone Municipal Services are not just third-party contractors, but instead are, or were, officials appointed by the Township pursuant to the Borough Code, the instant matter does not implicate the same concerns that were addressed by the Commonwealth Court in *Bousamra*, concerning the applicability of the attorney-client privilege to records involving third-party agents. *See Bousamra*, 210 A.3d at 983-985 (explaining that for the privilege to extend to third-parties, their presence must be either indispensable to the lawyer giving legal advice or it must facilitate the lawyer’s ability to give legal advice to the agency).¹⁷

The Borough’s Privilege Log and affidavits further demonstrate that Withheld Records 2, 3, 8, 10, 12-14, 19, 22 and 24-26 are communications that request and provide legal advice, contemplate “legal opinions, memos, [] reports” and/or contain response strategy pertaining to the July 2024 Solicitor’s Monthly Report to Council, the Property and permit application for such, and

¹⁷ Contrary to the Requester’s additional arguments, the privileges have not been waived simply because a Council Member used or forwarded communications to their own personal email address. Further, Council Members have the power to act on behalf of the Borough, and whether they have “zero legal vote, veto, or administrative input over an automatic Use by Right permit,” as alleged by the Requester, is irrelevant to whether the responsive communications involving them are privileged.

zoning questions. *See* Privilege Log, pp. 7-11; Steers Affidavit, ¶¶ 52-53, 57, 59, 61-64, 69-77, 80-82; Pacchioli Affidavit II, ¶ 67. In addition, Withheld Records 30-32, their attachments and the “Right to Know Request Response 7-26-2024(3274)” document consist of communications “to and from the Borough Solicitor with legal edits to” draft RTKL extension and response letters.¹⁸ *See* Privilege Log, pp. 11.

Additionally, the Privilege Log and the records that the Requester uploaded on appeal, reflect that the additional withheld attachments consist of the July 2024 Solicitor’s Report for Council and “doc20240724125913,” doc20240801123546,” “doc20240801123546 (1),” “doc20240801123546 REDLINE,” “1061 Letter Rev,” and “1061 Letter REDLINE, which contain counsel’s comments, redlines/edits and drafts of letters regarding the Property and permit application and/or are the draft letters that were sent to counsel for legal review. The Borough’s affidavits also affirm that “[n]o outside parties were included on th[o]se correspondences[,]” that [t]he communications are not related to any crime or fraud[,]” and that Attorney Freed and Attorney Steers are licensed attorneys in Pennsylvania. Pacchioli Affidavit II, ¶¶ 62-63, 66, 73. Moreover, despite the Requester’s arguments, he has not presented any evidence that the privileges have been waived as to the above-mentioned fifteen emails/threads and fourteen attachments.

Accordingly, the Borough has established, by a preponderance of the evidence, that the above-mentioned records are protected by the attorney-client privilege and/or the work product doctrine. Therefore, said records are not subject to the redaction provisions of 65 P.S. § 67.706

¹⁸ The OOR has previously found that communications with counsel regarding legal advice about RTKL requests or appeals, including draft documents provided by counsel for the client’s review that do not consist solely of factual information, may be privileged. *See e.g., Nell v. Dauphin Cnty. Gen. Auth.*, OOR Dkt. AP 2025-2119, 2025 PA O.O.R.D. LEXIS 2448.

because they do not constitute public records under the RTKL. *See, e.g., Heavens v. Pa. Dep't of Evntl. Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. Ct. 2013).¹⁹

5. The OOR declines to make a finding of bad faith

The Requester argues that the Borough acted in bad faith by, among other things, “suppressing core administrative records, failing to conduct compliant searches of private and commercial domains, and offering rolling, piecemeal disclosures months after initial denials.” While the OOR may make a finding of bad faith, only a court may impose related penalties. *See* 65 P.S. §§ 67.1304(a), 1305. Under the RTKL, a finding of bad faith may be appropriate where an agency refuses to comply with its statutory duties. *See, e.g., Uniontown Newspapers I*, 185 A.3d at 1171-74; *Off. of the Dist. Att’y. of Phila. v. Bagwell*, 155 A.3d 1119, 1140-41 (Pa. Commw. Ct. 2017). However, such a finding is typically reserved only for an egregious or blatant violation of the RTKL.

In this instance, the Borough issued a timely extension notice and Final Response, it participated on appeal and it provided clarification when directed by the OOR. In addition, we determined above that the Borough proved that a good faith search was conducted and that no additional responsive records exist. While the Borough provided additional responsive records on appeal, such does not rise to the level of bad faith, in this instance. Accordingly, the OOR declines to make a finding of bad faith in this matter.

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, 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

¹⁹ Based on these determinations the OOR need not address the Borough’s alternative grounds for withholding these records under 65 P.S. § 67.708(b)(10)(i)(A).

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.²⁰ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 25, 2026

/s/ Megan Burns

MEGAN BURNS
APPEALS OFFICER

Sent via OOR Portal to: Albert Prickett; Janet Pacchioli, AORO; and Sarah Steers, Esq.

²⁰ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).