

pennsylvania
OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF	:
	:
DAWN PERLMUTTER,	:
Requester	:
	:
v.	: Docket No: AP 2026-4208
	: (Consolidated with OOR Dkts.
YARDLEY BOROUGH,	: AP 2026-4209 and AP 2026-4210)
Respondent	:

FACTUAL BACKGROUND

On September 2 and September 16, 2026, Dawn Perlmutter (“Requester”) submitted three requests (collectively the “Requests”) to Yardley Borough (“Borough”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records related to salt bids, council meeting materials and Borough Manager reports. On September 18, 2026, the Borough issued final responses, denying the Requests based upon the Requester’s failure to pay outstanding fees from earlier RTKL requests totaling \$58.25.¹ The Borough advised that until the outstanding fees are paid, the Borough will withhold access to records for all requests. *See* 65 P.S. § 67.901.

On September 29, 2026, the Requester submitted three separate appeals to the Office of

¹ For two of the requests, the Borough invoked thirty-day extensions of time to respond, and for the third request, the Borough issued a final response without invoking an extension; however, in each instance, the Borough issued a denial based upon the Requester’s failure to pay outstanding fees.

Open Records (“OOR”), challenging the denials and stating grounds for disclosure.² 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 this appeal. 65 P.S. § 67.1101(c).

On October 13, 2026, the Borough submitted a position statement, reiterating the Borough’s basis for denial of the Requests. The Borough also explains that it has offered the Requester an alternative to paying the duplication fees for all of the records, noting that the Requester may schedule an appointment to inspect the responsive records in-person, but notes that inspection would not alleviate the totality of the fees.³ In support of the Borough’s position, the Borough submitted an attestation made subject to the penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities, authored by Paula Johnson (“Johnson Attestation”), the Borough’s Agency Open Records Officer (“AORO”).

On October 13, 2026, the Requester submitted a position statement, disputing the cumulative alleged balance of \$58.25 for six requests made to the Borough from July 2, 2026 through August 19, 2026.⁴ The Requester also asserts that the Borough has failed to provided itemized invoices⁵ and notes that the Requests are being modified to reflect “on-site, in person inspection.”⁶ Lastly, the Requester claims the Borough is acting in bad faith by denying the

² The appeals were docketed as OOR Dkts. AP 2026-4208 through AP 2026-4210. As the appeals involved the same parties and similar issues, the OOR consolidated the appeals on October 2, 2026, *sua sponte*, into OOR Dkt. AP 2026-4208 for disposition.

³ The Borough indicates that a duplication cost of \$8.50 is necessary to redact a portion of the responsive records and, as of the date of its position statement, the Requester has not requested or scheduled an appointment to inspect the records. *See* Borough position statement pp. 3, 4.

⁴ Upon review of the dates of the requests for which duplication fees are owed, none of the six involve current appeals pending before the OOR or were previously appealed by the Requester. Further, the appeal periods have expired for each of the final responses issued by the Borough included with the Requester’s position statement. *See* Requester position statement, Exhibit 1.

⁵ Each of the final responses submitted by the Requester contain a breakdown of the number of pages and the price per page charge for duplication. *Id.* Thus, while the final responses are not labeled as “invoices,” the final responses provide detail regarding the assessment of duplication fees.

⁶ The Requests herein seek electronic records. The OOR has repeatedly held that a requester may not modify, explain or expand a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Dep’t of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that “where a requestor requests

processing of RTKL requests.

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)).

1. The Borough is permitted to withhold access to records until unpaid duplication fees are remitted by the Requester

The Borough denied the Requests, arguing that the Requester owes the Borough outstanding fees related to its production of records in response to six prior, separate RTKL requests. Johnson Attestation ¶ 12. The Borough additionally explains that the fees in the prior requests arose because certain responsive records exist only in paper form, and therefore, must be physically reproduced before copies can be provided to the Requester. Johnson Attestation ¶¶ 13, 38.

An agency may deny access to public records where a requester has an outstanding balance due for previous RTKL requests. *Pa. Dep’t. of Transp. v. Drack*, 42 A.3d 355, 363 (Pa. Commw. Ct. 2012) (“In a situation where a requester owes money for an agency’s fulfillment of an earlier

a specific type of record ... the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request”).

request, and where the amount owed for a current request is not expected to exceed \$100, Section 901 permits an agency to process the request but to withhold access to the request until all applicable fees, including fees for earlier requests, are paid”) (emphasis in original). Here, the Borough argues that the Requester has not paid duplication fees in the amount of \$58.25 associated with RTKL requests from July 2, 2026 through August 19, 2026, which, based upon the evidence presented and the final responses issued by the Borough that were provided by the Requester, is not in dispute because the Requester did not challenge the fees assessed for the duplication of records. *See Pa. Game Comm’n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements within the appeal record).

In the absence of a decision finding the fees to have been unreasonable or improper, the Requester must pay them. Therefore, pursuant to Section 901 of the RTKL, the Borough was permitted to deny the instant Requests and is permitted to withhold access to responsive records until the Requester has paid the outstanding fees totaling \$58.25.

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

The Requester presents a claim concerning the Borough’s actions in regard to the instant Requests and appeal. *See generally* 65 P.S. § 67.1304(a). Under the RTKL, a finding of bad faith is appropriate where an agency refuses to comply with its statutory duties under the RTKL. *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 243 A.3d 19, 28-29 (Pa. 2020); *California Univ. of Pa. v. Bradshaw*, 210 A.3d 1134 (Pa. Commw. Unpub. 2021), *appeal denied* 2019 PA LEXIS (Pa. 2019); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017).

As noted herein, the Requester owes the Borough outstanding fees related to prior RTKL requests. Additionally, the Borough provided timely, detailed final response and fully participated

on appeal, and a finding of bad faith is typically reserved only for an egregious or blatant violation of the RTKL. Thus, we decline to make a finding of bad faith in the instant matter.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Borough is not required to take any further action until the outstanding fees of \$58.25 are paid by the Requester. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Bucks County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL; however, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁷ 65 P.S. § 67.1303. 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: October 29, 2026

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent via portal only to: Dawn Perlmutter; Travis Hunsberger, Esq.; Nicole Feight, Esq.;
Paula Johnson

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