



FINAL DETERMINATION

IN THE MATTER OF

DEVIN RALPH AND THE CITY OF
READING CHARTER BOARD,
Requester

v.

CITY OF READING,
Respondent

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**Docket No: AP 2020-1271
(CONSOLIDATED)**

INTRODUCTION

Devin Ralph, Esq., on behalf of the City of Reading Charter Board (collectively “Requester”), submitted five requests (“Requests”) to the City of Reading (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking communication between attorneys representing the City. The City denied the Requests, and the Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part, denied in part, and dismissed as moot in part**, and the City is required to take further action as directed.

FACTUAL BACKGROUND

On June 9, 2020, the Requests were filed, seeking:

[1] All communications, written or electronic, between any attorney now or formerly employed by the City of Reading and Mark J. Merolla, Esquire for the

period of November 22, 2019 through the date of your response¹ regarding the matter captioned City of Reading v. City of Reading Charter Board, Berks Co. CCP No. 19-19319, regardless if any third party or parties are copied on the communication.

[2] All communications, written or electronic, between any attorney now or formerly employed by the City of Reading and Mark J. Merolla, Esquire for the period of October 1, 2019 through the date of your response regarding Charter Board Investigation No. 53, regardless if any third party or parties are copied on the communication.

[3] All communications, written or electronic, between any attorney now or formerly employed by the City of Reading and Mark J. Merolla, Esquire for the period of December 12, 2019 through the date of your response regarding the matter captioned The Honorable Wally S. Scott, Mayor of the City of Reading v. City of Reading Charter Board, Berks Co. CCP No. 19-20764 [the appeal of Investigation No. 53], regardless if any third party or parties are copied on the communication.

[4] All communications, written or electronic, between any attorney now or formerly employed by the City of Reading and Mark J. Merolla, Esquire for the period of December 12, 2019 through the date of your response regarding the Charter Board Investigation No. 54, regardless if any third party or parties are copied on the communication.

[5] All communications, written or electronic, between any attorney now or formerly employed by the City of Reading and Mark J. Merolla, Esquire for the period of December 20, 2019 through the date of your response regarding the matter captioned The Honorable Wally S. Scott, Mayor of the City of Reading v. City of Reading Charter Board, Berk Co. CCP No. 19-21454 [the appeal of Investigation No. 54], regardless if any third party or parties are copied on the communication..

On June 16, 2020, the City invoked a thirty-day extension to respond. *See* 65 P.S. § 67.902(b).

On July 10, 2020, the City denied the Requests, asserting that certain records do not exist in its possession, custody, or control, and that responsive records are protected by the attorney-client privilege and/or the attorney-work product doctrine. *See* 65 P.S. §§ 67.102, 305.

¹ A request can only seek records in existence at the time of the request; agencies are not required to provide records that do not exist at the time of the request. *See, e.g., Kloepper v. Rutledge Borough*, OOR Dkt. AP 2017-1600, 2017 PA O.O.R.D. LEXIS 1371.

On July 31, 2020, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.² The OOR invited both parties to supplement the record and directed the City to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).³

On a number of dates, the Requester submitted position statements; the City also submitted multiple position statements. On August 21, 2020, the City submitted the affidavits of Fred Lachat, Esq., an attorney with the City's Law Department, and Attorney Merolla, outside council who was retained by the City to represent its then-Mayor, Mr. Scott, as well as then-Managing Director, Glenn Steckman, regarding litigation related to complaints filed with the City Charter Board ("Board") and a complaint filed with the Ethics Board. Attorney Merolla was also the primary representative of the City in a declaratory judgment action filed by the City against the Board. On August 31, 2020, the City submitted a second affidavit executed by Attorney Lachat, and on September 25, 2020, the City submitted supplemental affidavits executed by Attorneys Lachat and Merolla, as well as the affidavits of Thomas Rothermel, Esq., outside counsel who represented Mr. Steckman in regard to the Board's investigation of him.⁴

² The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

³ The appeal of the first request was docketed at OOR Dkt. AP 2020-1271; the second was docketed at OOR Dkt. AP 2020-1272; the third was docketed at OOR Dkt. AP 2020-1273; the fourth was docketed at OOR Dkt. AP 2020-1274; and the fifth was docketed at OOR Dkt. AP 2020-1275. The Requester does not oppose the consolidation of the latter four appeals, which all relate to investigations by the Charter Board, but argues that they should not be consolidated with OOR Dkt. AP 2020-1271 because that matter refers to a declaratory relief suit filed by the City against the Charter Board and the underlying factual scenarios differ. However, analysis of responsive records and the arguments made in each appeal reveal that though the underlying cases may differ, the arguments and issues are substantially similar. Thus, because they also involve the same parties and dates, the appeals are hereby consolidated at OOR Dkt. AP 2020-1271.

⁴ Attorneys Lachat and Merolla, as well as Mr. Deming, attest that they had no correspondence with the Berks County Court of Common Pleas regarding the subject matter of the Requests. These attestations were provided when the appeal docketed at AP 2020-1276 was still pending before the OOR. The request at issue in that appeal sought communications between City employees and attorneys and staff of the Berks County Court of Common Pleas. This appeal was subsequently withdrawn. Regardless, the OOR has no jurisdiction over records of judicial agencies. *See Grine v. County of Centre*, 138 A.3d 88 (Pa. Commw. Ct. 2016); *Court of Common Pleas of Lackawanna County v. Office of Open Records*, 2 A.3d 810, 813 (Pa. Commw. Ct. 2010).

On November 9, 2020, at the request of the OOR, the City produced a privilege log, verified by Attorney Lachat. The City also submitted some responsive emails sent by Elizabeth Magovern, Esq., the Board's Independent Investigator, together with the affidavit of Osmer Deming, the City's Managing Director, who attests that he does not have responsive records in his possession. On November 23, 2020, the Requester agreed to an additional extension of time, and the next day, the OOR ordered the production of responsive records for review *in camera*. On December 10, 2020, the City submitted responsive records, accompanied by a revised privilege log. On December 14, 2020, in response to the Requester's challenge, the City submitted another affidavit executed by Attorney Lachat, verifying the revised privilege log. On various dates, the City responded to the OOR's requests for clarification.

LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required "to review all information filed relating to the request" and may consider testimony, evidence, and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here,

the Requester requested a hearing; however, this request is respectfully denied, as the OOR has conducted *in camera* review of the records.

The City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 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 Requests are moot in part

Initially, the OOR notes that the City has produced some responsive records on appeal. Accordingly, insofar as it seeks those records, the appeal is dismissed as moot. *See Kutztown Univ. of Pa. v. Bollinger*, 2019 Pa. Commw. Unpub. LEXIS 521, *6 (holding that an appeal is properly dismissed as moot where no controversy remains).

2. The City's interpretation of the Requests was reasonable in part

On appeal, the Requester argues that the City should have interpreted the Requests as seeking RFPs, contracts, and billing invoices. An agency may interpret the meaning of a request for records, but that interpretation must be reasonable. *See Garland v. Pa. Dep't of Environ. Prot.*, OOR Dkt. AP 2017-1490, 2017 PA O.O.R.D. LEXIS 1310; *Ramaswamy v. Lwr. Merion Sch. Dist.*, OOR Dkt. AP 2019-1089, 2020 PA O.O.R.D. LEXIS 2095. When a request is subject to multiple reasonable interpretations, the OOR's task on appeal is to determine if the agency's interpretation was reasonable. *Ramaswamy*, 2020 PA O.O.R.D. LEXIS 2095. The OOR determines this from the text and context of the request alone, as neither the OOR nor the Requester is permitted to alter a request on appeal. *See McKelvey v. Office of the Attorney Gen.*, 172 A.2d 122, 127 (Pa. Commw. Ct. 2016); *Smith Butz, LLC v. Dep't of Environ. Protection*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016).

The RTKL does not define "communication," but Merriam-Webster defines it as "1 a: a process by which information is exchanged" or an "exchange of information." *Communication*, MERRIAM-WEBSTER.COM DICTIONARY, available at <https://www.merriam-webster.com/dictionary/communication> (last accessed Feb. 2, 2021). Alternatively, "communication" can refer to "2 a: information communicated or exchanged" or "2 b: a verbal or written message." *Id.* Although RFPs, contracts, and billing invoices undoubtedly contain information, the fact that the Requests seek "communications, written or electronic, between [specific] attorney[s]..." suggests that responsive records are limited to emails and letters, and that RFPs, contracts, and billing invoices do not fall within the scope of the Requests, at least not as standalone documents.

The City argues that the attachments to responsive emails are not responsive as standalone documents, and thus, it is under no obligation to provide them.⁵ However, the interpretation of the Requests as not seeking attachments is too narrow. The Requests seek communications between certain attorneys. While a document such as a draft filing does not, standing alone, constitute a responsive communication, when attached to an email sent by one identified attorney to another, it fits within one of Merriam-Webster’s above-cited definitions of communication—“information communicated or exchanged”—and thus, falls squarely within the scope of the Requests.⁶ See *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38, *16 (Pa. Commw. Ct. 2012) (“The RTKL must be construed to maximize access to government records”); *Allegheny County Dep’t of Admin. Servs. v. A Second Chance*, 13 A.3d 1025 at 1034 (Pa. Commw. Ct. 2011) (“We must also interpret the RTKL liberally to effect its purpose”); *Peiffer v. Penn Ridge Sch. Dist.*, OOR Dkt. AP 2016-0031, 2016 PA O.O.R.D. LEXIS 1225 (rejecting the argument that a request for correspondence did not encompass attachments). Accordingly, all attachments identified in the revised log are responsive to the Requests and, subject to the below findings regarding privilege, must be produced.

3. Some records are privileged

The City argues that most of the emails and some of the attachments are protected by the attorney-client privilege and/or the attorney-work product doctrine. In order for the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of

⁵ The privilege log that was originally produced by the City does not list the attachments to the emails. The City subsequently provided a revised log listing all of the attachments. In response to the OOR’s inquiry, the City provided a final version of the log, specifying which of the attachments it argued were privileged.

⁶ This same logic applies to any contracts, RFPs, and billing invoices attached to emails; however, the only attachments in this category are the invoices found at Bates Nos. 000247-1 through 6; 000293-1 through 7; and 000294-1 through 5. These invoices must be provided in redacted form, as discussed below.

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 citation omitted). When waiver is at issue, the burden of proof shifts to the requester. *See Bagwell v. Pa. Dep't of Educ.*, 103 A.3d 409, 420 (Pa. Commw. Ct. 2014). An agency may not rely on a bald assertion that the attorney-client privilege applies; instead, the agency must establish the first three prongs of the privilege for it to apply. *See id.*

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

circumstances in which there is a significant likelihood that an adversary or potential adversary in anticipated litigation will obtain it.” *Id.* at 978 (internal quotation omitted).

The doctrine applies to non-attorney representatives as well, as long as that individual was hired in anticipation of litigation. *Rittenhouse v. Bd. of Supervisors*, 2012 Pa. Commw. Unpub. LEXIS 248, *4 (Pa. Commw. Ct. 2012) (citing *LaValle v. Office of General Counsel*, 769 A.2d 449 (2001)). For the doctrine to apply, the material must contain opinions relating to the merit of a claim or defense or relating to strategy or tactics. *See id.*

Here, Attorney Lachat attests:

3. The Law Department serves as legal counsel for the City’s Administration and City Council and some of its boards and commissions provided that they do not have independent counsel, such as the Zoning Hearing Board, Ethics Board or the [R]equester in these appeals, the Charter Board.
 4. As part of my role as an attorney for the City, I represented then-mayor, now former mayor, Wally Scott on two administrative complaints filed with the City’s Charter Board related to his alleged failure to properly appoint an administrative services director and his alleged failure to properly appoint a managing director. Both of these Charter Board complaints involve matters squarely within the scope of a mayor’s authority, therefore entitling the Mayor to legal representation by the City (through either the Law Department, outside counsel, or as in this case, both). These are the matters that are the subject of [Items 2-5]. In early September 2019, the City retained Mark Merolla, Esquire, to take over the primary representation of Mayor Scott in these matters. []
 5. On November 12, 2019 I filed a complaint in the Berks County Court of Common Pleas seeking declaratory and injunctive relief against the Charter Board, including a declaration that the Charter Board is unconstitutional as it is preempted by Article V of the Pennsylvania Constitution (the case that is the subject of [Item 1]).
- ...
10. I have personally reviewed [the records] that are responsive to the [Requests]. They all meet one of the criteria for work product as they contain one of the following mental impressions, opinions, memoranda, notes, summaries, and/or legal research and many involve communications where the Law Department served as a liaison between [] Mayor Scott who did not use email and Merolla.

Attorney Lachat's attestation and *in camera* review establish that many of the emails were sent between attorneys who represented the former mayor;⁷ relate to information exchanged for the purpose of securing opinions and assistance in responding to the Board investigations and related litigation, or contain attorney thoughts, opinions, research, memoranda, notes or tactical/strategic discussions; and the privilege has been invoked.

However, the Requester argues that emails sent or received by Attorney Lachat cannot be privileged because Attorney Lachat withdrew from primary representation, and Attorney Merolla was appointed as "conflict counsel." The Requester argues that this acknowledged a conflict of interest such that privilege cannot attach to emails sent to and from Attorney Lachat. Attorney Lachat explains his role in the relevant litigation as follows.

5. ... While I stepped down as primary counsel, I never completely withdrew from these matters and Merolla worked with the Law Department to ensure that the Mayor received an adequate legal defense since all of the complaints against him involved matters in which he was acting within the scope of his authority as mayor. I never declared a conflict because there was no conflict to declare; rather I simply assigned representation to outside counsel which ... is something the City, like most similar government organizations, does routinely. Further, it is normal and routine for outside counsel to report to the Law Department on representative matters handled by outside counsel unless there is a declared conflict.... Since there was no such declared conflict, Merolla reported to the Law Department on the status of these matters and Merolla and Law Department discussed strategy and opinions of these cases and at times the Law Department attorneys served as a liaison between Merolla and Mayor Scott.
6. The City, for a variety of practical reasons, decided to assign the primary representation of the City in the City v. Charter Board matter to Merolla, so myself and Kraft withdrew our appearances while Merolla entered his. This was not done because the City felt that there was an actual conflict or that the Requester's motion to disqualify had any merit-to the contrary we believe it was meritless and filed in bad faith. There is no conflict between any of the City Law Department attorneys and the Charter Board as they are completely independent with the sole exception being that the City pays their legal fees as is required in the Charter Amendment which created the Charter Board.

...

⁷ Other City employees were copied on a number of emails.

11. At no time did myself or any other attorney disclose any of these communications to a third party, and particularly not to a third party that would be likely to disclose the communications to an adversary....

The Requester also argues that it was inappropriate for Attorney Lachat to represent the City in responding to these Requests; however, the OOR does not have jurisdiction over the workings of the City.⁸ *See Seiberling v Lancaster Co.*, OOR Dkt. AP 2020-2010, 2020 PA O.O.R.D. LEXIS 2770 (rejecting a requester's argument that it was inappropriate for the county solicitor to be involved in responding to a RTKL request where the solicitor was allegedly an adverse party in the underlying litigation).

The City also argues that emails between Attorneys Merolla, Lachat, and Attorney Magovern and members of her firm are protected by the work-product doctrine. Disclosure to a third party who is not an adversarial party does not waive work-product protection, unless the disclosure significantly increases the likelihood that an adversary or anticipated adversary will obtain it. *Bousamra*, 210 A.3d 969. Here, many of the emails sent to or authored by Attorney Magovern were not sent to adversarial parties, but were only exchanged between her and the City, itself. Attorney Lachat attests that neither he nor any of the other attorneys involved disclosed the communications to third parties. Accordingly, the Requester has not met his burden of proving that the privilege was waived. *See Bagwell*, 103 A.3d at 420.

⁸ The Requester also asks the OOR to make a finding of bad faith. Section 1304(a) of the RTKL states that a court "may award reasonable attorney fees and costs of litigation ... if the court finds ... the agency receiving the ... request willfully or with wanton disregard deprived the requester of access to a public record ... or otherwise acted in bad faith..." 65 P.S. § 67.1304(a). Similarly, Section 1305(a) authorizes a court to "impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith." 65 P.S. § 67.1305; *see also Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119, 1140-41 (Pa. Commw. Ct. 2017) ("An example of bad faith is a local agency's failure to comply with the mandate of Section 901 of the RTKL, which requires that a local agency make a good faith search for information responsive to a request and determination of whether that information is public."). However, the record does not support a finding of bad faith.

However, some emails are privileged only in part, because, while they include privileged communications between Attorneys Lachat, Rothermel, Merolla, and other City employees,⁹ some prior emails in the email chain—i.e. further down the page—are forwarded emails from Attorney Eric Smith and other members of his firm. Thus, the following emails must be provided, with privileged communications redacted:

- Bates Nos. 00008-12; 000017-24; 00027-29;¹⁰ 000044; 000052-58; 000063-64; 000105-111; 000112; 000113-120; 000130-131; 000146; 000176; 000179-180; 000184-185; 000192-193; 000208-210; 000219-000220; 000233-239; 000241;¹¹ 000253-255; 000261-262; 000271-272; 000275-278; 000287-288; and 000290-292.

Additionally, many of the emails were originally sent by Attorney Smith, members of his firm, or other third parties, and were forwarded by Attorney Merolla or other outside counsel for the City to Attorney Lachat and other City employees, or vice-versa. Many such emails add either minimal content (e.g. “FYI” or “thanks”) or none at all; thus, they cannot be privileged. Still other emails include third parties as senders or recipients. Thus, the following emails are not privileged:

- Bates Nos. 000007; 000016; 000025-26; 000043; 000045-51; 000149; 000150; 000159; 000168; 000173-175; 000191;¹² 000211, 000214-218; 000231-232; 000245-246; 000257; 000258; 000269; 000270; and 000285-286

In camera review establishes that most of the attachments that the City claims are privileged on the supplemental log constitute Attorney Merolla’s work product and consist of filings, memoranda, and letters. As a result, the following attachments are privileged:

⁹ These employees include Elizabeth Kraft, Esq., City Solicitor, Mark Poist, Esq., Assistant City Solicitor, Mr. Deming, Amanda Helbert, Paralegal, Jeff Waltman, City Council President, among others. Additionally, Andrew Adair, Esq., was outside counsel who represented the City and Mr. Steckman in a separate matter.

¹⁰ While the emails sent by Attorney Lachat to Attorneys Merolla and Rothermel are privileged, the prior emails in the email chain were sent by and include unidentified parties; thus, the City has not met its burden of proving that these emails are privileged.

¹¹ While the email from Attorney Lachat to Attorney Merolla is privileged, the forwarded email from Alison Heist and the voicemail itself are not.

¹² The revised privilege log reflects that Bates Nos. 000212-213 are not responsive to the Requests and were inadvertently included. The City need not disclose these documents.

- Bates Nos. 000032-1 through 5; 000121-1 and 2; 000132-4 through 6; 000149-1 through 3; 000151-1 through 16; 000153-1 through 3; 000158-1 and 2; 000159-1 through 17; 000164-1 through 11; 000165-1 through 11; 000186-1 through 11; 000189-1 through 12; 000190-1; 000201-1 through 12; 000224-1 through 18; 000234-1; 000248-1 through 6; 000285-1 through 19

However, the attachments at Bates Nos. 000255-1 and 000132-1 through 3 are not, as they were not drafted by Attorney Merolla.

A number of the attachments are legal invoices; with regard to such invoices, the Commonwealth Court has found that:

[G]eneral descriptions such as drafting a memo, making [a] telephone call, performing research, observing a trial, reflect work performed, without further detail they do not reveal an attorney's 'mental impressions, theories, notes, strategies, research and the like.' Disclosure of the general tasks performed in connection with the fee charged reveals nothing about litigation strategy. They simply explain the generic nature of the service performed and justify the charges for legal services rendered. Where, as here, the taxpayers are footing the bill for the legal services, they are entitled to know the general nature of the services provided for the fees charged.

Levy v. Senate of Pa., 94 A.3d 436 (Pa. Commw. Ct. 2014) (internal citations omitted), *petition for allowance of appeal denied*, 106 A.3d 727 (Pa. 2014). *In camera* review establishes that the majority of the attachments to Bates Nos. 000247, 000293, and 000294 consist of general descriptions that are not privileged. However, the following portions may be redacted:

- Bates No. 000247-3: Abbreviation following "Legal Research" in the entry dated 11/07/19
- Bates No. 000293-1: Words following "Review" in the entries dated 12/17/19 and 12/19/19
- Bates No. 000293-3: Last word of the entry dated 12/20/19
- Bates No. 000293-7: Words following "Legal Research" in the entries dated 01/08/20 and 01/14/20
- Bates No. 000294-1: Two words following "Review" in the entries dated 12/17/19 and 12/19/19
- Bates No. 000294-3: Word following "Legal Research" in the entry dated 12/20/19

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part, denied in part**, and **dismissed as moot in part**, and the City is required to provide the records identified above within thirty days. 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 Berks 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.¹³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: February 23, 2021

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Devin Ralph, Esq. (via email);
Eric Smith, Esq. (via email);
Christopher McMonagle, Esq. (via email);
Fred Lachat, Esq. (via email);
Jennifer Hanlin, Esq. (via email);
John Miravich, Esq. (via email)

¹³ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).