

PETITION FOR RECONSIDERATION

DATE ISSUED AND MAILED: March 24, 2021

IN RE: *Ralph v. City of Reading*, OOR Dkt. AP 2020-1271 (consolidated)

Upon review of the petition for reconsideration filed with the Office of Open Records (“OOR”) to the above-referenced docket number, it is determined that the petition is **DENIED** because:

This Appeal involved a request for correspondence between City attorneys and outside counsel, regarding three Berks County Court of Common Pleas’ cases and two Charter Board Investigations. The City claimed that records were protected by the attorney-client privilege and the attorney-work product doctrine. After an *in camera* review, the OOR held that while most of the emails and their attachments were privileged, certain emails were only privileged in part or not at all because of their origination from outside parties or because they did not include any privileged content. The OOR also found that some of the attachments were not work product because they were not drafted by counsel, or because the attachments are legal invoices that are subject to redaction.

The City has filed for reconsideration, arguing that the OOR failed to consider the “selection and compilation” theory of the work product doctrine, i.e. that counsel’s selection and compilation of documents show counsel’s mental impressions or strategy.

While the work product doctrine was raised by the City as a reason for denial, it did not specifically advance an argument regarding the “selection and compilation” theory, despite having multiple opportunities to do so during the course of the appeal. Because this argument was not raised by the City during the course of the appeal, it has been waived. *See, e.g., Pa. Dep’t of Educ. v. Bagwell*, 131 A.3d 638, 660 (Pa. Commw. Ct. 2016) (explaining that challenges must be raised before the fact-finder) (citing *Levy v. Senate of Pa.*, 94 A.3d 436, 441-42 (Pa. Commw. Ct. 2014)). In addition, the OOR is not permitted to accept new evidence on Reconsideration, *Bagwell*, 131 A.3d at 656 n.12. Accordingly, we deny the petition for reconsideration.

Issued by:

/s/ Kyle Applegate

ASSISTANT CHIEF COUNSEL

Sent to: Requester, Agency Open Records Officer