

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

No. 142 C.D. 2022

SAM JANESCH *and*
ANGELA COULOUMBIS,
Petitioners,

v.

PENNSYLVANIA HOUSE OF REPRESENTATIVES,
Respondent.

PRINCIPAL BRIEF OF PETITIONERS

ON APPEAL FROM THE DETERMINATION OF THE HOUSE APPEALS OFFICER
IN RTKL APPEAL No. 2021-0002 ACA

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STATEMENT OF JURISDICTION

Appellate jurisdiction lies with this Honorable Court pursuant to 65 P.S. § 67.1301(a), 42 Pa.C.S. § 763(a)(2), and Rule 1511 of the Pennsylvania Rules of Appellate Procedure.

ORDER UNDER REVIEW

Petitioners seek review of the January 19, 2022 determination of the House Appeals Officer (“AO”) in Appeal No. 2021-0002 ACA, attached hereto as Exhibit

A. The text of the order is as follows:

And now, this 19th day of January, 2022, upon consideration of the subject appeal, the Denial is affirmed.

By Appeals officer

s/Anthony C. Aliano
Anthony C. Aliano, Esq.

House AO order appended hereto as Exhibit A

SCOPE AND STANDARD OF REVIEW

This Court exercises plenary review over legal questions arising from the Commonwealth's Right to Know Law. *Padgett v. Pa. State Police*, 73 A.3d 644, 646 n.3 (Pa. Commw. Ct. 2013). When, as here, the Court considers an appeal from the decision of a legislative agency pursuant to 65 P.S. § 67.1301, the Court “independently review[s] the agency’s orders, and [it] may substitute [its] own findings of fact.” *Levy v. Senate of Pa.*, 94 A.3d 436, 440 n.7 (Pa. Commw. Ct. 2014).

QUESTIONS INVOLVED

Question 1

Did the House produce evidence sufficient to establish that the attorney-client and work-product privileges justify its redaction of the responsive records?

Suggested Answer No.

Question 2

Does the Commonwealth's Right to Know Law require a legislative agency to redact general information about the subject matter of an outside attorney's services from engagement letters and invoice captions?

Suggested Answer No.

STATEMENT OF THE CASE

I. Form of action

This matter arises under the Pennsylvania Right to Know Law (“RTKL”), codified at 65 P.S. §§ 67.101–67.3104. It comes before the Court on petition for review of the decision of the RTKL AO designated by the Pennsylvania House of Representatives. 65 P.S. § 67.1301(a).

II. Procedural history

On October 15, 2021, pursuant to the RTKL, Sam Janesch and Angela Couloumbis (“Petitioners”) submitted a request for records (the “Request”) to the Pennsylvania House of Representatives (the “House”). R.002a. Petitioners are seasoned investigative reporters who have provided years-long, in-depth coverage of the Pennsylvania legislature and its spending habits, including a close focus on expenditures by the House and Senate on legal fees.¹ This year, they were

¹ See Angela Couloumbis, Brad Bumsted & Sam Janesch, *Pa. lawmakers black out details of why they spent tax dollars, claiming ‘legislative privilege’*, Spotlight PA (Feb. 27, 2020), <https://perma.cc/BQ8V-2UQP>; Angela Couloumbis & Sam Janesch, *Privileged Information: Pennsylvania lawmakers spend millions of taxpayer dollars each year on private lawyers, but rarely disclose who required representation – and why*, Spotlight PA (Oct. 12, 2021), <https://perma.cc/H7ET-GR2H>; Sam Janesch & Angela Couloumbis, *Pa. lawmakers hand out millions in public contracts to law firms that fill their campaign coffers*, Spotlight PA (Oct. 13, 2021), <https://perma.cc/KRZ8-GQGT>; Angela Couloumbis & Sam Janesch, *Pa. legislature’s redacted legal bills flout court ruling, leave taxpayers guessing*, Spotlight PA (Jan. 11, 2022), <https://perma.cc/5FFN-H5UN>.

presented a national Freedom of Information award for their work unearthing legislative spending practices.²

The House responded on November 22, 2021, informing Petitioners that the Request was granted in part and denied in part. R.004a–005a. On December 14, 2021, Petitioners timely appealed the House’s response to the House Appeals Officer (“AO”).³ R.008a. On January 19, 2022, the AO issued a final determination affirming the House’s partial denial of the Request. Exhibit A. On February 18, 2022, Petitioners filed in this Court a Petition for Review of the AO’s final determination.

III. Prior determinations

The House’s November 22, 2021 response to the Request is unreported, but is reproduced at R.003a. The AO’s January 19, 2022 determination affirming the House’s response is unreported, but is reproduced at Exhibit A. No court has issued a prior determination in this matter.

² Christopher Baxter, *Spotlight PA wins national award for investigation into the Pennsylvania legislature’s hidden spending*, Spotlight PA (Apr. 6, 2022), <https://perma.cc/YAZ8-YC5L>.

³ In the context of RTKL requests to legislative agencies, the AO’s role is similar to the role of the Office of Open Records (“OOR”). The House AO, Anthony C. Aliano, Esq., is a House employee who receives and determines appeals of the House’s RTKL decisions. 65 P.S. § 67.503(c)(2)(ii).

IV. Facts

A. Petitioners submitted an RTKL request seeking the House's legal billing records.

The House regularly hires outside attorneys. *See supra* note 1. So do its elected members and its employees. *Id.* These outside attorneys bill the House for their services, and the House pays them with taxpayer dollars. *Id.*

Petitioners Sam Janesch and Angela Couloumbis are investigative journalists. Pursuant to the RTKL, they asked the House to produce various records related to its legal bills, including:

- 1) Invoices, bills, vouchers, or other financial statements reflecting payment, and explanation of that payment, for legal work performed by outside law firms or individual lawyers hired or retained by any House employee or the House. Requesters define outside law firms or lawyers as any legal professional not employed directly by the Pennsylvania House of Representatives. Requesters seek these invoices, bills or statements submitted for payment to the House from 1/1/2021 to 10/15/2021.
- 2) Engagement or retainer letters signed by any House employee or House member to provide legal services (by an individual attorney or a law firm) to House-run offices or operations, House Caucuses, House employees or House members. Requesters seek these engagement or retainer letters for the following time period: 1/1/2021 to 10/15/2021.
- 3) Expense reports detailing all payments for legal services to outside law firms or individual lawyers hired by the House for the period of 1/1/2021 to 10/15/2021. These expense reports should cover payments made from all House accounts and include the following details: payee, name of the senator or staff

member to whom the payment applies, voucher number, date incurred, date paid, amount and description.

4) Any additional spreadsheets, lists, logs or other documents kept internally within the House for record-keeping purposes that identify the legal engagements, law firms, case numbers or purposes of the engagements.

R.002a.

B. The House released responsive records with extensive redactions.

The House granted in part and denied in part the Request. R.004a–005a.

The House partially granted the Request insofar as it produced 607 pages of responsive records (the “Records”). *See* Exhibit A at 2. One tranche of Records came from the Chief Clerk’s office, which is commonly known as “CORE” and is not affiliated with either political party; another came from the House Republican Caucus; and a third came from the House Democratic Caucus.

The House partially denied the Request insofar as it made thousands of redactions to the Records.⁴ The House informed Petitioners that some of these redactions concealed “information protected by the attorney-client and/or attorney work product privileges,” while others concealed “personal financial information.”

R.005a. In most instances, the House did not specifically tie its redactions to an exemption or privilege recognized by the RTKL; indeed, the vast majority of the

⁴ The RTKL states that the government’s redaction of information in responsive records “shall be deemed a denial.” 65 P.S. § 67.706.

House’s redactions consist of a black or white bar on which the word “redacted” is superimposed. *See, e.g.*, R.014a, 027a.

C. Petitioners appealed the propriety of certain redactions to the House AO.

Petitioners appealed the partial denial of their Request to the House AO. Petitioners explained that they did not object to the redaction of personal financial information. R.009a. They also explained that, because the majority of the House’s redactions were neither labeled nor indexed in an Exemption Log, they could not determine in most instances whether a given redaction reflected an assertion of the attorney-client privilege, the work-product privilege, or both; thus, Petitioners were unable to meaningfully contest the applicability of specific privileges to specific redactions. R.009a, 011a.

Nevertheless, Petitioners observed that many of the House’s redactions appeared to conceal “the purpose” or “legal matter” in relation to which the House had engaged an outside attorney. *See* R.008a. To illustrate, Petitioners pointed out that, in many instances, the House had redacted the portions of engagement letters and invoice-captions that typically contain only a case name, a docket number, or a broad description of an issue area—*e.g.*, “constitutional questions.”⁵ R.009a. Such information, Petitioners argued, is not subject to either the attorney-client privilege

⁵ Petitioners submitted exhibits to the AO showcasing the types of redactions to which they objected. R.13a–230a.

or the work-product privilege. R.009a–010a. For support, Petitioners relied principally on the Pennsylvania Supreme Court’s interpretation of the RTKL in *Levy v. Senate of Pennsylvania*, 65 A.3d 361 (Pa. 2013), and this Court’s interpretation of the Sunshine Act in *Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305 (Pa. Commw. Ct. 1993). Petitioners also noted that, historically, the House’s assertions of the attorney-client privilege had been overbroad, R.010a, and provided illustrative exhibits, R.025a–230a. Petitioners ultimately asked the AO either to (a) order the Records released immediately in unredacted form or (b) hold a hearing and review the Records *in camera*. R.011a.

At the AO’s request, R.233a, the House submitted a letter-brief responding to Petitioners’ appeal, R.008a. The House maintained that—aside from personal financial information—its redactions were limited to material that “constituted a protected attorney-client communication, attorney work-product information, or both.” R.238a. For this reason, the House argued that its redactions were consistent with the interpretations of the RTKL issued by this Court and the Pennsylvania Supreme Court. R.237a–38a.

The House attached to its letter-brief three affidavits (collectively, the “Affidavits”): one prepared by Daniel W. Coleman, CORE Legal Counsel, R.248a–254a; one prepared by Charlene A. Bashore, Open Records Officer of the House Republican Caucus, R.255a–262a; and one prepared by Matthew S.

Salkowski, Senior Legal Counsel to the House Democratic Caucus, R.263a–269a. Among other things, all three affiants attested that they understood the RTKL to “allow for disclosure of general descriptions of services provided, but preclude disclosure of further details.” R.251a, 258a, 266a. All three affiants also attested that indexing the House’s redactions in an Exemption Log was unfeasible, as it would be “extremely burdensome” and “repetitive.” R.254a, 261a, 268a.

D. The House AO adopted the House’s arguments and affirmed.

The House AO affirmed the partial denial of the Request. The AO’s written decision adopted in full the arguments set forth in the House’s letter-brief; indeed, in large part, the AO’s decision reproduces the House’s letter-brief verbatim.

Compare, e.g., R.238a *with* Exhibit A at 9. Having adopted the House’s arguments, the AO denied Petitioners’ request for a hearing and *in camera* review, concluding that “the redactions to the requested document are permitted and / or required under the RTKL.” Ex. A at 14. This appeal followed.

SUMMARY OF THE ARGUMENT

Every year, Pennsylvania lawmakers spend millions of dollars of taxpayer money on the services of outside attorneys. The public undeniably has a strong interest in scrutinizing such expenditures. To that end, Petitioners submitted an RTKL request for the House's legal billing records. The House produced the requested records with thousands of redactions. These redactions obscure even the most general information about the subject matter of the House's legal engagements. Without this basic information, the public cannot meaningfully scrutinize the House's use of taxpayer funds. The House's broad redactions therefore frustrate the central purposes of the RTKL: to enhance government transparency and enable the public to hold officials accountable for their decision making.

The House contends, incorrectly, that its redactions are necessitated by the attorney-client and work-product privileges. Not so. First, the House has failed to carry its burden of establishing that the attorney-client and work-product privileges apply to the information that it redacted from its legal billing records. Second, the House's contention that any information about the subject matter of an attorney's engagement must be obscured from legal billing records misreads the precedent of this Court and the Pennsylvania Supreme Court.

This Court should hold that because the House has failed to carry its burden under the RTKL, the Records must be released immediately in unredacted form. Alternatively, this Court should hold that the House incorrectly interpreted the extent to which an agency must redact its legal billing records pursuant to the attorney-client and work-product privileges; if the Court so holds, it should remand with instructions to re-process the records and produce new, Bates-stamped versions with more limited redactions, along with affidavits and a Privilege Log containing sufficient detail to enable meaningful adversary testing of any remaining redactions.

ARGUMENT

I. The House has not established that its redactions are necessitated by the attorney-client or work-product privilege.

The RTKL 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. Off. of Open Recs.*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010). To effectuate this purpose, courts “must” interpret the RTKL so as “to maximize access to public records.” *McKelvey v. Pa. Dep’t of Health*, 255 A.3d 385, 400 (Pa. 2021).

The RTKL is not absolute: it does not require the government to release information that is “protected by a privilege,” 65 P.S. § 67.305, or that otherwise falls into one of the statute’s enumerated exemptions, 65 P.S. § 67.708. But as this Court has explained, the RTKL’s exceptions “must be narrowly construed.” *Off. of Dist. Att’y of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (Pa. Commw. Ct. 2017) (“*Bagwell 2017*”); see also *Off. of Governor v. Scolforo*, 65 A.3d 1095, 1100 (Pa. Commw. Ct. 2013) (“*Scolforo*”). Otherwise, the exceptions would threaten to “frustrate the remedial purpose of the” law. *Bagwell 2017*, 155 A.3d at 1130.

When the government asserts a privilege over records responsive to an RTKL request, the government bears the burden of proving by a preponderance of the evidence that the privilege applies. *Pa. Dep’t of Educ. v. Bagwell*, 131 A.3d 638, 656 (Pa. Commw. Ct. 2015) (“*Bagwell 2015*”). Here, the House asserts that it

redacted the Records to conceal information subject to the attorney-client privilege, the attorney work-product doctrine, or—in at least some cases—both. R.005a, 237a; *see also* 65 P.S. § 67.102 (defining “privilege” to include both attorney-client and work-product privileges).

To establish that the information it redacted from the Records is subject to the attorney-client privilege, the House was required to prove four elements. *Bagwell 2015*, 131 A.3d at 656. First, the House had to establish “that the asserted holder of the privilege is or sought to become a client;” second, “that the person to whom the communication was made is a member of the bar of a court, or his or her subordinate;” third, “that the communication relates to a fact of which the attorney was informed by the client, without the presence of strangers, for the purpose of securing an opinion of law, legal services or assistance in a legal matter;” and fourth, “that the claimed privilege has not been waived by the client.”⁶ *Id.* (citation omitted).

To establish that the information it redacted from the Records is subject to the work-product privilege, the House had to “demonstrate that the [withheld information would] reveal the mental impressions of a party’s attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal

⁶ “If the agency proves the first three prongs of the test, the burden shifts to the challenger to prove that the privilege was waived under the fourth prong.” *Cal. Univ. of Pa. v. Schackner*, 168 A.3d 413, 421 (Pa. Commw. Ct. 2017).

theories.” *Bagwell 2017*, 155 A.3d at 1133 (citation and internal quotation marks omitted). This requirement stems from “[t]he underlying purpose of the work product doctrine,” which “is to guard the mental processes of an attorney, providing a privileged area within which he can analyze and prepare his client’s case.” *Levy v. Senate of Pa.*, 94 A.3d 436, 443 (Pa. Commw. Ct. 2014) (citation omitted).

In an effort to establish the existence of each privilege, the House relied on the Affidavits. R.236a–37a. There is no question that “[t]estimonial affidavits found to be relevant and credible may provide sufficient evidence” to carry the government’s burden. *Brown v. Pa. Dep’t of State*, 123 A.3d 801, 804 (Pa. Commw. Ct. 2015) (citation omitted). Such affidavits “must,” however, “be detailed, nonconclusory, and submitted in good faith.” *Id.* (citation omitted). “[C]onclusory affidavits, standing alone, will not satisfy the burden of proof an agency must sustain to show that a requester may be denied access to records under the RTKL.” *Bagwell 2017*, 155 A.3d at 1130.

Here, the Affidavits are vague and conclusory; consequently, they do not establish that the House’s redactions are proper under either the attorney-client privilege or the work-product privilege. The Affidavits offer nothing more than boilerplate recitations of the elements of the attorney-client and work-product privileges. *See, e.g.*, R.252a, 259a, 267a (asserting that “[t]he redacted items

reflect confidential communications between an attorney and his or her client that have not been shared with any third party or the general public”); *id.* (asserting that “[o]ther redacted items reflect an attorney’s preparation of material in connection with his or her legal work, or reflect the lawyer’s mental impressions, internal thought processes, or legal strategies, theories, opinions, research, or conclusions”). Such statements, which “merely parrot” the baseline definitions of the claimed privileges, are plainly insufficient to carry the House’s burden. *Bagwell 2015*, 131 A.3d at 659; *see also Pa. State Police v. Muller*, 124 A.3d 761, 765 (Pa. Commw. Ct. 2015) (“[A]n affidavit which merely tracks the language of the exception it presupposes is insufficient to demonstrate that the responsive records are exempt from disclosure.”) (citing *Scolforo*, 65 A.3d at 1103–04).

Put differently, the Affidavits do not describe “with any particularity . . . how the privilege”—attorney-client, work-product, or both—“supports non-disclosure or redaction.” *Bagwell 2015*, 131 A.3d at 658. Indeed, the Affidavits contain insufficient detail even to identify which privilege (or privileges) the House has asserted to justify any given redaction—much less the type of information that any given redaction conceals. Petitioners cannot, for example, determine which of the redactions in the Records produced by the House Democratic Caucus conceal the “identities of people an attorney or attorneys spoke with on the telephone or emailed.” R.266a (Salkowski Affidavit); *see also* R.258a

(attesting that the Records produced by the House Republican Caucus were redacted to conceal, among other things, “names of individuals consulted or contemplated for consultation (other than the parties or counsel involved)”); *see also Levy v. Senate of Pa.*, 65 A.3d 361, 370 (Pa. 2013) (stating that, in general, “client identities are not protected by the attorney-client privilege because the identity of the client is rarely relevant to the legal advice sought”). Nor can Petitioners discern whether the House seeks to justify such redactions by asserting the attorney-client privilege, the work-product privilege, or both.

This Court has previously held that strikingly similar attestations failed to carry an agency’s burden of proof under the RTKL. For example, in *Bagwell 2015*, the government relied in part on the attorney-client and work-product privileges to justify the denial of an RTKL request. *Bagwell 2015*, 131 A.3d at 645. To sustain its invocation of the privileges, the government submitted an affidavit that contained no more detail than the following:

The records responsive to [the] request that are in [the Pennsylvania Department of Education]’s possession include communications made only between myself, members of the Governor’s cabinet and executive offices, and attorneys in [the Office of General Counsel] and contain the mental impressions and/or opinions of those attorneys pertaining to issues presented to them for the purpose of seeking legal services or assistance in legal matters relating to my activities as Secretary of Education and as a [Pennsylvania State University] Board member, and members of the Governor’s cabinet and executive offices, and which were not for the purpose of committing a crime or tort.

Attestation of Ronald J. Tomalis, Reproduced Record 37a–40a, *Bagwell 2015*, No. 1617 C.D. 2014 (Feb. 9, 2015). This Court held that the affidavit was “conclusory and vague,” and therefore insufficient to carry the agency’s burden. *Bagwell 2015*, 131 A.3d at 658; *see also, e.g., Cal. Univ. of Pa.*, 168 A.3d at 422 (holding that agency failed to establish existence of attorney-client privilege based on affidavit containing no less detail than the House Affidavits). The House Affidavits are equally conclusory and vague. *See, e.g., R.266a* (Salkowski Affidavit) (stating that the House redacted “subject lines that revealed the purpose for obtaining the legal counsel, descriptions of the reason why attorney tasks were performed and the nature of the legal advice rendered, the identities of people an attorney or attorneys spoke with on the telephone or emailed, [and] the subject of conferences, discussions, communications, research memoranda or other work product”).

Relatedly, the House contends that it need not provide a detailed privilege log to substantiate its assertions of the attorney-client and work-product privileges because doing so would be, in the words of its affiants, “extremely burdensome” and “repetitive.” R.254a, 261a, 268a. That argument is wrong twice over. First, an agency is not relieved of its burdens under the RTKL merely because meeting those burdens would be difficult. *See, e.g., Commonwealth v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012). Second, a privilege log that adequately set forth the factual circumstances underlying the House’s assertion of the attorney-client

and work-product privileges presumably would not be entirely repetitive, as it would account for differences in, among other things, the general subject matter for which the House’s outside attorneys were engaged.⁷ *Cf. McGowan v. Pa. Dep’t of Env’t Prot.*, 103 A.3d 374, 381 (Pa. Commw. Ct. 2014) (explaining that a privilege log “typically lists the date, record type, author, recipients, and a description of the withheld record”); *Off. of Governor v. Davis*, 122 A.3d 1185, 1194 (Pa. Commw. Ct. 2015) (“An index, even one containing minimal description, offers a tool for a fact-finder reviewing corresponding records.”).

Agency open records officers are tasked with performing a good faith search from the outset of receiving a RTKL request. Agencies are required under the RTKL to not only contact potential Commonwealth custodians, but also to “contact agents within [their] control, including third-party contractors” and “review the records and assess their public nature.” *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161, 1172 (Pa. Commw. Ct. 2018), *aff’d*, 243 A.3d 19 (Pa. 2020). In a case in which multiple bases of exemption are claimed for numerous records, it is difficult to understand how a good faith search was made, and how each record was assessed on its own merits without creating a privilege

⁷ It is difficult to see how the type of (inadequate) privilege log that the House apparently contemplates—*i.e.*, an entirely repetitive one—could be “extremely burdensome,” as it would, by the House’s own account, be a copy-and-paste job.

log⁸ to carefully review the claimed exemption. An open records officer cannot “fulfill[] his or her obligation simply by relying on the representations of others without inquiring as to what investigation was made and without reviewing the records upon which the individual responding to the request relied.” *Uniontown*, 243 A.3d 19, 28 (Pa. 2020). By indiscriminately redacting records and refusing to create a detailed privilege log, the House open records officer abnegated its duty under 65 P.S. § 67.901 to make a “good faith” effort to determine which records were public.

II. The *Levy* Opinions do not categorically require the redaction of subject-matter references in the House’s legal billing records.

To justify its redactions under the attorney-client and work-product privileges, the House repeatedly invokes a seminal trio of opinions (the “*Levy* Opinions”) issued by this Court and the Pennsylvania Supreme Court: *Levy v. Senate of Pennsylvania*, 34 A.3d 243 (Pa. Commw. Ct. 2011) (“*Levy I*”); *Levy v. Senate of Pennsylvania*, 65 A.3d 361 (Pa. 2013) (“*Levy II*”); *Levy v. Senate of Pennsylvania*, 94 A.3d 436 (Pa. Commw. Ct. 2014) (“*Levy III*”). These opinions address in detail a legislative agency’s invocation of the attorney-client and work-

⁸ While the RTKL does not mandate privilege logs, the Office of Open Records certainly contemplates their utility, inasmuch as it provides templates for both an exemption log and an attestation in support of an exemption log. *See* RTKL Forms, Office of Open Records, <https://www.openrecords.pa.gov/RTKL/Forms.cfm> (last accessed June 13, 2022).

product privileges to justify the redaction of legal billing records. *Id.* The House maintains that the *Levy* Opinions not only permit, but require all of the redactions now found in the Records—including the House’s redaction of the produced engagement letters and invoice captions. *See, e.g.,* R.236a. Not so.

The latter two *Levy* Opinions are particularly relevant. In *Levy II*, the Pennsylvania Supreme Court addressed the scope of the attorney-client privilege. The Court stated that “general descriptions of legal services included in attorney invoices are not covered by the umbrella of the attorney-client privilege.” *Levy II*, 65 A.3d at 363. Thus, for example, the privilege does not apply to “an entry that generically states that counsel made a telephone call for a specific amount of time to the client.” *Id.* at 373. Instead, the privilege is limited to, in relevant part, “descriptions of legal services that address the client’s motive for seeking counsel, legal advice, strategy, or other confidential communications.” *Id.*

In *Levy III*, this Court addressed the scope of the work-product privilege. “In the RTKL context,” wrote the Court, the work-product privilege “protects the mental impressions, theories, notes, strategies, research and the like created by an attorney in the course of his or her professional duties, particularly in anticipation or prevention of litigation[,] from disclosure.” *Levy III*, 94 A.3d at 443 (citation and internal quotation marks omitted). The privilege does not extend to descriptions of “the general tasks performed in connection with” legal fees,

because such descriptions “simply explain the generic nature of the service performed and justify the charges for legal services rendered.” *Id.* at 444.

Below, the House advocated—and the AO adopted—an overbroad and erroneous construction of the *Levy* Opinions. In essence, the House argued that the *Levy* Opinions require the redaction of *any* information in a legal billing record that pertains to the subject matter of an attorney’s services. For instance, according to the House,

an agency may disclose an attorney fee invoice under the RTKL, but *only* to the extent of its general description of the service performed—such as drafting a memorandum, making a telephone call, performing research, or attending a trial. *The agency must redact any further details*—including the specific description of a legal service provided, the subject of a memorandum, the identity of a person called, the nature of the researched performed, or identification of the trial attended.

R.236a (emphasis added); *see also* R.251a (Coleman Affidavit) (“As I understand the decisions in *Levy*, the attorney-client privilege and work-product doctrine allow for disclosure of general descriptions of services provided, but preclude disclosure of further details.”); R.258a (Bashore Affidavit) (same); R.266a (Salkowski Affidavit) (same). The AO’s decision adopts a nearly identical misstatement of the law. Exhibit A at 7.

The House’s construction pushes the *Levy* Opinions too far. Neither this Court (in *Levy III*) nor the Pennsylvania Supreme Court (in *Levy II*) held that a legislative agency must redact information in attorney invoices or engagement

letters whenever such information goes beyond a mundane description of services performed. Instead, the *Levy* Opinions stand for two propositions. First, mundane descriptions of the tasks or services performed by outside attorneys are never privileged, because they cannot convey the type of information the attorney-client and work-product privileges are designed to protect. *See, e.g., Levy III*, 94 A.3d at 444 (holding that “rote entries regarding the general nature of legal services performed are not entitled to protection under the work-product doctrine”). Second, information on the general subject matter of an attorney’s services *may* be privileged, but only when that information would, if revealed, expose the type of information that the attorney-client and work-product privileges are designed to protect— “the client’s motive for seeking counsel, legal advice, strategy, or other confidential communications.” *Levy II*, 65 A.3d at 373; *see also id.* (approving this Court’s appointment of a Special Master to conduct “careful line-by-line analysis of the content of the invoices” to ascertain whether redacted material was in fact privileged).

Especially germane here, the information typically contained in engagement letters and the captions of invoices—*i.e.*, general descriptions of the subject matter of an attorney’s services, such as “Education funding litigation”—is highly unlikely to reveal “a fact of which the attorney was informed by the client, without the presence of strangers, for the purpose of securing an opinion of law, legal

services or assistance in a legal matter.” *Bagwell 2015*, 131 A.3d at 656 (citation omitted). It is even less likely to reveal “the mental impressions” of any attorney involved. *Id.* at 657 (citation omitted).

This Court’s opinion in a Sunshine Act case—*Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305, 307 (Pa. Commw. Ct. 1993)—is instructive, particularly as Pennsylvania courts have repeatedly affirmed that the RTKL and the Sunshine Act are to be read *in pari materia*. See *Off. of Gen. Counsel v. Bumsted*, 247 A.3d 71, 81 (Pa. Commw. Ct. 2021). *Reading Eagle* concerned a provision of the Sunshine Act that permits an agency to hold an “executive”—*i.e.*, closed—session, 65 Pa.C.S. § 708(a)(4), while also providing that “[t]he reason for holding the executive session must be announced” to the public in advance, *id.* § 708(b).

The question in *Reading Eagle* was whether an agency satisfied the notice requirement of section 708(b) when it announced that it would hold an executive session “to discuss matters of litigation.” *Reading Eagle*, 627 A.2d at 306 (internal quotation marks omitted). This Court answered “no.” The Court recognized that “if knowledge of litigation strategy, of the amount of settlement offers or of potential claims became public, it would damage the municipality’s ability to settle or defend those matters and all the citizens would bear the cost of that disclosure.” *Id.* at 307. Nevertheless, the Court held that “the reasons stated by the public

agency must be specific, indicating a real, discrete matter that is best addressed in private.” *Id.* The Court therefore affirmed that “when announcing executive sessions,” an agency “must spell out in connection with existing litigation the names of the parties, the docket number of the case and the court in which it is filed.” *Id.* at 306. Likewise, “[i]n connection with identifiable complaints or threatened litigation,” an agency “must state the nature of the complaint, but not the identity of the complainant.” *Id.*

Just as the information at issue in *Reading Eagle* was necessary to achieving the purposes of the Sunshine Act, the information at issue here is necessary to achieving the purposes of the RTKL. The public needs to know the general subject matter of the House’s legal engagements in order to “scrutinize the actions of public officials” and to “make public officials accountable for their actions”—the RTKL’s central aims. *Bowling*, 990 A.2d at 824. Public scrutiny can have only a limited effect if the House is permitted to conceal from the public even the most basic, general information about its reasons for engaging outside attorneys.

CONCLUSION

For the reasons set forth above, Petitioners respectfully submit that this Court should reverse the AO’s decision of January 19, 2022 and order the House to produce the Records without redaction.

Alternatively, Petitioners respectfully submit that this Court should vacate the AO's decision of January 19, 2022 and remand with instructions for the House to: re-process the Records in accordance with the legal principles set forth in the Court's opinion; produce new, Bates-stamped versions of the Records; and produce affidavits and a Privilege Log that are sufficiently detailed to enable meaningful adversary testing and *in camera* review.

CERTIFICATES OF COMPLIANCE

I hereby certify that:

1. This filing complies with the word-count limit set forth in Pennsylvania Rule of Appellate Procedure 2135(a)(1). Based on the word-count function of Microsoft Word, the filing contains 5290 words.

2. This filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: June 14, 2022

/s/ Paula Knudsen Burke

Paula Knudsen Burke
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
PA ID: 87607

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

By email

Karl S. Myers
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Counsel for Respondent

Dated: June 14, 2022

/s/ Paula Knudsen Burke

Paula Knudsen Burke
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
PA ID: 87607

**EXHIBIT A:
DETERMINATION OF HOUSE AO**



HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Via Certified Mail No. 7011 0470 0002 7989 5918

Sam Janesch
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Spotlight PA
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Harrisburg, PA 17101

Hon. Brooke Wheeler, Esq.
House Open Records Officer
Pennsylvania House of Representatives
129 Main Capitol Building

RIGHT-TO-KNOW LAW APPEAL
Mailing Date: January 19, 2022

DECISION

RE: Appeal No. 2021-0002 ACA

This is an appeal pursuant to 65 P.S. § 67.101 *et seq.*, also known as the Right-To-Know Law, (“RTKL”)¹, filed on October 15, 2021 by Sam Janesch and Angela

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101 – 67.3104.

Couloumbis (the “Requesters”). This is an appeal of a denial issued by the Hon. Brooke Wheeler, Open Records Officer (the “ORO”) of the Pennsylvania House of Representatives, (the “House”) Room 129, Main Capital Building, Harrisburg, PA 17120.

The ORO’s denial was issued on November 22, 2021. In response to that denial, the Requesters filed an appeal on October 8, 2021. That appeal is the subject of the within decision.

I. STATEMENT OF FACTS

The facts identified from the submissions of the parties are as follows:

1. On October 15, 2021, Requesters directed a RTKL to the House RTKL Office for (1) attorney invoices for House outside counsel for the period January 1, 2021 to October 15, 2021, (2) attorney engagement letters for the same period, (3) expense reports showing payments to attorneys for the same period, and (4) other documents concerning the engagement of outside attorneys.²

2. After invoking its right to an extension,³ the House timely issued its final response on November 22, 2021⁴.

3. The House granted the request in part and denied it in part.

4. The House produced 607 pages of attorney invoices, engagement letters, and expense reports in PDF format.⁵

² Requesters’ October 15, 2021, RTKL, request is attached and labeled “Request.”

³ See Interim Response dated October 22, 2021 from ORO to Requesters.

⁴ See final response dated November 22, 2021 from ORO to Requesters.

⁵ This includes a supplemental production of 13 pages on December 7, 2021.

5. The House redacted documents protected by the attorney-client privilege and work-product doctrine, as required by the decisions *Levy v. Senate of Pennsylvania*.

6. The House redactions also included personal financial information relating to billing and payment.

7. Requesters appealed to the Appeals Officer on December 14, 2021.

8. Requesters do not challenge the redactions for personal financial information, but dispute only the attorney-client privilege and work-product doctrine redactions.

9. On December 15, 2021, the Appeals Officer notified the House of the appeal on December 14, 2021 and was directed to make a submission in support of its position by January 10, 2022.

II. ARGUMENT

a. Scope of Review

The RTKL does not expressly establish a scope of review regarding appeals. Supporting *de novo* review, or a broad standard of review, the RTKL mandates that the appeals officer set a schedule so that documents can be submitted by all parties in support of their positions. 65 P.S. § 671102(a)(1). The RTKL does not restrict the documents that can be submitted nor does it prescribe the appeals officer's authority to request documents which can be submitted.

Instead, the RTKL broadly buttresses the authority by directing the appeals officer to "review all information filed relating to the request." 65 P.S. § 67.1102(a)(2).

Additionally, among other things, the appeals officer is authorized by the RTKL to hold a hearing and admit testimony, documents and other evidence which the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Accordingly, a *de novo*, or broad standard of review will be used in reviewing the present Appeals.⁶

b. Analysis

**THE RTKL REQUIRES REDACTION OF
ATTORNEY INVOICES AND ENGAGEMENT LETTERS.**

To refresh the facts above, Requester's original RTKL Request on October 15, 2021 sought access to the following records:

- (1) attorney invoices for House outside counsel for the period January 1, 2021 to October 15, 2021, (2) attorney engagement letters for the same period, (3) expense reports showing payments to attorneys for the same period, and (4) other documents concerning the engagement of outside attorneys.

The House ORO issued a response on November 22, 2021, granted the request in part and denied it in part, and noted that some of the information had been redacted based on attorney-client privilege, attorney work product or financial information.

The Pennsylvania Supreme Court has "repeatedly noted that the attorney-client privilege is deeply rooted in our common law and is the most revered of our common law

⁶ A broad standard of review is comparable to the wide latitude of review granted to the final finders of fact in administrative hearings. In unemployment compensation matters, appeals are handled by referees and the Board of Unemployment Compensation. Referees review decisions of the Department of Labor Personnel. The referee's scope of review is limited by statute to consideration of the issues expressly ruled upon in the decision being appealed. 34 Pa. Code § 101.87. Appeals of the referee's decision are made to the Board of Unemployment Compensation. That Board is the ultimate fact finder in unemployment cases and is empowered to resolve conflicts in evidence, determine the credibility of witnesses, and determine the weight to the accorded evidence. The Board can affirm, modify, or reverse the referee's decision based on previously submitted evidence, or after taking further evidence. The authority granted to appeals officers under 65 P.S. § 67.1102 of the RTKL more closely approximates that granted to the Board in unemployment compensation cases.

privileges.” *Levy v. Senate of Pa.*, 65 A.3d 361, 368 (Pa. 2013) (“*Levy II*”) (cleaned up). Its purpose “is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” *Id.* (quoting *Gillard v. AIG Ins. Co.*, 15 A.3d 44, 47 n.1 (Pa. 2011)). Given the importance of the privilege, a “broader range of derivative protection is appropriate to facilitate open communication.” *Levy v. Senate of Pa.*, 34 A.3d 243, 248 (Pa. Commw. 2011) (“*Levy I*”).

The work-product doctrine is even broader than the attorney-client privilege. *Levy v. Senate of Pa.*, 94 A.3d 436, 443 (Pa. Commw. 2014) (“*Levy III*”). It covers “any material prepared by the attorney in anticipation of litigation, regardless of whether it is confidential.” *Id.* (cleaned up); *see also Bagwell v. Pa. Dep’t of Educ.*, 103 A.3d 409, 415-17 (Pa. Commw. 2014) (holding doctrine applies even beyond anticipated litigation). Its purpose “is to guard the mental processes of an attorney, providing a privileged area within which” the attorney can “analyze and prepare” his or her case. *Levy III*, 94 A.3d at 443 (citation omitted). The doctrine forbids disclosure of wide swaths of information - including anything reflecting an attorney’s mental impressions, strategies, research, theories, opinions, conclusions, memoranda, notes, and summaries. *Id.*

The RTKL “specifically exempts privileged documents from disclosure.” *Levy II*, 65 A.3d at 368 (citing 65 P.S. §67.102 & §67.305). Privileged material includes information covered by the attorney-client privilege and work-product doctrine. *Id.* (citing 65 P.S. §102). And, while an agency has the discretion to disclose exempt documents, that

leeway does not extend to privileged material. It never may be disclosed. *Id.* (citing 65 P.S. §67.506(c)(2)). And, if a document includes a combination of privileged and non-privileged information, the agency must redact the privileged information before disclosure. 65 P.S. §67.706.

The decisions in *Levy v. Senate of Pennsylvania* explain the portions of an attorney's invoice that are protected by the attorney-client privilege and work-product doctrine in RTKL cases. They protect "the specific descriptions of legal services, such as the subject of the memo, who was called, the nature of the research performed, [and] identification of the trial attended." *Levy III*, 94 A.3d at 444 n.9. Similarly, "descriptions of legal services that address the client's motive for seeking counsel, legal advice, strategy, or other confidential communications are undeniably protected." *Levy II*, 65 A.3d at 373. If "invoices contain any references to confidential communications, those references [must] be redacted." *Levy I*, 34 A.3d at 254; *id.* at 252 (stating same).

On the other hand, the privilege and doctrine do not cover "general descriptions of legal services," *id.* at 254, such as "mundane and uninforming entries" like those stating "the bare fact that a telephone conference occurred." *Levy III*, 94 A.3d at 443; *see Levy II*, 65 A.3d at 373 (stating same). "General descriptions such as drafting a memo, making a telephone call, performing research, and observing a trial" reflect that the lawyer performed work, but "without further detail" "do not reveal an attorney's mental impressions, theories, notes, strategies, research and the like." *Levy III*, 94 A.3d at 444 (cleaned up). Such entries

“simply explain the generic nature of the service performed and justify the charges for legal services rendered.” *Id.*

The privilege and doctrine are extremely important privileges. An agency may disclose an attorney fee invoice under the RTKL, but only to the extent of its general description of the service performed, such as drafting a memorandum, making a telephone call, performing research, or attending a trial. The agency must redact any further details, including the specific description of a legal service provided, the subject of a memorandum, the identity of a person called, the nature of the research performed, or identification of the trial attended.

The agency must redact any references to the client’s motive for seeking counsel and any legal advice, strategy, or confidential communications. As such, the agency must redact any reference to an attorney’s mental impressions and legal strategies, theories, opinions, and conclusions.

THE HOUSES’ REDACTIONS WERE APPROPRIATE

Enclosed with this submission are the sworn Affidavits of four House witnesses: Daniel W. Coleman, CORE Legal Counsel for the Pennsylvania House of Representatives; Charlene A. Bashore, Senior Legal Counsel and Caucus Open Records Officer for the House Republican Caucus; Matthew S. Salkowski, Senior Legal Counsel to the House Democratic Caucus; and Matthew S. Salkowski, Senior Legal Counsel to the House Democratic Caucus. It is well-settled that these Affidavits are competent evidence here.⁷

⁷ See Affidavits attached hereto.

See Heavens v. Pa. Dep't of Env'tl. Prot., 65 A.3d 1069, 1073-74, 1076-77 (Pa. Commw. 2013) (explaining that agencies may use affidavits to meet RTKL burdens and that the agency's affidavits proved its attorney-client and work-product claims).⁸ These Affidavits "should be accepted as true," as there is no evidence of bad faith. *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. 2014) (citation omitted).

As explained in the Affidavits, House personnel thoroughly searched House files for potentially responsive outside attorney invoices and engagement letters. The assembled documents were comprised of attorney fee invoices and engagement letters, and expense reports for the requested periods from several outside law firms. Those firms were engaged as legal counsel for the House or a constituent part of the House.

House personnel reviewed the assembled materials to determine the documents and portions of documents that were subject to RTKL disclosure. Upon review, it was determined that the documents contained three types of information excluded from RTKL disclosure: information protected by the attorney-client privilege; information protected by the work-product doctrine; and personal financial information.

To determine what material had to be withheld on attorney-client and work-product grounds, the House followed the Pennsylvania Courts' direction and guidance in *Levy v. Senate of Pennsylvania*. (As discussed above, *Levy* permits disclosure of general descriptions of attorney services, but precludes disclosure of further details.) The

⁸ See also *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. 2011) (explaining that agencies may use affidavits for RTKL burdens); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. 2010) (same); *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. 2011) (same).

assembled invoices and letters were reviewed and redacted consistent with *Levy*. Given the volume of documentation involved, House personnel were required to invest significant time and effort in performing the necessary redactions.

The redactions for the attorney-client privilege and work product doctrine were made to the narrative entries of the attorney fee invoices and in the body of certain engagement letters. This content was written by or at the direction of outside House lawyers, and thus constitute written communications by attorneys to their clients. As the witnesses explain, those items were redacted because the redacted information constituted a protected attorney-client communication, attorney work-product information, or both.⁹

None of the attorney-client and work-product redactions reflect purely factual information or any other type of information not subject to an exemption or other protection under the RTKL. Nor have the redacted items been disclosed to a third party or otherwise publicly disclosed, as the House always rigorously and routinely protects and maintains as confidential all of this information under the attorney-client privilege and work product doctrine.

For these reasons, the House maintains, and this Officer agrees, that its RTKL production complies with Pennsylvania law. It has produced all of the documents requested that are within its possession, custody, and control, comprised of 607 pages of attorney fee invoices, engagement letters, and expense reports, and has redacted only what the law says must be withheld. The documents provided explain to the Requesters (and,

⁹ As noted, the documents also were redacted for personal financial information—the law firms’ billing and payment information. Requesters do not challenge those redactions on appeal.

by extension, the public) the general nature of the services the attorneys provided and the fees they charged. As the Commonwealth Court explained in *Levy*, this meets the RTKL’s objective of public transparency. *See Levy III*, 94 A.3d at 444 (“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.”).

Additionally, Requesters have access to publicly filed documents in House litigation matters, including pleadings, briefs, and other materials submitted to the courts. Requesters thus have a clear picture of the activities of House outside counsel and know the names of all the outside lawyers, everything they did, the time they spent on their work, and how much they charged for their services.

This outcome and partial denial of the appeal tracks nearly identical to a decision in a matter docketed at No. 2021-0001, and decided May 4, 2021.¹⁰ In that matter, the same Requesters challenged the same redactions to the same kinds of records, albeit for a slightly different time period. The Requester therein did not contest the Appeal Officer’s decision.

THERE IS NO REASON TO DISTURB THE HOUSE’S FINAL RESPONSE

In their appeal, Requesters assert four challenges to the House’s attorney-client and work-product redactions. First, Requesters suggest the House had to provide evidence supporting its redactions with its final response. This is incorrect. An agency need only provide “specific reasons for the denial” in its final RTKL response. 65 P.S. §67.903(2); *see also id.*, §67.901 (requiring a “response”). Evidence is required later, during the RTKL

¹⁰ *See Decision dated May 4, 2021 to Appeal No. 2021-0001 ACA*

appeal. *See id.*, §67.708, §67.1101, §67.1102; *McGowan*, 103 A.3d at 381 (the RTKL charges an “appeals officer with the obligation of determining, in the first instance, whether an agency has met its burden of proof”); *Pa. State Police v. Kim*, 150 A.3d 155, 157 (Pa. Commw. 2016) (“The agency bears the burden of substantiating its denial on appeal to [the appeals officer] by a preponderance of the evidence.”). Here, the House has provided more than sufficient evidence to the Appeals Officer, in the form of the House’s Affidavits, and thus has proved the redactions were proper.

Second, Requesters ask for *in camera* review and an order for the House to submit Bates-stamped documents and an exemption log. These steps are unnecessary and unreasonable, given the explanation and detail included in the House’s Affidavits. As the Commonwealth Court has explained, “where an agency sufficiently explains the basis for nondisclosure through an affidavit, a log or *in camera* review may not be necessary.” *UnitedHealthcare of Pa. v. Pa. Dep’t of Human Servs.*, 187 A.3d 1046, 1060 (Pa. Commw. 2018) (holding these steps unnecessary, given agency affidavits); *Chambersburg Area Sch. Dist. v. Dorsey*, 97 A.3d 1281, 1289-91 (Pa. Commw. 2014) (affirming trial court’s rejection of request for agency to produce unnecessary exemption log); *see also Office of Governor v. Scolforo*, 65 A.3d 1095, 1103 n.13 (Pa. Commw. 2013) (noting that an exemption log “may not be a practical approach in view of the records requested” and that sometimes “agencies may proffer generic determinations for nondisclosure”). Here, the House’s sworn Affidavits show that the witnesses performed redactions in good faith and redacted only items legitimately protected under applicable law.

In camera review and a log would also put an undue burden on the House and the Appeals Officer, as the House's Affidavits explain. As noted, the House produced over 600 pages, most of which have many redactions. The documents thus would necessitate creation of an extensive log with hundreds or thousands of repetitive entries. It is unclear if the House could accomplish such an immense undertaking within the relevant RTKL timeframe and the resulting log would not be useful.

Such an undertaking would merely repeat attorney-client and work product claims, time after time, line after line, page after page, that are already evident and obvious from the records produced. *Compare Schackner v. Edinboro Univ.*, 2020 WL 1983761, *5 (Pa. Commw. Apr. 27, 2020) (holding an exemption log "unnecessary" for hundreds of records repeatedly redacted "only as to personal identifiers and disability status when the redactions are clear from review of the redacted records themselves").

Third, Requesters suggest there are some inconsistencies among the redactions. This is mostly based on supposed differences between the redactions here and those in the documents produced in their prior request (at issue in Appeal No. 2021-0001). But Requesters did not prevail in the prior matter and did not seek review there, so they cannot resurrect their issues with the prior redactions now. And, while Requesters relatedly contend that the purpose of an attorney's engagement can never be considered privileged, Pennsylvania law refutes that argument. *See, e.g., Levy ii*, 65 A.3d at 371-72 (recognizing that client identities and the subject matter of an engagement may be privileged and

affirming the Commonwealth Court’s approval of redactions of “lines of text involving the ‘specific nature of representation’”).

Variations in the redactions should not come as a surprise. The *Levy* decisions leave room for differing interpretations about the precise scope of required invoice redactions. And when several people review over 600 pages and apply countless redactions, a handful of minor discrepancies is only natural. Each person involved still did his or her level best to get the redactions right.

Nothing here suggests bad faith or otherwise undermines the fact that those involved were careful and conscientious in their redaction efforts.¹¹ Moreover, the Requesters’ argument does not change the simple fact that they were given every page of documentation they requested and were entitled to receive under the RTKL.

III. CONCLUSION

In sum, the redactions were proper in all respects under the RTKL. The House ORO issued a proper denial in response to Request because the agency must redact certain details, including the specific description of a legal service provided, the subject of a memorandum, the identity of a person called, the nature of the research performed, or identification of the trial attended. Additionally, the agency must redact any references to the client’s motive for seeking counsel and any legal advice, strategy, or confidential communications. The agency must in fact redact any reference to an attorney’s mental

¹¹ Nor could these circumstances support a waiver finding. *See, e.g., Bagwell*, 103 A.3d at 417-20 (rejecting claim of subject matter waiver as a result of disclosure of attorney-client privileged material in RTKL matter); *Board of Suprvs. of Milford Twp. v. McGogney*, 13 A.3d 569, 573-74 (Pa. Commw. 2011) (holding privilege not waived as for inadvertently disclosed attorney invoices in RTKL matter).

impressions and legal strategies, theories, opinions, and conclusions. Thus, the redactions to the requested document are permitted and / or required under the RTKL.

Accordingly, the Denial was proper and the Appeal fails. If you choose to file an appeal to this Denial, you must do so in writing within thirty (30) days of the mailing date noted herein, addressed as follows:

**Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
P.O. Box 69185
Harrisburg, PA 17106-9185**

ORDER

AND NOW, this 19th day of January, 2022, upon consideration of the subject appeal,
the Denial is AFFIRMED.

BY APPEALS OFFICER

A handwritten signature in cursive script, reading "Anthony C. Aliano".

Anthony C. Aliano, Esq.

cc: Daniel Coleman, Esq.
Rodney A. Corey, Esq.