No. 250603359

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

City of Philadelphia,
Appellant,

v.

Faye Anderson and All That Philly Jazz,
Appellees.

On Appeal from an Order of the
Office of Open Records
Docket No. AP 2023-1840

BRIEF FOR APPELLEES

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[1] An Unopposed Motion for Law Student Participation was filed on January 16, 2026, which is currently pending before this Court.

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MATTER BEFORE THE COURT

This case is about a quest for government transparency and efforts to thwart that quest. Faye Anderson, a watchdog journalist, seeks records relating to communications about a highly controversial development on the 1000 block of Market Street—a new professional basketball arena. Ms. Anderson proceeded under the Right to Know Law (RTKL), 65 P.S. §§ 67.101–3104, as the General Assembly intended: to promote expansive and expedited transparency in government and allow citizens to know what officials did in their names. Ms. Anderson's requests would shed light on a decision that would have jeopardized family businesses, disrupted traffic, and diverted public infrastructure dollars.

The Commonwealth's Office of Open Records (OOR) properly ruled in Ms. Anderson's favor on many of the documents she requested. In fact, OOR did so twice: once during individual appeals of the City of Philadelphia's denials and a second time on remand in a consolidated case. OOR rightly found, both times, that the City failed to submit sufficient evidence to substantiate numerous claimed exemptions from the RTKL. The City's arguments also included a retread of an argument specifically rejected by the Commonwealth Court in *Se. Pa. Transp. Auth. (SEPTA) v. Anderson,* a precedential opinion with almost identical facts. 337 A.3d 575, 598 (Pa. Commw. Ct. 2025). Finally, the City's continued delay tactics demonstrate a lack of good faith in honoring Ms. Anderson's right to access the information.

For all these reasons, this Court should affirm the ruling of OOR, award attorney's fees to Ms. Anderson, and impose civil penalties on the City.

STATEMENT OF THE QUESTIONS INVOLVED

I. Should this Court affirm the decision of OOR and find Ms. Anderson entitled to the public records ordered released by that agency given the City did not submit sufficient evidence to meet its burden of proving its claimed exemptions?

Suggested answer: Yes.

II. Should this Court find the City acted in bad faith and award attorney's fees because the City squandered multiple opportunities to submit evidence to corroborate its claimed exemptions and made frivolous arguments that flouted binding precedent such that the City willfully and wantonly denied Ms. Anderson's RTKL rights?

Suggested answer: Yes.

STATEMENT OF THE CASE

A. Procedural History

In July and August 2023, Ms. Anderson requested documents under the RTKL from various City departments. Certified Record ("CR") 22, 185, 255. Two batches of requests were denied through lack of response and a third via letter. CR 22, 185, 287. Ms. Anderson appealed to OOR, challenging denials from the City Planning Commission (AP 2023-1840), the mayor's office (AP 2023-1842), and several other agencies in a consolidated appeal (AP 2023-2222). CR 21, 184, 256. The final determinations in all three cases granted the requests in part and denied them in part, concluding they were partially sufficiently specific and that the City had not proven any basis for withholding the documents. CR 155–81, 234–51, 514–66.

The City appealed all three final determinations to this Court. CR 570. In March 2024, the cases were consolidated. *Id.* This Court ordered a rolling production

of documents and an exemption log from the City. *Id.* The Court then approved a stipulation to remand the case to OOR to address claimed exemptions. CR 569–72. In May 2025, OOR issued its Final Determination on Remand granting the appeal in part and denying it in part. CR 1056. OOR allowed withholding of certain records it reviewed *in camera.* CR 1056. It ordered production of the rest of the disputed records. CR 1045–46, 1056. The City petitioned for reconsideration, which OOR denied. CR 1059, 1084. The City appeals the Final Determination on Remand to this Court.

B. Factual Background

1. Ms. Anderson utilized the RTKL to shed light on the controversial 76ers arena

Ms. Anderson is a journalist, citizen watchdog, and director of the website All That Philly Jazz. CR 29. Like many Philadelphians, she was worried about the development of a new arena near Chinatown, and believed residents deserved to know more about the influence of 76ers representatives on City plans. CR 29, 86. The selected site was the 1000 block of Market Street ("76ers arena" or "76 Place"). CR 25. Transparency was a concern: In June 2023, the Philadelphia Board of Ethics reached a $4,000 settlement with lobbying firm CBL Real Estate LLC (CBL). CR 376–78. The Board found CBL had not disclosed the subject of its direct communications with city officials—"sports arena"—in a required filing. CR 376.

News of the ethics settlement prompted Ms. Anderson to file a series of RTKL requests to city departments and bureaus with jurisdiction or influence over the

arena. CR 22, 84, 85, 185, 255. This was almost three years ago. CR 22, 185, 255. Yet the City continues to fight disclosure.

2. OOR ordered many requested documents released

The City's responses to Ms. Anderson's requests were varied, but all requests were denied. That included denial of Request 1840 via nonresponse due to an outage in the City's case management system. CR 52. The City did not state the outage's length. CR 52. The City denied Request 1842 via nonresponse, later blaming an administrative error. CR 207. The City provided no further details about this error. *Id.* Finally, the City denied Request 2222 via letter. CR 260–90. The letter claimed the request was insufficiently specific, unreasonably burdensome, and that some exemptions and privileges were "likely" to apply. CR 288–90.

Ms. Anderson appealed these denials to OOR in August and September 2023. CR 33, 193, 342. The City argued the requests were insufficiently specific and the documents still needed review for potential exemptions and privileges, which rendered them unreleasable. CR 52–56, 207–10, 428–39. The City also stated that it maintained "the right to provide further evidence if there are appeals beyond" OOR. CR 48, 206, 407. Ms. Anderson argued the City did not meet its statutory burden of proof for claimed exemptions nor did it prove the requests were insufficiently specific. CR 86, 351–53.

In all three cases, OOR ordered many requested documents released. CR 181, 251, 566. While OOR determined some of Ms. Anderson's requests were insufficiently specific, many other requests had met the specificity standard. CR 155–78, 238–48, 546–60. OOR also rejected the City's attempt to bifurcate proceedings into a

specificity stage and a later exemption stage. CR 181, 250–51, 562. Notably, the City did not request additional time from OOR to review the requested documents for evidence of exemptions. CR 48–57, 206–11, 407–40.

3. Four hundred documents were still disputed and withheld after this Court's production order

The City appealed the three OOR final determinations to this Court, which were then consolidated. CR 570. While the appeal was pending, the Court set a rolling production schedule and required an exemption log from the City. *Id.* The City provided documents in three batches following the schedule and submitted its Exemption Log after seeking an extension. CR 924, 986. After two meet and confers, Ms. Anderson and the City agreed that 184 records were exempt, with 437 still in dispute. CR 570. To promote judicial economy, the parties agreed to remand the case to OOR to assess any applicable exemptions. CR 570–71.

4. The City ineffectively supports claimed exemptions

On remand, OOR's task was to review the exemption-related evidence, including affidavits, the Exemption Log, and documents designated for *in camera* review. CR 571. Both parties had the opportunity to make position statements. CR 920. Additionally, any interested third party was notified and given a deadline to request to participate. *Id.* No one from the 76ers made such a request. CR 1050.

The City's submission included its Exemption Log and the Rabady Affidavit. CR 993–1006. The Affidavit included seven paragraphs detailing the search for responsive records. CR 996–1002. It did not provide explanations for the claimed exemptions but stated the Exemption Log did. CR 1006. In addition to lacking any

meaningful detail, the City's submission created confusion. Its position statement referenced up to paragraph twenty-two of the Rabady Affidavit, but the Affidavit only contained ten enumerated paragraphs. CR 988–92, 1006. When OOR asked for clarification, the City failed to comply. CR 1018–31. Instead, it instructed OOR to ignore the paragraph citations to the Affidavit because they were "in error." CR 1031.

Ms. Anderson compiled a representative list of records she suggested OOR review *in camera*. CR 1008–12. The record contains no such proposal from the City. The City also failed to respond to separate prompting from Ms. Anderson and OOR and allowed the deadline to lapse. *See* CR 1014–16, 1020. OOR then ordered the City to produce the records Ms. Anderson identified for *in camera* review. CR 1020. The City provided those records after two extensions. CR 1023–31.

On May 30, 2025, almost two years after Ms. Anderson's initial request, OOR issued its Final Determination on Remand, concluding the City had not provided sufficient evidence for ***any*** of the claimed exemptions. CR 1045–46. OOR, however, could determine certain documents were facially exempt after reviewing them *in camera*. CR 1046–57. Besides the few exempt documents, OOR ordered production of the remaining disputed records. CR 1057. The City's petition for reconsideration was subsequently denied. CR 1084.

Now, almost three years after the initial requests and one year since the 76ers announced its intention to stay in South Philadelphia, the City is asking this Court's permission to further withhold public records. City Br. 29.

STANDARD OF REVIEW

This Court exercises a *de novo* standard of review and is the ultimate fact finder on OOR appeals. *Bowling v. Off. of Open Recs.*, 75 A.3d 453, 477 (Pa. 2013). The scope is "broad or plenary." *Id.* However, this Court is not obligated to conduct its own fact finding or create its own reasoning; rather, it can adopt the well-reasoned OOR decision from the facts determined by the appeals officer. *Id.* at 473. The OOR appeals officer is authorized to develop the record as the initial fact finder to ensure a court may review without needing to perform its own fact finding. *Twp. of Worcester v. Off. of Open Recs.*, 129 A.3d 44, 59 (Pa. Commw. Ct. 2016) (citation omitted).

SUMMARY OF THE ARGUMENT

Pennsylvania's RTKL exists for residents and journalists like Ms. Anderson to enforce efficient and meaningful transparency in local government. OOR properly held the City failed to meet its evidentiary burden for its claimed exemptions, aside from the small group of *in camera*-reviewed documents. The remainder must be released in compliance with the statute's mandate that nonexempt records are presumed public.

First, the evidence the City submitted in defense of its claim is insufficient. The Rabady Affidavit and Exemption Log the City produced on remand to OOR were conclusory at best and offer generic statements as to what information the disputed documents contain. The Exemption Log provided no more than a list of subjects.

These submissions do not explain the basis of the City's arguments for withholding the records.

The City also fails to satisfy the various legal standards for its claimed exemptions. For one, the draft ordinance exemption no longer applies because the City shared some ordinances publicly, erasing their "draft" status under RTKL doctrine. The acquisition of real property exemption is also unavailable because an arena deal was approved and final. The lack of concrete detail in the City's evidence dooms its claims of other exemptions covering internal predecisional deliberation, public safety, noncriminal investigation, and bidding proposals. And peppering the word "legal" throughout the Log's one-line descriptions is insufficient to establish attorney work product or attorney-client privilege.

Finally, the City's conduct and legal arguments comprise bad faith conduct, meriting the award of attorney's fees and civil sanctions. The City squandered at least four opportunities over the past twenty-nine months to submit sufficient evidence to establish its claimed exemptions. Suggesting a return to OOR in its brief further reveals persistent, dilatory tactics that deny Ms. Anderson's right to access public records. *See* City Br. 29. Furthermore, the argument that some records are covered by the RTKL's trade secrets exemption is frivolous and unreasonable, as it explicitly flouts the recent Commonwealth Court opinion in *SEPTA*. Therefore, this Court should affirm the OOR's Final Determination on Remand and award attorney's fees to Ms. Anderson.

ARGUMENT

I. MS. ANDERSON IS ENTITLED TO THE REQUESTED RECORDS RELATING TO THE 76ERS ARENA UNDER PENNSYLVANIA'S RIGHT-TO-KNOW LAW

The Pennsylvania RTKL is designed to promote expansive and expedited transparency in the government and its actions. *Levy v. Senate of Pa.*, 65 A.3d 361, 382 (Pa. 2013). Its purpose is to promote the public's access to official government information by limiting secrets, scrutinizing public officials' actions, and holding them accountable. *Am. C.L. Union of Pa. (ACLU) v. Pa. State Police*, 232 A.3d 654, 656 (Pa. 2020) (citation omitted). In 2008, the General Assembly dramatically expanded the public's access to government documents by enacting a new RTKL. *Levy*, 65 A.3d at 382. Under this new RTKL, a record possessed by an agency is presumed to be public. § 67.305(a). This presumption does not apply if the record is exempt under Section 708, privileged, or exempt under any other law, regulation, or judicial order or decree. *Id.* RTKL exemptions must be "narrowly construed" to promote the RTKL's remedial purpose. *Off. of Governor v. Scolforo*, 65 A.3d 1095, 1100 (Pa. Commw. Ct. 2013) (citation omitted). The agency has the burden of proving a record is exempt by a preponderance of the evidence. § 67.708(a).

The City argues the withheld records are exempt as (1) draft bills and ordinances (§ 67.708(b)(9)); (2) internal predecisional deliberations (§ 67.708(b)(10)); (3) public utility infrastructure security risks (§ 67.708(b)(3)); (4) trade secrets and confidential proprietary information (§ 67.708(b)(11)); (5) noncriminal investigations (§ 67.708(b)(17)); (6) real estate appraisals, engineering or feasibility estimates, environmental review, audit, or evaluations (§ 67.708(b)(22)); (7) procurement

proposals (§ 67.708(b)(26)); and (8) protected attorney work product and attorney-client privileged documents.

The City fails to meet its statutory burden. First, its Exemption Log and affidavit are conclusory and vague. Second, it does not establish the requisite elements for each claimed exemption or privilege.

A. The City's affidavit and exemption log provide only conclusory information and fall short of its required burden

The City provides scant and conclusory evidence in its attempt to claim a bevy of exemptions. To meet its burden to overcome the public record presumption, an agency may provide relevant testimonial affidavits as well as a "privilege log" or index of the records withheld. *Worcester*, 129 A.3d at 60 (citation omitted). However, a log or affidavit only offering generic determinations or conclusory statements is not enough to establish an exemption of a public record. *Scolforo*, 65 A.3d at 1103.

Furthermore, while an exemption log is not required to be an item-by-item index, a list of subjects to which exemptions may apply is insufficient. *Vista Health Plan, Inc. v. Dep't of Hum. Servs.*, No. 660 C.D. 2017, 2018 WL 2436329, at *8 (Pa. Commw. Ct. May 31, 2018) (citations omitted). The evidence provided by the agency must be sufficiently specific that OOR or this Court can evaluate how exemptions apply to the withheld documents. *Id.* Claiming multiple exemptions in a log without delineation and only general statements does not provide enough to determine if all the exemptions were appropriately stated. *See Couloumbis v. Senate of Pa.*, 300 A.3d 1093, 1105 (Pa. Commw. Ct. 2023) (explaining that claiming combination of attorney-

client, work product, and speech and debate privileges "blurs the line" between them and prevents determination of whether redactions were proper).

The City's evidence to support the claimed exemptions, at best, is conclusory. The Rabady Affidavit submitted to OOR on remand is ten paragraphs long; seven of which describe the City's search process to find responsive records and have no bearing on whether an exemption applies. CR 996–1006. Deputy City Solicitor Omar Rabady attested he created an Exemption Log that "explains the basis for all records which are being withheld or exempt from disclosure." CR 1006. However, instead of providing any such explanation, the Exemption Log includes only one-sentence descriptions of the allegedly exempt records with ***occasional*** reference to buzz words from the statute. *See* CR 576–908 (using words such as "predecisional" or "attorney" in certain descriptions).

These one-sentence descriptions are meant to support the multiple exemptions the City often claims for a single withheld record. *See* CR 576–908 (withholding MOJ.EM.00002542.0 under work product, attorney-client privilege, and Sections 708(b)(3)(iii), 708(b)(10)(i), 708(b)(11), and 708(b)(26), but only describing the document as "Draft 76 Place Site Plan and Site Survey sent for review and feedback"). The City appears to cherry pick which exemption aligns most with its vague description when providing examples in its brief. *See, e.g.*, City Br. 21 (describing ALK.EM.00001419.0 as public utility infrastructure security risk, using statutory language of "building plans" in record description). The City provides no argument at all about the other claimed exemptions. *See, e.g.*, City Br. 21 (claiming

ALK.EM.00001419.0 also exempt as a noncriminal investigation, trade secret/confidential proprietary information, predecisional deliberation, and appraisal/evaluation/audit).

In its brief, the City argues the descriptions in its Exemption Log are comparable to logs deemed sufficient in other cases. City Br. 9–13. However, these cases are inapposite as these other agencies supplemented their exemption logs with affidavits detailing facts relevant to the claimed exemption. *See McGowan v. Pa. Dep't of Env't Prot.*, 103 A.3d 374, 384–85 (Pa. Commw. Ct. 2014) (examining affidavits containing specific details relating withheld documents to contemplation of agency's future course of action); *Transfer v. Cortes*, Nos. 1296–98 C.D. 2021, 1311 C.D. 2021, 2023 WL 2943056 (Pa. Commw. Ct. Apr. 14, 2023) (unpublished table decision) (determining affidavits and log were not generic or conclusory when they detailed specific grounds and explained problems disclosure could cause while providing specific detail relevant to each document); *Heavens v. Pa. Dep't of Env't. Prot.*, 65 A.3d 1069, 1075–77 (Pa. Commw. Ct. 2013) (reviewing affidavits that showed a detailed examination and the harm disclosure would create). The three paragraphs in the Rabady Affidavit and the one-sentence descriptions in the Log are a far cry from the evidence in these other cases. Contrary to the City's claim, it does not come close to satisfying its evidentiary burden. *See* City Br. 11.

The City also attempts to distinguish its evidence from other cases where the evidence was determined to be conclusory. City Br. 11–13. The City highlights a "common theme" in other cases where the agency's insufficient evidence stemmed

from the "lack of any description of the document." City Br. 12. However, the City neglects to mention that these other agencies' inadequate evidence was still more than what the City provides in this case. *See Vista*, 2018 WL 2436329 at *9 (finding two affidavits describing evaluation process and selected offerors only provided a description of the general subject matter); *Cal. Univ. of Pa. v. Schackner*, 168 A.3d 413, 418, 421 (Pa. Commw. Ct. 2017) (determining affidavit and log showed a gathering of information but not how this amounted to a noncriminal investigation in addition to listing subjects and conclusory statements); *Scolforo*, 65 A.3d at 1104–05 (determining affidavit that tracked language of the predecisional exemption and listing subjects of redacted entries was insufficient); *Cassel v. Dep't of Health (Off. of Open Recs.)*, No. 491 C.D. 2022, 2023 WL 141233 (Pa. Commw. Ct. Jan. 10, 2023) (unpublished table decision) (determining three department affidavits detailed start of investigation but did not evidence a relationship between investigation and records). The agencies in these cases all provided more detail than the City does in this case, and they still lost. The City does not describe any relevant processes or context to support any of its claimed exemptions as the other agencies at least attempted. The Exemption Log and Rabady Affidavit do not even reach the level of support provided in these cases where the evidence was deemed insufficient.

The City argues it cannot provide any more detail without revealing sensitive information to support the exemptions it claims. City Br. 14–15. Not only does this disregard the cases where the agencies were able to successfully meet their burden, but it ignores the expansive purpose of the RTKL. The tension between transparency

and the disclosure of sensitive information is not new, yet the Pennsylvania legislature still wrote this new version as "a dramatic expansion" of public access to records. *See Levy*, 65 A.3d at 381. The legislature has expressly placed the burden on the agency to prove a record is exempt, § 67.708(a), and the courts have consistently held exemptions should be construed narrowly, *Scolforo*, 65 A.3d at 1100. To hold the City to any other standard would undermine the purpose of the RTKL and obstruct citizens who exercise their rights to scrutinize government action.

B. The City does not sufficiently establish the applicability of any exemption under the RTKL statute

Pennsylvania courts have emphasized that exemptions to disclosure "must narrowly be construed." *Couloumbis,* 300 A.3d at 1099 (citation omitted). However, this directive does not alleviate agencies of their duties to prove claimed exemptions by a preponderance of the evidence. § 67.708(a). The City provides a conclusory affidavit and undetailed Exemption Log that fail to significantly address or satisfy the elements for any claimed exemption. Accordingly, the City does not sufficiently prove any exemption, and the Court should order the disclosure of the withheld records.

1. The City shared certain ordinances and bills for public discussion that are not exempt under § 67.708(b)(9)

Under Section 708(b)(9), the draft of a bill, ordinance, regulation, statement of policy or amendment thereto prepared by or for an agency is exempt from disclosure. § 67.708(b)(9). However, legislative measures presented for public discussion, in a public venue, and subject to questions from the public, cease to be "drafts" as they become documents "no longer intended for 'further or additional writing.'" *Phila. Pub.*

Sch. Notebook v. Sch. Dist. of Phila., 49 A.3d 445, 451–52 (Pa. Commw. Ct. 2012). Once a record crosses that threshold, it is no longer exempt. *Id.*; *W. Chester Univ. of Pa. v. Schackner*, 124 A.3d 382, 397 (Pa. Commw. Ct. 2015).

Without more detail, this Court cannot be certain the ordinances and pieces of legislation cited by the City qualify as "drafts" under the statute. On September 25, 2024, the City publicly shared[2] nine draft ordinances and two draft resolutions with the public.[3] Additionally, on December 19, 2024, Philadelphia City Council voted on a legislative package to advance the 76ers arena.[4]

In both instances, named and numbered ordinances and bills were presented to the public for discussion and questioning thereby crossing the threshold from "draft" to public document. Because neither the Exemption Log nor Rabady Affidavit attest to the nature of the ordinances and bills cited, the Court has no way to determine if the withheld records are unrelated to the published records. As Pennsylvania courts have ruled, "merely stat[ing] that the '[r]ecords involved in this exception . . . should be clear on their face'" is insufficient to meet an agency's burden of proof. *W. Chester Univ. of Pa.,* 124 A.3d at 397. Accordingly, the City's superficial descriptions of the

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[2]Pa. R. Evid. 902(5)–(6) ("The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted: . . . A book, pamphlet, or other ***publication*** purporting to be issued by a ***public authority*** . . . [and] Material purporting to be a ***newspaper or periodical***." (emphasis added)). The URL links for these documents are set forth in the Table of Authorities.

[3] *See* The City of Philadelphia, *Arena Proposal: Drafted Ordinances* (publishing ordinances relating to arena transactions, service agreements, zoning overlays, 10th Street aerial bridge, Filbert Street parking, large signs, and encroachments and bollards).

[4]*See* Hayden Mitman, *Philadelphia City Council Approves $1.3 Billion 76ers Center City Area Plan*, NBC News (Dec. 19, 2024).

alleged drafts paired with an affidavit that wholly fails to engage with the RTKL are insufficient.

2. The City's bare descriptions fail to tie the withheld records to any particular decision and are not exempt under § 67.708(b)(10)(i)

Section 708(b)(10) exempts records which reflect the internal predecisional deliberations of an agency as well as predecisional deliberations between agencies. § 67.708(b)(10). To invoke this exemption, an agency must show the information was (1) internal to the agency, (2) deliberative in character, and (3) prior to a related decision. *McGowan,* 103 A.3d at 381 (citation omitted). To show deliberative character, evidence of specific facts "showing how the information relates to a deliberation of a ***particular*** decision" must be provided. *McGowan*, 103 A.3d at 383 (emphasis added) (quotation omitted). Additionally, the agency must prove the records contain opinions, recommendations, or confidential deliberations of law or policy. *Pa. Pub. Util. Comm'n v. Nase*, 302 A.3d 264, 272 (Pa. Commw. Ct. 2023) (citations omitted).

The Exemption Log's descriptions do not show how the withheld records necessarily contain confidential deliberations of law or policy, opinions, or recommendations. This renders them legally insufficient. As confirmed in *Scolforo*, an agency's evidence should "prove[ ] with sufficient detail" that the withheld records are reflective of internal deliberations. 65 A.3d at 1104. Only listing subjects to which internal deliberations ***may*** have related is not enough to satisfy an agency's burden.

The City also fails to demonstrate the withheld documents preceded a ***particular*** decision. Instead, it attempts to qualify large swaths of documents by

claiming they all relate to the overarching decision to build a sports arena. City Br. 19. This interpretation is untenable, as it would shield "virtually any discussion or dialogue" occurring within government agencies. *Shepherd v. Pa. Off. of Governor,* No. 900 C.D. 2024, 2025 WL 1584285, at *9 (Pa. Commw. Ct. June 5, 2025) (unpublished table decision) (citation omitted). That would, in turn, eviscerate the RTKL and undermine government transparency.

3. Release of the withheld records is not connected to a security related harm and therefore not exempt from disclosure under § 67.708(b)(3)

Although the City mistakenly construes Section 708(b)(3) as the public safety exemption, City Br. 21, it is the public utility infrastructure security exemption, *see* § 67.708(b)(3); *Pa. Pub. Util. Comm'n v. Friedman*, 293 A.3d 803, 824 (Pa. Commw. Ct. 2023). Access to this exemption is limited. To invoke it, an agency must demonstrate that "disclosure . . . rather than the records themselves, would create a reasonable likelihood of endangerment to the safety or physical security of certain structures." *Friedman*, 293 A.3d at 824 (citation omitted). The burden on an agency to show such reasonable likelihood is substantial. An agency "must offer more than a speculation or conjecture" that a real and demonstrable risk is likely. *See Cal. Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018).

The City fails to satisfy its burden in three ways. First, neither the Exemption Log nor Affidavit specifies what building, facility, utility or resource is purportedly threatened. Second, the affidavit does not explain how disclosure of "76 Place building plans" or "draft site plans" is reasonably likely to threaten the security of the undisclosed structure, utility, or resource. City Br. 21. Third, by not explaining how

disclosure of the records would threaten security, the City essentially invites this Court to speculate as to the nature of the risk.

The supporting documents also fail to prove exemption under Section 708(b)(2), the actual public safety exemption, for largely the same reasons. Evidence supporting this exemption should (1) include detailed information describing the nature of the records sought, (2) connect the nature of the records to the reasonable likelihood that disclosing them would threaten public safety, and (3) demonstrate that disclosure would impair the agency's public safety functions. *ACLU*, 232 A.3d at 658. None of these requirements are satisfied by the Exemption Log's sparse descriptions. *See Harrisburg Area Cmty. Coll. (HACC) v. Off. of Open Recs.,* No. 2110 C.D. 2009, 2011 WL 10858088, at *7 (Pa. Commw. Ct. May 17, 2011) (finding affidavit insufficient where it did not describe how release of records would threaten safety or articulate the connection between the policy decision and the potential harm). Moreover, the City must clarify how the withheld documents differ from documents of a similar type that have already been released to the public.[5]

The submitted evidence does not come close to satisfying the City's burden under this exemption. Aside from not clarifying what (if anything) is likely to be harmed by disclosure, the City invites this Court to speculate as to any resulting harm. This contravenes settled law and must be rejected.

[5]*See generally* The City of Philadelphia, *76 Place CDR Resubmission* (2024).

4. Absent a detailed explanation, the Court cannot determine if the withheld documents are investigatory in nature, which is necessary for exemption under § 67.708(b)(17)

Section 708(b)(17) exempts from disclosure any documents relating to a noncriminal investigation, including complaints, investigative materials, notes, correspondence, and reports, which could reveal the institution, progress, or result the investigation. § 67.708(b)(17)(i), (ii), (vi)(A). The term "investigation" under the statute means a "systematic or searching inquiry, a detailed examination, or an official probe." *Dep't of Health v. Off. of Open Recs.*, 4 A.3d 803, 810–11 (Pa. Commw. Ct. 2010). "[M]erely stating that an investigation occurred is not sufficient" to invoke the exemption. *Friedman*, 293 A.3d at 828 (citation omitted). Rather, an agency must demonstrate how "the nature of the particular documents involved" qualifies as investigatory and show whether the withheld records "were created during the course of an investigation." *Id.* at 831.

Our courts require more than conclusory statements that an investigation occurred. *See Pa. Dep't of Lab. and Indus. v. Darlington*, 234 A.3d 865, 877 (Pa. Commw. Ct. 2020). Ignoring this requirement, the City instead asks this Court to take its word that the withheld studies are investigations. *See* City Br. 23–24. The City's supporting materials do not detail the purpose of the investigations, the authority under which they were conducted, or how the investigations constitute systematic, detailed examinations. Nor do the Exemption Log or Affidavit connect the withheld documents to a qualifying investigation or explain how procurement of the

records exceeded the City's routine departmental functions. *See Friedman*, 293 A.3d at 828.

In addition to those infirmities, the provisions of the Philadelphia Home Rule Charter on which the City relies do not clearly confer investigative authority on the relevant departments. City Br. 23; *see Dep't of Pub. Welfare v. Chawaga*, 91 A.3d 257, 259 (Pa. Commw. Ct. 2014) ("An official probe only applies to 'noncriminal investigations conducted by an agency acting within its legislatively granted fact-finding and investigative powers.'"). For example, the City cites Section 4-604 of the Home Rule Charter, which authorizes the City Planning Commission to prepare and maintain a comprehensive "Physical Development Plan," and Section 5-100, which grants the managing director supervisory authority over certain departments. Phila. Home Rule Charter §§ 4-604, 5-100. Neither provision clarifies whether traffic or pedestrian studies are part of each department's "official duties," nor do they clarify whether the studies at issue are routine and, therefore, not exempt.

In short, the City's reliance on the label "traffic study" or "pedestrian study" as sole proof of an investigation is precisely the kind of unsupported reasoning our courts have rejected.

5. Records concerning the acquisition of real property are not exempt under § 708(b)(22)(i) because the City and 76 DevCo entered an agreement

Under Section 708(b)(22), "real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency relative to . . . [t]he leasing, acquiring or disposing of real property" are exempt from public disclosure. § 67.708(b)(22)(i). But there is an exception. "[O]nce the decision

has been made to proceed with the lease, acquisition or disposal of real property" the exemption ceases to apply. § 67.708(b)(22)(ii). In property acquisitions, the decision to proceed occurs when the sales agreement cannot be voided without incurring a penalty. *Mountz v. Columbia Borough*, 260 A.3d 1046, 1051 (Pa. Commw. Ct. 2021).

The City argues that no agreement with the 76ers owners was ever reached because the owners ultimately abandoned the partnership and no arena was built. City Br. 25. That argument fails for two reasons. First, it is public knowledge an agreement was reached. On September 25, 2024, the City published a slideshow titled *Arena Agreement: Public Meeting*, which refers to the 76 Place Agreement, agreement details, agreement highlights, and a community benefit agreement.[6] Likewise, in December 2024, City Council approved eleven bills authorizing the project after Mayor Cherelle Parker's administration negotiated a final agreement valued at $60 million.[7] Second, the fact the 76ers later chose not to proceed with construction does not preclude the existence of an agreement. Abandonment of performance is not the same as absence of agreement—a tenet of contract law so basic the City cannot claim ignorance.[8]

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[6] *See* City of Philadelphia, *Arena Agreement: Public Meeting* 2 (2024).

[7] *See* Khara Garcia, *Weekly Report–A Busy First Year of Council Ends With Approval of a New Sixers Arena in Center City*, City Council Philadelphia (Dec. 23, 2024).

[8] A third reason is the City's misplaced reliance on *Mountz*. In *Mountz*, the Commonwealth Court held environmental assessment reports were exempt under Section 708(b)(22)(i) because the Borough abandoned a property acquisition pursuant to an environmental-study contingency clause. *Mountz,* 260 A.3d at 1047, 1051. No such contingency provision exists here. Absent contractual language permitting withdrawal without consequence, *Mountz* offers no support for the City's implied claim that the 76ers exited the agreement without repercussion.

6. Absent a detailed description of the bidding process the withheld records must be disclosed under § 67.708(b)(26)

Section 708(b)(26) temporarily exempts offerors' proposals from disclosure until a contract is awarded or a procurement process is canceled. *See* § 67.708(b)(26); *UnitedHealthcare of Pa., Inc. v. Pa. Dep't of Hum. Servs.*, 187 A.3d 1046, 1054 (Pa. Commw. Ct. 2018) (collecting cases). The exemption only protects proposals, bids, requested financial information, and other records of an agency's proposal evaluation committee. § 67.708(b)(26).

The withheld records must be disclosed because the City fails to describe its bidding process or point to such an explanation in the record, as precedent requires. *See UnitedHealthcare*, 187 A.3d at 1060 (finding agency sufficiently explained basis for nondisclosure through affidavits explaining the RFP process and detailed evaluation and scoring process); *S. Alleghenies Plan. & Dev. Comm'n v. Latker*, Nos. 827–29 C.D. 2023, 2024 WL 3191702 (Pa. Commw. Ct. June 27, 2024) (unpublished table decision) (holding agency satisfied its burden through affidavit outlining protocol of RFP process, when bidding occurred, and how many entities participated). Additionally, the City fails to aver that a contract with a bidder was not executed and, therefore, that any related proposal is exempt. *See UnitedHealthcare*, 187 A.3d at 1060 (agency submitted affidavit attesting RFP was rescinded and reissued but no contract or agreement was reached).

7. Conclusory logs cannot satisfy nondisclosure under the RTKL's privilege protection under § 67.305(a)

Section 305(a) exempts attorney-work product and records subject to attorney-client privilege. §§ 67.102, 67.305(a). In the RTKL context, work product doctrine

broadly protects "the mental impressions, theories, notes, strategies, research and the like created by an attorney in the course of his or her professional duties." *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 657 (Pa. Commw. Ct. 2015). To invoke attorney-client privilege protection under the statute, an agency must show (1) the asserted privilege holder is or sought to become a client; (2) the person to whom the communication was made is a member of the bar of a court, or a subordinate; (3) 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 legal assistance; and (4) the claimed privilege was not waived. *Id.* at 656. "Bald assertions of the applicability of the attorney-client privilege are insufficient to excuse an agency from its burden of demonstrating the [required] elements." *See Off. of the Governor v. Wanner*, No. 1453 C.D. 2019, 2020 WL 3495623, at *4 (Pa. Commw. Ct. 2020).

The City claims its one-line descriptions (with qualifying words like "legal" sprinkled throughout) accompanied by a list of senders and recipients is enough to demonstrate the records are attorney work product or subject to attorney-client privilege. Once again, this is incorrect. First, by asserting that privilege is apparent on the face of the log entries, the City makes exactly the kind of "bald assertion" our courts have prohibited. The City never explains how each withheld record satisfies the elements of attorney-client privilege. Second, logs which "only generally" describe the types of communications withheld and recite that each element is satisfied are conclusory and insufficient. *See Couloumbis*, 300 A.3d at 1105 (holding vague descriptions of messages, plus superficial claims they were made for securing legal

advice, were inadequate). By contrast, courts have affirmed claims of privilege when agencies support them with detailed logs and affidavits establishing each element. *See Heavens*, 65 A.3d at 1076–77.

Lastly, neither supporting document demonstrates privilege was not waived by the presence of third parties or lawyers representing other interests. The record revealed various instances in which City employees, lawyers, and employees of other entities (like Harris Blitzer Sports Entertainment) were on the same email chains. *See* CR 131–33, 364–66, 400–01, 441–42. There is no evidence in the record that the City entered into a common interest privilege agreement with the law firms for the 76ers or any other entity. Without such evidence—or an affidavit explaining otherwise—lawyers not representing the City and the employees of other entities are "strangers" who break the privilege. *See C&S Wholesale Grocers, Inc. v. Gerrity's Super Mkt., Inc.*, No. 3:22-CV-1331, 2023 WL 5651997, at *6 (M.D. Pa. Aug. 31, 2023) (holding common interest doctrine serves as an exemption to rule that attorney-client and attorney work product privileges are waived when privileged material is disclosed to a third party).

II. THE CITY FLOUTS THE RTKL BY WILLFULLY AND WANTONLY DISREGARDING MS. ANDERSON'S RIGHT TO PUBLIC RECORDS

The City has willfully and wantonly disregarded the RTKL through persistent efforts to delay releasing records and frivolous, unreasonable legal arguments. This is bad faith and serves as grounds for awarding attorney's fees. *See* §§ 67.1304–05. The RTKL empowers courts to make this determination. *Id.*; *Bowling*, 75 A.3d at 458. The statute also grants attorney's fees in several scenarios: (1) an agency denial is

reversed and the agency acted "willfully or with wanton disregard" or otherwise in bad faith; (2) the agency is reversed and it claimed exemptions, exclusions, or defenses with no basis in a reasonable interpretation of the law; or (3) a party mounted frivolous legal challenges. § 67.1304(a)–(b). Finally, a court may impose a civil penalty of $1,500 if an agency denied access to a public record in bad faith. § 67.1305. The Commonwealth Court has used this provision to deter agencies from "disregarding their statutory duties under the RTKL." *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.* (*Uniontown I*), 185 A.3d 1161, 1176 (Pa. Commw. Ct. 2018).

Demonstrated fraud or corruption is not necessary to establish bad faith; rather, failing to comply in good faith with the mandatory duties of the RTKL is enough. *Uniontown I*, 185 A.3d at 1170. It is the requestor's burden to show bad faith. *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.* (*Uniontown II*), 197 A.3d 825, 837 (Pa. Commw. Ct. 2018). Yet the analysis of bad faith rests on the agency's conduct, not the mental state of the record officer. *Sawicki v. Wessels,* No. 1046 C.D. 2021, 2022 WL 17750940 (Pa. Commw. Ct. Dec. 19, 2022) (unpublished table decision) (citation omitted).

In the instant case, the City's conduct falls squarely within the parameters of Sections 1304–05. The City's continued pattern of denial and delay before OOR and this Court has willfully and wantonly disregarded Ms. Anderson's right to access public records and flouted the agency's RTKL obligations.

A. The City Squandered Multiple Opportunities to Present Evidence of Exemptions or Argue for More Expansive *In Camera* Review

Persistently denying access to records is bad faith under the RTKL. *Uniontown I*, 185 A.3d at 1174. The RTKL text reveals the General Assembly intended requests to be resolved promptly and efficiently. *Pa. State Police v. Am. C.L. Union*, 300 A.3d 386, 393 (Pa. 2023). First, the statute considers requests denied when an agency does not respond within five days or after a claimed thirty-day extension. §§ 67.901–02. Next, appeals are due within fifteen days. § 67.1101(a)(1). OOR must then decide appeals within thirty days, unless the requestor agrees to another timeframe. § 67.1101(b). Appeals from OOR decisions are also due within thirty days. §§ 67.1301–02. Cumulatively, these statutory provisions reveal a legislative goal of prompt adjudication.

These deadlines should not be undermined. "The timely and efficient process that the General Assembly designed cannot give way to a system in which well-resourced agencies encounter no urgency to comply with the RTKL, while requesters deplete their coffers playing Sisyphus." *Pa. State Police*, 300 A.3d at 394. But if more time is truly needed, the RTKL text and Pennsylvania precedent "make clear" there are "multiple opportunities" for agencies to request more time to review records for potential exemptions when they also plan challenges on specificity grounds. *SEPTA*, 337 A.3d at 593.

The City denied Ms. Anderson her right to timely access public records by repeatedly failing to present evidence for its claimed exemptions, only to demand additional opportunities to do so. The City failed to provide sufficient evidence at least

four times: in its initial denial; in its first appeal to OOR; in the OOR adjudication on remand; and now, before this Court. The City is requesting yet another opportunity for OOR to review records for exemptions. City Br. 29. This is dilatory and unacceptable. The City's persistent delays, denials, and pursuit of further proceedings constitute a bad faith disregard for the RTKL and Ms. Anderson's rights.

1. The City's initial denials failed to present evidence of claimed exemptions

The City squandered its first opportunity to present evidence of exemptions when it denied Ms. Anderson's requests in 2023. The City said it denied Request 1840 via nonresponse because of an outage of undisclosed duration to its case management system. CR 52. Otherwise, the City said it would have invoked its right to a thirty–day extension. CR 52. The City denied Request 1842 via nonresponse because of an unspecified "administrative error." CR 207. These excuses do not change the fact that the City denied two requests via nonresponse, forgoing its first opportunities to substantiate claimed exemptions.

The City denied Request 2222 via letter. CR 287. Before turning to its claimed exemptions, the City argued the request was insufficiently specific and unreasonably burdensome.[9] CR 287–88. As for exemptions, the City did not identify which precise

[9] The City wisely abandoned the argument that Ms. Anderson's requests were insufficiently specific. *See* CR 52, 207, 434. The Commonwealth Court recently held that similar RTKL requests Ms. Anderson submitted to another agency regarding the same development project were sufficiently specific in part. *SEPTA*, 337 A.3d at 586. But despite the City's waiver of the issue in these proceedings, its description of the specificity standard in footnote 2 is inaccurate. *See* City Br. 8 n.2. The Commonwealth

exemptions it was claiming. Rather, it named exemptions and privileges "likely" to apply to requested records. CR 288–90. It claimed the records Ms. Anderson "may be seeking" implicated the safety exemptions in Section 708(b). CR 289. The letter said the records were "potentially" trade secrets covered by Section 708(b)(11). *Id.* It also argued the requests "may implicate" the draft bill exemption, and "could include" exempted notes and working papers. *Id.* In failing to actually claim these exemptions at the denial stage, the City prolonged proceedings in violation of the intended efficiency goals of the RTKL. The City also attempted to delay satisfying its burden of proof under Section 708(a)(1).

2. The City's position statements before OOR further delayed release of public records

The City again failed to claim exemptions and present applicable evidence when OOR adjudicated the cases on initial appeal. The City's position statements to OOR for all three Requests prior to consolidation begin by claiming it "reserves the right to provide further evidence" for future proceedings. CR 48, 206, 407. This indicates the City contemplated a need to make a fuller evidentiary showing in the future, while foregoing the opportunity at this stage.

In its position statement for Request 1840, the City again failed to make a concrete exemption claim. Instead, it stated each requested email "would need to be

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Court has emphasized the multifactor test for specificity in *Pittsburgh Post-Gazette* provides a "useful framework" but does not etch a bright line rule. *Pa. Off. of Governor v. Brelje*, 312 A.3d 928, 937–38 (Pa. Commw. Ct. 2024) (citing *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1124 (Pa. Commw. Ct. 2015)). Rather, courts should rule consistent with *Pittsburgh Post-Gazette* but also consider that specificity is "inherently fact-sensitive" and a "case-by-case" inquiry. *Id.* at 938.

reviewed" for possible exemptions and privileges. CR 55. The City provided a list of exemptions "likely" to apply but included the caveat that it was "not a comprehensive list." CR 55. OOR properly ruled the City was "required to raise all of its arguments and support them with evidence in the normal course of the appeal." CR 181. Submitting exemption evidence ***after*** a ruling on the specificity issue was an attempt to "bifurcate" the appeal; the statute does not allow it. CR 181. Statements that exemptions "likely" apply and that requested emails could trigger "various" exemptions from the RTKL are not the same as outright claiming an exemption under Section 708. Asserting exemptions without substantiating them only pushed adjudication further into the future. This hedging contributed to a persistent delay of proceedings, which under *Uniontown I* is bad faith conduct. 185 A.3d at 1174.

The City also failed to take advantage of flexibility Pennsylvania courts gave to local agencies to comply with the law. When an agency is incapable of performing its review within the required time, its statutory duty to determine exemptions remains. *Pa. State Sys. of Higher Educ. (PASSHE) v. Ass'n of State Coll. & Univ. Fac.*, 142 A.3d 1023, 1031 (Pa. Commw. Ct. 2016). But agencies can request more time to review records for exemptions. *Id.* at 1032. Requests for more time must provide OOR with a valid estimate of the number of documents requested, the length of time needed to perform the review, and any technological challenges they have with delivering the documents in the requested format. *Id.*

The City made no such explicit request to OOR at the appeal stage for Requests 1840, 1842, or 2222, despite its ability to do so under *PASSHE*. *See* CR 48–57, 206–

11, 407–40. Rather than utilize the OOR appeal to substantiate its claimed exemptions, the City delayed the RTKL process and continued its improper denial of Ms. Anderson's rights to public records.

3. The City ignored multiple opportunities before OOR to argue for expansive in camera review

The City's quest to delay delivering public documents to Ms. Anderson is all the more obvious from its current suggestion that OOR review all withheld documents *in camera*. City Br. 29. This is double dipping. When OOR heard the case on remand, the City failed to request a more exhaustive *in camera* review despite several opportunities to do so.

Prior to OOR's *in camera* review, Ms. Anderson complied with the schedule of proceedings and submitted a list of records for review. CR 920, 1008–14. The City was permitted to submit filings supplementing that request. CR 920. Yet the City failed to object to Ms. Anderson's list or submit to OOR an argument for more robust *in camera* review. CR 1016, 1020. This was despite OOR specifically writing the parties to ask for supplements to the record on what it should review *in camera*. CR 1016. After OOR announced its *in camera* list, the City asked for two extensions to produce the documents. CR 1023, 1027. It did not, however, respond to OOR's entreaty to supplement the *in camera* list. CR 1016–27.

The record therefore reveals the City chose not to request a more exhaustive *in camera* review despite opportunities to respond to Ms. Anderson or otherwise submit arguments to OOR. This conduct undermined the originally stated motivation of the remand to OOR—that "judicial economy would be best served . . . for the parties

to establish an agreed–upon schedule that would include expanded deadlines for filings." CR 570. The City's current argument to remand yet again to review all records *in camera* further reveals its opposition to judicial economy. It is also a bad faith effort to delay Ms. Anderson's statutory right.

4. City again attempts to delay releasing public records in its filing to this Court

As described *supra*, the City again failed to submit sufficient evidence of its claimed exemptions in its brief to this Court. Its brief was the City's ***fourth*** opportunity since 2023 to prove the requested records are subject to exemptions. *See* § 67.708(a)(1). Yet again the City failed to supply that evidence and instead suggests another trip to OOR. City Br. 29.

The City's request for *in camera* review of every document willfully and wantonly disregards Ms. Anderson's rights under the RTKL to obtain public records. The pattern of delay establishes bad faith. Because of this conduct, this Court should accordingly award Ms. Anderson reasonable attorney's fees and costs and impose a civil penalty under Sections 1304 and 1305.

B. City Violated Binding Precedent by Again Improperly Attempting to Claim the Trade Secrets Exemption

The City engages in another bad faith gambit under the RTKL: a frivolous appeal and unreasonable interpretation of law. *See* § 67.1304(a)(2)–(b). In the context of appeals from state agency adjudications, if an appellant raises an issue well settled by a controlling decision, the appeal is frivolous when the party provides no legal support for why the precedent does not control. *Hewitt v. Commonwealth*, 541 A.2d 1183, 1185 (Pa. Commw. Ct. 1988). Taking a position contrary to settled precedent

can also be an unreasonable interpretation of law for purposes of Section 1304(a)(2). *See Cal. Univ. of Pa. v. Bradshaw*, No. 1491 C.D. 2018, slip op. at 16 (Pa. Commw. Ct. Oct. 13, 2021) (Brobson, J.).[10]

The City continues to unreasonably assert an exemption of confidential proprietary information under Section 708(b)(11). § 67.708(b)(11); *see* City Br. 22–23. On the merits, the City's claim fails. It cited no case law supporting its baseless assertion the proprietary nature of certain records is evident from the descriptions in the Exemption Log. *See* City Br. 22. The Exemption Log and Rabady Affidavit, which lack relevant substantive detail, are insufficient to establish the exemption applies. *See Threthewey v. Downingtown Area Sch. Dist.*, 331 A.3d 956, 970 (Pa. Commw. Ct. 2025) (vacating trial court, in part, because local agency's affidavits "do not even describe" supposedly proprietary material). Neither document explains how disclosure of the requested materials would result in competitive harm, and neither document identifies the specific competitive business or industry in which the harm would occur. *See* CR 576–908 (Exemption Log); CR 996–1006 (Rabady Affidavit).

In addition to being conclusory, the City's argument is frivolous and unreasonable. It flouted a binding precedent with almost identical facts. *SEPTA* concerned the same requestor (Ms. Anderson) and the same topic (76ers arena). *SEPTA*, 337 A.3d at 596. The requests were for the same type of documents, during

[10]Single judge opinions of the Commonwealth Court are not binding and must be cited for their persuasive value only. Pa. R. App. P. 3716(e).

similar dates, and between public employees and 76 DevCo. *Id.* at 579–80; CR 25–29, 188–89, 291–339. Yet *SEPTA* is absent from the City's brief.

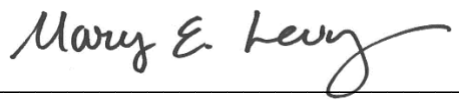
The trade secrets issue is clearly governed by the *SEPTA* opinion. The instant case shares a crucial fact with *SEPTA*: No one from 76 DevCo sought to intervene. *See* CR 1050; *SEPTA*, 337 A.3d at 596. While the Commonwealth Court acknowledged the importance of third-party rights to due process in RTKL proceedings, those rights had been honored. *Id.* The Commonwealth Court therefore held "SEPTA simply cannot assert those claims on behalf of 76 DevCo or any other party." *Id.* There is no difference between the facts of the *SEPTA* case and the instant one. 76 DevCo knew of the RTKL proceedings between Ms. Anderson and the City yet chose not to intervene. CR 1050. OOR therefore properly rejected the City's assertion of the confidential proprietary information exemption. CR 1050–51; *SEPTA*, 337 A.3d at 596. The fact that the City again claims the confidential and proprietary information exemption before this Court is frivolous, an unreasonable interpretation of clear, binding precedent, and a persistent denial of access to records. *See Uniontown I*, 185 A.3d at 1174.

It is now more than two years after Ms. Anderson submitted her valid requests to the City. CR 25, 188, 291; Notice of Appeal, June 27, 2025. The City's renewed attempt in this Court to generate additional proceedings is consistent with its efforts throughout this litigation to delay the release of records. It also unfairly forces Ms. Anderson to continue to fight for records she is lawfully entitled to. These dilatory and frivolous tactics support a finding of bad faith.

RELIEF

For the foregoing reasons, Appellees respectfully request the final determination of OOR be affirmed, and further that this Court award attorney's fees to Ms. Anderson.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE JUDICIAL PUBLIC ACCESS POLICY

I, Mary E. Levy, Esquire, hereby certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than nonconfidential information and documents.

Mary E. Levy

Pro Bono Co-Counsel for Appellees

Dated: February 3, 2026

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2026, I electronically filed the foregoing BRIEF OF APPELLEES by using the E-FILING system. I further certify that a copy of the foregoing was served on the following:

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