

March 15, 2023

Bruce Markovich
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RE: Advisory Opinion on agency-issued email accounts

Dear Mr. Markovich:

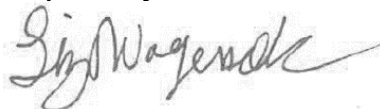
The Office of Open Records (“OOR”) received your request for an advisory opinion on March 10, 2023. The OOR may issue advisory opinions pursuant to Section 1310 of the Right-to-Know Law (“RTKL”), 65 P.S. § 67.1310(a)(2). Your request for an advisory opinion is **GRANTED**.

In your request for an advisory opinion, you explain that members of Borough Council are provided with email addresses from the Borough, but that the emails from those accounts are not stored or possessed by the Borough. Thus, you ask: “is the borough required to contact each council member to determine if there is any information contained in each member[’]s borough issued email address to satisfy [a] Right To Know Request[?]”

Emails transacting agency business may be public records, even if they are located on personal computers or in personal email accounts. *Mollick v. Twp. of Worcester*, 32 A.3d 859, 872-3 (Pa. Commw. Ct. 2011); *see also* 65 P.S. § 67.102. Section 901 of the Right-to-Know Law explains that: “Upon receipt of a written request for access to a record, an agency shall make a good faith effort to determine if the record requested is a public record ... and whether the agency has possession, custody or control of the identified record....” 65 P.S. § 67.901. In order for an agency open-records officer to make these determinations, they must necessarily request potentially public records from any possible custodians and conduct a review of those records. *In re Silberstein*, 11 A.3d 629, 633-634 (Pa. Commw. Ct. 2011) (holding that the Right-to-Know Law “requires that the local agency’s open-records officer inquire of its public officials ... as to whether the public official is in possession, custody or control of a requested record that could be deemed public”). Therefore, in response to a Right-to-Know request received by the Borough’s open-records officer, they are statutorily required to contact each Borough council member to determine if they possess any potentially public records.

This Advisory Opinion will be posted on the OOR’s website at <https://www.openrecords.pa.gov/RTKL/AdvisoryOpinions.cfm>.

Respectfully,



Liz Wagenseller
Executive Director