

By Allyson N. Lonas, Attorney, Tucker Arensburg Attorneys

# Artificial Intelligence

## Preparing for the Next Governance Challenge in the New Year

Artificial Intelligence (AI) is no longer a futuristic concept. It is a fast-moving reality reshaping how boroughs operate and provide services to the people they serve.

The growth of AI touches nearly every aspect of local government. Borough officials must balance innovation with caution. Every AI interaction, from generating a press release to summarizing a zoning ordinance, can carry legal consequences and raise ethical questions that boroughs cannot ignore. AI has the potential to discriminate and provide false information, known as hallucinations, as well as waive attorney-client privilege and create records under Pennsylvania's Right-to-Know Law ("RTKL").

### ChatGPT is Creating Public Records

Under the RTKL, a record is broadly defined as "information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received, or retained pursuant to law or in connection with a transaction, business, or activity of the agency." 65 P.S. §67.102. A public record under the RTKL is a record that is not exempt under the law, any other law, or is not protected by privilege. *Id.* Under Section 901 of the RTKL, in response to a request for records, "an agency shall make a good faith effort to determine if . . . the agency has possession, custody, or control of the record[.] 65 P.S. §67.901. Specifically, an Agency Open Records Officer has a duty to advise all custodians of potentially responsive records about the request; obtain all potentially responsive records from those in possession of the potentially responsive records; contact agents within its control, including third party contractors; and review the records and assess their public nature. *Uniontown Newspapers, Inc. v. Pa.*

*Dept. of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018) *aff'd*, 243 A.3d 19 (Pa. 2020).

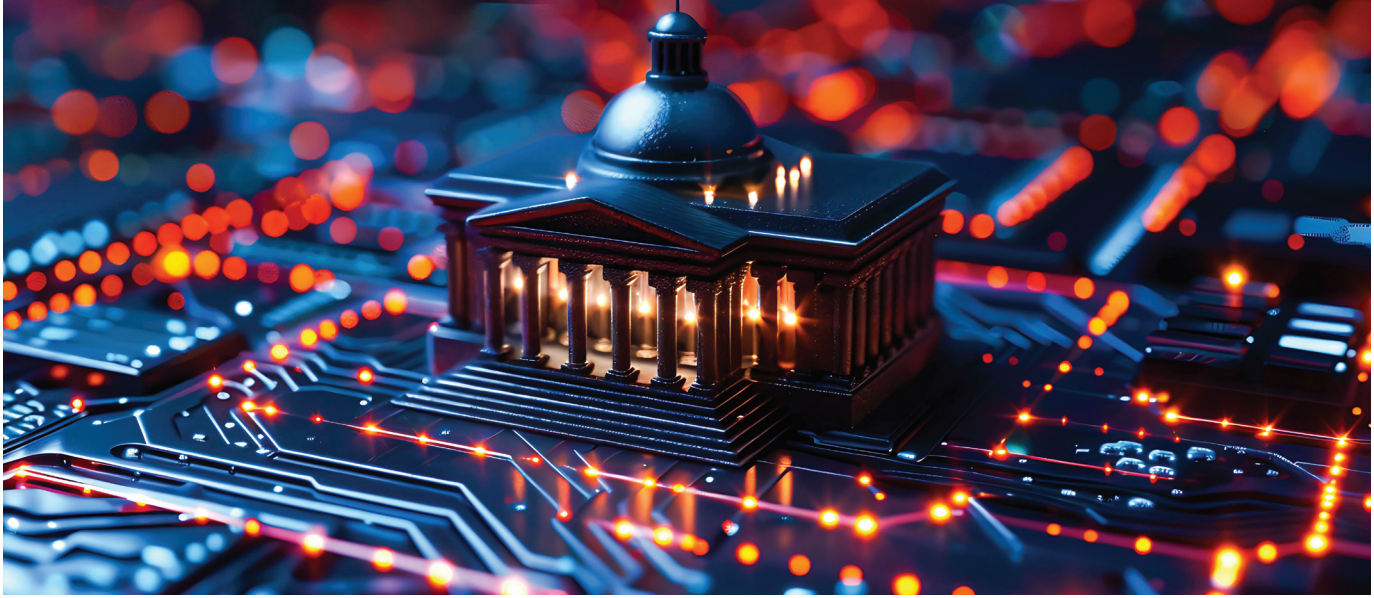
***"When a borough employee uses an AI tool for borough business, the employee isn't just adopting a new technology; the employee is creating a new record. Understanding that distinction is key to protecting your internal communications."***

In other words, when a borough manager or employee enters information into an AI platform to help draft an internal memo, that content may be classified as a record under the RTKL, and it is the responsibility of the Agency Open Records Officer to seek these records. Platforms like ChatGPT maintain detailed logs of user activity, including both prompts and responses. Once information is entered, it is effectively transmitted outside a borough's control.

ChatGPT is a third party, so even well-intentioned use of AI tools can raise questions about confidentiality and privilege. Communications that might otherwise be protected by attorney-client privilege or an executive session may become a public record because it was entered into AI. Boroughs should treat any information entered into an AI platform as a record and potentially accessible under the RTKL.

### AI in Public Meetings: Sunshine Act Implications

Artificial Intelligence also intersects with Pennsylvania's Sunshine Act, which provides the public's right to witness the decision-making of their local government. Accordingly, borough officials must ensure that AI tools are not used in ways that appear to deliberate or reach conclusions outside of a public meeting. For instance,



if an AI system is used to analyze council communications and recommend policy outcomes before any public discussion, that could give the appearance of private deliberation. A borough's obligation to comply with the law and make decisions in the public applies when AI is being used. It is important to make the public aware of AI use and to include the AI policy on the borough website.

### Why Does it Matter in Litigation?

ChatGPT creates discoverable information. ChatGPT prompts and generated outputs may qualify as electronically stored information (ESI). The duty to preserve ESI attaches when litigation is reasonably anticipated, and relevant information is discoverable. Third party platforms keep detailed logs and training data. This means that when you input information into ChatGPT or an AI platform, you are creating evidence. By inputting information into a third-party platform, it is no longer confidential information.

### Emerging Case Law

Courts are already grappling with these types of issues in other states. In *New York Times v. OpenAI*, a copyright infringement case turned into a discovery dispute related to AI data. The *New York Times* alleged that there is evidence in the data to support their claim that OpenAI used its articles to train AI models. Notably, an order was issued which required OpenAI, the parent company of ChatGPT, to preserve and segregate AI chats. Specifically, the order stated in part: “[T]o preserve and segregate all output log data that would

otherwise be deleted on a going-forward basis.”

This is only one example of a court recognizing that AI chats are discoverable and demonstrates a court's willingness to compel broad AI data retention, putting your borough at risk. The questions become: How long is the data stored? Could it later be discoverable or publicly released? Is the borough obligated to contact a third-party platform to provide public records under the RTKL?

Unfortunately, there is no comprehensive federal AI law, and Pennsylvania has not enacted any legislation to address these issues. As a result, these issues have been left to judicial discretion. However, for boroughs, the takeaway is clear: be cautious, be transparent, and be prepared to justify how AI is used, how information is protected, and what steps you took to be legally compliant.

### How Can a Borough Protect Itself?

#### 1. Develop an AI Policy

The best protection for a borough is to work with its solicitor to adopt an AI policy to reduce risk and liability. A well-written policy demonstrates a borough's willingness to be legally compliant. It's important that AI policies evolve as technology evolves, and the policy needs to be tailored to a borough's individual needs.

Every AI policy should cover at least the following:

**Applicability.** Specify who the policy governs and require acknowledgment of compliance. Does it govern employees, contractors, vendors, or volunteers?

**Scope of tools.** Identify which AI systems are covered, including generative tools like ChatGPT, Microsoft Copilot, or Gemini, as well as any embedded AI features in office software or municipal systems.

**Purpose and permitted use.** Describe how AI may be used, such as for research, drafting, or administrative efficiency, and explicitly prohibit its use for confidential, privileged, or sensitive matters.

**Definitions.** Define “artificial intelligence,” “AI-assisted output,” and “machine learning system” to avoid ambiguity.

**Human oversight.** Require that a designated borough employee review and approve all AI-generated content before it is released or relied upon in official borough business.

**Record retention.** Clarify how AI-related materials, including inputs, drafts, or outputs, will be retained under the borough’s retention schedule and applicable laws.

**Training and accountability.** Include an annual review and training requirement so that employees understand the policy’s purpose and requirements, including both the benefits and boundaries of AI use.

## 2. Establish an AI Governance Committee

A strong policy is most effective when paired with oversight. An AI Governance Committee should be established to review technology, evaluate vendors and data-systems, and provide periodic reports to council on AI usage and compliance.

New Year’s Checklist: Five Steps Boroughs Can Take Now

1. Identify where AI tools are already being used in borough operations.
2. Draft and adopt an internal AI policy prepared by your solicitor.

3. Establish an AI Governance Committee for oversight.
4. Train employees on appropriate and prohibited AI use.
5. Explain the borough’s approach to AI to maintain public trust.

## Looking Ahead

AI will continue to evolve, and it is the responsibility of a borough to be prepared to address the risks associated with AI use. Boroughs should remain proactive in understanding AI and apply the same values that have always governed local government: transparency and accountability. By approaching AI deliberately, local officials can ensure that AI tools strengthen public trust instead of challenging it. The future of municipal governance will include artificial intelligence, and it is local officials’ duty to be prepared for AI’s effect on their borough. **B**



### ABOUT THE AUTHOR

Allyson Lonas is a skilled attorney whose unique upbringing in a small family-owned business brings a client-first and entrepreneurial approach to her practice. She earned her law degree from Penn State Dickinson Law and gained valuable experience as a law clerk for the Commonwealth Court. Allyson advises municipalities, public entities, and public officials on compliance with regulations, including the Sunshine Act, Ethics Act, and Election Code, ensuring adherence to state laws and promoting transparency in government operations. She also serves as the solicitor for the Somerset Housing Authority. She has also defended statewide cases with the Pennsylvania Office of the Attorney General, conducted legal research for the Pennsylvania Senate, and advised legislative leaders and committee chairs on policy matters with the Pennsylvania House of Representatives. Allyson’s diverse legal background, combined with her proactive approach, makes her a trusted advisor in complex business litigation, defamation defense, and compliance matters.