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*Attorney for Petitioner*

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BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-9734

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**BRIEF IN SUPPORT OF MOTION TO STRIKE “ANSWER, PRELIMINARY  
OBJECTIONS AND COUNTERCLAIM”**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Brief in Support of Motion to Strike “Answer, Preliminary Objections and Counterclaim.”

**I. STATEMENT OF FACTS.**

This matter arises under the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* On May 17, 2023, Respondent Michael Long (“Requester” or “Respondent”), *pro se*, filed a RTKL request (“Request”) to the Borough, seeking certain alleged public records. The Borough partially granted responsive public records, and the Requester filed a statutory appeal to the Office of Open Records (“OOR”) per the RTKL. Following proceedings before an OOR Appeals Officer, on November 3, 2023, the OOR Appeals Officer issued a final determination in the matter of *Michael Long v. Bath Borough*, OOR Dkt. AP 2023-1598 that, in relevant part, impermissibly (1) refashioned the Request so it seeks certain additional alleged public records not covered by the actual Request, (2) required the Borough to conduct a supplemental search for

additional alleged public records, and (3) required the Borough to provide the “factual material” within confidential communications protected by the attorney-client privilege.

On November 17, 2023, the Borough filed a Petition for Reconsideration with the OOR, arguing that the OOR erred in (1) impermissibly refashioning the Request to seek certain alleged public records between less than the entire group of listed persons; (2) potentially granting access to such potential records other than emails; and (3) potentially granting access to part(s) of records that would reveal attorney-client privileged communications.

On December 1, 2023, per the RTKL, the Borough filed a statutory appeal of the OOR’s final determination issued on November 3, 2023, which appeal is pending before this Court at C-48-CV-2023-09734. That same date, the OOR issued a final order purporting to partially grant and partially deny the Borough’s Petition for Reconsideration. On December 27, 2023, because the applicable regulation (1 Pa. Code § 35.241(f)) only permits an agency to fully grant or fully deny a petition for reconsideration, per the RTKL, the Borough filed a statutory appeal of the OOR’s final order purporting to partially grant and partially deny reconsideration, which appeal is pending before this Court at *Borough of Bath v. Michael Long*, C-48-CV-2023-10559.

Despite the pending appeals, the OOR, on January 12, 2024, issued a Final Determination Upon Reconsideration in the matter docketed as *Long v. Bath Borough*, OOR Dkt. AP 2023-1398R that no longer refashioned the Request to cover certain additional alleged public records not covered by the actual Request or a supplemental search but required the Borough “to review the records and email attachments claimed to be protected by the attorney-client privilege to determine whether they contain non-exempt factual information...” On February 9, 2024, per the RTKL, the Borough filed a statutory appeal of the Final Determination Upon Reconsideration to this Court, where it is pending at *Borough of Bath v. Michael Long*, C-48-CV-2024-01039.

In the instant matter (*Borough of Bath v. Michael Long*, C-48-CV-2023-10559), the Respondent, on December 22, 2023, filed a document titled “Answer, Preliminary Objections, and Counterclaim” in response to the Borough’s appeal sub judice. Also, on January 10, 2024, the Respondent filed a document titled “Praecipe to Strike Appeal” relative to the Borough’s appeal sub judice. On February 21, 2024, the Borough filed a Motion to Strike “Answer, Preliminary Objections and Counterclaim” to which Respondent responded on April 5, 2024. Also, on February 21, 2024, the Borough filed a Motion to Strike Praecipe to Strike Appeal to which Respondent responded on April 5, 2024. The Borough’s Motion to Strike Answer, Preliminary Objections and Counterclaim and the Borough’s Motion to Strike Praecipe to Strike Appeal are ready for disposition and the Borough respectfully requests that this Honorable Court review and decide each of the Borough’s Motion at the same time. The Borough has provided a brief in support of each Motion separately for organizational purposes. This brief is in support of the Borough’s Motion to Strike Answer, Preliminary Objections and Counterclaim.

## **II. STATEMENT OF THE QUESTIONS INVOLVED.**

- A. Where, as a statutory appeal under the RTKL, neither the PA Rules of Civil Procedure nor the PA Rules of Appellate Procedure apply, should Respondent’s Answer, Preliminary Objections and Counterclaim be stricken where they are not authorized in this proceeding under the RTKL?

**SUGGESTED ANSWER:** Yes.

## **III. ARGUMENT.**

This matter is a statutory appeal from a final determination of the OOR under the RTKL. As a statutory appeal under the RTKL, the PA Rules of Civil Procedure do not apply. *See Borough of W. Easton v. Mezzacappa*, 74 A.3d 417, 420 (Pa. Commw. 2013) (“The Pennsylvania Rules of Civil Procedure do not apply to statutory appeals, such as an appeal under the RTKL”); *Allegheny*

*Cnty. Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1033 (Pa. Commw. 2011). Similarly, the PA Rules of Appellate Procedure also do not apply to statutory appeals under the RTKL. *See* Pa.R.A.P. 103; *see Chambersburg Area Sch. Dist. v. Dorsey*, No. 2012-849 (C.P. Franklin May 18, 2012) (Walsh, J.) (noting, in the context of a Right-to-Know Law appeal, that neither the PA Rules of Civil Procedure nor the PA Rules of Appellate Procedure apply), *aff'd* 97 A.3d 1281 (Pa. Commw. 2014). Further, the RTKL does not authorize the filing of an answer, preliminary objections and/or counterclaim by the respondent to an appeal filed under the RTKL. *See generally* 65 P.S. §§ 67.101 *et seq.*

Because this matter is a statutory appeal under the RTKL, Respondent's "Answer, Preliminary Objections and Counterclaim" is not appropriately before this Court. As a threshold matter, the RTKL does not authorize an answer, preliminary objections and/or counterclaim to be filed in response to an appeal filed by a party under the RTKL. Also, the combination of three distinct pleadings into one document muddies the waters as to whether Respondent is attempting to argue against Petitioner's statutory appeal and/or requesting relief not authorized by the RTKL. Although inapplicable here as set forth above, Pa. R.Civ.P. 1017 contemplates the filing of individual documents, rather than one document containing various types of pleadings, *see generally* Pa. R.Civ.P. 1017 (referencing "an answer" and "a preliminary objection" and "a counterclaim"), presumably for the purpose of avoiding the confusion created by a combined document.

As to the alleged preliminary objection portion of Respondent's pleading, preliminary objections are governed by Pa. R.Civ.P. 1028; however, because the PA Rules of Civil Procedure do not apply to statutory appeals, no preliminary objections can be filed in a statutory appeal. Even if, *arguendo*, Respondent's preliminary objections were properly before this Court, N.C.R. Civ.P.

N1028(c)(2) requires preliminary objections to be “endorsed with a notice to plead because the objections involve issues that cannot be determined from facts of record...” Here, among other assertions, Respondent alleges that he is raising an “Objection to Borough’s Assertions of Non-existence of Non-email Records;” however, Respondent’s alleged Preliminary Objections do not include a notice to plead as required by N.C.R. Civ.P. N1028(c)(2). *See* Paragraph 4 of “Preliminary Objections” portion of Respondent’s “Answer, Preliminary Objections, and Counterclaim.” Additionally, Respondent has not filed a brief with his preliminary objections. *See* C.R. Civ.P. N1028(c)(1)(a) (“If a brief is not filed in accordance with this rule, the preliminary objections shall be dismissed by the court...”). Because preliminary objections are not authorized in a statutory appeal and Respondent has not complied with local rules governing the process for disposing of preliminary objections, Respondent’s preliminary objections should be stricken.

Additionally, Respondent purports to raise various matters in an alleged counterclaim, which, as set forth above, is not authorized in this statutory appeal under the RTKL as the RTKL does not authorize a counterclaim and the PA Rules of Civil Procedure do not apply. *See generally* 65 P.S. §§ 67.101 *et seq.*; *see also Mezzacappa*, 74 A.3d at 420. Like preliminary objections, counterclaims are governed by the PA Rules of Civil Procedure which do not apply here. For example, under Pa. R.Civ. P. 1031(a), a “defendant” may file as a counterclaim “any cause of action cognizable in a civil action which the defendant has against the plaintiff...” However, Respondent is a “respondent,” as opposed to a “defendant” and this statutory appeal under the RTKL is not a “civil action” per PA Rules of Civil Procedure Rule 1001(a) because the PA Rules of Civil Procedure do not apply to this statutory appeal. *See* Pa.R.Civ.P. 1001(a); *see also, Mezzacappa*, 74 A.3d 417, 420. Because of the foregoing, PA Rules of Civil Procedure Rules 1026 (Answer), 1029 (Answer), 1028 (Preliminary Objections and 1030 (Counterclaim), among

other PA Rules of Civil Procedure, do not apply and, therefore, Respondent's alleged Answer, Preliminary Objections and Counterclaim are not permitted in this statutory appeal. *Id.*

To the extent that the issues Respondent attempts to raise in his alleged counterclaim involve the underlying final determination appealed by the Borough,<sup>1</sup> Respondent could have filed a statutory appeal with this Honorable Court within 30 days after November 3, 2023, pursuant to RTKL Section 1302(a), regarding that part of the final determination issued on November 3, 2023. Respondent, however, did not file such appeal within 30 days after November 3, 2023. Accordingly, to the extent that Respondent argues that the OOR erred in its final determination, Respondent has waived all objections to the underlying final determination by the OOR by failing to timely appeal. He cannot now attempt to collaterally attack the merits of the underlying final determination when he failed to timely appeal it.

Additionally, Respondent does not raise any causes of action against the Borough in the "Counterclaim" section of his December 22, 2023 filing. Instead, Respondent sets forth a variety of arguments concerning why he believes the Final Determination is correct and seeks relief that is not available under the RTKL. *See* Paragraphs 20-21 of "Counterclaim" portion of Respondent's "Answer, Preliminary Objections, and Counterclaim" (asking for "tailored discovery and forensic scrutiny" and a "comprehensive investigation and forensic audit").

While the Borough recognizes that Respondent is *pro se* in this matter, Respondent must still abide by applicable rules of law. By Respondent filing his "Answer, Preliminary Objections, and Counterclaim" in this statutory appeal, Respondent has utterly muddied the waters and unduly required the Borough to sift through Respondent's morass to determine that Respondent's

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<sup>1</sup> For example, Respondent argues that the OOR erred by not finding in the Final Determination that the Borough acted in bad faith, and, by not appealing that issue, such issue has been waived by Respondent.

“Answer, Preliminary Objections, and Counterclaim” filed on December 22, 2023, is not properly before this Honorable Court.

**IV. CONCLUSION.**

For the foregoing reasons, the Borough respectfully asks this Honorable Court to strike Respondent’s “Answer, Preliminary Objections, and Counterclaim” filed on December 22, 2023.

I certify that 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.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC



By: \_\_\_\_\_

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Dated: July 29, 2024

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BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-9734

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**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 29<sup>th</sup> day of July, 2024, I have served a true and correct copy of the attached Praecipe for Argument and Brief in Support of Motion to Strike “Answer, Preliminary Objections and Counterclaim” on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*



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J. Chadwick Schnee, Esq.

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BOROUGH OF BATH, Petitioner,	:	IN THE COURT OF COMMON PLEAS
	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2023-9734

**PRAECIPE FOR ARGUMENT UNDER N211**

TO THE PROTHONOTARY:

Please list Petitioner's February 21, 2024 Motion to Strike Praecipe To Strike Appeal in the above-referenced matter on the August 20, 2024 argument list.

Respectfully submitted,

/s/ J. Chadwick Schnee, Esq.  
J. Chadwick Schnee, Esquire  
Attorney ID No. 306907  
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74 E. Main Street, #648  
Lititz, PA 71543  
[chadwick@schneelegal.com](mailto:chadwick@schneelegal.com)  
*Counsel for Plaintiff, Borough of Bath*

Dated: July 29, 2024

## CERTIFICATE OF COMPLIANCE

I certify that 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.

/s/ J. Chadwick Schnee, Esq.  
J. Chadwick Schnee, Esquire  
Counsel for Plaintiff, Borough of Bath

Dated: July 29, 2024

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*Attorney for Petitioner*

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BOROUGH OF BATH, Petitioner,	:	IN THE COURT OF COMMON PLEAS
	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2023-9734

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**BRIEF IN SUPPORT OF MOTION TO STRIKE PRAECIPE TO STRIKE APPEAL**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Brief in Support of Motion to Strike Praecipe to Strike Appeal.

**I. STATEMENT OF FACTS.**

This matter arises under the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* On May 17, 2023, Respondent Michael Long (“Requester” or “Respondent”), *pro se*, filed a RTKL request (“Request”) to the Borough, seeking certain alleged public records. The Borough partially granted responsive public records, and the Requester filed a statutory appeal to the Office of Open Records (“OOR”) per the RTKL. Following proceedings before an OOR Appeals Officer, on November 3, 2023, the OOR Appeals Officer issued a final determination in the matter of *Michael Long v. Bath Borough*, OOR Dkt. AP 2023-1598 that, in relevant part, impermissibly (1) refashioned the Request so it seeks certain additional alleged public records not covered by the actual Request, (2) required the Borough to conduct a supplemental search for

additional alleged public records, and (3) required the Borough to provide the “factual material” within confidential communications protected by the attorney-client privilege.

On November 17, 2023, the Borough filed a Petition for Reconsideration with the OOR, arguing that the OOR erred in (1) impermissibly refashioning the Request to seek certain alleged public records between less than the entire group of listed persons; (2) potentially granting access to such potential records other than emails; and (3) potentially granting access to part(s) of records that would reveal attorney-client privileged communications.

On December 1, 2023, per the RTKL, the Borough filed a statutory appeal of the OOR’s final determination issued on November 3, 2023, which appeal is pending before this Court at C-48-CV-2023-09734. That same date, the OOR issued a final order purporting to partially grant and partially deny the Borough’s Petition for Reconsideration. On December 27, 2023, because the applicable regulation (1 Pa. Code § 35.241(f)) only permits an agency to fully grant or fully deny a petition for reconsideration, per the RTKL, the Borough filed a statutory appeal of the OOR’s final order purporting to partially grant and partially deny reconsideration, which appeal is pending before this Court at *Borough of Bath v. Michael Long*, C-48-CV-2023-10559.

Despite the pending appeals, the OOR, on January 12, 2024, issued a Final Determination Upon Reconsideration in the matter docketed as *Long v. Bath Borough*, OOR Dkt. AP 2023-1398R, that no longer refashioned the Request to cover certain additional alleged public records not covered by the actual Request or a supplemental search but required the Borough “to review the records and email attachments claimed to be protected by the attorney-client privilege to determine whether they contain non-exempt factual information...” On February 9, 2024, per the RTKL, the Borough filed a statutory appeal of the Final Determination Upon Reconsideration to this Court, where it is pending at *Borough of Bath v. Michael Long*, C-48-CV-2024-01039.

In the instant matter (*Borough of Bath v. Michael Long*, at C-48-CV-2023-09734), the Respondent, on December 22, 2023, filed a document titled “Answer, Preliminary Objections and Counterclaim” in response to the Borough’s appeal filed on December 1, 2023. Also, on January 10, 2024, the Respondent filed a document titled “Praecepto to Strike Appeal” relative to the Borough’s appeal filed on December 1, 2023. On February 21, 2024, the Borough filed a Motion to Strike Answer, Preliminary Objections and Counterclaim to which Respondent responded on April 5, 2024. Also, on February 21, 2024, the Borough filed a Motion to Strike Praecepto to Strike Appeal to which Respondent responded on April 5, 2024.<sup>1</sup> The Borough’s Motion to Strike Answer, Preliminary Objections and Counterclaim and the Borough’s Motion to Strike Praecepto to Strike Appeal are ready for disposition and the Borough respectfully requests that this Honorable Court review and decide each of the Borough’s Motion at the same time. The Borough has provided a brief in support of each Motion separately for organizational purposes. This brief is in support of the Borough’s Motion to Strike Praecepto to Strike Appeal.

## **II. STATEMENT OF THE QUESTIONS INVOLVED.**

- A. Where Respondent has filed a praecipe seeking to strike Petitioner’s appeal without legal basis to do so, should Respondent’s praecipe be stricken?

**SUGGESTED ANSWER:** Yes.

## **III. ARGUMENT.**

This matter is a statutory appeal from a final determination of the OOR under the RTKL. In the present case, Petitioner timely filed its appeal pursuant to the RTKL and Respondent cites no authority permitting him to file a praecipe to strike Petitioner’s appeal. Also, the case law cited

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<sup>1</sup> However, the “Response to Motion to Strike Praecepto to Strike Appeal as Moot” filed by Respondent does not respond to any of the averments within Petitioner’s Motion.

by Respondent in no way supports the relief he asserts. Quite simply, Respondent's praecipe is frivolous and should be stricken.

Specifically, Respondent cites cases that in no way stand for the proposition asserted. For example, in paragraphs 3 and 5 of his "Praecipe to Strike Appeal," Respondent cites *In re S.S.*, 651 A.2d 174 (Pa. Super. 1994) as containing "codified rehearing procedures [that] ... automatically render[] the initial" Final Determination issued by the Office of Open Records "non-binding pending agency review." However, *In re S.S.*, 651 A.2d 174 (Pa. Super. 1994) does not in any way reference rehearings, reconsideration or 1 Pa. Code § 35.241, as it, instead, is an appeal from a child dependency matter.

Similarly, Respondent cites *Jacobs v. Halloran*, 710 A.2d 1098 (Pa. 1998) in paragraph 6 of his praecipe for the proposition that "parallel premature appeals at interim stages splinter court focus delaying outcomes." However, *Jacobs v. Halloran*, 710 A.2d 1098 (Pa. 1998) has nothing to do with "parallel premature appeals," as it, instead, involves an appeal from a judgment of non pros and various equitable considerations.

Respondent cites no other law in support of his Praecipe to Strike Appeal, and the caselaw cited in no way stand for the various propositions asserted.

#### **IV. CONCLUSION.**

For the foregoing reasons, Petitioner respectfully asks that Respondent's January 10, 2024 Praecipe to Strike Appeal be stricken.

I certify that 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.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC



By: \_\_\_\_\_

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Dated: July 29, 2024

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BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
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**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 29th day of July, 2024, I have served a true and correct copy of the attached Praeceptum for Argument Brief in Support of Motion to Strike Praeceptum to Strike Appeal on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*



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J. Chadwick Schnee, Esq.

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BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
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v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-9734

**PRAECIPE FOR ARGUMENT UNDER N211**

TO THE PROTHONOTARY:

Please list Petitioner’s February 21, 2024 Motion to Strike “Answer, Preliminary Objections and Counterclaim” in the above-referenced matter on the August 20, 2024 argument list.

Respectfully submitted,

/s/ J. Chadwick Schnee, Esq.  
J. Chadwick Schnee, Esquire  
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[chadwick@schneelegal.com](mailto:chadwick@schneelegal.com)  
*Counsel for Plaintiff, Borough of Bath*

Dated: July 29, 2024

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/s/ J. Chadwick Schnee, Esq.  
J. Chadwick Schnee, Esquire  
Counsel for Plaintiff, Borough of Bath

Dated: July 29, 2024

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*Attorney for Petitioner*

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BOROUGH OF BATH, Petitioner,	:	IN THE COURT OF COMMON PLEAS
	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2023-10559

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**BRIEF IN SUPPORT OF MOTION TO STRIKE MOTION TO QUASH APPEAL**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Brief in Support of Motion to Strike Motion to Quash Appeal.

**I. STATEMENT OF FACTS.**

This matter arises under the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* On May 17, 2023, Respondent Michael Long (“Requester”), *pro se*, filed a RTKL request (“Request”) to the Borough, seeking certain alleged public records. The Borough partially granted responsive public records, and the Requester filed a statutory appeal to the Office of Open Records (“OOR”) per the RTKL. Following proceedings before an OOR Appeals Officer, on November 3, 2023, the OOR Appeals Officer issued a final determination in the matter of *Michael Long v. Bath Borough*, OOR Dkt. AP 2023-1598 that, in relevant part, impermissibly (1) refashioned the Request so it seeks certain additional alleged public records not covered by the actual Request, (2) required the Borough to conduct a supplemental search for

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On November 17, 2023, the Borough filed a Petition for Reconsideration with the OOR, arguing that the OOR erred in (1) impermissibly refashioning the Request to seek certain alleged public records between less than the entire group of listed persons; (2) potentially granting access to such potential records other than emails; and (3) potentially granting access to part(s) of records that would reveal attorney-client privileged communications.

On December 1, 2023, per the RTKL, the Borough filed a statutory appeal of the OOR’s final determination issued on November 3, 2023, which appeal is pending before this Court at C-48-CV-2023-09734. That same date, the OOR issued a final order purporting to partially grant and partially deny the Borough’s Petition for Reconsideration. On December 27, 2023, because the applicable regulation (1 Pa. Code § 35.241(f)) only permits an agency to fully grant or fully deny a petition for reconsideration, per the RTKL, the Borough filed a statutory appeal of the OOR’s final order purporting to partially grant and partially deny reconsideration, which appeal is pending before this Court at *Borough of Bath v. Michael Long*, C-48-CV-2023-10559.

Despite the pending appeals, the OOR, on January 12, 2024, issued a Final Determination Upon Reconsideration in the matter docketed as *Long v. Bath Borough*, OOR Dkt. AP 2023-1398R, that no longer refashioned the Request to cover certain additional alleged public records not covered by the actual Request or a supplemental search but required the Borough “to review the records and email attachments claimed to be protected by the attorney-client privilege to determine whether they contain non-exempt factual information...” On February 9, 2024, per the RTKL, the Borough filed a statutory appeal of the Final Determination Upon Reconsideration to this Court, where it is pending at *Borough of Bath v. Michael Long*, C-48-CV-2024-01039.

In the instant matter (*Borough of Bath v. Michael Long*, at C-48-CV-2023-10559), the Respondent, on January 10, 2024, filed a Motion to Quash Appeal in response to the Borough's appeal sub judice filed on December 27, 2023. Also, on January 10, 2024, the Respondent filed a document titled "Answer, Preliminary Objections and Counterclaim" relative to the Borough's appeal sub judice filed on December 27, 2023. On March 18, 2024, the Borough filed an Answer to Motion to Quash Appeal. On March 18, 2024, the Borough filed a Motion to Strike Motion to Quash Appeal to which Respondent filed his response on April 5, 2024. On March 18, 2024, the Borough mailed a Motion to Strike Answer, Preliminary Objections and Counterclaim to the Prothonotary for filing and served a copy on Respondent that same date. Respondent filed his response on April 5, 2024. After realizing the Borough's Motion to Strike Answer, Preliminary Objections and Counterclaim was not yet docketed, on May 17, 2024, the Borough filed its Motion to Strike Answer, Preliminary Objections and Counterclaim and served another copy upon Respondent via first class mail on May 17, 2024.

The Borough's Motion to Strike Motion to Quash Appeal and the Borough's Motion to Strike Answer, Preliminary Objections and Counterclaim are ready for disposition and the Borough respectfully requests that this Honorable Court review and decide each of the Borough's Motions at the same time. The Borough has provided a brief in support of each Motion separately for organizational purposes. This brief is in support of the Borough's Motion to Strike Motion to Quash Appeal.

## **II. STATEMENT OF THE QUESTIONS INVOLVED.**

- A. Where Respondent has filed a Motion seeking to strike Petitioner's appeal without legal basis to do so, should Respondent's Motion be stricken?

**SUGGESTED ANSWER:** Yes.

### **III. ARGUMENT.**

This matter is a statutory appeal from a final order of the OOR under the RTKL. In the present case, Petitioner timely filed its appeal pursuant to the RTKL and Respondent cites no authority authorizing this Honorable Court to quash the Borough's appeal. The case law cited by Respondent in no way supports the relief he asserts. Quite simply, Respondent's Motion to Quash is frivolous and should be stricken.

Specifically, Respondent cites cases that in no way stand for the proposition asserted. For example, in paragraph 7 of his "Motion to Quash Appeal," Respondent cites *In re S.S.*, 651 A.2d 174 (Pa. Super. 1994) for the proposition that it "pronounced based on underlying 1 Pa. Code § 35.241 provisions" that "the original decision becomes inoperative for appeal purposes once reconsideration commences..." However, *In re S.S.*, 651 A.2d 174 (Pa. Super. 1994) does not in any way reference rehearings, reconsideration or 1 Pa. Code § 35.241, as it, instead, is an appeal from a child dependency matter.

Similarly, Respondent cites *Jacobs v. Halloran*, 710 A.2d 1098 (Pa. 1998) in paragraph 12 of his Motion for the proposition that "parallel court Appeals of non-final decisions risk confusion and erosion of orderly dispute resolution..." However, *Jacobs v. Halloran*, 710 A.2d 1098 (Pa. 1998) has nothing to do with "parallel court Appeals," as it, instead, involves an appeal from a judgment of non pros and various equitable considerations.

Respondent cites no other law in support of his Motion to Quash Appeal, and the caselaw cited in no way stand for the various propositions asserted.

### **CONCLUSION.**

For the foregoing reasons, Petitioner respectfully asks that Respondent's January 10, 2024 Motion to Quash Appeal be stricken.

I certify that 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.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC



By: \_\_\_\_\_

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Dated: July 29, 2024

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BOROUGH OF BATH, Petitioner,	:	IN THE COURT OF COMMON PLEAS
	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2023-10559

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**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 29<sup>th</sup> day of July, 2024, I have served a true and correct copy of the attached Praecipe for Argument and Brief in Support of Motion to Strike Motion to Quash Appeal on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*



---

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*Attorney for Petitioner*

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BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-10559

---

**BRIEF IN SUPPORT OF MOTION TO STRIKE “ANSWER, PRELIMINARY  
OBJECTIONS AND COUNTERCLAIM”**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Brief in Support of Motion to Strike “Answer, Preliminary Objections and Counterclaim.”

**I. STATEMENT OF FACTS.**

This matter arises under the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* On May 17, 2023, Respondent Michael Long (“Requester” or “Respondent”), *pro se*, filed a RTKL request (“Request”) to the Borough, seeking certain alleged public records. The Borough partially granted responsive public records, and the Requester filed a statutory appeal to the Office of Open Records (“OOR”) per the RTKL. Following proceedings before an OOR Appeals Officer, on November 3, 2023, the OOR Appeals Officer issued a final determination in the matter of *Michael Long v. Bath Borough*, OOR Dkt. AP 2023-1598 that, in relevant part, impermissibly (1) refashioned the Request so it seeks certain additional alleged public records not covered by the actual Request, (2) required the Borough to conduct a supplemental search for

additional alleged public records, and (3) required the Borough to provide the “factual material” within confidential communications protected by the attorney-client privilege.

On November 17, 2023, the Borough filed a Petition for Reconsideration with the OOR, arguing that the OOR erred in (1) impermissibly refashioning the Request to seek certain alleged public records between less than the entire group of listed persons; (2) potentially granting access to such potential records other than emails; and (3) potentially granting access to part(s) of records that would reveal attorney-client privileged communications.

On December 1, 2023, per the RTKL, the Borough filed a statutory appeal of the OOR’s final determination issued on November 3, 2023, which appeal is pending before this Court at C-48-CV-2023-09734. That same date, the OOR issued a final order purporting to partially grant and partially deny the Borough’s Petition for Reconsideration. On December 27, 2023, because the applicable regulation (1 Pa. Code § 35.241(f)) only permits an agency to fully grant or fully deny a petition for reconsideration, per the RTKL, the Borough filed a statutory appeal of the OOR’s final order purporting to partially grant and partially deny reconsideration, which appeal is pending before this Court at *Borough of Bath v. Michael Long*, C-48-CV-2023-10559.

Despite the pending appeals, the OOR, on January 12, 2024, issued a Final Determination Upon Reconsideration in the matter docketed as *Long v. Bath Borough*, OOR Dkt. AP 2023-1398R that no longer refashioned the Request to cover certain alleged public records not covered by the actual Request or a supplemental search but required the Borough “to review the records and email attachments claimed to be protected by the attorney-client privilege to determine whether they contain non-exempt factual information...” On February 9, 2024, per the RTKL, the Borough filed a statutory appeal of the Final Determination Upon Reconsideration to this Court, where it is pending at *Borough of Bath v. Michael Long*, C-48-CV-2024-01039.

In the instant matter (*Borough of Bath v. Michael Long*, C-48-CV-2023-10559), the Respondent, on January 10, 2024, filed a Motion to Quash Appeal in response to the Borough's appeal sub judice filed on December 27, 2023. Also, on January 10, 2024, the Respondent filed a document titled "Answer, Preliminary Objections and Counterclaim" relative to the Borough's appeal sub judice filed on December 27, 2023. On March 18, 2024, the Borough filed an Answer to Motion to Quash Appeal. On March 18, 2024, the Borough filed a Motion to Strike Motion to Quash Appeal to which Respondent filed his response on April 5, 2024. On March 18, 2024, the Borough mailed a Motion to Strike Answer, Preliminary Objections and Counterclaim to the Prothonotary for filing and served a copy on Respondent that same date. Respondent filed his response on April 5, 2024. After realizing the Borough's Motion to Strike Answer, Preliminary Objections and Counterclaim was not yet docketed, on May 17, 2024, the Borough filed its Motion to Strike Answer, Preliminary Objections and Counterclaim and served another copy upon Respondent via first class mail on May 17, 2024.

The Borough's Motion to Strike Motion to Quash Appeal and the Borough's Motion to Strike Answer, Preliminary Objections and Counterclaim are ready for disposition and the Borough respectfully requests that this Honorable Court review and decide each of the Borough's Motions at the same time. The Borough has provided a brief in support of each Motion separately for organizational purposes. This brief is in support of the Borough's Motion to Strike Answer, Preliminary Objections and Counterclaim.

## **II. STATEMENT OF THE QUESTIONS INVOLVED.**

- A. Where, as a statutory appeal under the RTKL, neither the PA Rules of Civil Procedure nor the PA Rules of Appellate Procedure apply, should Respondent's

Answer, Preliminary Objections and Counterclaim be stricken where they are not authorized in this proceeding under the RTKL?

**SUGGESTED ANSWER:** Yes.

### **III. ARGUMENT.**

This matter is a statutory appeal from a final determination of the OOR under the RTKL. As a statutory appeal under the RTKL, the PA Rules of Civil Procedure do not apply. *See Borough of W. Easton v. Mezzacappa*, 74 A.3d 417, 420 (Pa. Commw. 2013) (“The Pennsylvania Rules of Civil Procedure do not apply to statutory appeals, such as an appeal under the RTKL”); *Allegheny Cnty. Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1033 (Pa. Commw. 2011). Similarly, the PA Rules of Appellate Procedure also do not apply to statutory appeals under the RTKL. *See* Pa.R.A.P. 103; *see Chambersburg Area Sch. Dist. v. Dorsey*, No. 2012-849 (C.P. Franklin May 18, 2012) (Walsh, J.) (noting, in the context of a Right-to-Know Law appeal, that neither the PA Rules of Civil Procedure nor the PA Rules of Appellate Procedure apply), *aff’d* 97 A.3d 1281 (Pa. Commw. 2014). Further, the RTKL does not authorize the filing of an answer, preliminary objections and/or counterclaim by the respondent to an appeal filed under the RTKL. *See generally* 65 P.S. §§ 67.101 *et seq.*

Because this matter is a statutory appeal under the RTKL, Respondent’s “Answer, Preliminary Objections and Counterclaim” is not appropriately before this Court. As a threshold matter, the RTKL does not authorize an answer, preliminary objections and/or counterclaim to be filed in response to an appeal filed by a party under the RTKL. Also, the combination of three distinct pleadings into one document muddies the waters as to whether Respondent is attempting to argue against Petitioner’s statutory appeal and/or requesting relief not authorized by the RTKL. Although inapplicable here as set forth above, Pa. R.Civ.P. 1017 contemplates the filing of individual documents, rather than one document containing various types of pleadings, *see*

*generally* Pa. R.Civ.P. 1017 (referencing “an answer” and “a preliminary objection” and “a counterclaim”), presumably for the purpose of avoiding the confusion created by a combined document.

As to the alleged preliminary objection portion of Respondent’s pleading, preliminary objections are governed by Pa. R.Civ.P. 1028; however, because the PA Rules of Civil Procedure do not apply to statutory appeals, no preliminary objections can be filed in a statutory appeal. Even if, *arguendo*, Respondent’s preliminary objections were properly before this Court, N.C.R. Civ.P. N1028(c)(2) requires preliminary objections to be “endorsed with a notice to plead because the objections involve issues that cannot be determined from facts of record...” Here, among other assertions, Respondent alleges that he is raising an “Objection to Borough’s Assertions of Non-existence of Non-email Records;” however, Respondent’s alleged Preliminary Objections do not include a notice to plead as required by N.C.R. Civ.P. N1028(c)(2). *See* Paragraph 4 of “Preliminary Objections” portion of Respondent’s “Answer, Preliminary Objections, and Counterclaim.” Additionally, Respondent has not filed a brief with his preliminary objections. *See* C.R. Civ.P. N1028(c)(1)(a) (“If a brief is not filed in accordance with this rule, the preliminary objections shall be dismissed by the court...”). Because preliminary objections are not authorized in a statutory appeal and Respondent has not complied with local rules governing the process for disposing of preliminary objections, Respondent’s preliminary objections should be stricken.

Additionally, Respondent purports to raise various matters in an alleged counterclaim, which, as set forth above, is not authorized in this statutory appeal under the RTKL as the RTKL does not authorize a counterclaim and the PA Rules of Civil Procedure do not apply. *See generally* 65 P.S. §§ 67.101 *et seq.*; *see also Mezzacappa*, 74 A.3d at 420. Like preliminary objections, counterclaims are governed by the PA Rules of Civil Procedure which do not apply here. For

example, under Pa. R.Civ. P. 1031(a), a “defendant” may file as a counterclaim “any cause of action cognizable in a civil action which the defendant has against the plaintiff...” However, Respondent is a “respondent,” as opposed to a “defendant” and this statutory appeal under the RTKL is not a “civil action” per PA Rules of Civil Procedure Rule 1001(a) because the PA Rules of Civil Procedure do not apply to this statutory appeal. *See* Pa.R.Civ.P. 1001(a); *see also Mezzacappa*, 74 A.3d at 420. Because of the foregoing, PA Rules of Civil Procedure Rules 1026 (Answer), 1029 (Answer), 1028 (Preliminary Objections and 1030 (Counterclaim), among other PA Rules of Civil Procedure, do not apply and, therefore, Respondent’s alleged Answer, Preliminary Objections and Counterclaim are not permitted in this statutory appeal. *Id.*

To the extent that the issues Respondent attempts to raise in his alleged counterclaim involve the underlying final determination appealed by the Borough<sup>1</sup>, Respondent could have filed a statutory appeal with this Honorable Court within 30 days after December 1, 2023, pursuant to RTKL Section 1302(a), regarding that part of the final determination issued on December 1, 2023. Respondent, however, did not file such appeal within 30 days after December 1, 2023. Accordingly, to the extent that Respondent argues that the OOR erred in its final determination, Respondent has waived all objections to the underlying final determination by the OOR by failing to timely appeal. He cannot now attempt to collaterally attack the merits of the underlying final determination when he failed to timely appeal it.

Additionally, Respondent does not raise any causes of action against the Borough in the “Counterclaim” section of his January 10, 2024 filing. Instead, Respondent sets forth a variety of arguments concerning why he believes the Final Determination is correct and seeks relief that is not available under the RTKL. *See* Paragraphs 20-21 of “Counterclaim” portion of Respondent’s

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<sup>1</sup> For example, Respondent argues that the OOR erred by not finding in the Final Determination that the Borough acted in bad faith, and, by not appealing that issue, such issue has been waived by Respondent.

“Answer, Preliminary Objections, and Counterclaim” (asking for “tailored discovery and forensic scrutiny” and a “comprehensive investigation and forensic audit”).

While the Borough recognizes that Respondent is *pro se* in this matter, Respondent must still abide by applicable rules of law. By Respondent filing his “Answer, Preliminary Objections, and Counterclaim” in this statutory appeal, Respondent has utterly muddied the waters and unduly required the Borough to sift through Respondent’s morass to determine that Respondent’s “Answer, Preliminary Objections, and Counterclaim” filed on January 10, 2024, is not properly before this Honorable Court.

#### **IV. CONCLUSION.**

For the foregoing reasons, the Borough respectfully asks this Honorable Court to strike Respondent’s “Answer, Preliminary Objections, and Counterclaim” filed on January 10, 2024.

I certify that 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.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC



By: \_\_\_\_\_  
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chadwick@schneelegal.com

Dated: July 29, 2024

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BOROUGH OF BATH,	:	IN THE COURT OF COMMON PLEAS
Petitioner,	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2023-10559

---

**CERTIFICATE OF SERVICE**

I, J. Chadwick Schnee, Esq., certify that, on this 29th day of July, 2024, I have served a true and correct copy of the attached Praecipe for Argument and Brief in Support of Motion to Strike “Answer, Preliminary Objections and Counterclaim” on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*



---

J. Chadwick Schnee, Esq.

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BOROUGH OF BATH, Petitioner,	:	IN THE COURT OF COMMON PLEAS
	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2023-10559

**PRAECIPE FOR ARGUMENT UNDER N211**

TO THE PROTHONOTARY:

Please list Petitioner's March 18, 2024 Motion to Strike Motion to Quash Appeal in the above-referenced matter on the August 20, 2024 argument list.

Respectfully submitted,

/s/ J. Chadwick Schnee, Esq.  
J. Chadwick Schnee, Esquire  
Attorney ID No. 306907  
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[chadwick@schneelegal.com](mailto:chadwick@schneelegal.com)  
*Counsel for Plaintiff, Borough of Bath*

Dated: July 29, 2024

## CERTIFICATE OF COMPLIANCE

I certify that 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.

/s/ J. Chadwick Schnee, Esq.  
J. Chadwick Schnee, Esquire  
Counsel for Plaintiff, Borough of Bath

Dated: July 29, 2024

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BOROUGH OF BATH, Petitioner,	:	IN THE COURT OF COMMON PLEAS
	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2023-10559

**PRAECIPE FOR ARGUMENT UNDER N211**

TO THE PROTHONOTARY:

Please list Petitioner's May 17, 2024 Motion to Strike Answer, Preliminary Objections and Counterclaim in the above-referenced matter on the August 20, 2024 argument list.

Respectfully submitted,

/s/ J. Chadwick Schnee, Esq.  
J. Chadwick Schnee, Esquire  
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[chadwick@schneelegal.com](mailto:chadwick@schneelegal.com)  
*Counsel for Plaintiff, Borough of Bath*

Dated: July 29, 2024

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/s/ J. Chadwick Schnee, Esq.  
J. Chadwick Schnee, Esquire  
Counsel for Plaintiff, Borough of Bath

Dated: July 29, 2024

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*Attorney for Petitioner*

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BOROUGH OF BATH, Petitioner,	:	IN THE COURT OF COMMON PLEAS
	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2024-01039

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**BRIEF IN SUPPORT OF MOTION TO QUASH CROSS-APPEAL**

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files this Brief in Support of Motion to Quash Cross-Appeal.

**I. STATEMENT OF FACTS.**

This matter arises under the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* On May 17, 2023, Respondent Michael Long (“Requester” or “Respondent”), *pro se*, filed a RTKL request (“Request”) to the Borough, seeking certain alleged public records. The Borough partially granted responsive public records, and the Requester filed a statutory appeal to the Office of Open Records (“OOR”) per the RTKL. Following proceedings before an OOR Appeals Officer, on November 3, 2023, the OOR Appeals Officer issued a final determination in the matter of *Michael Long v. Bath Borough*, OOR Dkt. AP 2023-1598 that, in relevant part, impermissibly (1) refashioned the Request so it seeks additional alleged public records not covered by the actual Request, (2) required the Borough to conduct a supplemental search for additional alleged public records and (3) required the Borough to provide the “factual material” within confidential communications protected by the attorney-client privilege.

On November 17, 2023, the Borough filed a Petition for Reconsideration with the OOR, arguing that the OOR erred in (1) impermissibly refashioning the Request to seek certain alleged public records between less than the entire group of listed persons; (2) potentially granting access to such potential records other than emails; and (3) potentially granting access to part(s) of potential records that would reveal attorney-client privileged communications.

On December 1, 2023, per the RTKL, the Borough filed a statutory appeal of the OOR's final determination issued on November 3, 2023, which appeal is pending before this Court at C-48-CV-2023-09734. That same date, the OOR issued a final order purporting to partially grant and partially deny the Borough's Petition for Reconsideration. On December 27, 2023, because the applicable regulation (1 Pa. Code § 35.241(f)) only permits an agency to fully grant or fully deny a petition for reconsideration, per the RTKL, the Borough filed a statutory appeal of the OOR's final order purporting to partially grant and partially deny reconsideration, which appeal is pending before this Court at *Borough of Bath v. Michael Long*, C-48-CV-2023-10559.

Despite the pending appeals, the OOR, on January 12, 2024, issued a Final Determination Upon Reconsideration in the matter docketed as *Long v. Bath Borough*, OOR Dkt. AP 2023-1398R that no longer refashioned the Request to cover additional alleged public records not covered by the actual Request or a supplemental search but required the Borough "to review the records and email attachments claimed to be protected by the attorney-client privilege to determine whether they contain non-exempt factual information..." On February 9, 2024, per the RTKL, the Borough filed a statutory appeal of the Final Determination Upon Reconsideration to this Court, where it is pending at *Borough of Bath v. Michael Long*, C-48-CV-2024-01039.

In the instant matter (*Borough of Bath v. Michael Long*, C-48-CV-2024-01039), the Respondent, on March 1, 2024, filed a document titled "Cross-Appeal of and Petition for Review

of Final Determination upon Reconsideration Dated January 12, 2024, Issued by Pennsylvania Office of Open Records at OOR Docket No. AP 2023-1598.” On March 18, 2024, the Borough filed a Motion to Quash Cross-Appeal of Michael Long. Respondent has not filed a reply to the instant Motion;<sup>1</sup> however, on May 13, 2024, Respondent filed a motion seeking leave to appeal *nunc pro tunc*.

## II. STATEMENT OF THE QUESTIONS INVOLVED.

A. Where Respondent has not timely filed an appeal or cross-appeal of the Final Determination Upon Reconsideration dated January 12, 2024, should his Cross-Appeal filed on March 1, 2024, be dismissed?

**SUGGESTED ANSWER:** Yes.

## III. ARGUMENT.

The Pennsylvania Right-to-Know Law (“RTKL”) permits parties to file appeals of final determinations issued by the OOR “[w]ithin 30 days” of when the final determination is issued. *See* 65 P.S. § 67.1302(a). The RTKL is completely silent as to whether a party can file a cross-appeal of a final determination. *See* 65 P.S. §§ 67.101 *et seq.*

The PA Rules of Appellate Procedure do not apply to statutory appeals under the RTKL. *See* Pa.R.A.P. 103; *see Chambersburg Area Sch. Dist. v. Dorsey*, No. 2012-849 (C.P. Franklin May 18, 2012) (Walsh, J.) (noting, in the context of a Right-to-Know Law appeal, that neither the PA Rules of Civil Procedure nor the PA Rules of Appellate Procedure apply), *aff’d* 97 A.3d 1281 (Pa. Commw. 2014). Nevertheless, Petitioner notes that Pa.R.A.P. 1512(a)(2) sets forth that parties

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<sup>1</sup> Petitioner has received a document titled “Response to Motion to Quash Cross-Appeal of Michael Long” dated April 9, 2024; however, upon a review of the docket, it appears that this Response has not been filed.

may file cross appeals “within 14 days of the date on which the first petition for review was served...”

In the present case, the OOR issued a final determination upon reconsideration in *Long v. Bath Borough*, OOR Dkt. AP 2023-1398R on January 12, 2024. On February 9, 2024, per the RTKL, Petitioner filed a timely statutory appeal of that decision and served Respondent with a copy of its appeal on February 12, 2024. The last possible day to have filed an appeal of the OOR’s final determination upon reconsideration mailed January 12, 2024 was Monday, February 12, 2024.<sup>2</sup>

Respondent did not file an appeal of the OOR’s final determination upon reconsideration by February 12, 2024. Accordingly, Respondent has waived all arguments concerning any errors he alleges that the OOR made in its final determination upon reconsideration because the RTKL does not permit appeals beyond the 30-day statutory period under 65 P.S. § 67.1302(a).

Even if, *arguendo*, Pa.R.A.P. 1512(a)(2) were to apply to this matter (even though, by virtue of Pa.R.A.P. 103, it does not<sup>3</sup>), Respondent would have had 14 days from Petitioner’s February 12, 2024 service of its appeal for Respondent to file a cross-appeal. In other words, Respondent would arguably have been permitted to file a cross-appeal no later than February 26, 2024 in the event that a cross-appeal of a final determination issued under the RTKL is permitted per Pa.R.A.P. 1512(a)(2). Here, however, Respondent did not file a cross-appeal by February 26, 2024. Instead, Respondent waited until March 1, 2024, to file a document purporting to cross-appeal the OOR’s final determination upon reconsideration mailed on January 12, 2024.

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<sup>2</sup> Because the 30<sup>th</sup> day fell on a Sunday, the last day to file an appeal was the following Monday. *See* 1 Pa.C.S. § 1908.

<sup>3</sup> Pa.R.A.P. 103 states “These rules govern practice and procedure in the Supreme Court, the Superior Court and the Commonwealth Court, including procedures in appeals to such courts from lower courts and the procedure for direct review in such courts of determinations of government units.”

As Respondent did not appeal the OOR's final determination upon reconsideration mailed on January 12, 2024 by Monday, February 12, 2024, per RTKL Section 1302(a), 65 P.S. § 67.1302(a), Respondent's purported cross appeal should be dismissed. Also, even if, *arguendo*, Pa.R.A.P. 1512(a)(2) were to apply to this matter (even though, by virtue of Pa.R.A.P. 103, it does not), Respondent did not file his purported cross appeal by February 26, 2024, as he waited until March 1, 2024 to do so.<sup>4</sup>

#### IV. CONCLUSION.

For the foregoing reasons, Petitioner respectfully asks that Respondent's March 1, 2024 "Cross-Appeal" be quashed.

I certify that 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.

Respectfully submitted,

SCHNEE LEGAL SERVICES, LLC



By: \_\_\_\_\_  
J. Chadwick Schnee, Esquire

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<sup>4</sup> Although Respondent's May 13, 2024 motion for leave to appeal *nunc pro tunc* has not been praeciped at this time, Respondent notes that Respondent claims that he attempted to file an appeal on February 12, 2024. However, even if accurate (which Petitioner disputes), Respondent apparently took no action until March 1, 2024 to attempt to file a cross-appeal. Additionally, although Petitioner filed the instant Motion to Quash Cross-Appeal on March 18, 2024, Respondent took no action to seek this court's permission to appeal *nunc pro tunc* until nearly two months later. Respondent's delay in seeking to appeal or cross-appeal should not be excused as a result of Respondent's inaction.

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Dated: July 29, 2024

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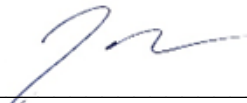
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Petitioner,	:	NORTHAMPTON COUNTY,
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MICHAEL LONG,	:	
Respondent.	:	NO. C-48-CV-2024-01039

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I, J. Chadwick Schnee, Esq., certify that, on this 29th day of July, 2024, I have served a true and correct copy of the attached Praecipe and Brief in Support of Motion to Quash Cross-Appeal on the person listed below via First Class Mail:

Michael Long  
220 Creek Road  
Bath, PA 18014  
*Respondent, pro se*

  
\_\_\_\_\_  
J. Chadwick Schnee, Esq.

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	:	NORTHAMPTON COUNTY,
	:	PENNSYLVANIA
v.	:	CIVIL DIVISION
MICHAEL LONG, Respondent.	:	
	:	NO. C-48-CV-2024-01039

**PRAECIPE FOR ARGUMENT UNDER N211**

TO THE PROTHONOTARY:

Please list Petitioner's March 18, 2024 Motion to Quash Cross-Appeal of Michael Long in the above-referenced matter on the August 20, 2024 argument list.

Respectfully submitted,

/s/ J. Chadwick Schnee, Esq.  
J. Chadwick Schnee, Esquire  
Attorney ID No. 306907  
Schnee Legal Services, LLC  
74 E. Main Street, #648  
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[chadwick@schneelegal.com](mailto:chadwick@schneelegal.com)  
*Counsel for Plaintiff, Borough of Bath*

Dated: July 29, 2024

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/s/ J. Chadwick Schnee, Esq.

J. Chadwick Schnee, Esquire  
Counsel for Plaintiff, Borough of Bath

Dated: June 24, 2024