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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

BRIEF IN SUPPORT OF MOTION FOR SANCTIONS

AND NOW COMES Petitioner Borough of Bath (“Petitioner” or “Borough”), who, by and through its undersigned legal counsel, files, in accordance with N211(c), this Brief in Support of Motion for Sanctions.

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 identified 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 identified records that would reveal attorney-client privileged communications.

The OOR issued a final order partially granting reconsideration of its Final Determination in response to the Borough’s Petition for Reconsideration,¹ and, on January 12, 2024, the OOR issued a Final Determination Upon Reconsideration in the matter docketed as *Long v. Bath Borough*, OOR Dkt. AP 2023-1598R 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 the instant statutory appeal of the Final Determination Upon Reconsideration to this Court, docketed here at *Borough of Bath v. Michael Long*, C-48-CV-2024-01039.

The sole question raised in the Borough’s Petition for Review (and, accordingly, the sole issue before this Court) is whether the attorney-client privileged emails (and email attachments) identified on the Borough’s privilege log are wholly protected by attorney-client privilege. *See* February 9, 2024 Borough Petition for Review; *see also Long, supra*.

¹ The Borough filed appeals of the OOR’s Final Determination and of its final order partially granting reconsideration, which were docketed before this Court at *Borough of Bath v. Michael Long*, C-48-CV-2023-09734 and *Borough of Bath v. Michael Long*, C-48-CV-2023-10559. By order dated August 28, 2024, the Honorable Abraham P. Kassis issued an order dismissing these appeals as moot.

On September 10, 2024, Respondent filed a “Motion for Protective Order, Sanctions, and Injunctive Relief” (“Motion for Protective Order”). On September 12, 2024, Respondent filed a Motion for Appointment of Court Experts (“Motion for Experts”). During a September 24, 2024 conference before the Honorable Jennifer R. Sletvold, the parties agreed that the instant motion could be decided on the briefs, and, on September 24, 2024, Judge Sletvold issued an order providing that “All current outstanding motions shall be submitted on brief[s] on the October 15, 2024 argument list.”

On September 24, 2024, the Borough hand-delivered two (2) written demands to Respondent to withdraw his Motion for Protective Order and Motion for Experts. *See* Exhibit A to Motion for Sanctions. On September 30, 2024, the Borough filed a verified response in opposition to Respondent’s Motion for Protective Order and Motion for Experts. On October 3, 2024, the Borough filed a response to Respondent’s Motion for Experts. That same day, Respondent filed a document purporting to be a legal brief in support of his Motion for Protective Order. On October 4, 2024, Respondent filed a document purporting to be a legal brief in support of his Motion for Experts. On October 10, 2024, the Borough filed briefs in opposition to Respondent’s motions, and, on October 17, 2024, Respondent filed three (3) Reply Briefs in support of his motions.

By Judge Morganelli’s Opinion of the Court entered on October 23, 2024, this Honorable Court denied Respondent’s Motions because they are not supported by any law. *See* Exhibit B to Motion for Sanctions.

As Respondent has not withdrawn either his Motion for Protective Order or his Motion for Experts within 28 days of his receipt of the Borough’s written demand, the Borough has filed the instant Motion for Sanctions. Petitioner – a public entity funded through its taxpayers – has

incurred costs as a result of Respondent's the Motion for Protective Order or the Motion for Experts, as Petitioner has incurred (a) \$7,976.50 (37.1 hours of time at \$215/hour) and \$4.61 in costs (postage for three mailings to Respondent) billed by J. Chadwick Schnee, Esq. of Schnee Legal Services, LCC as a result of responding to Respondent's Motions, responding to briefs accompanying Respondent's Motions, conducting legal research for the same and various communications related to Respondent's Motions and (b) \$1,620.00 billed by James F. Kratz, Esq., of Stevens & Lee as a result of aiding Attorney Schnee responding to Respondent's Motions and briefs accompanying Respondent's Motions, conducting legal research for same and various attorney-client privileged communications related to Respondent's Motions and aiding Attorney Schnee in his preparation of this Motion and the Borough's brief accompanying this Motion and attorney-client privileged communications related to same.

II. STATEMENT OF THE QUESTIONS INVOLVED.

- A. Should sanction be imposed on Respondent where neither his Motion for Protective Order nor Motion for Experts have any legal or factual support and are arbitrary and vexatious?

SUGGESTED ANSWER: Yes.

III. ARGUMENT.

This matter is a statutory appeal from a final determination of the OOR under the RTKL, and the limited question raised in the Borough's Petition for Review (and, accordingly, the sole issues before this Court) is whether certain records are protected by the attorney-client privilege. *See* February 9, 2024 Petition for Review.

Notwithstanding the narrow issues before this Court, Respondent filed two wholly-irrelevant motions before this Court: a September 10, 2024 Motion for Protective Order and a

September 12, 2024 Motion for Experts. Neither motion has any factual or legal support and, accordingly, are both arbitrary and vexatious.

In terms of legal support, the RTKL does not provide for the filing of a protective order or the appointment of experts. *See generally* 65 P.S. §§ 67.101 *et seq.*; *see* Exhibit B at 10 (“In short, there is no legal basis for the relief sought by Respondent”). Other than a passing, general citation to the RTKL, neither Motion contains any citation to any legal support whatsoever for the relief requested. The lack of any reference to any legal basis is telling: there is none.

As to the lack of any factual basis, Respondent has admitted that his Motion for Protective Order has nothing to do with the instant matter. *See* Respondent’s October 17, 2024 Reply Brief² at 1-2 (noting that his Motion for Protective Order “relate[s] to matters occurring after the [OOR] Final Determination and the closing of the certified record...”); *see also* Respondent’s Brief in Support of Motion for Protective Order at 7-10 (referencing a social media policy that is not at issue in this matter); *id.* at 10 (referencing a request for a legal hold notice that was not requested under the RTKL); *id.* at 5-6 (arguing that additional records exist, even though that it not an issue in this matter); *id.* at 6-7 (arguing that the Borough is “harassing” and “intimidating him). Respondent’s Motion for Experts equally has nothing to do with the instant matter, as it makes argues concerning alleged financial improprieties and other issues completely outside the limited scope of this RTKL appeal. *See* Respondent’s Biref in Support of Motion for Experts at 2-5.

Pa.R.Civ.P. 1023.1(c) provides that the signature of a *pro se* party constitutes a certification that, among other things, a filing (1) is not being presented for any improper purpose and (2) the

² Respondent filed three (3) reply briefs on October 17, 2024, and Respondent’s Reply Brief in connection with his Motion for Protective Order falsely represents that both 65 P.S. § 67.1302(a) and *City of Philadelphia v. Schweiker*, 858 A.2d 75 (Pa. 2004) contain language that they do not. Petitioner notes that reply briefs are not permitted under this Court’s local rules and has advised Respondent of the same. Petitioner reserves the right to seek sanctions in connection with Respondent’s reply briefs if they are not timely withdrawn.

claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law. The Judicial Code permits parties to obtain reasonable counsel fees “as a sanction against another participant for violation of any general rule which expressly prescribes the award of counsel fees as a sanction for dilatory, obdurate or vexatious conduct during the pendency of any matter,” 42 Pa.C.S. § 2503(6), and Pa.R.Civ.P. 1023.4(a)(2) permits the imposition of sanctions as a result of a violation of Pa.R.Civ.P. 1023.1.

As neither of the two motions have any legal support whatsoever and appear to being presented for the purpose of needlessly increasing the cost of this litigation, sanctions are appropriate. *See* Pa.R.Civ.P. 1023.1(c)(1)-(2); *see also In re Doyle*, 304 A.3d 1091, 1116 (Pa. 2023) (stating that conduct is “dilatory” where the record demonstrates “a lack of diligence that delayed proceedings unnecessarily and caused additional legal work”).

Additionally, 42 Pa.C.S. § 2503(9) permits parties to obtain counsel fees because “the conduct of another party in commencing the matter **or otherwise** was arbitrary, vexatious or in bad faith.” For purposes of sanctions, the word “arbitrary” has been defined as “based on random or convenient selection or choice rather than on reason or nature.” *See Carroll Twp. Auth. v. Mun. Auth. of City of Monongahela*, 518 A.2d 337, 341 (Pa. Commw. 1986) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 110 (1966)). As there is absolutely no legal or factual support for any of the relief sought in either motion, Respondent’s Motion for Protective Order and/or Motion for Experts is not based on “reason or nature,” and, as a result, is arbitrary.

Respondent’s Motion for Protective Order and Motion for Experts are also vexatious in nature. The question of whether a party acted vexatiously is a two-part inquiry looking to whether the conduct (1) was done “without sufficient grounds in either law or in fact” and (2) “[with] the

sole purpose of causing annoyance.” *Moyer v. Leone*, 260 A.3d 245, 255 (Pa. Super. 2021). As set forth above, there is no ground in either law or fact for either the Motion for Protective Order or Motion for Experts. Respondent reveals that the sole purpose of his Motion for Protective Order and/or Motion for Experts is to retaliate against the Borough as a result of a purported “pattern of harassment and intimidation” of him, *see* Motion for Protective Order at p. 6, rather than for any legitimate reason. Accordingly, Respondent’s Motion for Protective Order and/or Motion for Experts are vexatious for purposes of 42 Pa.C.S. § 2503(9).

As, on September 24, 2024, the Borough hand-delivered two (2) written demands to Respondent to withdraw his Motion for Protective Order and Motion for Experts no later than October 22, 2024, and Respondent has not done so, the instant motion is properly before this Court. Petitioner has incurred(a) \$7,976.50 (37.1 hours of time at \$215/hour) and \$4.61 in costs (postage for three mailings to Respondent) billed by J. Chadwick Schnee, Esq. of Schnee Legal Services, LCC as a result of responding to Respondent’s Motions, responding to briefs accompanying Respondent’s Motions, conducting legal research for the same and various communications related to Respondent’s Motions and (b) \$1,620.00 billed by James F. Kratz, Esq., of Stevens & Lee as a result of aiding Attorney Schnee responding to Respondent’s Motions and briefs accompanying Respondent’s Motions, conducting legal research for same and various attorney-client privileged communications related to Respondent’s Motions and aiding Attorney Schnee in his preparation of this Motion and the Borough’s brief accompanying this Motion and attorney-client privileged communications related to same. As a result, Petitioner respectfully ask this Court to issue an order sanctioning Respondent and awarding Petitioner its reasonable attorney’s fees and cost so that Borough taxpayers are not bearing the costs incurred as a result of Respondent’s frivolous, arbitrary and vexatious filings.

IV. CONCLUSION.

For the foregoing reasons, the Borough respectfully asks this Honorable Court to grant Petitioner’s Motion for Sanctions.

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,

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Dated: November 6, 2024

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	:	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 6th day of November, 2024, I have served a true and correct copy of the attached Brief in Support of Motion for Sanctions to the person listed below via First Class Mail:

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



J. Chadwick Schnee, Esq.