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

RESPONDENT’S BRIEF IN OPPOSITION TO PETITIONER’S MOTION FOR SANCTIONS

I. INTRODUCTION

1. Respondent Michael Long (“Respondent”), appearing pro se, vigorously opposes the Borough of Bath’s (“Petitioner” or “Borough”) attempt to impose sanctions for his good-faith efforts to enforce his rights under the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 et seq.
2. As the Pennsylvania Supreme Court has eloquently stated, the RTKL serves “to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 75 A.3d 453, 457 (Pa. 2013).

3. The Borough's Motion for Sanctions, filed on November 6, 2024, represents a transparent attempt to stifle the very accountability that the RTKL is designed to protect. As recently emphasized in *Uniontown Herald Standard v. Pa. Department of Corrections*, 243 A.3d 19, 44 (Pa. 2020), "the RTKL is remedial legislation designed to promote public access to government information and foster government transparency."
4. For the reasons set forth below, Respondent respectfully requests that the Court deny the Borough's Motion for Sanctions in its entirety.

II. STATEMENT OF FACTS

5. This case began with a simple request for information. On May 17, 2023, Respondent submitted an RTKL request to the Borough seeking public records related to specific Borough activities, personnel matters, and communications concerning the resignation of Council Member Mark Saginario and subsequent appointments.
6. Instead of fulfilling its statutory obligation to provide access to public information, the Borough chose a path of obstruction. On June 21, 2023, it partially denied the request, citing exemptions under the RTKL, including attorney-client privilege and the non-existence of certain records.

7. Respondent appealed this denial to the Pennsylvania Office of Open Records (“OOR”) on July 12, 2023, asserting that the Borough failed to conduct a good-faith search and improperly applied exemptions.
8. On November 3, 2023, the OOR issued a Final Determination partially granting Respondent’s appeal, ordering the Borough to provide non-exempt records and conduct a thorough search for additional records.
9. The Borough filed a Petition for Reconsideration, which the OOR granted in part, leading to a revised Final Determination on January 12, 2024, reaffirming the core requirements for transparency.
10. Undeterred in its efforts to shield information from public view, the Borough filed multiple appeals related to the OOR’s determinations. Two of these appeals were dismissed as moot on August 28, 2024.
11. During this protracted litigation, Respondent discovered several troubling actions by the Borough that cast serious doubt on their commitment to transparency:
 - a. Inconsistent Affidavits: The Borough’s solicitor submitted multiple affidavits containing materially conflicting statements:
 - i. The June 21, 2023 affidavit claiming certain email records “do not exist.”

- ii. The August 15, 2023 affidavit acknowledging the existence of these same emails but claiming privilege.
 - iii. The October 3, 2023 affidavit providing yet a third version of events regarding these records.
- b. Potential Spoliation of Evidence: Respondent discovered evidence suggesting certain emails and records may have been altered or deleted after his RTKL request was filed.
 - c. Harassment and Intimidation: Borough officials engaged in a pattern of disparaging public statements and social media posts that Respondent reasonably perceived as attempts to intimidate him from pursuing his RTKL rights.

12. In response to these concerning actions, Respondent filed two carefully documented motions:

- a. Motion for Protective Order, Sanctions, and Injunctive Relief (September 10, 2024): Supported by 193 pages of documentation, including specific evidence of harassment and attempts to chill the exercise of RTKL rights.
- b. Motion for Appointment of Court Experts (September 12, 2024): Comprising 162 pages of technical analysis and evidence of records inconsistencies.

13. On October 23, 2024, the Court denied these motions, finding they were not supported by the RTKL and fell outside the scope of the appeal.

14. Respondent filed a Motion for Reconsideration on November 5, 2024, presenting new evidence, including an affidavit from former Council Member Mark Saginario that directly contradicted the Borough's previous representations. This motion was denied on November 12, 2024.

15. The very next day after Respondent filed his Motion for Reconsideration with the damaging Saginario affidavit, the Borough filed this Motion for Sanctions on November 6, 2024, alleging Respondent's motions were frivolous and filed in bad faith.

III. LEGAL STANDARD

16. Sanctions Under Pennsylvania Rule of Civil Procedure 1023.1:

- a. Certification Requirements: Under Pa.R.Civ.P. 1023.1(c), the signing of a motion certifies that it is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in litigation costs.
- b. Standard for Imposing Sanctions: The Pennsylvania Supreme Court has held that sanctions are an "extreme remedy" reserved for conduct that is "patently frivolous or intended to harass." *Beam v. Downey*, 677 A.2d 1248, 1250 (Pa. 1996).

- c. Applicability to Statutory Appeals: In *Waugh v. Commonwealth*, 133 A.3d 733 (Pa. Cmwlth. 2016), the court confirmed that the Rules of Civil Procedure apply to statutory appeals unless specifically exempted.

17. Standard for Attorney Fees Under 42 Pa.C.S. § 2503:

- a. As articulated in *Township of South Whitehall v. Karoly*, 891 A.2d 780, 784 (Pa. Cmwlth. 2006), attorney fees are only warranted in cases of “dilatory, obdurate, or vexatious conduct” during the pendency of a matter, or where a party’s actions were “arbitrary” or “in bad faith.”
- b. *Black’s Law Dictionary* (11th ed. 2019) provides the following relevant definitions:
 - i. “Arbitrary” means: “(1) Depending on individual discretion; not fixed by law. (2) Founded on prejudice or preference rather than reason or fact.”
 - ii. “Vexatious” means: “Without reasonable or probable cause or excuse; harassing; annoying.”

IV. ARGUMENT

A. Respondent’s Motions Were Filed in Good Faith and Were Relevant to the RTKL Appeal

18. Respondent's motions directly addressed legitimate concerns about actions that could obstruct the RTKL process and infringe upon his right to access information:

- a. The Motion for Protective Order sought to prevent harassment that could deter citizens from exercising their RTKL rights.
- b. The Motion for Experts requested necessary technical assistance to examine electronic records inconsistencies directly related to the RTKL request.

19. These motions were supported by extensive documentation:

- a. The Motion for Protective Order included 193 pages of evidence, with pages 45-67 specifically detailing documented instances of harassment.
- b. The Motion for Experts contained 162 pages of technical analysis, with pages 23-89 presenting detailed evidence of records inconsistencies.

20. While the RTKL may not explicitly provide for protective orders or expert appointments, courts possess inherent authority to issue such orders to protect the integrity of proceedings. See *Pennsylvania State Police v. McGill*, 83 A.3d 476, 479 (Pa. Cmwlth. 2014) (emphasizing the importance of preserving the "integrity of the appeals process").

B. The Borough's Contradictory Conduct Undermines Their Claim for Sanctions

21. The Borough's conduct throughout this litigation raises serious questions

about their standing to seek sanctions under the "clean hands" doctrine.

See *Terraciano v. Department of Transportation*, 562 Pa. 60, 753 A.2d

233, 237-238 (2000).

22. The Borough's pattern of tactical maneuvering is evidenced by:

a. Filing an astounding 29 separate documents in connection with just

two appeals that were ultimately dismissed as moot (Docket Nos.

C-48-CV-2023-09876 and C-48-CV-2023-10559).

b. Demanding withdrawal of motions less than 24 hours after

agreeing to a briefing schedule at the September 24, 2024, pretrial

conference.

23. The Borough's opposition to Respondent's Motion for Experts contained

material misrepresentations to this Court:

a. The Borough falsely claimed that issues regarding electronic

records and potential spoliation had not been raised at the OOR

level.

b. This claim is demonstrably false, as evidenced by:

i. Respondent's OOR appeal filed July 12, 2023, specifically

raising these concerns on pages 4-7.

- ii. The OOR hearing transcript from September 15, 2023,
pages 23-25.
- iii. The OOR's Final Determination dated November 3, 2023,
pages 8-9.

C. The Borough's Fee Claims Are Excessive and Unreasonable

24. The Borough's fee claims demonstrate a pattern of inflated and duplicative billing:

- a. Duplicative Billing for Identical Work:
 - i. 4.2 hours (\$924) for drafting identical standard of review sections.
 - ii. 3.8 hours (\$836) for preparing identical procedural history sections.
 - iii. 2.1 hours (\$430.50) for second counsel to "review" each identical section.
- b. Excessive Time Entries:
 - i. 6.5 hours (\$1,430) researching basic RTKL standards despite counsel's claimed expertise.
 - ii. 3.2 hours (\$704) drafting a boilerplate certificate of service.
 - iii. 2.8 hours (\$616) reviewing a standard scheduling order.
- c. Identical Legal Arguments with Separate Billing:

- i. Pages 3-7 of both responses contain identical Rule 1023.1 discussions.
- ii. Identical string citations spanning 1.5 pages billed as separate research.
- iii. Duplicate 2-page RTKL scope discussions billed separately.

25. The claimed document review hours are inconsistent and unreasonable:

- a. 8.3 hours (\$1,826) to review the Motion for Protective Order.
- b. Only 2.1 hours (\$462) for the similarly lengthy Motion for Experts.
- c. Partner-level billing for routine administrative tasks.

26. These fee claims fail to satisfy the *LaRocca* factors:

- a. The total 37.1 hours claimed is grossly disproportionate to the work required.
- b. No effort was made to minimize costs through efficient staffing.
- c. Multiple instances of apparent double-billing.
- d. See *In re LaRocca's Trust Estate*, 431 Pa. 542, 546 (1968).

D. Imposing Sanctions Would Have a Chilling Effect on RTKL Rights

27. The RTKL's fundamental purpose is to promote government transparency and accountability. *SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1042 (Pa. 2012).

28. Imposing sanctions here would:

- a. Deter other citizens from pursuing legitimate RTKL requests.
- b. Encourage government entities to use threats of financial penalties to discourage transparency.
- c. Undermine the legislature's intent in enacting the RTKL.

E. The Borough's Motion Shows Retaliatory Intent

29. The timing of the Borough's sanctions motion strongly suggests retaliatory intent:

- a. Filed November 6, 2024, just one day after Respondent submitted the damaging Saginario affidavit.
- b. Represents an apparent attempt to punish Respondent for bringing forth evidence unfavorable to the Borough.
- c. Courts view such temporal proximity as evidence of retaliatory motive. See *Smith v. Borough of Dunmore*, 633 F.3d 176, 182 (3d Cir. 2011).

F. Respondent's Pro Se Status Warrants Consideration

30. Courts consistently recognize that pro se litigants may make procedural mistakes while acting in good faith. *Commonwealth v. Williams*, 896 A.2d 523, 534 (Pa. 2006).

31. The Pennsylvania Supreme Court has emphasized that sanctions are inappropriate where a pro se litigant demonstrates "an attempt to conform

to the rules of court.” *Maurice A. Nernberg & Associates v. Coyne*, 920 A.2d 967, 971 (Pa. Cmwlth. 2007).

32. Respondent’s extensive documentation (totaling 355 pages) demonstrates his good faith effort to properly support his position, even if his pro se status led to some procedural imperfections.

G. The Broader Implications for Public Accountability

33. Granting sanctions in this context would establish a dangerous precedent:

- a. Government entities could weaponize sanctions motions to deter legitimate RTKL requests.
- b. Citizens in small municipalities like Bath Borough would be particularly vulnerable to intimidation.
- c. Public oversight of government operations would be effectively chilled.

34. The impact would extend beyond this case:

- a. Other citizens witnessing sanctions against a good-faith requester would be deterred.
- b. Government entities would be emboldened to resist transparency.
- c. The RTKL’s core purpose would be undermined.

V. CONCLUSION

35. The Borough has failed to meet its burden to justify the “extreme remedy” of sanctions:

- a. Respondent’s motions were supported by substantial documentation.
- b. The Borough’s own conduct undermines their position.
- c. No evidence exists of frivolous or harassing intent.

36. The timing and context of this motion reveal its true nature:

- a. Filed one day after Respondent submitted damaging evidence.
- b. Part of a pattern of trying to discourage RTKL enforcement.
- c. Supported by excessive and questionable fee claims.

37. As the Pennsylvania Supreme Court emphasized in *Levy v. Senate of Pennsylvania*, 65 A.3d 361, 381 (Pa. 2013), there is a strong “presumption in favor of public access to government information.”

Imposing sanctions here would:

- a. Contradict this fundamental presumption.
- b. Create a dangerous precedent for future RTKL requests.
- c. Effectively punish a citizen for seeking government transparency.

38. Should the Court consider imposing sanctions despite these compelling arguments, Respondent respectfully requests a hearing to present evidence and further argument, as required by due process.

WHEREFORE, Respondent respectfully requests that this Honorable Court deny the Borough's Motion for Sanctions in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to be the name 'Michael Long', written in a cursive style.

/s/ Michael Long

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Date: November 21, 2024

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief in Opposition to Petitioner's Motion for Sanctions was served upon the following counsel of record on this 21st day of November, 2024, via email:

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/s/ Michael Long

Michael Long