
BOROUGH OF BATH,
Petitioner,

v.

MICHAEL LONG,
Respondent.

: IN THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY,

:
PENNSYLVANIA

CIVIL DIVISION

:

:
NO. No. C-48-CV-2024-01039 _

**RESPONDENT’S MOTION FOR LEAVE TO SUPPLEMENT THE RECORD
AND FOR IN-CAMERA REVIEW (INCLUDING METADATA
CONFIRMATION)**

AND NOW COMES Respondent, Michael Long (“Respondent”), by and through the undersigned, respectfully moves this Honorable Court for leave to supplement the record with newly discovered evidence and to conduct an in-camera review, including confirmation of metadata, of withheld communications. This Motion arises under the Pennsylvania Right-to-Know Law (“RTKL”), 65 Pa. Stat. and Cons. Stat. Ann. §§ 67.101–.3104 (West 2023), and is prompted by the Borough of Bath’s (“Borough”) contradictory sworn submissions and the need for this Court to independently verify the Borough’s privilege claims. In support thereof, Respondent avers as follows:

I. INTRODUCTION

1. This matter arises from a Right-to-Know Law request submitted by Respondent seeking, among other things, communications concerning the resignation of Council member Mark Saginario, the subsequent vacancy on Borough Council, the hiring or prospective employment of Mayor (and part-time clerk) Fiorella Mirabito, and related Borough policies and personnel matters.

2. On June 23, 2023, the Borough issued a Final Response, asserting it had conducted a “thorough” search and producing only three non-privileged emails plus an Employee Earnings Report (Borough of Bath, Final Response to RTKL Request from Michael Long 1–4 (June 23, 2023)). The Borough withheld or denied additional records by invoking attorney-client privilege.
3. During the subsequent appeal before the Office of Open Records (“OOR”), OOR Docket No. AP 2023-1598, the Borough’s narrative shifted. Through multiple affidavits and an exemption log, the Borough acknowledged previously undisclosed “privileged” emails and revised earlier sworn statements. These filings include the Attestation of Borough Manager Bradford T. Flynn, dated July 24, 2023 (OOR Ex. 4, Flynn Attestation ¶¶ 4–12), two Affidavits by Solicitor James Kratz, dated July 24, 2023, and October 4, 2023 (OOR Ex. 4, Kratz July 24 Aff. ¶¶ 29–33; OOR Ex. 15, Kratz Oct. 4 Aff. ¶¶ 1–19), and an Exemption Log submitted on or about October 4, 2023.
4. Notably, the Borough claims it sought legal advice on October 3, 2021, regarding Council member Saginario’s “prospective resignation.” However, newly discovered evidence—namely, the Declaration of Former Council member (Former) Mark Saginario, dated November 3, 2024 (attached hereto as Exhibit A)—shows that no Borough official was aware of Mr. Saginario’s resignation until October 4, 2021.

5. The Borough also withheld multiple April 21, 2022, emails, allegedly “authored by Flynn,” concerning Mayor Mirabito’s prospective employment—directly contradicting Manager Flynn’s earlier claim that no such emails existed. These inconsistencies warrant supplementing the record and conducting an in-camera review (including metadata confirmation) to verify the Borough’s privilege claims and underlying factual representations.

II. FACTUAL BACKGROUND

A. The June 23, 2023, Final Response

6. In its Final Response of June 23, 2023, the Borough produced only three non-privileged emails plus an Employee Earnings Report, citing attorney-client privilege to withhold or deny additional documents (Final Response, at 1–4 (June 23, 2023)). Notably absent were any references to communications about Mayor Mirabito’s hiring or the alleged October 3, 2021, consultation regarding a “prospective resignation.”

B. Flynn Attestation and First Kratz Affidavit (July 24, 2023)

7. In his July 24, 2023, Attestation, Borough Manager Bradford Flynn asserted that a comprehensive server search—conducted with the Borough’s IT vendor—revealed no emails about Mayor Mirabito’s hiring or employment (OOR Ex. 4, Flynn Attestation ¶¶ 7, 11–12). Simultaneously, Solicitor Kratz submitted an affidavit that likewise omitted any mention of Flynn-authored emails concerning Ms. Mirabito (OOR Ex. 4, Kratz July 24 Aff.).

8. Flynn’s Attestation also vaguely alluded to an October 3, 2021, privileged email regarding Mr. Saginario’s resignation, but failed to explain how the Borough could have sought legal advice on that date if it did not learn of the resignation until October 4 (OOR Ex. 4, Flynn Attestation ¶ 10).

C. Second Kratz Affidavit (October 4, 2023) and Exemption Log

9. On October 4, 2023, Solicitor Kratz filed a second affidavit and an Exemption Log, revealing withheld emails from April 21, 2022, labeled “authored by Flynn” and discussing Mayor Mirabito’s prospective employment (OOR Ex. 15, Kratz Oct. 4 Aff. & attached Exemption Log (Records #13–#15)). This disclosure contradicts Flynn’s prior sworn statement that no such emails existed (compare OOR Ex. 4, Flynn Attestation ¶¶ 11–12 with OOR Ex. 15, Exemption Log (Records #13–#15)).
10. The Borough continues to assert privilege over an October 3, 2021, email (Record #5) allegedly seeking legal advice about Mr. Saginario’s resignation, even though newly revealed evidence indicates no one at the Borough knew of Mr. Saginario’s plan to resign before October 4, when he formally resigned.

D. Newly Discovered Declaration of Former Council member Saginario

11. On November 3, 2024, Mr. Saginario executed a Declaration stating that he finalized his position with Tatamy Borough only on October 4, 2021, announced his Bath Borough resignation that same evening, and did not discuss his impending employment change with Bath officials at any time before October 4,

2021 (Declaration of Former Councilmember M. Saginario ¶¶ 4–6, 8–9 (Nov. 3, 2023), attached as Exhibit A).

12. This Declaration directly contradicts the Borough’s assertion that it sought legal advice on October 3, 2021, for Mr. Saginario’s “prospective resignation” (see *Dages v. Carbon Cnty.*, 44 A.3d 89, 92 (Pa. Commw. Ct. 2012)). If the Borough was unaware of his resignation until October 4, any privilege claim grounded in an October 3 consultation is unfounded.

13. Because this Declaration was not available during the OOR proceedings, it qualifies as newly discovered evidence justifying record supplementation under *Bowling v. Office of Open Records*, 75 A.3d 453, 466 & n.14 (Pa. 2013), and *Pa. Dep’t of Educ. v. Bagwell*, 114 A.3d 1113, 1120 (Pa. Commw. Ct. 2015).

III. LEGAL ARGUMENT

A. Leave to Supplement the Record Is Warranted

14. This Court exercises de novo review of OOR determinations, allowing the introduction of new evidence post-determination (*Bowling v. Office of Open Records*, 75 A.3d 453, 466 & n.14 (Pa. 2013); *Pa. Dep’t of Educ. v. Bagwell*, 114 A.3d 1113, 1120 (Pa. Commw. Ct. 2015)).

15. The Declaration of Former Council member Saginario was not previously available to the OOR. It refutes the Borough’s central premise that it knew of Mr. Saginario’s resignation as early as October 3, 2021—a key basis for withholding

“Record #5.” Thus, supplementation is necessary for an accurate and complete record.

B. In-Camera Review, Including Metadata Confirmation, Is Necessary

16. Under 65 Pa. Stat. and Cons. Stat. Ann. § 67.708(a)(1) (West 2023), an agency bears the burden of proving any claimed exemption by a preponderance of the evidence (*Heavens v. Pa. Dep’t of Env’t Prot.*, 65 A.3d 1069, 1073 (Pa. Commw. Ct. 2013)). Further, RTKL exemptions are narrowly construed in favor of transparency (*Pa. Dep’t of Educ. v. Bagwell*, 114 A.3d 1113, 1122 (Pa. Commw. Ct. 2015)).
17. The Borough’s contradictory affidavits, late disclosures (Records #13–#15), and the factually impossible timeline surrounding the alleged October 3 consultation raise significant doubts about whether the Borough actually knew of Saginario’s resignation on October 3, 2021, whether Manager Flynn accurately reported the existence and authorship of emails regarding Mayor Mirabito’s hiring, and whether the withheld communications truly involve legal advice or instead constitute unprivileged factual/administrative exchanges (see *Gillard v. AIG Ins. Co.*, 15 A.3d 44, 52–59 (Pa. 2011)).
18. Where an agency’s affidavits and logs are undermined by newly discovered evidence, in-camera review is essential to ascertain the nature and timing of the withheld documents (*Office of the Governor v. Davis*, 122 A.3d 1185, 1193–94

(Pa. Commw. Ct. 2015) (en banc); *Office of Open Records v. Center Twp.*, 95 A.3d 354, 370 (Pa. Commw. Ct. 2014) (en banc)).

19. Metadata confirmation is vital. It allows the Court to verify creation, transmission, and authorship dates, ensuring that an alleged October 3, 2021, email predated any known resignation, and that Flynn’s authorship of the April 21, 2022, emails is accurately described (*Office of Open Records v. Center Twp.*, 95 A.3d 354, 370 (Pa. Commw. Ct. 2014)). Without metadata, the Court cannot definitively resolve these factual inconsistencies.

IV. REQUEST FOR RELIEF

WHEREFORE, Respondent Michael Long respectfully requests that this Honorable Court:

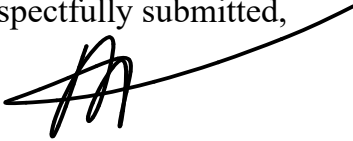
20. **Grant Leave to Supplement the Record:** Permit Respondent to supplement the record with the Declaration of Former Council member (Former) Mark Saginario, dated November 3, 2024 (attached hereto as Exhibit A), as newly discovered evidence under the Court’s de novo review authority (*Bowling v. Office of Open Records*, 75 A.3d 453, 466 & n.14 (Pa. 2013); *Pa. Dep’t of Educ. v. Bagwell*, 114 A.3d 1113, 1120 (Pa. Commw. Ct. 2015)).

21. **Order In-Camera Review (Including Metadata Confirmation):** Direct the Borough to produce all withheld emails referenced in its exemption logs (including, but not limited to, Record #5 and Records #13–#15), together with metadata, for in-camera inspection by this Court, allowing an independent

determination of their creation dates, authors, recipients, and privileged or non-privileged content.

22. Grant Such Other Relief as Deemed Just and Proper: Issue any additional orders necessary to ensure compliance with the RTKL's public-transparency mandate and to address the Borough's contradictory factual assertions about the withheld records.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'ML', with a long horizontal line extending to the right across the signature.

/s/ Michael Long

Michael Long

220 Creek Road

Bath, PA 18014

(610) 507-3721

Michael.Long479@gmail.com

Date: December 23, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December 2024, a true and correct copy of the foregoing Respondent's Motion for Leave to Supplement the Record and for In-Camera Review (Including Metadata Confirmation) was served via email upon the following counsel of record:

J. Chadwick Schnee, Esq.
Schnee Legal Services, LLC
74 E. Main St. #648
Lititz, PA 17543
chadwick@schneelegal.com

A handwritten signature in black ink, appearing to be 'M Long', with a long horizontal stroke extending to the right.

/s/ Michael Long
Michael Long

EXHIBIT

A

DECLARATION OF MARK SAGINARIO

I, **Mark Saginario**, hereby declare and state as follows:

1. I make this declaration based upon personal knowledge of the facts and circumstances described herein.
2. On September 29, 2021, I submitted my resume to the Borough of Tatamy for consideration for a full-time borough manager position.
3. Between September 30, 2021, and October 2, 2021, I participated in several interviews for the aforementioned position.
4. On Sunday, October 3, 2021, I was offered the appointment as Borough Manager of Tatamy, with the understanding that I would need to attend their Monday, October 4, 2021 council meeting for formal hiring.
5. On October 4, 2021, I attended the Tatamy Borough Council meeting and accepted council's appointment for the position of Borough Manager.
6. Following the Tatamy meeting, I attended the Bath Borough Council meeting, arriving during executive session, where I announced to the full council, the solicitor, and borough manager my immediate resignation.
7. The basis for my immediate resignation was twofold:
 - a. My new employment schedule would make it impossible to commit to Bath borough business due to conflicting meeting schedules;
 - b. The potential conflict of interest as both municipalities might compete for similar funding or grants.

8. I did not discuss my change of employment with any Bath borough officials prior to the October 4 meeting.
9. After my resignation, my only subsequent interactions with Bath Borough were:
 - a. Submitting a formal resignation letter;
 - b. Receiving one phone call from the borough manager requesting I amend my resignation date to December 31, 2021, for accounting purposes.
10. I did not attend any council meetings after October 4, 2021, as a council member.
11. My borough email access was terminated within approximately two weeks of my verbal resignation.
12. I have no knowledge of any discussions regarding the appointment of my replacement on the council.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 3rd day of November, 2024.


Mark Saginario (Nov 3, 2024 20:30 EST)

Mark Saginario