

J. Chadwick Schnee, Esquire (PA 306907)
Schnee Legal Services, LLC
74 E. Main Street, #648
Lititz, PA 17543
(717) 400-5955
Fax: (717) 882-5271
chadwick@schneelegal.com

Attorney for Petitioner

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 OPPOSITION TO MOTION FOR LEAVE TO SUPPLEMENT

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 Opposition to Motion for Leave to Supplement.

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 Request² 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 motion at issue in this matter is the latest in a series of unsuccessful attempts by Respondent to supplement the record in this RTKL appeal. On May 13, 2024, Respondent filed a “Motion to Supplement the Record,” which Respondent, as of this writing, has not praeciped for

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.

² Specifically, based on the OOR’s Final Determination, Records 2-20 identified in the Borough’s Exemption Log, *see* OOR Certified Record at Exhibit 15, pages 13-19, are not responsive to the Request as written are outside the scope of this appeal.

disposition. On September 10, 2024, Respondent filed a Motion of Protective Order, Sanctions, and Injunctive Relief and, on September 12, 2024, Respondent filed a Motion for Appointment of Court Experts requesting the Court appoint a forensic financial auditor to perform an unspecified audit of Bath's financials and a forensic computer specialist to perform an unspecified review of electronic financial records of the Borough. On October 23, 2024, the Honorable John M. Morganelli denied Respondent's Motion of Protective Order, Sanctions, and Injunctive Relief and Respondent's Motion for Appointment of Court Experts. Dissatisfied, Respondent, on November 5, 2024, filed a motion seeking reconsideration of Judge Morganelli's order denying Respondent's Motion of Protective Order, Sanctions, and Injunctive Relief and Respondent's Motion for Appointment of Court Experts. Via his motion for reconsideration, Respondent requested the record be supplemented to add Respondent's proffered Declaration of Mark Saginario, dated November 3, 2024, to the record. By Order dated November 12, 2024, the Honorable Judge Morganelli denied Respondent's motion for reconsideration.

Because Respondent repeatedly filed materials devoid of legal support, completely fabricated citations of cases and represented that various cases and statutes contain language they do not, Petitioner, on November 6, 2024, filed a Motion for Sanctions. After argument, the Honorable Abraham P. Kassis issued an order on December 9, 2024 imposing sanctions on Respondent "based on Respondent's frivolous, vexatious, and bad faith filing of" Respondent's Motion of Protective Order, Sanctions, and Injunctive Relief and Motion for Appointment of Court Experts which were, among other things, irrelevant and unsupported by legal authority. Judge Kassis additionally noted that "Petitioner is without prejudice to seek additional sanctions if Respondent files further dilatory motions without property legal basis."

Undeterred by his repeated prior attempts to supplement the record, the order imposing sanctions upon him and a September 24, 2024 order explicitly stating that “this matter shall be decided on the certified record developed by the Office of Open Records,” Respondent has filed yet another motion seeking to supplement the record in this matter. Specifically, on December 23, 2024, Respondent filed a “Motion for Leave to Supplement the Record and for In-Camera Review (Including Metadata Confirmation)” (“Motion”), along with a supporting brief and praecipe for argument.

II. STATEMENT OF THE QUESTIONS INVOLVED.

A. Should Respondent’s latest motion seeking to supplement the record be denied where it is barred by previous orders of this Court?

SUGGESTED ANSWER: Yes.

B. Should further sanctions be imposed on Respondent as a result of his latest dilatory motion?

SUGGESTED ANSWER: Yes.

C. Should Respondent’s Motion be denied where it is meritless?

SUGGESTED ANSWER: Yes.

III. ARGUMENT.

A. Respondent's Motion should be denied because it is barred by this Court's previous orders.

This is a second request of Respondent Michael Long (“Respondent”) to supplement the record in this appeal to add the Respondent proffered Declaration of Mark Saginario dated November 3, 2024, to the record. On September 10, 2024, Respondent filed a Motion of Protective Order, Sanctions, and Injunctive Relief and, on September 12, 2024, Respondent filed a Motion for Appointment of Court Experts requesting the Court appoint a forensic financial auditor to perform an unspecified audit of Bath’s financials and a forensic computer specialist to perform an unspecified review of electronic financial records of the Borough. On October 23, 2024, the Honorable John M. Morganelli denied Respondent’s Motion of Protective Order, Sanctions, and Injunctive Relief and Respondent’s Motion for Appointment of Court Experts. On November 5, 2024, Respondent filed a Motion for Reconsideration of the October 23, 2024, Order. Via his Motion for Reconsideration, Respondent requested the record be supplemented to add Respondent’s proffered Declaration of Mark Saginario dated November 3, 2024, to the record. By Order dated November 12, 2024, the Honorable Judge Morganelli denied Respondent’s Motion for Reconsideration.

Respondent was even *sanctioned* by this Court due to his baseless and repeated motions to supplement the record, as, on December 9, 2024, Judge Kassis issued an order imposing sanctions on Respondent “based upon the Respondent’s frivolous, vexatious and bad faith filing of” Respondent’s Motion of Protective Order, Sanctions, and Injunctive Relief and Motion for Appointment of Court Experts which were, among other things, irrelevant and unsupported by legal authority.

Respondent's instant Motion once again seeks to supplement the record before this Court to add Respondent's proffered Declaration of Mark Saginario dated November 3, 2024, to the record. Because this is yet another misguided attempt seeking to supplement the record, this Court should deny the Motion for that reason alone. However, the Motion is also barred by this Court's September 24, 2024 scheduling order. Specifically, due to the repeated frivolous motions filed by Respondent and the Borough's interest in having this matter resolved, the Borough sought a pre-trial conference, and, on September 24, 2024, this Court issued an order setting forth various deadlines for the purpose of bringing this matter to a final resolution. The September 24, 2024 Order provides that "this matter shall be decided on the certified record developed by the Office of Open Records, the briefs of the parties and argument" and, in accordance with that schedule, Petitioner filed its brief – based on the content of the certified record lodged by the OOR – on November 22, 2024. Despite the fact that the September 24, 2024 order specifically provided that the matter would be decided on the OOR's certified record and the briefs and the fact that his repeated previous attempts to supplement the record proved unsuccessful, Respondent, on December 23, 2024, filed the instant Motion to supplement the record once again. Quite simply, because Respondent is attempting to expand the record on which this matter will be decided, Respondent's Motion conflicts with this Court's September 24, 2024 order and should be denied.

B. Sanctions should be imposed on Respondent for his latest dilatory motion.

As noted by Judge Kassis in his December 9, 2024 order, “Petitioner is without prejudice to seek additional sanctions if Respondent files further dilatory motions without property legal basis.” The instant Motion is once again dilatory in nature. 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 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.

Like his previous dilatory motions, Respondent again fabricates legal authority to support his claims. For example, at paragraph 18 of his Motion, Respondent cites *Office of the Governor v. Davis*, 122 A.3d 1185 (Pa. Commw. 2015) and *Office of Open Records v. Center Twp.*, 95 A.3d 354 (Pa. Commw. 2014) as standing for “[w]here 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.” Neither case cited by Respondent has anything to do with alleged “newly discovery evidence.” Also, on page 1 of his Brief in support of his Motion, Respondent cites “Pennsylvania Rule of Judicial Administration 1971,” which does not exist. Respondent also relies on “any applicable local rules” without even specifying *what* particular local rules on which he bases authority to file the Motion. In other words, despite the fact that Respondent was

previously sanctioned by this Court in this very matter for filing motions unsupported by legal authority, Respondent continues to flout the need to accurately rely on legal authority, needlessly increasing Petitioner's costs in this matter and necessitating a need for further sanctions.

As the Motion is merely another in a series of unsuccessful motions seeking to supplement the record and conflicts with this Court's September 24, 2024 order, Respondent has presented the instant Motion for no purpose other than to again needlessly increase the cost of this litigation to Petitioner. As a result, sanctions are appropriate for Respondent's latest Motion. *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").

C. The instant Motion is meritless.

To the extent that this Motion need be considered on the merits, Respondent's argument appears to be concerned entirely with a handful of privileged emails, specifically Records 5 and 13-15 identified in the Borough's Exemption Log submitted to the OOR. *See* OOR Certified Record at Exhibit 15, pages 14 and 17. With respect to Record 5, Respondent argues that the record before this Court should be supplemented with the alleged affidavit from former Borough Council member Mark Saginario because the Borough could not have discussed the potential resignation of Mr. Saginario prior to October 4, 2021. Respondent's argument in this regard appears to stem from a typographical error as the date of the email was incorrectly labeled "10-3-21 at 3:38 PM" on the Exemption Log when it was actually sent at 3:38 p.m. on October 19, 2021 as part of the same email chain with Records 2-4 and Records 6-12. As noted in the accompanying affidavit from then-Borough Solicitor James Kratz, *see* OOR Certified Record at Exhibit 15, pages 8-9, ¶¶27-32, the Records 2-12 were all part of the "Email Exchange in October 2021." As a result, for

purposes of the instant Motion, the proposed Declaration of Mark Saginario (“Declaration”) is wholly irrelevant where Record 5 was sent after Mr. Saginario’s resignation³. Accordingly, the Motion should be denied.

With respect to Records 13-15, Respondent’s Brief in support of his Motion does not provide any rationale as to seeking relief concerning these documents at all, and, notably, Respondent only seeks an *in camera* review of Record 5 in his Brief. *Compare* Motion at 7 (seeking relief with respect to “Record #5 and Records #13–#15”), *with* Brief at 12 (seeking relief with respect to “Record #5”). Nevertheless, it appears that Respondent’s argument is that the Borough’s purported “late disclosures” of the existence of Records 13-15 somehow justifies the relief he seeks. However, as set forth in the Borough’s submissions to the OOR, the Borough initially viewed the email exchanges of April 21, 2022 as not being responsive because they were not sent among all individuals listed in Request, *see* OOR Certified Record at 4, page 18, ¶34, and, importantly, *the OOR agreed*. *See* OOR Certified Record at Exhibit 35, page 17 (agreeing that the “Borough’s interpretation that was used to respond to Item 1 was reasonable in this instance” and that “Nothing precludes the Requester from submitting a new RTKL request with language that seeks a larger universe of records, if he chooses to do so”).

Nevertheless, during the course of the appeal before the OOR, the Borough conducted an additional search for records and as a courtesy identified the first of the two email exchanges as Records 13-15 in its Exemption Log. *See* Affidavit from then-Borough Solicitor James Kratz at OOR Certified Record at Exhibit 15, pages 9, ¶37. In other words, while the Borough set forth a legal argument that Records 13-15 are not responsive to the Request as written (an interpretation with which the OOR agreed), the Borough identified these records during the proceedings before

³ In addition, the alleged Declaration is not credible for the reasons provided by the Borough in Paragraph 4 of its Response filed on January 8, 2024 to the Motion.

the OOR in the furtherance of transparency. Also, Respondent has not filed a timely appeal challenging the OOR's ruling in this regard, and, as a result, Records 13-15 are not at issue in this matter because they are not responsive to the Request. As a result, Respondent has identified no basis for which to supplement the record before this Court as it relates to Records 13-15.

Accordingly, Respondent's Motion is meritless and should be denied.

IV. CONCLUSION.

For the foregoing reasons, the Borough respectfully asks this Honorable Court to enter an order denying Respondent's Motion, imposing additional sanctions on Respondent and granting Petitioner whatever additional relief that this Court deems appropriate.

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
PA Attorney ID 306907
Schnee Legal Services, LLC
74 E. Main Street, #648
Lititz, PA 17543
Phone: 717-400-5955
Fax: 717-882-5271
chadwick@schneelegal.com

Dated: January 9, 2025

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

CERTIFICATE OF SERVICE

I, J. Chadwick Schnee, Esq., certify that, on this 9th day of January, 2025, I have served a true and correct copy of the attached Brief in Opposition to the person listed below via First Class Mail:

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



J. Chadwick Schnee, Esq.