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OFFICE OF OPEN RECORDS

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| JIM LOCKWOOD and THE SCRANTON TIMES, L.P., d/b/a THE SCRANTON TIMES-TRIBUNE, | : | In the Court of Common Pleas | MAURIE B. KELLY CLERK OF JUDICIAL ADMINISTRATION & COUNTY RECORDS DIVISION 2019 AUG 13 P 1:26 |
| | : | of Lackawanna County | |
| <i>Plaintiffs,</i> | : | | |
| | : | | |
| vs. | : | | |
| | : | Civil Action - Law | |
| | : | | |
| NANCY KRAKE, in her official capacity as The CITY OF SCRANTON OPEN RECORDS OFFICER, | : | | |
| | : | | |
| <i>Defendant.</i> | : | 2019-CV-3668 | |

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiffs commenced this action with a Petition for Peremptory Judgment against the designated Open Records Officer of the City of Scranton seeking a determination that the City of Scranton failed to comply with the Right to Know Law, 65 P.S. §67.101-67.3104 (Act of February 14, 2008) (the Act). Specifically, Plaintiffs sought video from the surveillance cameras in Scranton City Hall on January 9, 2019. (Petition, ¶13). Plaintiffs identified January 9, 2019 as the date on which agents of the Federal Bureau of Investigation executed search warrants at Scranton City Hall. The parties appeared on August 12, 2019, pursuant to a June 26, 2019 Rule to Show Cause accompanying Plaintiffs' Petition. At the time of the August 12, 2019 hearing, the parties entered into a stipulation which essentially entitles Plaintiffs to the relief requested. The parties agree that although the subject videotape has in fact been turned over by the Defendant, it had not been timely and properly preserved as mandated by the Act; consequently, the quality and value of the videotape was significantly diminished at the time it was produced.

Plaintiffs seek the imposition of court costs and attorney's fees pursuant to 65 P.S. §67.1304 on the basis that the exemption and defenses asserted by the City to their request were not based on a reasonable interpretation of the law. While the City does not concede this, it does acknowledge its failure to preserve properly and timely the requested video when it received the initial request from Plaintiffs. The City insists that its failure was neither malicious nor intentional but, rather, neglectful. We are mindful that bad

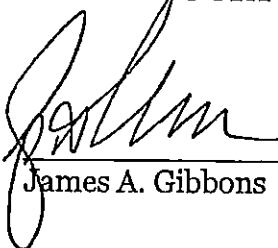
faith is not necessarily predicated upon a showing of fraud or corruption. The lack of good faith compliance with the requirements of the Right to Know Law and an abnegation of mandatory duties under its provisions can rise to the level of bad faith. *Chambersburg Area School District v. Dorsey*, 97 A.3d 1281 (Pa.Cmwlt. 2014); *Office of District Attorney of Philadelphia v. Bagwell*, 155 A.3d 1119, 1130 (Pa.Cmwlt. 2017). See also, *Uniontown Newspapers, Inc. v. Pennsylvania Department of Corrections*, 185 A.3d 1161 (Pa.Cmwlt. 2018).

Here, the City of Scranton does not quarrel that it had a mandatory duty under the Right to Know Law to preserve the videotape requested and it further acknowledges its failure to do so. While it may not have been intentional, we must bear in mind the remedial purpose behind the Act, and if that purpose is to be promoted, there need be consequences, even for benign neglect. We will, therefore, award court costs and attorney's fees to the Plaintiffs¹. We decline, however, to impose a civil penalty under 65 P.S. §67.1305. It is within our discretion to do so ("a court may impose a civil penalty . . .") (emphasis supplied), and we find the award of court costs and attorney's fees sufficient in this context.

ACCORDINGLY, this 13th day of August, 2019, IT IS HEREBY ORDERED THAT:

1. Plaintiffs' Petition for Peremptory Judgment is hereby **GRANTED**;
2. Plaintiffs are hereby awarded their costs and attorney's fees in the amount of \$3,484.35;
3. The City of Scranton shall forward the sum of \$3,484.35 to counsel for Plaintiffs forthwith and counsel for Plaintiffs shall acknowledge receipt of same immediately thereafter.

BY THE COURT:


_____, J.
James A. Gibbons

¹ We directed counsel for Plaintiffs to submit his statement of fees and costs at the close of the August 12, 2019 hearing, and he complied.

cc: *Written notice of the entry of the foregoing Order has been provided to each party pursuant to Pa. R. Civ. P. 236 (a)(2) by mailing time-stamped copies to:*

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