

**THE STATE OF NEW HAMPSHIRE**

**HILLSBOROUGH, SS.  
SOUTHERN DISTRICT**

**SUPERIOR COURT  
No. 2021-CV-00354**

Laurie Ortolano

v.

The City of Nashua

**ORDER**

The plaintiff, Laurie Ortolano, brought this action against the defendant, the City of Nashua (the “City”), three years ago pursuant to RSA 91-A, New Hampshire’s Right-to-Know (“RTK”) Law, to enforce her right to access public records. Presently before the Court are Ortolano’s motions for a protective order and for contempt. The City objects to both motions. The Court held a hearing on the motions on June 28, 2024. Based on the evidence, the parties’ arguments, and the applicable law, the Court finds and rules as follows.

**Discussion**

By way of procedural background, in June 2021 Ortolano submitted a RTK request pursuant to RSA 91-A, requesting copies of emails of a former City employee, Louise Brown. The City responded, but did not produce emails that were stored on backup tapes due to its belief that these documents were effectively deleted and no longer subject to disclosure pursuant to RSA 91-A:4. Ortolano then filed the present action pursuant to RSA 91-A, seeking the production of the emails stored on backup tapes. The Court held a bench trial on the matter on December 6, 2021. By order dated February 7, 2022 (the “Order”), the Court determined that emails on the backup tapes were subject to disclosure under RSA 91-A and accordingly ordered the City to

conduct a search of the backup tapes. If any of Ms. Brown's emails were found, the City was ordered to produce them to Ortolano.

The City appealed. The Order was then affirmed by the New Hampshire Supreme Court on August 18, 2023. The City filed a motion for reconsideration with the supreme court, which was denied on October 11, 2023. Immediately thereafter, on October 11, 2023, the City's Office of Corporation Counsel ("OCC") started to review the backup tapes, applying appropriate redactions pursuant to RSA 91-A:5, and producing Ms. Brown's e-mails in batches. This case was closed on October 17, 2023.

On February 21, 2024, Ortolano filed a motion to reopen this case, contemporaneously with her motion for protective order and motion for contempt. The genesis for these motions was Ortolano's frustration with the City's rate of production of the emails and the fact that the City was producing voluminous attachments. Ortolano requested that the Court order the City to cease reviewing the email attachments in order to speed up production, and hold the City in contempt.

The Court held an evidentiary hearing on these matters on June 28, 2024, at which it heard testimony from Ortolano and Manuela Perry, a paralegal with the OCC. At the outset of the hearing, the City made an oral motion to dismiss on the basis of mootness, asserting that the final batch of responsive emails had been produced to Ortolano on May 28, 2024. The Court reserved ruling on the oral motion to dismiss, allowing the evidentiary hearing to proceed and noting that the Court would consider the mootness issue after reviewing all of the evidence.

In her motion for protective order, Ortolano requests that the Court "issue a Protective Order . . . to secure the expedited process afforded under RSA 91-A:7, I,"


namely, the efficient production of public documents. (Court Doc. 44 at 1.) In her motion for contempt, Ortolano “requests the Court take the action to file a contempt charge against the City to stop the vexatious attorney’s actions” and delay in production of documents. (Court Doc. 45 at 8.) For its part, the City maintains that the rate of production was reasonable given the nature of the request and the need for redactions, and that the City at no point acted vexatiously or in bad faith. Moreover, the City reiterates that, because all of the emails have been produced, the motions are now moot. The Court agrees.

“[T]he question of mootness is one of convenience and discretion and is not subject to a hard-and-fast rules.” Appeal of Hinsdale Fed’n of Teachers, NEA-N.H., NEA, 133 N.H. 272, 276 (1990). “Generally, however, a matter is moot when it no longer presents a justiciable controversy because issues involved have become academic or dead.” Id. (cleaned up). Usually, “an issue that has already been resolved is not entitled to judicial intervention.” Id.

It is undisputed that all of the responsive records relevant to Ortolano’s petition were produced by the City as of May 2024. Therefore, the Court determines that the issues raised in Ortolano’s motion for protective order and motion for contempt no longer require judicial intervention. The City has complied with the Order issued by this Court in 2022 and produced all documents. As such, Ortolano’s motions for protective order and for contempt are MOOT.

So ordered.

Date: August 8, 2024



Hon. Charles S. Temple,  
Presiding Justice