

**THE ILLINOIS POLLUTION CONTROL BOARD
PCB 23-133**

Anna Andrushko, Complainant vs Thomas Egan, Respondent

**COMPLAINANT'S REPLY TO
RESPONDENT'S OPPOSITION TO COMPLAINANT'S SECOND MOTION TO COMPEL DISCOVERY
AND FOR SANCTIONS**

Now Comes, Complainant, Ms. Anna Andrushko, in response to Respondent's Response in Opposition to Complainant's Second Motin to Compel Discovery and for Sanctions.

I. Failure to Answer Interrogatories

The Respondent's objections are frivolous and made in bad faith solely to frustrate the discovery process and delay trial. Their argument is an unwarranted claim of disproportionate burden, as they have failed to provide any evidence to support their assertions. The Board should overrule the Respondent's objections and compel full and complete discovery immediately, and further award the Complainant Sanctions according to the Illinois Pollution Control Board (the "Board") provision 35 Ill. Admin. Code 101.800.

The Respondent has demonstrated a deliberate pattern of non-cooperation by failing to answer the Complainant's duly served Interrogatories. This failure is in direct violation of the rules of procedure governing discovery. The Complainant served these discovery requests to obtain essential facts necessary to properly prepare for trial). The Respondent's refusal to provide responses impedes the discovery process, unfairly prejudices the Complainant's ability to prosecute this case, and further confirms their lack of good faith in these proceedings. The Complainant reserves the right to seek sanctions or an order compelling these responses, in addition to relief for the underlying complaint.

II. Failure to Cooperate and Abrupt Termination of Mediation Due to Reasonable Requests

The Respondent's lack of good faith in resolving this dispute is evident in two key areas: their failure to answer the Complainant's interrogatories and their actions during the requested mediation. Despite the initial complaint being filed on June 26, 2023, the Respondent waited until August 8, 2025, to request mediation. Upon beginning the session, the Respondent had nothing to say and no meaningful value, effectively wasting the Complainant's time and resources.

When the Complainant proposed a good-faith path forward, including requests for in this order, as follows below, the Respondent's attorney abruptly stopped the mediation. This action confirms the Respondent's lack of genuine commitment to resolution through mediation and suggests their request was merely a tactical maneuver to delay proceedings rather than an earnest attempt to settle the matter.

1. Noise Abatement and Responsible Pet Ownership (Dog-Related)

The requests were detailed, specific, and focused on genuine noise abatement and responsible animal behavior—the root cause of the noise complaint (especially relevant given the OP mention of the hunting dog):

- **Professional Training:** Demanding training through a recognized body, such as the **IAABC (International Association of Animal Behavior Consultants)**, is a reasonable measure to ensure the dog's behavior is professionally managed.
- **Detailed Abatement Measures:** The request for specific noise abatement products and management techniques (toys, pool, calming diffusers, anti-barking collars, yard partitioning, and distractions) demonstrates the Complainant's willingness to define concrete, manageable steps for the Respondent to take.

2. Safety, Peace, and Accountability Measures

These requests directly addressed the Complainant's documented distress, the threat of intimidation (per the pending OP), and the need for future behavioral compliance:

- **Acknowledgement of Wrongdoing (Accountability):** The request for the Respondent to admit wrongdoing and take full responsibility (including identifying accomplices) is a foundational element for any restorative settlement, especially when the behavior has caused distress and violated the peace and quiet of a neighbor.
- **Behavioral Correction:** Requesting Anger Management Classes is a prudent and necessary measure given the pattern of targeted harassment and intimidation alleged in the pending Order of Protection.
- **Compliance and Safety Assurance:** Requesting Cameras with an Escrow Account is a reasonable way to provide a guarantee of future good behavior and compliance, offering the Complainant a sense of feeling safe and having peace.

Conclusion: The Respondent's unilateral decision to terminate mediation upon receiving a set of detailed and highly relevant proposals—which addressed the core noise issues, required accountability, and included measures for future peace and safety—is conclusive proof that

their participation in mediation was a sham. It confirms their lack of genuine interest in resolution and their intent to avoid any meaningful compromise or corrective action.

Stress that the Respondent's actions are impeding discovery and wasting time/resources.

While Complainant's specific requests (admitting wrongdoing, etc.) may be viewed as requests for specific relief, their rejection via an abrupt end to mediation shows the Respondent is unwilling to negotiate even basic steps toward resolution.

III. Integration of Pending Order of Protection (OP)

The Respondent's disruptive and uncooperative conduct in this noise complaint matter must be viewed within the context of related legal proceedings. There is currently a **Pending Plenary Order of Protection Case No. 2024OP80471** against the Respondent, filed by the Complainant.

This pending Order of Protection specifically alleges the Respondent engaged in Targeted Surveillance and Intimidation. Specifically, the Petition for the Plenary Order of Protection details the Respondent's use of personal property, including but not limited to a "hunting dog", as a tool to effect surveillance, noise-based harassment, and intimidation near the Complainant's home and property.

The behaviors alleged in the underlying noise complaint, the Respondent's failure to participate in discovery, and the abrupt termination of mediation are not isolated incidents, but rather additional evidence of a documented, ongoing pattern of harassment and non-cooperation that threatens the Complainant's peace and quiet and safety.

IV. Pattern of Procedural Delay and Obstruction

The Respondent's lack of good faith extends directly to the core legal procedures of this case. Specifically, the Respondent has consistently sought to delay the court's review of the merits by repeatedly requesting extensions for their response to the Complainant's Motion for Summary Judgment (MSJ), filed on May 28, 2025.

Multiple Extended Delays: The Respondent requested and received multiple extensions to file their MSJ response.

- While the Complainant initially accommodated these requests, this pattern shows a deliberate effort by the Respondent to slow the judicial process.
- Overruled Objection: Hearing on July 17, 2025, the Complainant formally objected to the Respondent's final request for an extension, citing the undue burden and delay already

imposed. Despite the Complainant's formal objection, the court overruled the objection and granted the Respondent yet another extension.

- **Conclusion:** This conduct, viewed alongside the failure to answer Interrogatories and the abrupt termination of the Respondent-requested mediation, solidifies the argument that the Respondent is employing a strategy of dilatory tactics to avoid addressing the serious claims—including those related to the pending Plenary Order of Protection—on their merits.

V. Willful Delay and Non-Compliance Post-Summary Judgment Denial

The Respondent's delaying actions regarding noise abatement demonstrate a strategy intended to avoid responsibility unless legally forced to act.

- **Strategic Delay Tied to Litigation:** The Respondent's Motion for Summary Judgment was denied on February 20, 2025. The denial confirmed that a genuine issue of material fact exists regarding the noise complaint and that the case must proceed. The Respondent's failure to install the suggested permanent noise barrier (fence) immediately following this ruling indicates they were likely waiting on the outcome of the MSJ before incurring any cost or effort toward compliance.
- **Continued Non-Compliance:** Even after the court confirmed the validity of the case on February 20, 2025, the Respondent failed to install the fence throughout three subsequent Status Meetings:
 - o March 06, 2025: No fence installed.
 - o March 27, 2025: No fence installed.
 - o April 17, 2025: No fence installed.
- **Minimal and Late Action:** Only around April 18 or 19, 2025—nearly two months after the MSJ denial and following repeated court appearances—did the Respondent finally install a privacy device. This installation was a minimal, reluctant action taken only after all delaying tactics had been exhausted.

While the Complainant acknowledges the installation of a privacy device on or about April 19, 2025, the finding that the Respondent has taken action is contradicted by the record, which shows 70 days of deliberate non-compliance following the MSJ denial, coupled with a total failure in discovery and settlement efforts. The Respondent's actions are not those of a party seeking resolution, but of one seeking to obstruct and delay this entire proceeding.

Conclusion: The Respondent's conduct following the denial of the Motion for Summary Judgment is a clear example of bad faith. It shows an intent to postpone or avoid effective

abatement until the last possible moment, which directly violates the spirit of cooperation and violates the Complainant's right to peace and quiet. This must be considered in light of their concurrent failure in discovery and their unilateral termination of mediation.

The Board's power to impose sanctions for a party's failure to cooperate in discovery is not only inherent in its quasi-judicial function but is explicitly provided for in the Board's procedural rules. Title 35, Subtitle A, Section 101.800 of the Illinois Administrative Code, entitled "Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders," states in relevant part:

(a) If any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or any order entered by the Board or the hearing officer... the Board may order sanctions. (b) Sanctions include the following: (3) The offending person may be barred from maintaining any claim, counterclaim, third-party complaint, or defense relating to that issue; (4) As to claims or defenses asserted in any pleading or other document to which that issue is material, a judgment by default may be entered against the offending person or the proceeding may be dismissed with or without prejudice; (5) Any portion of the offending person's pleadings or other documents relating to that issue may be stricken and, if appropriate, judgment may be entered as to that issue; and (6) The witness may be barred from testifying concerning that issue.

This provision clearly and unambiguously grants the Board the power to impose the types of non-monetary, case-dispositive sanctions requested by the Complainant (e.g., barring a defense, striking a pleading, or deeming facts admitted).

I. Introduction

Complainant's Response: The current motion is necessary not because it 'repackages' issues, but because the Respondent's initial responses were so vague and deficient that they constituted a functional non-response to critical discovery. Answers were met with blanket objections rather than the required substantive answer. The boilerplate or blanket objections demonstrates a lack of good faith.

I refute the claim that the motion "repackages issues already addressed." The responses provided were evasive, incomplete, or based on improper objections, necessitating this second motion.

II. Background

Complainant's Response: The issue is not the number of interrogatories, but the Respondent's willful failure to provide substantive, complete, and verified answers as required by the rules.

Respondent attempts to minimize their obligation by characterizing the disputed interrogatories as merely a '**subset**' of previously discussed topics. The reality is that for Interrogatories 3(a), 5, 9(a)-(c), 1, 11 (b), 3(b)-(c), 17, 26 revised), and 27, Respondent has provided evasive, boilerplate, or cryptic responses that are the functional equivalent of a refusal to answer, necessitating this Motion.

Federal Rule of Civil Procedure (FRCP) 37(a)(4), which states that an evasive or incomplete answer is treated as a failure to answer.

The fact that these topics were 'previously discussed' is not a defense; it is proof of Respondent's sustained refusal to comply.

The Complainant repeatedly explained the deficiencies, but the Respondent simply provided an inadequate "supplement" that failed to rectify the defect.

Sanctions are warranted here because Respondent's failure to answer or provide substantially complete answers to Interrogatories was not substantially justified and caused Complainant to file this Motion to Compel. Had Respondent answered these clear, relevant, and necessary discovery requests in good faith, this dispute would not exist.

Complainant must be ensured to have all the necessary exhibits, interrogatories, original responses, the supplemental responses, and all good-faith correspondence.

In a noise case involving a dog, details about the animal's routine, training, and history are highly supportive of the cause, predictability, and preventability of the excessive barking.

III. Governing Principles

Complainant's Response:

Overbroad: The requests are limited to the minimum necessary to prove the Complainant's claim.

Cumulative: The requests are not cumulative because each question seeks unique information necessary to complete the picture.

Unduly Burdensome: The Respondent should have organized records. The importance of the requested evidence outweighs any burden. The documents sought go directly to the Respondent's knowledge and intent, which is the key element of the dog barking claim. The Respondent has failed to provide any detail or evidence.

Limited to non-privileged matter relevant to claims or defenses: The requested information is directly relevant and proportional to the core issues in this case. The discovery is necessary because the information is uniquely within the Respondent's control.

Proportional to the needs of the case: The Respondent's alleged "needs" (or desire to avoid work) do not outweigh the importance of the issues at stake. The information is critical to resolving the factual dispute, and there is no less burdensome way to obtain it.

Seek private third-party data: Complainant is requesting information relevant to the scope of the case.

Waiver of Privileges or Privacy Protections: The Respondent has made blanket assertion of privilege without meeting their burden. The Respondent is withholding documents because they are privileged, but fails to provide the necessary details for the Complainant or the Board to evaluate the claim document-by-document. This suggests the Respondent may be attempting to improperly shield non-privileged, discoverable information or is simply being lazy in preparing the proper documents. The Respondent's failure to provide a proper, timely, and itemized privilege for all documents they withhold.

IV. Argument

A. Interrogatory 3(g)-(o): identities of facilities/shelters/breeders; breed "purpose" and traits.

Complainant's Response: The dog's history and innate characteristics are highly relevant to its current behavior. The information is relevant to the knowledge, intent, and foreseeability of the Respondent in acquiring an animal with a predisposition for the alleged conduct.

The dog's origin is relevant to the inception of the problem. The identity of the breeder/shelter provides a necessary starting point for determining the dog's age, known behavioral history, and any prior complaints, all of which bear on the dog's suitability for the environment and the foreseeability of the nuisance.

Breed traits are not speculative; they are a key factor in nuisance cases involving animals. The specific "purpose and traits" of the breed (e.g., a known barking/alarm breed vs. a quiet companion breed) go directly to the issue of Respondent's responsibility and negligence in selecting an animal whose energy level and traits are incompatible with a shared/residential environment. This is central to a defense/mitigation argument.

The requested information is not about irrelevant third parties; it is about establishing the context and knowledge the Respondent possessed when acquiring an animal that causes a nuisance, making it directly relevant to the claims and defenses in this case.

B. Interrogatory 5: consultation with trainer/behaviorist

Complainant's Response: The Respondent states the answer is no, therefore a document does not exist.

The Respondent's response is a blanket denial that fails to meet the standard of a complete interrogatory answer under the rules of civil procedure.

The simple "no" answer is vague and incomplete without specifying the scope of the search or who was consulted. The answer should include details on who was asked about the consultation.

The complete answer must include a statement that the Respondent made a reasonable inquiry and consulted with any professional, even informally.

The initial failure to provide a complete answer is a form of evasive or incomplete disclosure which is treated as a failure to answer, thereby warranting sanctions.

The Respondent's simple denial is an evasion of discovery. Complainant seeks an order compelling a supplemental sworn answer detailing the scope of the investigation into the Interrogatory and seeks sanctions for the initial failure to provide a sufficient response, thereby forcing the Complainant to unnecessarily bring this Motion.

C. Interrogators 9(a), 9(b), 9(c), 9(e), 9(g) and 11(a)-b): Care, enrichment, training, "isolation".

Complainant's Response: The Respondent's objections are nothing more than an improper attempt to limit the scope of discovery and avoid producing evidence relevant to the cause and mitigation of the ongoing nuisance. Complainant respectfully requests to grant the Motion to Compel on all aforementioned interrogatories.

The requested information is directly relevant to the dog's mental state, training, and supervision, which are causal factors for the excessive barking that is the subject of the complaint.

Complainant states that the requested details regarding care, enrichment, training, and isolation are highly relevant as they go to the root cause of the excessive barking. Lack of proper care, enrichment, or training is a recognized contributing factor to nuisance barking. Establishing the Respondent's compliance or non-compliance with accepted animal rearing practices is essential to proving negligence or failure to mitigate the nuisance, which bears a clear connection to the ultimate issue.

Granular details: The request for details like food, enrichment, and training methods is not overreaching but is necessary to test the veracity of the Respondent's defense of due care. If the Respondent's claims to mitigate the barking, the underlying facts of that mitigation (e.g., what specific training is used) must be disclosed for fairness.

9(c) Isolation Answered: The answer to Interrogatory 9(c) is vague and non-responsive. Complainant seeks factual details regarding the dog's confinement/isolation schedule and duration, not a conclusory statement. This information is necessary to determine if the dog's routine contributes to anxiety-driven nuisance barking.

Already Disclosed Mitigation: The Respondent's general statements of mitigation are unsupported by any factual specifics. The specific schedules, methods, and documentation requested are essential to determine if the disclosed 'mitigation' efforts are effective.

11(a) Impossible Task: Complainant is not asking for every moment of silence; rather, the Respondent must disclose records, logs, or concurrent notes the Respondent possesses or have created that indicate periods of non-barking. If the Respondent wants to defend his case, then keeping records of non-barking to defend the claim, those records must be produced.

11(b) Vague/Ultimate Issue: The Respondent's assertion of vagueness is without merit; the request is easily understood and seeks factual data supporting the defense, such as specific examples of non-nuisance behavior that may mitigate the complaints.

D. Interrogators 13(b)-(c): Circumstances and frequency of barking

Complainant's Response:

Forensic Taxonomy: The requested information is highly relevant, direct evidence of the nuisance being alleged. The complainant is not asking for a 'forensic taxonomy,' but for the details necessary to establish the frequency and unreasonable interference with the quiet enjoyment of property—the very elements of a private nuisance claim. Without details on when and how often the barking occurs, the Complainant cannot prove the nuisance is substantial and unreasonable.

Unduly Burdensome and Disproportionate: The Complainant is merely asking the Respondent to record the events which the Respondent is in the best position to observe and control. The burden of logging the frequency and circumstances of the barking is not undue when compared to the Complainant's continuous, undue burden of suffering the ongoing noise nuisance. The Respondent cannot claim this is unduly burdensome when it is the exact information necessary to resolve the central issue of the case.

The Respondent's answer ("may bark when stimulated by squirrels, cats, or similar triggers, and that he intervenes") is evasive.

The Respondent's current answer is evasive and incomplete. Stating that the dog 'may bark' and that the Respondent 'intervenes' provides no factual data on how often the barking occurs, how long it lasts, or how effective the intervention is. The Complainant requires the specific factual

details (dates, times, duration) to assess the claim and prepare for trial, which is the entire purpose of discovery.

Respondent's objection that the request is '**speculative**' and '**unduly burdensome**' fails because:

1. The Complainant is entitled to discover the specific frequency and duration of the disturbance, which the Respondent's vague answer entirely omits.
2. The Respondent is the party with exclusive access to the knowledge and ability to keep a log of the dog's activities. The limited burden of keeping a record is proportional to the significant issue of the Complainant's ability to peaceably enjoy their home.

The Court should compel a full and complete response to Interrogatory 13(b)-(c).

E. Interrogatory 17(a)-(b): Complaints and remedial steps since June 26, 2023.

Complainant's Response: The history of complaints and steps taken is highly relevant to demonstrating a pattern and the effectiveness (or lack thereof) of the Respondent's past mitigation efforts.

Past complaints show the Respondent's knowledge of the ongoing problem, which can be relevant to the Board's determination of fault or violation.

The issue isn't just that the dog barks now, but whether the Respondent has adequately and permanently resolved the problem. The receipts and notes regarding past steps are crucial to assess if the "remedial steps" they claim (screen, restriction) were timely and complete. Did the Respondent consult a professional or just symbolic acts.

Limited Issue: The issue is not just the specific incident leading to the current complaint, but the overall continuing violation and whether a permanent remedy (which the Board must order) is necessary.

The requested information is directly relevant to Complainant's ability to challenge the adequacy and effectiveness of the Respondent's claimed mitigation efforts and to demonstrate a continuing pattern of non-compliance, which the Board must consider in fashioning a final remedy.

Overly Burdensome: The standard discovery rules permit the search for relevant documentation, and a party cannot simply withhold evidence by claiming it is inconvenient.

Receipts, invoices, and professional notes (e.g., vet/trainer consultations) are documents that a responsible homeowner would keep, making the search simple.

The importance of resolving the underlying dispute and protecting your property rights outweighs the minimal effort required to gather records related to the one issue in the case.

Adequate Disclosures: The fact that the Complainant filed a Motion to Compel and Sanctions proves the Respondent's claim of mitigation is not "adequate." The requested documentation is needed to verify the nature, quality, and timing of those steps.

The Claim of Recording: The Respondent's defensive statement about the Complainant attempting to record the dog indoors shows the problem persists and that the Respondent's "mitigation" has simply forced the Claimant to document the issue under more difficult circumstances, reinforcing the need for the requested evidence of remedial efforts.

The Respondent's bare claims of mitigation are unsupported self-serving statements. Production of the underlying documents, such as receipts and notes, is not unduly burdensome but is essential to verify the Respondent's credibility and the true extent of their efforts to comply with Board regulations.

F. Interrogatories 26 (revised) & 27: Legal defenses and "understanding" of ordinances

Complainant's Response: Under the rules of civil procedure an interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact.

The purpose of these types of questions is to narrow the issues for trial, clarify the basis for the defenses, and prevent surprise. This is essential for the Complainant to prepare her case and the summary judgment to be approved.

The interrogatory does not ask for the Respondent's attorney's legal strategy or mental impressions. It asks the Respondent to state the facts that support the defenses they have pled.

The ordinance is public information, and the Complainant requests the Respondent's understanding or interpretation of how the ordinance applies to the specific facts of their defense.

The Respondent is to identify the specific sections/provisions of the ordinance they rely upon and, more importantly, the facts in the case that demonstrate compliance or non-applicability of that ordinance.

The Respondent states they "pleaded defenses and produced facts relevant to causation and mitigation." Interrogatories are necessary to pinpoint the specific facts supporting those defenses, which is the whole point of discovery. Simply producing "facts" is not enough. The interrogatories are necessary to force the defendant to connect the specific facts produced to

the specific elements of the legal defenses pled. Without this connection, the discovery process is incomplete, leaving the Complainant to guess the basis of their case.

The specific information from these interrogatories is relevant to The Complainant's claims and proportional to the needs of the case; the Complainant can't fully rebut their defense without knowing the basis.

V. The request for Sanctions Lacks Merit

Complainant's Response: The Respondent mischaracterizes the Motion as a mere '**disagreement over scope**' and misleads the Board by claiming '**timely responses.**' Complainant's Motion to Compel and for Sanctions is necessary because the Respondent's responses are not merely late or narrow; they are incomplete, evasive, and functionally useless, effectively preventing the Complainant from preparing for trial. This pattern of obstruction, despite multiple attempts to deliberate or present, constitutes the very 'willful noncompliance' the Respondent's claims is required to warrant sanctions."

While the initial paperwork may have been timely, the substance of the responses was delayed or entirely missing. An incomplete or evasive answer is treated as no answer at all under the Rules of Civil Procedure FRCP 37(a)(3). A timely, yet empty, response is an abuse of the discovery process.

Complainant's attempts to confer were met with Respondent's reiteration of their bad-faith objections and a refusal to provide substantive, necessary information. The duty to confer requires a good-faith effort to resolve the dispute, not just an agreement to hold a phone call to confirm non-compliance.

The Respondent's objections are boilerplate and not tailored to the specific requests. The Respondent's repeat generic phrases like 'vague,' 'overbroad,' and 'unduly burdensome' without explaining the specific prejudice they face or what part of the request is objectionable.

For the request on "mitigation," the Respondent provided one sentence but objected to producing the supporting documents necessary to test the sufficiency of that response, rendering the "answer" meaningless.

A good-faith objection requires the objecting party to provide responsive information to the extent the request is NOT objectionable and to specify what is being withheld. Respondent has refused to produce clearly relevant, non-privileged documents that fall well within the scope of discovery allowed under (cite your specific rule, e.g., FRCP 26(b)(1))."

The Respondent's position that "all communications prior to the date of the contract" are irrelevant is completely baseless. This is not a scope disagreement; it is an improper attempt to narrow the issues of the case to avoid disclosure."

The Respondent's claim to have provided '**many substantive answers**' is disingenuous. The answers provided are legal statements without the necessary factual support. The answers are 'insufficient' because they are a shield for withholding the documents and data that would prove or disprove the very facts asserted in the response. A bare-bones answer followed by an objection that withholds key evidence is the definition of an evasive response."

VI. Conclusion

Complainant's Response:

The Respondent's Opposition fails to justify their continued, specific failures to provide discovery. Because the Opposition is without merit, the Board should grant Complainant's Motion to Compel and impose the requested Sanctions.

For the foregoing reasons, Complainant respectfully requests that the Board deny all relief sought in the Respondent's Opposition, grant Complainant's Second Motion to Compel Discovery and for Sanctions in its entirety.

Respectfully submitted by:

Anna Andrushko

Anna Andrushko