



BOROUGH OF BOUND BROOK

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Robert P. Fazen
Mayor

Via Email

Time for Change – Jersey Style

RE: Your OPRA Request for Access to Public Records pertaining to attorney invoices and litigation settlement agreements

Please accept this correspondence in response to your request for records under the Open Public Records Act (“OPRA”). On behalf of the Borough of Bound Brook (the “Borough”), please be advised that the Government Records Custodian received the above-referenced OPRA request and is now responding to the first part of same in accordance with New Jersey law and is providing certain responsive documents to you. As you recall, you gave the Borough until December 31, 2018 to provide its response to the first part of your November 28, 2018 request.

For ease of reference, the Borough notes that the first part of your request seeks:

All attorney invoices for Bound Brook Borough from January 1, 2013 to December 31, 2013 and copies of all litigation settlement agreements from January 1, 2013 to December 31, 2015.

Please see the enclosed responsive documents. Please be advised that it is well settled that in the context of public entities, the attorney-client privilege extends to communications between the public body, the attorney retained to represent it, necessary intermediaries and agents through whom communications are conveyed, and co-litigants that have employed a lawyer to act for them in common interest. See Tractenberg v. Twp. of W. Orange, 416 N.J. Super. 354, 376 (App. Div. 2010).

OPRA expressly exempts access to “any record within the attorney-client privilege.” N.J.S.A. 47:1A-1.1. Moreover and significantly, the OPRA’s provisions do not “abrogate or erode any . . . grant of confidentiality . . . recognized by . . . court rule.” N.J.S.A. 47:1A-9(b).

Accordingly, OPRA does not allow for the disclosure of attorney work product, consisting of “the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.” See Rule 4:10-2(c); see also Scheeler v. Twp. of Galloway, GRC Complaint No. 2012-151 (July 2013) (citing N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-9 (attorney-client privilege); N.J.S.A. 47:1A-1.1 (information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office; N.J.S.A. 47:1A-1.1 (information generated by or on behalf of a public employers or employees in connection with a grievance filed against such employee); Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009) (information whose disclosure

would run contrary to the reasonable expectation of privacy of involved parties)); Renna v. Union Cnty. Improv. Auth., GRC Complaint No. 2008-86 (March 2009) (holding that N.J.S.A. 10:4-12 protects from public disclosure information and records pertaining to litigation and personnel matters); Keddie v. Rutgers, State University, 148 N.J. 36, 54 (1997) (holding that “[e]ven in closed cases . . . attorney work-product and documents containing legal strategies may be entitled to protection from disclosure”).

In addition to the attorney-client privilege and attorney work product doctrine, the responsive records have also been redacted to remove personal identifiers pursuant to the Government Records Council Exemptions No. 12 and 16 under OPRA.

The first part of your OPRA Request is now deemed answered and closed. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jm", enclosed within a circular scribble.

Jasmine D. Mathis,
Deputy Borough Clerk