

Karen Gallagher

From: Chris Wood
Sent: Monday, September 23, 2019 9:41 AM
To: Karen Gallagher
Subject: FW: OPRA request - Email between Mary Bittner and James Birchmeier

RECEIVED

SEP 21 2019

CITY CLERK'S OFFICE

-----Original Message-----

From: Anonymous [<mailto:opra+request-7376-2e6e38eb@requests.opramachine.com>]
Sent: Sunday, September 22, 2019 8:13 PM
To: Chris Wood
Subject: OPRA request - Email between Mary Bittner and James Birchmeier

Dear Wildwood City,

This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message.

Records requested:

Please provide the email dated July 31, 2019 regarding marguerite candelaria between James Bitchmeier and Mary Bittner solicitor

Yours faithfully,

Anonymous

Please use deliver records electronically via email to the below UNIQUE address for all replies to this request:
opra+request-7376-2e6e38eb@requests.opramachine.com

Is cwood@wildwoodnj.org the wrong address for OPRA requests to Wildwood City? If so, please contact us using this form:
https://opramachine.com/change_request/new?body=wildwood_city

Disclaimer: This message and any reply that you make will be published on the internet. Our privacy and copyright policies:
<https://opramachine.com/help/officers>

View this OPRA request & responses online:
https://opramachine.com/request/email_between_mary_bittner_and_j

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an OPRA custodian, please ask your web manager to link to us from your organisation's website:

THE CITY OF WILDWOOD

4400 NEW JERSEY AVENUE
WILDWOOD, NEW JERSEY 08260



INTEROFFICE MEMORANDUM

OFFICE OF THE CITY SOLICITOR

(609) 846-2077 PH
(609) 523-2444 FX

TO: KAREN GALLAGHER, DEPUTY CLERK
FROM: MARY D'ARCY BITTNER, CITY SOLICITOR
SUBJECT: OPRA REQUEST - JULY 31 EMAIL
DATE: SEPTEMBER 24, 2019

With regard to the OPRA request you forwarded to me yesterday requesting a copy of the email dated July 31, 2019 between James Birchmeier, Esq. and myself, attached please find the following two emails:

1. Email from James Birchmeier, Esq. to me from July 31, 2019, 3:20 P.M.
2. Email from me to James Birchmeier, Esq. from July 31, 2019, 3:50 P.M.

There are three attachments to the 3:20 P.M. email from Mr. Birchmeier to me. One is being withheld for the following reason: It is a status memo to the insurance carrier on which I am copied and communications between a public agency and its insurance carrier or administrative service organization (which this is) and communications between attorney and client (which this is) are exempted from public disclosure under OPRA. N.J.S.A. 47:1A-1.1.

The other two attachments are a letter to counsel for the estate of Margarita Candelaria-Betancourt and a proposed court order which are being produced and are attached.

This should fully comply with the OPRA request.

Thank you.

Mary

Mary Bittner

From: James R. Birchmeier, Esq <jbirchmeier@birchmeierlaw.com>
Sent: Wednesday, July 31, 2019 3:20 PM
To: skellerman@qual-lynx.com
Cc: david@deweeselawfirm.com; smooney@qual-lynx.com; Mary Bittner
Subject: Re: Est. of Margarita Candelaria-Betancourt v. City of Wildwood (Claim No. 2019167699)
Attachments: doc02703320190731151124.pdf; doc02702820190731150959.pdf; doc02702920190731151008.pdf

Dear Sandy:

See attached status update letter in the above matter.

James R. Birchmeier, Esquire
BIRCHMEIER & POWELL LLC
1891 State Highway 50
P.O. Box 582
Tuckahoe, NJ 08250
609-628-3414
609-628-2966 (fax)
jbirchmeier@birchmeierlaw.com

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This email has been checked for viruses by AVG antivirus software.

www.avg.com

Mary Bittner

From: Mary Bittner
Sent: Wednesday, July 31, 2019 3:50 PM
To: jbirchmeier@birchmeierlaw.com
Subject: RE: Est. of Margarita Candelaria-Betancourt v. City of Wildwood (Claim No. 2019167699)

Thank you. I do not see Deputy Chief Murphy on the email so I assume this was sent to him separately.

Mary

Mary D'Arcy Bittner, Esq.
Solicitor, City of Wildwood
4400 New Jersey Ave.
Wildwood, NJ 08260
Direct Dial: (609) 846-2077

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply email or contact the sender at (609) 846-2077. Thank you very much.

From: James R. Birchmeier, Esq [<mailto:jbirchmeier@birchmeierlaw.com>]
Sent: Wednesday, July 31, 2019 3:20 PM
To: skellerman@qual-lynx.com
Cc: david@deweeseelawfirm.com; smooney@qual-lynx.com; Mary Bittner
Subject: Re: Est. of Margarita Candelaria-Betancourt v. City of Wildwood (Claim No. 2019167699)

Dear Sandy:

See attached status update letter in the above matter.

James R. Birchmeier, Esquire
BIRCHMEIER & POWELL LLC
1891 State Highway 50
P.O. Box 582
Tuckahoe, NJ 08250
609-628-3414
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jbirchmeier@birchmeierlaw.com

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BIRCHMEIER & POWELL LLC

COUNSELLORS AT LAW
1891 STATE HIGHWAY 50
PO BOX 582
TUCKAHOE NJ 08250-0582
(609) 628-3414
(609) 628-2966 (FAX)
info@birchmeierlaw.com
www.birchmeierlaw.com

JAMES R. BIRCHMEIER °*
ERIN R. THOMPSON
EDWARD N. ROMANIK
SANDRA A. SORANTINO

GLOUCESTER COUNTY OFFICE
70 EUCLID STREET
WOODBURY NJ 08096

DONALD A. POWELL
RETIRED

° CERTIFIED BY THE SUPREME COURT OF
NEW JERSEY AS A CIVIL TRIAL ATTORNEY
*ALSO MEMBER PA. BAR

OUR FILE NO. 13,488J

July 31, 2019
via e-mail: obarry@capelegal.com

Oliver T. Barry, Esquire
**BARRY CORRADO GRASSI
& GILLEN-SCHWARTZ, PC**
2700 Pacific Avenue
Wildwood, NJ 08260

Re: Est. of Margarita Candelaria-Betancourt v. City of Wildwood
Docket No.: CPM-L-259-19

Dear Mr. Barry:

As you know, this office has been retained to represent the interest of the City of Wildwood in connection with the Petition filed by your office pursuant to Rule 4:11. It is my understanding that this Petition is currently returnable on Friday, August 2, 2019.

Just so the record is clear, to date, our office has not been provided with copies of the unredacted records you requested in your OPRA request forwarded to the City on or about April 5, 2019. That being said, pursuant to the provisions of Rule 4:11, I do believe that you are entitled to be requested documents. However, the City does have concerns about the sensitive nature of some of these documents, including videos.

Accordingly, attached for your review is a proposed Discovery Confidentiality Order which I have drafted. If this order meets with your approval, I would ask that it be signed and returned to me for submission and execution by the Court. If, for some reason, you are not in a position to execute this proposed Order, please let me know. Assuming that this Order is acceptable, and given my representations that the City will produce the documents requested in your OPRA request, I would ask that the Petition filed by your office be withdrawn.

If you would like to discuss this matter any further, please feel free to contact me.

Very truly yours,

BIRCHMEIER & POWELL LLC

A handwritten signature in black ink, appearing to read "JRB", is written over the printed name "JAMES R. BIRCHMEIER".

JRB:amt

jbirchmeier@birchmeierlaw.com

Enclosure

cc: Mary D'Arcy Bittner, Solicitor – City of Wildwood
Sandy Kellerman, Qual-Lynx (Claim No. 2019167699)
David S. DeWeese, Esquire
Susan Mooney, Claims Supervisor

13,488J
James R. Birchmeier, Esquire
Attorney ID#: 022821986
BIRCHMEIER & POWELL LLC
COUNSELLORS AT LAW
1891 STATE HIGHWAY 50
P. O. BOX 582
TUCKAHOE, NEW JERSEY 08250
(609) 628-3414
Attorneys for City of Wildwood

Petitioner	SUPERIOR COURT OF NEW JERSEY CAPE MAY COUNTY – LAW DIVISION
IN THE MATTER OF AXEL HERNANDEZ-CANDELARIA, ADMINISTRATOR AD PROSEQUENDUM FOR THE ESTATE OF MARGARITA CANDELARIA-BETANCOURT	Docket No.: CPM-L-000259-19 Civil Action DISCOVERY CONFIDENTIALITY ORDER

It appearing that discovery in the above captioned matter, produced pursuant to Rule 4:11, involves the disclosure of confidential information; and all parties consenting to the entry of this ORDER, it is **ORDERED** as follows:

1. Any party to this litigation shall have the right to designate as "Confidential" and subject to this Order any information, document, or thing, or portion of any document or thing: (a) that contains private or confidential personal information, or (b) that contains information received in confidence from third parties, or (c) which the producing party otherwise believes in good faith to be entitled to protection. Any party to this litigation covered by this Order, who produces or discloses any Confidential material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: "CONFIDENTIAL" or "CONFIDENTIAL – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER" (hereinafter "Confidential").

2. Any party to this litigation and any third-party shall have the right to designate as "Attorneys' Eyes Only" and subject to this Order any information, document, or thing, or portion of any document or thing that contains highly sensitive business or personal information, the disclosure of which is highly likely to cause significant harm to an individual or to the business or competitive position of the designating party. Any party to this litigation who is covered by this Order, who produces or discloses any Attorneys' Eyes Only material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: "ATTORNEYS' EYES ONLY" or "ATTORNEYS' EYES ONLY – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER" (hereinafter "Attorneys' Eyes Only").

3. All Confidential material shall be used by the receiving party solely for purposes of the prosecution or defense of this action and shall not be disclosed by the receiving party to anyone unless and until the restrictions herein are removed either by written agreement of counsel for the parties, or by Order of the Court. It is, however, understood that counsel for a party may give advice and opinions to his or her client solely relating to the above-captioned action based on his or her evaluation of Confidential material.

4. Confidential material shall be used only by individuals permitted access to it. Confidential material, copies thereof, and the information contained therein, shall not be disclosed in any manner to any other individual, until and unless (a) outside counsel for the party asserting confidentiality waives the claim of confidentiality or (b) the Court orders such disclosure.

5. Material produced and marked as Attorneys' Eyes Only may be disclosed only to outside counsel for the receiving party and to such other persons as counsel for the producing party agrees in advance or as Ordered by the Court.

6. If counsel for a party receiving documents or information designated as Confidential or Attorneys' Eyes Only hereunder objects to such designation of any or all of such items, the following procedure shall apply:

- a. Counsel for the objecting party shall serve on the designating party third party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection. Counsel for the designating party or third party shall respond in writing to such objection within fourteen (14) days and shall state with particularity the grounds for asserting that the document or information is Confidential or Attorneys' Eyes Only. If no timely written response is made to the objection, the challenged designation will be deemed to be void. If the designating party or nonparty makes a timely response to such objection asserting the propriety of the designation, counsel shall then confer in good faith in an effort to resolve the dispute.
- b. If a dispute as to a Confidential or Attorneys' Eyes Only designation of a document or item of information cannot be resolved by agreement, the proponent of the designation being challenged shall present the dispute to the Court filing a formal motion for an order regarding the challenged designation. The document or information that is the subject of the filing shall be treated as originally designated pending resolution of the dispute.

7. All requests to seal documents filed with the Court shall comply with the applicable Rules of Court.

8. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential material that should have been designated as such, regardless of whether the information, document or thing was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information, document or thing

disclosed or as to any other material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing counsel for all parties to whom the material was disclosed that the material should have been designated Confidential within a reasonable time after disclosure. Such notice shall constitute a designation of the information, document or thing as Confidential under this Discovery Confidentiality Order.

9. When the inadvertent or mistaken disclosure of any information, document or thing protected by privilege or work-product immunity is discovered by the producing party it should be brought to the attention of the receiving party. Such inadvertent or mistaken disclosure of such information, document or thing shall not by itself constitute a waiver by the producing party of any claims of privilege or work-product immunity. However, nothing herein restricts the right of the receiving party to challenge the producing party's claim of privilege if appropriate within a reasonable time after receiving notice of the inadvertent or mistaken disclosure.

10. No information that is in the public domain or which is already known by the receiving party through proper means or which is or becomes available to a party from a source other than the party asserting confidentiality, rightfully in possession of such information on a non-confidential basis, shall be deemed or considered to be Confidential material under this Discovery Confidentiality Order.

11. This Discovery Confidentiality Order shall not deprive any party of its right to object to discovery by any other party or on any otherwise permitted ground. This Discovery Confidentiality Order is being entered without prejudice to the right of any party to move the Court for modification or for relief from any of its terms.

12. This Discovery Confidentiality Order shall survive the termination of this action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the parties filed with the Court.

13. Upon final conclusion of this litigation, each party or other individual subject to the terms hereof shall be under an obligation to assemble and to return to the originating source all originals and unmarked copies of documents and things containing Confidential material and to destroy, should such source so request, all copies of Confidential material that contain and/or constitute attorney work product as well as excerpts, summaries and digests revealing Confidential material provided, however, that counsel may retain complete copies of all transcripts and pleadings including any exhibits attached thereto for archival purposes, subject to the provisions of this Discovery Confidentiality Order. To the extent a party requests the return of Confidential material from the Court after the final conclusion of the litigation, including the exhaustion of all appeals therefrom and all related proceedings, the party shall file a motion seeking such relief.

IT IS SO ORDERED.

DATED: _____

J.S.C.

We hereby consent to the
form and entry of this Order.

**BARRY CORRADO GRASSI
& GILLEN-SCHWARTZ, P.C.**

BIRCHMEIER & POWELL LLC

BY: _____
OLIVER T. BARRY, ESQUIRE
Attorneys for Plaintiffs

BY: _____
JAMES R. BIRCHMEIER, ESQUIRE
Attorneys for Defendants