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Reply to:

Caitlin C. Harney

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February 25, 2020

Via E-Mail Only

Mr. Julian Leone

Re: Howell Township OPRA Response
OPRA: 20-074

Dear Mr. Leone,

I am writing on behalf of my client, Howell Township, in response to your Open Public Records Act ("OPRA") request that you filed with the Township on or about January 20, 2020. An extension was requested on January 28, 2020 until February 14, 2020. A second extension was requested until February 28, 2020. This response is being provided to you prior to the extended deadline requested by the Township.

As a reminder, your OPRA request sought the following documents:

1. Digital copy of any correspondence sent or received by Howell Township Code Inspector John Aguiar related to the lawsuit against Howell Township filed in NJ Superior Court on December 24, 2019.
2. Digital copy of any correspondence sent or received by Howell Township Code Inspector John Aguiar related to municipal summons 1319-SC-017764 and 1319-SC-017762.
3. Digital copy of any official notices sent or received by Howell Township Code Inspector John Aguiar related to code violations for any property located on Vicksburg Court in Howell NJ from July 1, 2018 through January 20, 2020.
4. Digital copy of all summons issued by Howell Township Code Inspector John Aguiar for violations of Code Section 188-127, 188-63 or 188-20 from January 1, 2019-January 20, 2020.
5. Digital copy of any harassment complaints against Howell Township Code Inspector John Aguiar.

Your first request for “any correspondence sent or received by Howell Township Code Inspector John Aguiar related to the lawsuit against Howell Township filed in NJ Superior Court on December 24, 2019” is denied as overbroad and improper as it does not define specific records.

The New Jersey Appellate Division has held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, **it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records ‘readily accessible for inspection, copying, or examination.’** N.J.S.A. 47:1A-1. (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005). The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549. Here, your request for “any correspondence” related to “the lawsuit against Howell Township” would require the custodian to review all correspondence sent or received by Township Code Inspector John Aguiar and then make a determination if that correspondence is “related” to the lawsuit Leone v. Howell Township, et al. Docket Number MON-L-4517-19. Neither OPRA nor Common Law permit open-ended searches of agency files, nor does the law allow a request for every document an agency has on file on a specific subject matter.

Similarly, your requests for records in number two above (seeking correspondence “related to municipal summons 1319-SC-017764 and 1319-SC-017762”) is also denied as overbroad and improper as it does not define specific records. Again, this request would require the custodian to review every correspondence sent or received by the Township Code Inspector and then make a determination if that correspondence “relates” to municipal summons 1319-SC-017764 or 1319-SC017762, which is not permitted under OPRA.

Please see enclosed documents responsive to your requests for “[o]fficial notices sent or received by Howell Township Code Inspector John Aguiar related to code violations for any property located on Vicksburg Court in Howell NJ from July 1, 2018 through January 20, 2020” and “[s]ummons issued by Howell Township Code Inspector John Aguiar for violations of Code Section 188-127, 188-63 or 188-20 from January 1, 2019-January 20, 2020.”

Finally, your request for “any harassment complaints” against Howell Township Code Inspector is denied as they are considered personnel records. Pursuant to N.J.S.A. 47:1A-10, personnel records of any individual in the possession of a public agency, including but not limited to *records relating to any grievance filed by or against an individual*, shall not be considered a government record and shall not be made available for public access. In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004), the GRC found that records of complaints or internal reprimands against a municipal police officer were properly classified as personnel records encompassed within the provisions of N.J.S.A. 47:1A-10. For this reason, the GRC concluded that “. . . records of complaints filed against [the police officer] and/or reprimands [the officer] received are not subject to public access.” Id.; See also Allen v. Cnty. of Warren, GRC Complaint No. 2003-155 (March 2004) (holding that records related to an employee harassment complaint were exempt pursuant to February 25, 2020



N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-10); Wares v. Twp. of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015)(holding external grievances or complaints against an employee were exempt as personnel records); Mayer v. Borough of Point Pleasant (Ocean), 2016186. As a result, records of complaints filed against the Township Code Inspector are not subject to public access.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Very truly yours,
GluckWalrath LLP

By: /s/ Caitlin Harney
Caitlin C. Harney