

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
LISA P. THORNTON
ASSIGNMENT JUDGE



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March 2, 2016

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21 Main Street Ste. 100
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Daly, Lamastra, Cunningham,
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202 Hall's Mill Road
Whitehouse Station, NJ 08889

Re: Steven Wronko v Monmouth County Society for the Prevention
Of Cruelty to animals
Docket# L-1709-15

Dear Counselors:

Relative to the above captioned matter, enclosed please find the Opinion of this Court.

Respectfully,


LISA P. THORNTON, A.J.S.C.

LPT:rh

Enclosure

**NOT FOR PUBLICATION WITHOUT APPROVAL
FROM THE COMMITTEE ON OPINIONS**

STEVEN WRONKO,

Plaintiff,

v.

MONMOUTH COUNTY SOCIETY FOR
THE PREVENTION OF CRUELTY TO
ANIMALS, and JOHN DOE, in his
capacity as Records Custodian for Defendant
MONMOUTH COUNTY SOCIETY FOR
THE PREVENTION OF CRUELTY TO
ANIMALS,

Defendants.

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY LAW DIVISION

DOCKET NO.: MON-L-1709-15

OPINION

Decided: February 29, 2016

CJ Griffin for plaintiff (Pashman Stein, P.C., attorneys);

John E. Lamastra for defendant (Daly, Lamastra, Cunningham, Kirmsier & Skinner, attorneys).

THORNTON, A.J.S.C.

SUMMARY

In this Action in Lieu of Prerogative Writs, Plaintiff Steven Wronko (hereinafter "Plaintiff") alleges that Defendant, Monmouth County Society for the Prevention of Cruelty to Animals (hereinafter "Defendant MCSPCA"), violated the Open Public Records Act, N.J.S.A. 47:1A-1, et seq. (hereinafter "OPRA"), and the common law right of access by denying a request for various records, including copies of emails, text messages, policies and earnings reports for employees. Defendant denied the request based on its assertion that it was a "private non-governmental organization...not covered under the Open Public Records Act." With the exception of licenses, certifications of employees, and 1099s, Plaintiff's application for access is granted because Defendant failed to meet its burden that the denial is authorized by law. Defendant is a public agency as defined by OPRA and

is subject to the statute's provisions. In addition, Defendant failed to assert any exemptions in a timely fashion and the response submitted on July 6, 2015, fails to provide any evidence or specific explanation to support any of the asserted exemptions.

FACTS AND CONTENTIONS

Plaintiff is a New Jersey citizen and a self-professed "animal rights activist who frequently requests records from public agencies to learn more about events covered in the news and to promote government transparency." Verified Complaint, ¶20. Defendant MCSPCA is a "non-profit 501(c)(3) organization led by a volunteer Board of Trustees[.]" Defendant's Letter Brief dated July 6, 2015, Exhibit 1, Certification of Jerry Rosenthal, ¶3. The agency's mission is to "care for the community's homeless, neglected and abused animals." *Id.* at ¶2.

The Court takes judicial notice that in addition to providing many services, Defendant enforces "animal cruelty laws" and employs a "Chief of Humane Law Enforcement." About Us, Monmouth County SPCA, (January 25, 2016), <http://monmouthcountyspca.org/about/staff/>. As a result of its enforcement activities, Defendant recovered fines and penalties in 2012 and 2013. Plf.'s Reply Brief. More importantly, it is undisputed that Defendant employs law enforcement officers with police powers.

There is no indication that Defendant ever adopted "a form for use of any person who requests access to a government record." On March 28, 2015, April 7, 2015 and April 8, 2015, Plaintiff requested various documents from Defendant, including:

March 28, 2015 Request

1. Copies of all emails to or from Captain Richard Yokum of the NJSPCA from August 1, 2014 to April 1, 2015 sent to candie@monmouthcountyspca.org.
2. Copies of the video surveillance recordings from March 28, 2015 from both cameras that are in the adoption center in the Freehold Raceway Mall, please provide them in .avi form in your response.
3. Copies of all electronic mail, text messages, Facebook messages, audio recordings, video recordings, and faxes from or to

Chief Victor "Buddy" Amato, from December 1, 2013 to March 21, 2015 regarding the subject matter "animal abuse, njspca, cieliesz, Richard, Michal, Nancy Martin, Helmetta, Wronko, or cold."

4. Copies of all Monmouth County SPCA current regulations, Standard Operating Procedures (SOP), general orders and policy statements regarding the Monmouth County SPCA Freehold Adoption Center at the Freehold Raceway Mall for 2014 and 2015.

5. Copies of all correspondence (paper, fax, email, text message, postal, Federal Express, pictures, videos or documents) to or from the Helmetta Regional Animal Shelter pertaining to Michal Cieliesz or the Helmetta Regional Animal Shelter from January 1, 2014 to April 1, 2015.

6. Copies of all certifications, licenses for all current or former employees or volunteers at the Freehold Adoption Center from August 1, 2014 to April 1, 2015.

7. Copies of all certifications, licenses for all current or former employees or volunteers at the Freehold Adoption Center that is operated by the Monmouth County SPCA from January 1, 2014 to April 1, 2015.

8. A copy of job descriptions for each position held by any employee or volunteer of the Freehold Adoption Center that is operated by the Monmouth County SPCA from January 1, 2014 to April 1, 2015.

9. A copy of the existing actual 2013 year-end earnings report with net and gross income earned for each employee working and getting paid by the Monmouth County SPCA. Please include regular pay, overtime pay and which department the employee works for.

10. Copies of all electronic mail, text messages, Facebook messages, audio recordings, video recordings, video recordings, and faxes from or to Chief Victor "Buddy" Amato, from December 1, 2013 to March 21, 2015 regarding the subject matter "animal abuse, njspca, cieliesz, Richard, Michal, nancy martin, Helmetta, Wronko, indictment, Monmouth county, prosecutors, brandon, Charles or cold. (Plaintiff specifically requested that Defendant "please search the subject or body of the email/messages").

11. Copies of all health records, APHIS forms, Veterinary Records for all animals (Feline, Canine avian, reptile, rodents, etc.) that were at the Freehold Adoption Center operated by the Monmouth County SPCA from January 1, 2015 to April 1, 2015, including their dispositions and adoption records.

12. Copies of all Rescue groups 501(c) (3) paperwork that the Monmouth County SPCA's Adoption center at the Freehold Raceway mall allows to pull animals from January 1, 2014 to January 1, 2015.

13. Copies of all electronic mail, text messages, Facebook messages, audio recordings, video recordings, and faxes from or to candice@monmouthcountyspca.org, from August 1, 2014, 2013 to March 21, 2015 regarding the subject matter "animal abuse, njspca, cieliesz, helmetta, Wronko, Amato or policies. (Plaintiff specifically

requested that Defendant "please search the subject or body of the email/messages").

14. Copies of volunteer sign in and sign out sheet from March 1, 2015 to March 31, 2015.

15. Copies of all invoices to the Adoption Center located at the Freehold Raceway Mall that is operated by the Monmouth County SPCA.

April 7, 2015 Request

1. A copy of the existing actual 2014 year-end earnings report with net and gross income earned for each employee working and getting paid by the Monmouth County SPCA. Please include regular pay, overtime pay and which department the employee works for.

2. Copies of all electronic mail, text messages, Facebook messages, audio recordings, video recordings, and faxes from or to Chief Victor "Buddy" Amato, from April 1, 2015 to April 11, 2015 regarding the subject matter "animal abuse, njspca, ciemiesz, Richard, Michal, nancy martin, Helmetta, Wronko, indictment, Monmouth county, prosecutors, brandon, charles or cold."

3. Copies of all health records, APHIS forms, Veterinary Records for all animals (Feline, Canine avian, reptile, rodents, etc.) that were at the Freehold Adoption Center operated by the Monmouth County SPCA from April 2, 2015 to April 11, 2015, including their dispositions and adoption records.

4. Copies of all Rescue groups 501(c)(3) paperwork that the Monmouth County SPCA's Adoption center at the Freehold Raceway mall allows to pull animals from January 2, 2015 to April 11, 2015.

5. Copies of volunteer sign in and sign out sheet from April 1, 2015 to April 15, 2015 for the Adoption Center at the Freehold Raceway Mall.

6. Copies of all invoices from any veterinary services, cleaning services, medications, and travel to the Adoption Center located at the Freehold Raceway Mall that is operated by the Monmouth County SPCA from January 1, 2015 to April 15, 2015.

7. A copy of each MCSPCA "Request and Authorization for Records Disposal" if submitted by paper then the pink copy, or if on-line through the ARTEMIS system (Form No. CR-AA-0005 pages 1 & 2) that was submitted to the State of NJ from May 1, 2013 to the present day.

8. A copy of each cover letter sent to the State of NJ with the request of records disposal form is submitted by paper from May 1, 2013 to the present day.

9. A copy of each signed authorization from the State of NJ granting records disposal to MCSPCA if submitted by paper or a copy of the "Disposition Request Review Summary Sheet" if submitted through the ARTEMIS system from May 1, 2013 to the present day.

10. A copy of each and every signed authorization from the individual/company who is authorized to dispose the records for disposal for MCSPCA or a copy of the "Disposition Requests Summery" if submitted through the ARTEMIS system from May 1, 2013 to the present day.

April 8, 2015 Request

1. A copy of all controlled substance log books on the premises of the Monmouth County SPCA's Adoption Center located at the Freehold Raceway Mall for the 2014 and 2015 years.

2. Copies of all electronic mail, text messages, Facebook messages, audio recordings, video recordings, and faxes from or to candic@monmouthcountyspca.org, from February 1, 2015 to April 11, 2015 regarding the subject matter "animal abuse, njspca, cieliesz, helmetta, Wronko, Amato or policies. (Plaintiff specifically requested that Defendant "please search the subject or body of the email/messages").

3. A copy of the banned profiles on the Facebook page managed by the Monmouth County SPCA located at <https://www.facebook.com/MonmouthCountySPCA?fref=ts> from January 1, 2014 to April 11, 2015.

4. A copy of all deleted posts or hidden messages that were posted on the Facebook page that is administered by the Monmouth County SPCA located at: <https://facebook.com//MonmouthCountySPCA?fref=ts> from January 1, 2014 to April 11, 2015.

5. A copy of the list of administrators or editors on the Facebook page administered by the Monmouth County SPCA at <https://facebook.com//MonmouthCountySPCA?fref=ts> that are current as of April 8, 2015.

6. Copies of all certifications and licenses of the employees of the Monmouth County SPCA to include but not limited to the Adoption Center located at the Freehold Raceway Mall from January 1, 2013 to April 11, 2015.

7. A copy of invoices for security or surveillance systems at the Adoption Center at Freehold Raceway mall that is operated by the Monmouth County SPCA, including updates and training from January 1, 2011 to April 11, 2015.

8. A copy of the by-laws of the Monmouth County SPCA that are current as of April 11, 2015.

9. A copy of all fine moneys or restitutions received by the Monmouth County SPCA, any employee or volunteer of the Monmouth County SPCA to include summonses issued in regards to those fines that were levied from January 1, 2013 to April 1, 2015.

10. A copy of all 1099 or 1099-G's issued by the Monmouth County SPCA from January 1, 2010 to April 1, 2015.

11. A copy of all Standard Operating Procedures that are in place at the Adoption Center operated by the Monmouth County SPCA at the Freehold Raceway Mall that are active, including updates, memorandums and addendums from April 1, 2014 to April 15, 2015. [Note: Plaintiff listed this eleventh request as his tenth.]

On April 8, 2015, Jerry Rosenthal, President/CEO of MCSPCA denied Plaintiff's request for records based on his assertion that Defendant is a "private non-governmental organization and as such, is not covered under the Open Public Records Act." Defendant's denial was not included on a form that meets the requirements set forth by N.J.S.A. 47:1A-5(f). In addition, Defendant failed to assert exemptions in a timely fashion. In a submission to the court dated July 6, 2015, Defendant belatedly attempted to assert the following OPRA exemptions: 1) criminal investigatory records; 2) communications between attorney-client; 3) emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility; 4) security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software; 5) personnel or pension records; and 6) inter-agency or intra-agency advisory, consultative or deliberative material. In addition, Defendant claims the requests should be denied because: 1) "OPRA permits requests for records" and not information; 2) the information requested is "private," and 3) the records requested are not "government records" as defined by OPRA.

In support of the Action in Lieu of a Prerogative Writs, Plaintiff argues that the MCSPCA violated both OPRA and his common law Right of Access. He reasons that Defendant is a public agency as defined by OPRA because it was "created by the Legislative Branch," is an "instrumentality" of the State, has "law enforcement responsibilities," receives public funds, and has significant public reporting requirements.

In response, Defendant argues that it is not a "public agency" as defined by OPRA because it is not "an office, board, bureau, or commission created within or created by the Legislative Branch"

and is not an “instrumentality” of the State. Defendant alleges that the MCSPCA “was not created by the State” and is “not funded by it.” In the alternative, Defendant argues that assuming it is subject to OPRA, certain exceptions apply.

LAW

PUBLIC ACCESS

Access to public records is available “in three distinct ways.” MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 543 (App. Div. 2005) (citing Bergen County Improvement Auth. v. North Jersey Media Group, Inc., 370 N.J. Super. 504, 515 (App. Div. 2004), certif. denied, 182 N.J. 143 (2004)). Government records may be obtained through a citizen’s common law right of access, by asserting one’s rights pursuant to OPRA, or by the discovery procedures applicable to civil disputes. Ibid.

OPRA

Generally

OPRA provides access to “government records” and was enacted “to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.” Mason v. City of Hoboken, 196 N.J. 51, 64-65 (2008) (quoting Asbury Park Press v. Ocean County Prosecutor’s Office, 374 N.J. Super. 312, 329 (Law Div. 2004)).

Public Agency

OPRA broadly defines “public agency” in an effort to encourage open government and discourage waste and corruption. Paff v. New Jersey State Fireman’s Ass’n, 431 N.J. Super. 278, 287-288 (citing Sussex Commons Associates, LLC v. Rutgers the State University, 210 N.J. 531 (2012)); see also N.J.S.A. 47:1A-1. Specifically, “[p]ublic agency’ or ‘agency’ means . . . the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency.” The statute further defines

a “law enforcement agency” as a “public agency” subject to the provisions of OPRA. N.J.S.A. 47:1A-1.1.

Government Records

OPRA embodies New Jersey’s tradition of favoring the public’s right to be informed of government actions. To that end, “identifiable government records” are to be “readily accessible for inspection, copying, or examination” and are defined as:

any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof.

[N.J.S.A. 47:1A-1.1.]

However, the statute was “not intended as a research tool litigants may use to force government officials to identify and siphon useful information” and a government entity is not required to process requests that require it to analyze, collate or compile information. MAG, supra, 375 N.J. Super. at 546, 549. A request encompassed by OPRA must “identify with specificity or particularity the government records sought” including names and identifiers. Ibid; see also New Jersey Builder’s Ass’n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). While the decision is not binding, this court notes that in interpreting MAG, the Government Records Council (“GRC”) has ruled that “in order to specifically identify an e-mail, an OPRA requests must contain (1) the content/and or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid email request must identify the sender/and or the recipient thereof.” Elcavage v. West Milford Township, GRC Complaint No. 2009-07, at *5 (April 8, 2010).

OPRA Exemptions

Many categories of documents are “deemed confidential” and are not “government records” pursuant to OPRA, including: (1) criminal investigatory records; (2) records within the attorney-client privilege; (3) information regarding computer hardware, software or networks that could jeopardize security of the building, facility or persons therein; (4) emergency or security information or procedures for buildings that would create a risk to the safety of persons, property, electronic data or software, (5) personnel and pension records, and (6) Inter-agency or intra-agency advisory, consultative or deliberative material. While “personnel or pension records of any individual” are not considered government records, “an individual’s name, title, position, salary payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record.” N.J.S.A. 47:1A-1.1, 47:1A-10, 47:1A-9.

Procedures for OPRA Requests

OPRA provides procedures for requests and responses. N.J.S.A. 47:1A-5; New Jersey Builder’s Ass’n v. Council on Affordable Housing, 390 N.J. Super 166, 176 (App. Div. 2007). A public agency is required to adopt a form for use by any person that makes a request for government records. N.J.S.A. 47:1A-5(f). The form should include “a space for the custodian to indicate which record will be made available, when the record will be made available,” the time period within which the agency is required to respond, “space required for the custodian to list reasons the request is denied in whole or in part” and space for the custodian to sign and date if the request is fulfilled or denied. Ibid. If a custodian is unable to respond to a request, the custodian “shall indicate the specific basis therefor on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g). If the custodian asserts that part of a record is exempt from access, the custodian “shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access

to the remainder of the record.” *Ibid.* Finally, a custodian must grant or deny a request for access within 7 days. N.J.S.A. 47:1A-5(f) and (i).

Burden of Proof

When a public agency denies a request for records, it “shall have the burden of proving that the denial of access is authorized by law.” N.J.S.A. 47:1A-6; see also *Courier News v. Hunterdon County Prosecutor’s Office*, 358 N.J. Super. 373, 379 (App. Div. 2003). The agency “must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality. Absent such a showing, a citizen’s right of access is unfettered.” *Courier News, supra*, 358 N.J. Super. at 382-83. A court’s analysis should consider “the overarching public policy in favor of a

citizen’s right of access.” *Id.* at 383. If it is determined that access has been improperly denied, the court shall enter an order requiring the public agency to comply, and the prevailing party “shall be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6.

COMMON LAW RIGHT OF ACCESS

Under the common law, a citizen may gain access to public records if she can “establish an interest in the subject matter of the material.” *S. Jersey Pub. Co. v. N.J. Expressway Auth.*, 124 N.J. 478, 487 (1991) (citing *Irval Realty, Inc. v. Board of Pub. Util. Comm’rs*, 61 N.J. 366, 372 (1972)). The interest may be “personal” or one that concerns a “public problem or issue.” *Ibid.* Documents are “public” under the common law if they are: 1) required by law to be kept; 2) necessary to be kept in the discharge of a duty imposed by law; 3) directed by law to serve as a memorial and evidence of something written, said or done; 4) a written memorial made by a public officer authorized to perform that function, or 5) a writing filed in a public office. *S. Jersey Pub. Co., supra*, 124 N.J. at 487 (citing *Nero v. Hyland*, 76 N.J. 213, 222 (1978)). After determining that a plaintiff has standing and that documents are public, a judge must “balance the plaintiff’s interest in the information against the

public interest in confidentiality” and consider whether the request is made to advance a public or private purpose. *Id.* at 487-88. Factors to consider when balancing the respective interests include:

(1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policy-makers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

[*Loigman v. Kimmelman*, 102 N.J. 98, 113 (1986).]

PREVENTION OF CRUELTY TO ANIMALS, N.J.S.A. 4:22, et seq.

In 1868, the New Jersey Legislature created the New Jersey Society for the Prevention of Cruelty to Animals and authorized the State Society to “appoint in the several counties...district societies for the purpose of enforcement of all laws.” *N.J.S.A. 4:22, et seq.; Gerofsky v. Passaic Cnty. Soc. For Prevention of Cruelty to Animals*, 376 N.J. Super. 405, 415 (App. Div. 2005). Various provisions of *N.J.S.A. 4:22, et seq.* establish the framework for Defendant to exist, and set forth a variety of requirements for the agency, its employees and volunteers. For example, the statute requires the New Jersey Society for the Prevention of Cruelty to Animals to establish bylaws, standards and guidelines “necessary for the governance and operation” of county societies. *N.J.S.A. 4:22-11.3*. In addition, the legislature granted county societies the authority to hire law enforcement officers to investigate and enforce all ordinances and laws for the protection of animals. *N.J.S.A. 4:22-11.7*. Finally, Defendant is required to submit an audit to the State Society and the New Jersey Attorney General each year and must abide by standards to hire and train its officers. *N.J.S.A. 4:22-11.8 - 11.13*.

REASONING

PUBLIC AGENCY

A review of the facts reveals that Defendant is a “public agency” within the meaning of OPRA. It is undisputed that the New Jersey SPCA is an entity created by the “Legislature.” It is also undisputed that the Legislature created a mechanism for the creation of county agencies and but for that legislation, Defendant would not exist. Defendant may be a non-profit organization, but it is subject to many requirements that are mandated by statute. N.J.S.A. 4:22-11.6 requires every county society to “submit quarterly a law enforcement report” to the Attorney General, the county sheriff and the county prosecutor. N.J.S.A. 4:22-11.7 requires Defendant to “Enforce all laws and ordinances enacted for the protection of animals” and “Adopt a badge, which shall be authority for making arrests.” N.J.S.A. 4:22-11.12 requires all State, county and municipal law enforcement to make every reasonable effort to “assist the humane law enforcement officers and agents.” Finally, N.J.S.A. 4:22-11.13 requires Defendant to prepare an annual audit of its financial transactions by an independent New Jersey licensed certified public accountant, submit it to the Attorney General and make it available to the public upon request.

A plain reading of the OPRA statute also indicates that Defendant is a “public agency” because it exercises “law enforcement responsibilities” as determined by the Attorney General. N.J.S.A. 47:1A-1.1. There is no question that Defendant investigates and enforces animal cruelty laws and ordinances, employs law enforcement officers and a chief of enforcement. It files complaints and has the authority to make arrests.

GOVERNMENT RECORDS

Plaintiff made various requests for “copies of all electronic mail, text messages, Facebook messages, audio recordings, video recordings and faxes” on March 28, 2015, April 7, 2015 and April 8, 2015. On July 6, 2015, Defendant for the first time asserted that the records requested: (1) did not fall within the definition of government records; (2) were “not kept in the course of official business;” and (3) were not specifically identified.

Defendant’s denial for the above reasons is without merit. There is no question that the documents requested fall squarely within the statutory definition of government records. The text messages and electronic mail are “information stored and maintained electronically.” In addition, news accounts regarding a pending lawsuit reveal that “Chief Amato” communicated with officers and other employees and volunteers and often used crude and offensive language in the course of his employment. Defendant failed to explain what documents, if any, are not kept in the course of official business. Finally, Plaintiff’s requests identified a sender or recipient, a subject matter and specific dates. These requests meet the specificity and particularity requirements of MAG. The court notes that Defendant did not assert a defense based on N.J.S.A. 47:1A-5(g) that would permit a custodian to deny a request if access would “substantially disrupt agency operations.”

EXEMPTIONS

Criminal Investigatory Records

On April 8, 2015, Plaintiff requested copies of all fines/restitution received between January 1, 2013 and April 1, 2015, to include a copy of the summons issued and the employee or volunteer that filed the complaint. On July 6, 2015, Defendant denied this request and asserted that the documents were what OPRA defines as “criminal investigatory records.” This denial is without merit, as the records are clearly not covered by the exemption.

OPRA defines a “criminal investigatory record” as a record “not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal

investigation or related civil enforcement proceeding.” N.J.S.A. 47:1A-1.1 “Disorderly persons offenses and petty disorderly persons offenses are petty offenses and are not crimes within the meaning of the Constitution of this State.” N.J.S.A. 2C:1-4(b). Defendant failed to offer any evidence that the requested documents related to any “criminal” investigation. Most animal cruelty matters are litigated in municipal courts and are not “crimes.” More importantly, fines and restitution relate to the disposition of these matters and not the investigation. Finally, Defendant is required to disclose in an audit, fines and restitution recovered on an annual basis.

Emergency or Security Information or Procedures for Buildings

Plaintiff requested copies of “invoices for security or surveillance systems at the Adoption Center at the Freehold Raceway Mall.” On July 7, 2015, Defendant denied this request based on the “emergency or security information” exemption. Defendant’s denial is unsupported. Defendant failed to provide any evidence that the documents, if disclosed would jeopardize security of the building, facility or persons. In addition, Defendant failed to explain why it could not comply by redacting the documents to exclude specific information regarding the type of security system purchased or installed.

Security Measures or Surveillance Techniques

In response to Plaintiff’s request for “invoices for security or surveillance systems at the Adoption Center,” Defendant responded that the documents were excluded based on the “security measures” exemption. Defendant’s denial is unsupported. Defendant failed to provide specific evidence to support the exclusion and failed to explain why it could not comply by redacting certain information.

Personnel and Pension Records

Plaintiff requested copies of all 1099s for certain employees as well as certifications and licenses for all current and former employees/volunteers at the Freehold Adoption Center from

January 1, 2013 through April 11, 2015. In addition, Plaintiff requested “volunteer sign-in and sign-out” sheets from January 1, 2014 through April 15, 2015. On July 7, 2015 Defendant denied these requests and asserted the “personnel and pension records” exemption. With the exception of the request for 1099s, Defendant failed to meet its burden and provide specific evidence to support this exclusion.

There is no indication that the sign-in and sign-out sheets of volunteers are part of any personnel file maintained by Defendant. However, while it is Defendant's responsibility to provide specific evidence that the certifications or licenses are necessary to the employees' employment, the court is mindful that Defendant's mistakes or omissions should not jeopardize the privacy interests of individual employees. Consequently, Defendant shall advise the court within seven (7) days of the date of this decision, whether these documents exist and specifically why access should be denied.

Attorney-Client Privilege

As stated above, Plaintiff made requests for emails, text messages and Facebook posts. On July 7, 2015, Defendant asserted that the documents “may fall within the attorney-client privilege.” This denial is without merit. The explanation offered by Defendant is wholly inadequate and fails to provide any guidance regarding the validity of this exclusion. There is no indication from reviewing the request that the communications requested were part of communications between an attorney and a client.

Inter-agency or Intra-agency Advisory, Consultative or Deliberative Material

Defendant offered the above exemption in response to Plaintiff's multiple requests for emails, text messages, “current regulations, Standard Operating Procedures (SOP), general orders and policy statements” regarding the Freehold Adoption Center. This belated explanation is without merit as Defendant fails to explain how this exemption applies.

Privacy

OPRA's privacy clause specifies that public agencies have an "obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure" would violate a citizen's reasonable expectation of privacy N.J.S.A. 47:1A-1. In response to Plaintiff's numerous requests for electronic communications, Defendant relies on Burnett v. County of Bergen, 198 N.J. 408 (2008) and asserts that the communications are private and not subject to access. While Defendant failed to provide any explanation of how these communications are "private," press accounts indicate that Chief Amato routinely communicated with employees in the course of his employment and often used crude and offensive language. Consequently, these communications regarding work related issues, or that take place using work issued devices, cannot be excluded based on "privacy" concerns. Because Defendants failed to proffer any evidence that there should be a reasonable expectation of privacy, no analysis of the factors discussed in Burnett is necessary. Asbury Park Press v. County of Monmouth, 201 N.J. 5, 7 (2009).

CONCLUSION

In light of the foregoing, Plaintiff is entitled to access to the requested records pursuant to the provisions of OPRA. Having decided that Plaintiff is entitled to its OPRA request, there is no need to engage in an analysis of the common law right of access to public records.

Judgment is entered in favor of Plaintiff ordering:

1. With the exception of 1099s, certifications, and licenses, Defendant is to provide copies of the requested records;
2. Plaintiff is entitled to reasonable attorney's fees. Counsel for Plaintiff and Defendant are to confer and attempt to resolve the reasonable attorney's fees to which Plaintiff is entitled. If counsel cannot come to an agreement, Plaintiff's counsel shall submit a Certification of Services delineating the amount of attorney's fees requested;

3. Plaintiff's counsel, CJ Griffin, Esq., shall prepare and submit under the five-day rule, R. 4:42-1, an order that comports with this Court's ruling, and if necessary, the Certification of Services delineating the amount of attorney's fees requested;
4. Defendant to provide Plaintiff with the copies of the requested records within seven (7) days of its receipt of the signed order, or within a reasonable time as agreed upon by Plaintiff's counsel.