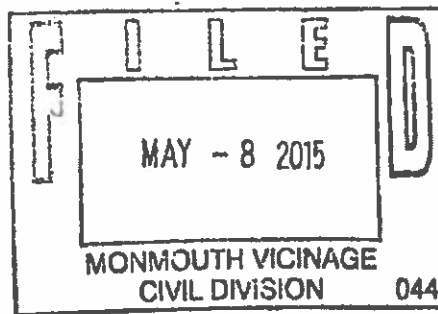


PASHMAN STEIN
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CJ GRIFFIN (#031422009)

Attorneys for Plaintiff,
Steven Wronko



STEVEN WRONKO,

Plaintiff,

v.

**MONMOUTH COUNTY SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS,
and JOHN DOE, in his/her capacity as Records
Custodian for Defendant Monmouth County
Society for the Prevention of Cruelty to Animals,**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH
COUNTY**

DOCKET NO:

L-1709-15

Civil Action

VERIFIED COMPLAINT

Plaintiff, Steven Wronko, through his undersigned counsel, Pashman Stein, A Professional Corporation, complains against the Defendants as follows:

1. This is an action alleging violation of the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1, et seq., ("OPRA") and the common law right of access to public records, seeking records from the Monmouth County Society for the Prevention of Cruelty to Animals.

PARTIES

2. Plaintiff Steven Wronko is an individual who resides at 62 Roland Street, Keansburg, New Jersey 07734.

3. Upon information and belief, Defendant Monmouth County Society for the Prevention of Cruelty to Animals ("Monmouth County SPCA") is a non-profit corporation

formed under the laws of the State of New Jersey, with its primary place of business located at 260 Wall Street, Eatontown, New Jersey 07724.

4. Defendant John Doe is the Records Custodian for Defendant Monmouth County SPCA, who is, according to OPRA, "the officer officially designated by formal action of that agency's director or governing body, as the case may be." N.J.S.A. 47:1A-1.1.

VENUE

5. Venue is properly laid in Monmouth County because Defendant Monmouth County SPCA is located in Monmouth County and because the cause of action arose in Monmouth County. R. 4:3-2(a).

FACTUAL ALLEGATIONS

About the Monmouth County SPCA

6. In 1873, the New Jersey Legislature enacted legislation authorizing the president of the State's SPCA ("NJSPCA") to appoint county societies for the purpose of enforcing all laws enacted for the protection of animals. Gerofsky v. Passaic Cnty. Soc. for Prevention of Cruelty to Animals, 376 N.J. Super. 405, 415 (App. Div. 2005) (citing L. 1873, c. 311, § 1; N.J.S.A. 4:22-5).

7. This legislation also provided that each county SPCA "shall have the same rights, powers and privileges as are vested in the [State SPCA]." Gerofsky, 376 N.J. Super. at 415 (citing N.J.S.A. 4:22-9; L. 1908, c. 148, §§ 1; 4).

8. In 2005, the Legislature amended its statutes regarding all societies for the prevention of cruelty to animals. See N.J.S.A. 4:22-11 to -60. The new statute specifically granted that each existing county society would be continued as a chartered county society. N.J.S.A. 4:22-11.6.

9. Under N.J.S.A. 4:22-11.2, the State has determined how the NJSPCA's Board of Trustees shall be composed, and that the Governor, with the advice and consent of the Senate, selects three of the NJSPCA's Trustees.

10. Per the statute, NJSPCA's Board of Trustees has the authority to grant charters for county societies. N.J.S.A. 4:22-11.4.

11. Overall, the NJSPCA serves as a "parent corporation for the purposes of coordinating the functions of county societies for the prevention of cruelty to animals, and of promoting the interests of, protecting and caring for, and doing any and all things to benefit or that tend to benefit animals." N.J.S.A. 4:22-11.2.

12. Further, each county society must submit a quarterly law enforcement report to the Board of Trustees of the NJSPCA, on a form developed in conjunction with the Attorney General. Each county society must also submit this quarterly report to the county sheriff and county prosecutor. The NJSPCA compiles these reports from the county societies and submits them to the Attorney General for oversight. N.J.S.A. 4:22-11.6(c).

13. Like the NJSPCA, each county society is required to prepare an annual audit of its financial transactions and submit their audits to the Attorney General. These audits shall be made available to the public upon request. N.J.S.A. 4:22-11.13.

14. In addition to the government's oversight of the organization, the Monmouth County SPCA also performs a number of traditional government functions, such as law enforcement activities.

15. The Monmouth County SPCA has the power to appoint humane law enforcement agents, investigate alleged acts of cruelty to animals, request legal assistance from the county or

municipal prosecutor, adopt a badge and make arrests with or without a warrant, and may sue and be sued in all courts. N.J.S.A. 4:22-11.7; N.J.S.A. 4:22-44; N.J.S.A. 4:22-47.

16. Additionally, Monmouth County SPCA's vehicles may utilize red lights, just as police vehicles do. N.J.S.A. 13:24-2.8; N.J.S.A. 13:24-1.1.

17. Any fines or penalties collected by a court or court clerk for violations of the animal cruelty law are paid to the county societies. N.J.S.A. 4:22-55.

18. Based on the holdings in Fair Share Housing Ctr. Inc. v. N.J. State League of Municip., 207 N.J. 489 (2011), Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 183 N.J. 519 (2005), Paff v. N.J. State Firemen's Assoc., 431 N.J. Super. 278 (App. Div. 2013), and Kennedy v. Montclair Center Corp. Business Improvement District, A-459-12T2 (App. Div. June 24, 2014), and the evidence provided above, Defendant Monmouth County SPCA is a public agency pursuant to N.J.S.A. 47:1A-1.1. Therefore, Defendant is subject to the provisions of OPRA and is required to respond to OPRA requests for records.

Plaintiff's OPRA Request

19. In March 2015, Monmouth County SPCA's police chief, Victor "Buddy" Amato, resigned after being named in a lawsuit alleging he sent racist and homophobic text messages to staff. [Attached hereto as **Exhibit A** is a true and accurate copy of a March 12, 2015 article regarding Amato's resignation].

20. Plaintiff is a concerned New Jersey citizen and animal rights activist who frequently requests public records from public agencies to learn more about events that have been covered in the news and to promote government transparency.

21. Monmouth County SPCA does not provide any information about how to make an OPRA request, provide an OPRA request form, or identify a records custodian on its website.

22. On March 28, 2015, Plaintiff submitted via e-mail a request for valid government records pursuant to OPRA and the common law right of access to Candie Caron, an employee of the Monmouth County SPCA whom Plaintiff believed might be the records custodian. [Attached hereto as **Exhibit B** is a true and accurate copy of Plaintiff's OPRA request].

23. Plaintiff requested the following documents, among other records:

3. Copies of all electronic mail, text messages, Facebook messages, audio recordings, video recordings and faxes from or to Captain Rick Yocum, from August 1, 2014 to March 21, 2015 regarding the subject matter "animal abuse, njspca, cieliesz, richard, michal, nancy martin, helmetta, Wronko, or cold." (Please search the subject or body of the email/messages).

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.

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, 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." (Please search the subject or body of the email/messages).

12. Copies of all Rescue groups 501c(3) paperwork that the Monmouth County SPCA's Adoption center at Freehold Raceway mall allows to pull animals from 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 candie@monmouthcountyspca.org, from August 1, 2014 to March 21, 2015 regarding the subject matter "animal, abuse, njspca, cieliesz, helmetta, Wronko, Amato or policies." (Please search the subject or body of the email/messages).

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

[Exhibit B].

24. On April 7, 2015, Plaintiff sent a second OPRA request to Candie Caron at the Monmouth County SPCA, via e-mail. [Attached hereto as **Exhibit C** is a true and accurate copy of Plaintiff's April 7, 2015 request]. This request asked for the following documents, among other records:

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, cieliesz, richard, michal, nancy martin, Helmetta, Wronko, indictment, Monmouth county, prosecutors, brandon, charles or cold." (Please search the subject or body of the email/messages).

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

5. Copies of the 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.

[Exhibit C].

25. On April 8, 2015, Plaintiff submitted a third OPRA request via e-mail to Candie Caron, at the Monmouth County SPCA. [Attached hereto as **Exhibit D** is a true and accurate copy of Plaintiff's April 8, 2015 request]. This request asked for the following documents, among other records:

1. A copy of any and 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 candie@monmouthcountyspca.org, from February 1, 2015 to April 11, 2015 regarding the subject matter "animal, abuse, njspca, cieliesz, richard, michal, nancy martin, Helmetta, Wronko, indictment, Monmouth county, prosecutors, OPRA." (Please search the subject or body of the email/messages).

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 the 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 the summonses issued in regards to those fines that are 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.

1[1]. 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.

[Exhibit D].

26. On April 8, 2015, Jerry Rosenthal, President/CEO at the Monmouth County SPCA, responded to Plaintiff via e-mail. Mr. Rosenthal's response stated the following: "Your request for information was received. Unfortunately, the Monmouth County SPCA is a private non-governmental organization and, as such, is not covered under the Open Public Records Act. Consequently, we cannot provide you with the documents you requested." [Attached hereto as Exhibit E is a true and accurate copy of Mr. Rosenthal's April 8, 2015 e-mail response].

27. To date, Defendant has not produced any of the records requested in response to Plaintiff's OPRA request.

FIRST COUNT
(Violation of OPRA)

28. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

29. Pursuant to N.J.S.A. 47:1A-1, all government records must be "readily accessible" to the citizens of this State unless specifically exempted by law.

30. Pursuant to N.J.S.A. 47:1A-5(f), "[t]he custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency."

31. Defendant is a public agency subject to OPRA.

32. Defendant maintains no such OPRA request form.

33. Defendant has also not designated a records custodian.

34. Despite the lack of a form, Plaintiff made a valid request for "government records" that are subject to access under OPRA, N.J.S.A. 47:1A-1 *et seq.*

35. The requested records are government records because they were "made, maintained or kept on file," or "received in the course of . . . [Defendant's] official business." N.J.S.A. 47:1A-1.1.

36. The records requested, therefore, should have been produced within seven business days of Plaintiff's request.

37. Pursuant to N.J.S.A. 47:1A-5(h), "[a]ny officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record."

38. Defendants failed to lawfully respond to Plaintiff's OPRA request.

39. Accordingly, Defendants violated OPRA by:

- a. Failing to make government records "readily accessible," in violation of N.J.S.A. 47:1A-1;
- b. Failing to grant access to government records within seven business days, in violation of N.J.S.A. 47:1A-5(i);
- c. Failing to maintain a OPRA Request Form, in violation of N.J.S.A. 47:1A-5(f);
- d. Failing to designate an OPRA Records Custodian, in violation of N.J.S.A. 47:1A-1.1;
- e. Failing to forward the OPRA Request to the records custodian, in violation of N.J.S.A. 47:1A-5(h).

WHEREFORE, Plaintiff demands judgment against Defendants:

- (a) Declaring Defendant Monmouth County SPCA to be a public agency pursuant to OPRA;
- (b) Declaring said actions of Defendants to be in violation of OPRA by failing to maintain an OPRA Request form, failing to identify a records custodian, and failing to grant access to the requested records within seven business days, as required by OPRA;
- (c) Directing Defendants to procure and release the requested records to Plaintiff;
- (d) Ordering Defendants to preserve the requested records pending resolution of these proceedings or as otherwise required by law;
- (e) Awarding counsel fees and costs pursuant to N.J.S.A. 47:1A-6; and
- (f) For such other relief as the Court may deem just and equitable.

SECOND COUNT
(Common Law Right of Access)

40. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

41. The public's need for access to these records is greater than Defendants' need for secrecy.

42. Defendants' failure to disclose the requested records violated Plaintiff's common law right of access to public records.

WHEREFORE, Plaintiff demands judgment against Defendants:

- (a) Declaring said actions of Defendants to be unlawful and invalid;
- (b) Directing Defendants to release the requested records to Plaintiff forthwith;
- (c) Awarding counsel fees and costs; and

(d) Granting such other relief as the Court may deem just and equitable.

PASHMAN STEIN
A Professional Corporation,
Attorneys for Plaintiff,
Steven Wronko

Dated: May 7, 2015

By: _____


CJ GRIFFIN, ESQ.

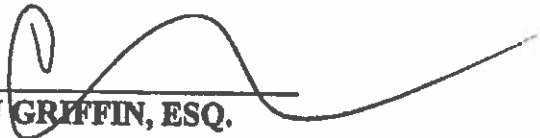
CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, by his attorney, hereby certifies that the matter in controversy is not the subject of any other action pending in any Court and is likewise not the subject of any pending arbitration proceeding. Plaintiff further certifies that he has no knowledge of any contemplated action or arbitration regarding the subject matter of this action and that Plaintiff is not aware of any other parties who should be joined in this action.

PASHMAN STEIN
A Professional Corporation,
Attorneys for Plaintiff,
Steven Wronko

Dated: May 7, 2015

By: _____


CJ GRIFFIN, ESQ.

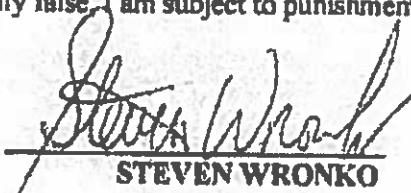
VERIFICATION

Steven Wronko, of full age, deposes and says:

1. I am a citizen of the State of New Jersey, Plaintiff in the foregoing Verified Complaint.
2. The factual allegations of the Verified Complaint contained in Paragraphs 2-3 and 19-27 are true. The said Verified Complaint is made in truth and good faith and without collusion, for the causes set forth herein. The allegations in the Verified Complaint are based on personal knowledge.
3. All documents attached to the Verified Complaint are true copies and have not been redacted, changed, modified, adjusted, or otherwise altered in any manner by me or my agents.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 6, 2015


STEVEN WRONKO

CERTIFICATION OF FAX/ELECTRONIC SIGNATURE

CJ Griffin, Esq., of full age, certifies and says as follows:

2. I am an attorney at law with the law firm of Pashman Stein, P.C. I make this certification of the genuineness of the electronic signature of Steven Wronko.

3. I hereby certify that Mr. Wronko acknowledge to me the genuineness of her signature on the foregoing Certification.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

PASHMAN STEIN
A Professional Corporation
Attorneys for Plaintiff,
Steven Wronko

Dated: May 7, 2015

By: 
CJ GRIFFIN