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Attorney for Plaintiff

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY – LAW DIVISION

AFRICAN AMERICAN DATA AND
AND RESEARCH INSTITUTE (“AADARI”),
Plaintiff

DOCKET NO.:

V.

JAMES ROLLY :
EATONTOWN POLICE DEPARTMENT :
EATONTOWN BOROUGH,
Defendants

**SUMMARY ACTION
VERIFIED COMPLAINT**

Plaintiff, African American Data and Research Institute (“AADARI”), by way of this complaint against the defendants named above hereby states as follows:

1. On 11-25-2019, Plaintiff sent a request pursuant to both OPRA and the common law right of access to the custodian of records for the defendants.
 2. The request of 1-25-2019 contained items 1 through 6. **See Exhibit 1.**
 3. On 12-4-2019, the custodian of records provided a partial response. The partial response covered only items 1 and 6 of the OPRA request. **See Exhibit 2.**
 4. After reviewing the partial response, plaintiff sent an email to the custodian of records stating: “Please let me know if you are going to comply with items 2, , 4 and 5 of the OPRA Request.”
 5. On 12-5-2019, the custodian of record asked for extension of time to 12-12-2019. Plaintiff granted the extension of time.
 6. On 12-12-2019, plaintiff received records that satisfied items 2, and 3. However, no records were sent to satisfy items **4 and 5** of the OPRA request. The custodian directed plaintiff to get items 4 and 5 from the municipal court. **See Exhibit 3.**
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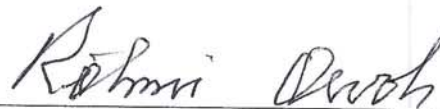
7. On 12-12-2019, plaintiff sent an email to the custodian asking the custodian to reconsider and make items 4 and 5 available to plaintiff. Plaintiff indicated a willingness to give the custodian additional time to do so. Plaintiff asked the custodian to respond to the email and indicate if the custodian is willing to reconsider. **See Exhibit 4.**
8. Plaintiff did NOT get a response to the email of 12-12-2019.
9. The time within which to comply with the OPRA request for items 4 and 5 expired on 12-12-2019.
10. As of today (12-18-2019), the defendants have NOT provided plaintiff with items 4 and 5 of the OPRA request.
11. This complaint is being filed in order to secure access to item numbers **4 and 5** of the OPRA request.
12. Rule 3:4-1 states: *"A law enforcement officer shall take a person who was arrested without a warrant to police station where a complaint shall be prepared immediately. If it appears that issuance of a warrant is authorized by Rule 3:-1(d) . . . , the Complaint may be prepared on a Complaint-Warrant (CDR-2) form. Otherwise, the Complaint shall be prepared on a Complaint-Summons (CDR-1) form."*
13. The Middlesex County Superior Court addressed a similar OPRA matter in MID-L-005752 pertaining to Plainsboro Township Police Department.
14. The Middlesex County Superior Court eventually ruled in favor of Plaintiff in that case and Ordered Plainsboro Township to pay counsel fees. **See Exhibit 5.**
15. It is instructive to note that since the award of counsel fees against Plainsboro Township in that case, Plainsboro Township and the Plainsboro Police Department have **not** denied any similar OPRA requests. Actually, Plainsboro Police Department recently complied with a similar OPRA request on March 19, 2018. **See Exhibit 6.**
16. The Middlesex County Superior Court also awarded counsel fees against Woodbridge Township on 8-1-2018 in MID-L-2052-18. **See Exhibit 7.** Woodbridge Township made the requested Summons and Complaints available to plaintiff **after** the OPRA complaint was filed. **See Exhibit 8.**
17. Several other Assignment Judges who have heard similar cases have held that summonses and complaints prepared by police officers (police departments) are subject to disclosure under OPRA just like the Assignment Judge in Middlesex County. **Some** of the pertinent cases are listed below.

18. Assignment Judge Marlene Ford (Ocean County) issued an order (OCN-L-001992) on 10-1-2018 giving Manchester Township 21 days to make the requested summonses and complaints available to AADARI.
19. Assignment Judge Lisa Thornton (Monmouth County) ruled in two similar cases that AADARI filed against the Atlantic Highlands Police Department (MON-L-002797-18) and City of Asbury Park (MON-L-2578-18) that summonses and complaints are subject to disclosure under OPRA.
20. Assignment Judge Telsey (Gloucester County and Cumberland County) ruled in two similar cases that AADARI filed against the East Greenwich Police Department (GLO-L-001309-18)) and City of Bridgeton Police Department (CUM-L-745-18) that summonses and complaints are subject to disclosure under OPRA.
21. Judge John C. Porto (Atlantic County and Cape May County) also awarded counsel fees in two similar OPRA cases that ADARI filed against Mullica Township Police Department (ATL-L-1932-18) and the City of wildwood Police Department (CPM-L-000422-18).
22. In addition to the court cases listed above. It is also important to note that the Government Records Counsel (GRC) also held that summonses are subject to disclosure. The GRC stressed the importance of the **“30 Days After disposition”** retention period that is mandated by the New Jersey Division of Archives and Records Management for Municipal Police Departments in the case. See Rick Merino v. Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004).
23. A copy of the pertinent Records Retention and Disposal Schedule is also attached herewith. See **Exhibit 9**.
24. Plaintiff has also attached herewith pertinent parts of a Handout/Power Point prepared by the AOC Municipal Court Services Division to show that both local police departments and municipal prosecutors do have access to complaints and summonses through the eCDR. See **Exhibit 10**.
25. There is a **significant cost difference** between obtaining records through OPRA and obtaining the same amount of records through the judiciary.

26. The decision whether to seek public records either through the judiciary or through the executive branch of government (OPRA) is and should be within the SOLE discretion and control of the requestor (AADARI). It is NOT up to some government bureaucrat sitting in his or her office to DICTATE to AADARI that the request MUST be filed with the judiciary. The government bureaucrat does not have to bear the financial burden of the significant cost difference between obtaining records through OPRA and obtaining the same amount of records through the judiciary.
27. Other Police Departments to include Vineland, Brielle and Marlboro Police Departments also complied with similar OPRA request. **See Exhibits 11.**
28. Defendants violated OPRA by failing to make **item numbers 4 and 5** available to Plaintiff just like Vineland Police Department, Plainsboro Police Department, Marlboro Police Department, Woodbridge Police Department and Brielle Police Departments did regarding the same and similar items.
29. Plaintiff has also attached herewith a copy of a letter dated 4-11-2018 from the Superior Court Clerk's Office stating that Woodbridge Police Department had an obligation to provide summonses and complaints to plaintiff regarding a similar OPRA request that was eventually decided by the Middlesex County Assignment Judge Alberto Rivas. **See Exhibit 12. See also Exhibits 5, 6 and 7 above.**
30. Therefore, plaintiff has decided to file this verified complaint and the attached order to show cause against the defendants for failure to grant access to item numbers 4 and 5 in violation of the OPRA.

WHEREFORE, plaintiff requests judgment as follows:

- a. Directing the immediate release of the records sought;
- b. Awarding counsel fees and cost of suit;
- c. Awarding other such relief as may be fair, equitable and necessary.

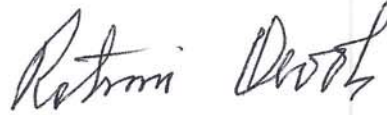


ROTIMI OWOH, ESQ.

Date: 12-18-2019

Rule 4:5-1 Certification

The undersigned hereby certifies that the matter in controversy is not the subject of any other pending action or arbitration proceeding. The undersigned does not know the names of any other parties who should be joined in the action.

A handwritten signature in black ink, appearing to read "Rotimi Owoh", is written above a horizontal line.

ROTIMI A OWOH, ESQ.

Date: 12-18-2019

**NOT TO BE PUBLISHED WITHOUT
THE APPROVAL FROM THE COMMITTEE ON OPINIONS**

AFRICAN AMERICAN DATA AND
RESEARCH INSTITUTE (“AADARI”),

Plaintiff,

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
LAW DIVISION, CIVIL PART
DOCKET NO. L-4431-19

v.

JAMES ROLLY, EATOWNTOWN
POLICE DEPARTMENT, EATONTOWN
BOROUGH,

Defendants.

THIS MATTER coming before the court by Rotimi Owoh, Esq., on behalf of African American Data and Research Institute (“AADARI”) under the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 (“OPRA) and the common law right of access, and the court having considered the parties’ moving papers and oral argument, and for good cause shown;

IT IS on 6th day of March 2020;

ORDERED that for the reasons stated on the record, plaintiff’s complaint is dismissed without prejudice.

/s/ Lisa P. Thornton
LISA P. THORNTON, A.J.S.C.