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FILE NO. 60991/00001

December 22, 2017

VIA CERTIFIED MAIL
VIA ELECTRONIC FILING

The Honorable Lisa P. Thorton, A.J.S.C.
Superior Court of New Jersey - Monmouth County
71 Monument St.
Freehold, New Jersey 07728

Re: *Ronald G. Foley v. Holmdel Board of Education, et al.*

Dear Your Honor:

Please be advised that this firm represents the Plaintiff, Ronald G. Foley, in the above-referenced matter. Please accept this letter brief in lieu of a more formal submission in support of Plaintiff's Verified Complaint (the "Complaint") and Application for an Order to Show Cause (the "OTSC") seeking relief from Defendants' denial of the Plaintiff's October 13, 2017 Open Public Records Act ("OPRA" or the "Act") and Common Law Right of Access request (the "Request" or the "October 13 Request") identified in the Complaint and as discussed below.

STATEMENT OF FACTS

Plaintiff Ronald G. Foley is a resident of New Brunswick, New Jersey, and as such is a citizen of the State of New Jersey. Mr. Foley owns and operates Foley Prep, Inc. ("Foley Prep"). ***Complaint***, ¶ 3. Foley Prep is a business that provides tutoring and standardized test preparations to New Jersey high school students seeking admission into college and college students seeking admission into post-graduate academic programs. ***Complaint*** ¶ 6. The Defendant Holmdel Board of Education

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(the “Board”) is a local public school board of education organized under the laws of the State of New Jersey; Defendant Michael Petrizzo is the records custodian for the Board. **Complaint ¶ 4-5.**

On October 13, 2017, Mr. Foley submitted a valid request for government records via e-mail to the Defendant Records Custodian pursuant to the OPRA and the Common Law Right of Access which sought the following:

a. All emails from or to Director of Counseling Services, Eric Swensen containing the words “testing”, “table”, “tables”, “test prep”, “Princeton”, “Princeton Review”, “college fair”, “Brookdale College Fair”, “vendor”, “vendors”, “Foley”, “Foley Prep”, “Robert Franek”, “NJACAC”, “MCDGA”, “MCGDA”, “Monmouth County Guidance Director Association”, “NACAC”, or “Catalyst”, that were sent between January 1, 2016 and October 12, 2017.

b. All emails from or to Director of Counseling Services, Eric Swensen from or to Francine Swift, Fran Swift, Bruce Marich, Jon Warner, Debra Sylvia, Joe Senerchia, Dana Lambert regarding the Princeton Review Test Preparation Program or containing the words “testing”, “table”, “tables”, “test prep”, “Princeton”, “Princeton Review”, “college fair”, “Brookdale College Fair”, “vendor”, “vendors”, “Foley”, “Foley Prep”, “Robert Franek”, “NJACAC”, “MCDGA”, “MCGDA”, “Monmouth County Guidance Director Association”, “NACAC”, or “Catalyst”, that were sent between January 1, 2016 and October 12, 2017.

[Exhibit A, October 13, 2017 E-Mailed OPRA Request from Plaintiff, Ronald G. Foley to Defendant, Holmdel Board of Education Custodian of Records, Michael Petrizzo].

On October 27, 2017, Paula Rispoli the Executive Secretary to the Defendant Records Custodian e-mailed Mr. Foley and advised him that the Defendants “will need until November 10, 2017, to review and possibly redact the e-mails” the Request seeks. **Exhibit B, October 27, 2017 E-Mail Response to Plaintiff from Holmdel Board of Education Executive Secretary to the Business Administrator, Paula Rispoli.**

On November 9, 2017, one day prior to the date that the Defendants stated they would respond, Mr. Foley e-mailed Ms. Rispoli and inquired as to the status of the Request. **Exhibit C, November 9, 2017 E-Mail from Plaintiff, Ronald G. Foley to Executive Secretary to the Business Administrator, Paula Rispoli.**

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To date, the Defendants failed to respond in any manner; the Defendants did not respond to Mr. Foley by granting access or denying access to the records sought, or requesting more time past November 10, 2017; nor did the Defendants deem the Request “closed.”

LEGAL ARGUMENT

I. PLATINFF’S ACTION SHOULD PROCEED IN A SUMMARY MANNER

Plaintiff brought this action pursuant to *New Jersey Rules of Court Rule 4:67-2(a)* and N.J.S.A. § 47:1A-6 which requires the within matter to be initiated by an OTSC supported by a verified complaint and to proceed in a summary manner. The purpose of this practice is so that OPRA actions, which usually do not require discovery or the filing of pre-trial motions, as required by the New Jersey Legislature to proceed in an expedited manner.

Here, because the OPRA requires actions under it to proceed in a summary or expedited manner and because Plaintiff’s request for an OTSC is supported by a verified complaint, the relevant documents have been provided via the Complaint, and the relevant facts should not reasonably be disputed, the OTSC should be granted so that this matter may proceed accordingly.

II. THE DEFENDANTS VIOLATED THE OPEN PUBLIC RECORDS ACT BY FAILING TO RESPOND AND PROVIDE THE PLAINTIFF THE RECORDS SOUGHT IN THE PLAINTIFF’S OCTOBER 13 REQUEST

The OPRA reflects New Jersey’s “history of commitment to public participation in government” and its “tradition favoring the public’s right to be informed about governmental actions.” *South Jersey Pub. Co., Inc. v. N.J. Expressway Auth.*, 124 N.J. 478, 486-87 (1991). The Act’s “purpose is to ‘maximize public knowledge about public affairs and to minimize the evils inherent in a secluded process.’” *Mason v. City of Hoboken*, 196 N.J. 51, 64 (2008). Indeed, pursuant to the OPRA:

The Legislature finds and declares it to be the public policy of this State that:

government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and **any limitations on the right of access accorded by P.L.1963, c.73 (C. 47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public’s right of access. . .**

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[N.J.S.A. § 47:1A-1].

It is the Defendants' burden to prove that the denial of access to the records sought in the Request was authorized by law. N.J.S.A. § 47:1A-6. Here, the Defendants cannot meet this burden as they failed to respond *at all* to the Request. As such, the only conclusion one can reach is that the failure to respond at all is unlawful and is a "deemed denial" pursuant to N.J.S.A. § 47:1A-5(i) ("...the failure to respond shall be deemed a denial of the request").

Accordingly, and for all of the aforementioned reasons, the Plaintiff is entitled to the relief requested.

III. THE E-MAILS THE PLAINTIFF SEEKS IN THE OCTOBER 13 REQUEST ARE GOVERNMENT RECORDS SUBJECT TO OPRA

The threshold issue in any OPRA litigation is whether the requested records are "government records"; OPRA broadly and liberally defines that term as follows:

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. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

[N.J.S.A. § 47:1A-1.1].

Here, the e-mails the Plaintiff sought in the October 13 Request are "government records" subject to release pursuant to a valid OPRA request such as the Plaintiff's. Indeed, it follows that e-mails that are sent or received by a government employee that are either "made, maintained or kept on file" by a government agency are "government records" subject to the Act.

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IV. THE DEFENDANTS VIOLATED THE OPRA WHEN IT FAILED TO PROVIDE THE REQUESTED E-MAILS AND WHEN IT FAILED TO PROVIDE A REASON AS TO THEIR NON-DISCLOSURE

The OPRA mandates that government records, such as the Plaintiff's requested e-mails be "readily accessible." N.J.S.A. § 47:1A-1.1. In addition, the OPRA provides that a records custodian shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived. N.J.S.A. § 47:1A-5(i). In the event a records custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request. *Ibid.*

Here, the Plaintiff's Request was made on October 13, 2017. *Exhibit A, October 13, 2017 E-Mailed OPRA Request from Plaintiff, Ronald G. Foley to Defendant, Holmdel Board of Education Custodian of Records, Michael Petrizzo.* On October 27, 2017 – ten business days after the October 13 Request was made - the Defendants replied to same and indicated that they would require until November 10, 2017 to provide records responsive to the Request ("Due to the extraordinary time and effort to accommodate your below OPRA request, we will need until November 10, 2017, to review and possibly redact the emails you seek."). *Exhibit B, October 27, 2017 E-Mail Response to Plaintiff from Holmdel Board of Education Executive Secretary to the Business Administrator, Paula Rispoli.* While the Defendants indicated that they required an extension of time to respond to the Request and a specific date they would do so, that date came and went with no response either granting access, denying access, advising how much they would charge him for the records the Request seeks, or requesting even more time. As such, because the Defendants failed to provide *any* response, the Request was unlawfully denied. See N.J.S.A. § 47:1A-5(i) ("...the failure to respond shall be deemed a denial of the request").

Accordingly, and for all of the aforementioned reasons, the Plaintiff is entitled to the relief requested.

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V. PLAINTIFF IS ENTITLED TO THE REQUESTED E-MAILS UNDER THE COMMON LAW RIGHT OF ACCESS

Pursuant to the Common Law Right of Access, the Plaintiff has an enforceable right to require the Defendants to make records available for reasonable inspection and examination. *Irval Realty v. Bd. of Pub. Util. Comm'rs, N.J.* 366, 372 (1972). Even where a plaintiff is denied access under the OPRA, the documents may be available through the Common Law Right of Access. *MAG Entertainment LLC v. Div. of Alcoholic Beverage Control*, 375 N.J. Super. 534, 543 (App. Div. 2005). The Common Law Right of Access is determined by balancing the Plaintiff's need versus the government entity's need for secrecy. *Shuttleworth v. City of Camden*, 258 N.J. Super. 573, 583 (App. Div. 1992). As such, a requester need not establish a personal interest, rather, a public interest is sufficient. *Id.*

Here, the Defendants have no interest in keeping e-mails about Mr. Foley, Foley Prep, other test preparation companies, or the college fairs Board Employees may organize or work with secret. Mr. Foley is not a Board employee nor is Foley Prep a vendor of the Board's that is owed some sort of confidentiality; indeed, there is no basis for *any* confidentiality regarding the records sought whereas Plaintiff has a strong interest in reviewing communications to or from government employees that are about him or his business and livelihood. Furthermore, the public has an interest here that outweighs the Defendants' need for secrecy. Specifically it is averred that the public has an interest in and having access to communications between government employees regarding college fairs that are governed, organized, approved, and hosted by local public school districts and other public entities. Indeed, the interests of Mr. Foley and the public for the records sought in the October 13 Request – taken together, or individually – outweigh the interests of the Defendants' need for secrecy pursuant to the Common Law Right of Access.

Accordingly, and for all of the aforementioned reasons, the Plaintiff is entitled to the relief requested.

VI. PLAINTIFF IS ENTITLED TO REASONABLE ATTORNEY'S FEES

If the Court orders the Defendants to produce the documents at issue, the Court should find that the Plaintiff is the prevailing party and, under OPRA's fee-shifting provisions and the Common Law

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Right of Access, award him reasonable attorneys' fees and costs per N.J.S.A. § 47:1A-6; *Mason v. Hoboken*, 196 N.J. 51, 79 (2008) (concluding that the catalyst theory applies to fee awards under both the OPRA and the Common Law Right of Access).

Accordingly, based on the above, it is averred that if the Plaintiff is deemed to be a prevailing party, an award of attorneys' fees and costs is required under the Act.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks this Court to enforce his rights under the OPRA and the Common Law Right of Access by: (1) declaring that the Defendants are in violation of the OPRA and the Common Law Right of Access by failing to provide access to the requested E-Mails; (2) declaring that the Defendants are in violation of the OPRA and the Common Law Right of Access by failing to provide any substantive response to the Plaintiff either granting or denying access to the E-Mails sought; (3) declaring that the Plaintiff is entitled to the records under the Common Law Right of Access; (4) declaring that the Defendants violated Plaintiff's Common Law Right of Access by not providing the E-Mails sought; and (5) awarding Plaintiff its reasonable attorney's fees and costs of suit.

Respectfully,



Christopher A. Barrett

CAB
Enclosures

Christopher A. Barrett, Esquire (Attorney ID No. 020182012)
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 Telephone (609) 572-7456
 Facsimile (609) 572-7457
 File No.:
 Attorney for Plaintiff, Ronald G. Foley

RONALD G. FOLELY.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	MONMOUTH COUNTY
Plaintiff,	:	
	:	DOCKET NO.: MON-L-
vs.	:	
	:	VERIFIED COMPLAINT
HOLMDEL BOARD OF EDUCATION AND	:	
MICHAEL PETRIZZO, in his official capacity as	:	
the Board's Records Custodian.	:	
	:	
Defendants.	:	
	:	

Plaintiff, Ronald G. Foley, through his undersigned Counsel, the Law Offices of Cooper Levenson, P.A., by way of Verified Complaint against the Defendants, the Holmdel Board of Education (the "Board" or the "District") and Board Records Custodian, Michael Petrizzo (collectively, the "Defendants") in his official capacity as Business Administrator and Records Custodian for the Board, alleges as follows:

PRELIMINARY STATEMENT

1. This is an action alleging violation of the New Jersey Open Public Records Act, N.J.S.A. § 47:1A-1 to -13, ("OPRA") and the Common Law Right of Access to government records.
2. Plaintiff brings this action because the Defendants have unlawfully denied Plaintiff access to several government records which were subject of a request for records for same under the OPRA and the Common Law Right of Access.

PARTIES

3. Plaintiff Ronald G. Foley is New Jersey resident and specifically resides in New Brunswick, New Jersey.

4. Defendant Board is a municipal entity formed under the laws of the State of New Jersey, with a primary place of business at 65 McCampbell Road, Holmdel, New Jersey 07733.
5. Defendant Michael Petrizzo is the Records Custodian for the Defendant Board. The Custodian maintains an office at 65 McCampbell Road, Holmdel, New Jersey 07733.

FACTUAL ALLEGATIONS

6. Plaintiff is the owner of Foley Prep, Inc. ("Foley Prep") which maintains an address at 221 Sirling Road, Suites A & C Warren, New Jersey 07059. Foley Prep is a business that provides tutoring and standardized test preparations to New Jersey high school students seeking admission into college and college students seeking admission into post-graduate academic programs.
7. On October 13, 2017 Mr. Foley submitted a request (the "Request") to the Defendants via e-mail seeking the following records pursuant to OPRA and the Common Law Right of Access. The Request sought:

- a. All emails from or to Director of Counseling Services, Eric Swensen containing the words "testing", "table", "tables", "test prep", "Princeton", "Princeton Review", "college fair", "Brookdale College Fair", "vendor", "vendors", "Foley", "Foley Prep", "Robert Franek", "NJACAC", "MCDGA", "MCGDA", "Monmouth County Guidance Director Association", "NACAC", or "Catalyst", that were sent between January 1, 2016 and October 12, 2017.

- b. All emails from or to Director of Counseling Services, Eric Swensen from or to Francine Swift, Fran Swift, Bruce Marich, Jon Warner, Debra Sylvia, Joe Senerchia, Dana Lambert regarding the Princeton Review Test Preparation Program or containing the words "testing", "table", "tables", "test prep", "Princeton", "Princeton Review", "college fair", "Brookdale College Fair", "vendor", "vendors", "Foley", "Foley Prep", "Robert Franek", "NJACAC", "MCDGA", "MCGDA", "Monmouth County Guidance Director Association", "NACAC", or "Catalyst", that were sent between January 1, 2016 and October 12, 2017.

[Exhibit A, October 13, 2017 E-Mailed OPRA Request from Plaintiff, Ronald G. Foley to Defendant, Holmdel Board of Education Custodian of Records, Michael Petrizzo].

8. Ten business days later, on October 27, 2017, Paula Rispoli, Executive Director to the Defendant, Business Administrator responded to the Request and advised in pertinent part:

Due to the extraordinary time and effort to accommodate your below OPRA request, we will need until November 10, 2017 to review and possibly redact the e-mails you seek.

[Exhibit B, October 27, 2017 E-Mail Response to Plaintiff from Holmdel Board of Education Executive Secretary to the Business Administrator, Paula Rispoli].

9. On November 9, 2017, one day prior to the date on which the Defendants stated they would reply to the Request, Mr. Foley reminded and inquired with the Defendants the status of same. ***[Exhibit C, November 9, 2017 E-Mail from Plaintiff, Ronald G. Foley to Executive Secretary to the Business Administrator, Paula Rispoli].***
10. To date, despite being reminded one day prior to the due date of the Request, and despite assuring the Plaintiff that they would respond to same on November 10, 2017, the Defendants failed to do so.

FIRST COUNT

(VIOLATION OF OPRA)

11. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.
12. Pursuant to N.J.S.A. § 47:1A-1, all government records must be “readily accessible” to the citizens of this State unless specifically exempt by law.
13. On October 13, 2017 Plaintiff submitted the Request which was valid.
14. The records requested by Plaintiff are government records subject to OPRA 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.
15. The government records requested by Plaintiff do not fall under any lawful exemption recognized by the OPRA statute.
16. The OPRA requires the records custodian to grant or deny access to public records “as soon as possible, but not later than seven business days.” N.J.S.A. § 47:1A-5(i).
17. The failure to respond to an OPRA request within seven business days, or at all, constitutes a “deemed” denial of the request. N.J.S.A. § 47:1A-5(i).
18. Defendants did not respond to Mr. Foley’s OPRA Request, despite his follow up measures and despite the Defendants’ assurance that it would do so by November 10, 2017.
19. To date, the Defendants have not responded to the Defendant by either denying access, granting access, or requesting another extension of time.

20. Accordingly, the Defendants have violated the OPRA by failing to respond to Mr. Foley and failing to grant him access to the government records that are subject of his OPRA Request.

WHEREFORE, Plaintiff demands judgment against Defendants:

- (a) Declaring said actions of Defendants to be in violation of OPRA, N.J.S.A. § 47:1A-1 *et seq.* by failing to respond to Plaintiff's OPRA request and failing to provide access to the requested records, as required by the OPRA;
- (b) Directing Defendants to release the requested records to Plaintiff forthwith. Alternatively, if the Court believes that any information is exempt from public access, Plaintiff respectfully asks the Court to review the record *in camera* review and then require Defendants to delete or excise from the records the portion(s) which are exempt from public access and promptly permit access to the remainder of the records;
- (c) Awarding counsel fees and costs pursuant to N.J.S.A. § 47:1A-6; and
- (d) For such other relief as the Court may deem just and equitable.

SECOND COUNT

(VIOLATION OF THE COMMON LAW RIGHT OF ACCESS)

21. Mr. Foley repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

22. The public, which includes Mr. Foley, has a significant interest in knowing details about the featured programs offered at college fairs that are governed, organized, approved, and hosted by local public school districts and other public entities.

23. The public's need for access to the government records requested in the Request is greater than Defendants' need for secrecy.

24. Defendants' failure to answer Plaintiff's Request and subsequent failure to disclose the requested government records violated Plaintiff's Common Law Right of Access.

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

DATED: 12/22/17

COOPER LEVENSON, P.A.

Christopher A. Barrett

Christopher A. Barrett, Esq.
Attorney for Plaintiff,
Ronald G. Foley

Christopher A. Barrett, Esquire (Attorney ID No. 020182012)
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 File No.:
 Attorney for Plaintiff, Ronald G. Foley

RONALD G. FOLELY.

Plaintiff,

vs.

HOLMDEL BOARD OF EDUCATION AND
 MICHAEL PETRIZZO, in his official capacity as
 the Board's Records Custodian.

Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 MONMOUTH COUNTY
 DOCKET NO.: MON-L-
VERIFICATION

Ronald G. Foley, of full age, deposes and says:

1. I am a citizen of the State of New Jersey and am the Plaintiff in the foregoing Verified Complaint.
2. I have read the Verified Complaint. The allegations of the Verified Complaint contained in Paragraphs 1 through and including 24 are true.
3. The Verified Complaint is based on personal knowledge and is made in truth and good faith and without collusion, for the causes set forth herein.
4. All documents attached to the Verified Complaint and Brief are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents unless so stated.

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.

Ronald Foley

DATED: December 22, 2017

Ronald G. Foley

Christopher A. Barrett, Esquire (Attorney ID No. 020182012)
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 Atlantic City, NJ 08401
 Telephone (609) 572-7456
 Facsimile (609) 572-7457
 File No.:
 Attorney for Plaintiff, Ronald G. Foley

RONALD G. FOLELY.

Plaintiff,

vs.

HOLMDEL BOARD OF EDUCATION AND
 MICHAEL PETRIZZO, in his official capacity as
 the Board's Records Custodian.

Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 MONMOUTH COUNTY

DOCKET NO.: MON-L-

**CERTIFICATION
 OF
 ELECTRONIC SIGNATURE**

Christopher A. Barrett., of full age, certifies and says as follows:

1. I am an attorney at law with the law firm of Cooper Levenson, PA. I make this Certification of the genuineness of the electronic signature of Plaintiff, Ronald G. Foley
2. I hereby certify that Mr. Foley acknowledge to me the genuineness of his 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.

DATED: 12/22/17

COOPER LEVENSON, P.A.

Christopher A Barrett

Christopher A. Barrett, Esq.
 Attorneys for Plaintiff,
 Ronald G. Foley

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 File No.:
 Attorney for Plaintiff, Ronald G. Foley

RONALD G. FOLELY.

Plaintiff,

vs.

HOLMDEL BOARD OF EDUCATION AND
 MICHAEL PETRIZZO, in his official capacity as
 the Board's Records Custodian.

Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 MONMOUTH COUNTY

DOCKET NO.: MON-L-

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.

DATED: 12/22/17

COOPER LEVENSON, P.A.

Christopher A. Barrett

Christopher A. Barrett, Esq.
 Attorney for Plaintiff,
 Ronald Foley

Christopher A. Barrett, Esquire (Attorney ID No. 020182012)
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 File No.:
 Attorney for Plaintiff, Ronald G. Foley

RONALD G. FOLEY.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	MONMOUTH COUNTY
Plaintiff,	:	
	:	DOCKET NO.: MON-L-
vs.	:	
	:	CERTIFICATION
HOLMDEL BOARD OF EDUCATION AND	:	
MICHAEL PETRIZZO, in his official capacity as	:	
the Board's Records Custodian.	:	
	:	
Defendants.	:	
	:	
	:	

I, Christopher A. Barrett, Esquire, hereby certify as follows:

1. I am an attorney practicing law at the law firm of Cooper Levenson, P.A., counsel for Plaintiff, Ronald G. Foley.
2. I am personally familiar with the facts set forth herein. I submit this Certification in support of Mr. Foley's Verified Complaint, its Brief in Support, and related documents which was electronically filed with the Court on December 22, 2017 and mail via Certified Mail to the Defendants.
3. A true and correct copy of Mr. Foley's October 13, 2017 request for records pursuant to the Open Public Records Act and Common Law Right of Access is attached hereto as **Exhibit A**.
4. A true and correct copy of the Defendants' October 27, 2017 E-Mail to Mr. Foley is attached hereto as **Exhibit B**.

5. A true and correct copy of Mr. Foley's November 9, 2017 E-Mail to the Defendants is attached hereto as **Exhibit C**.

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.

Date: December 22, 2017



Christopher A. Barrett, Esq.
Attorney for Plaintiff,
Ronald Foley

EXHIBIT A

Executive Secretary to the Business Administrator
Holmdel Township Public Schools
732-946-1800 X 6018



From: **Foley Prep** <ronfoley@foleyprep.com>
Date: Fri, Oct 13, 2017, at 3:51 PM
Subject: OPRA Request
To: mpetrizzo@holmdelschools.org

Dear Records Custodian,

Please accept this email as my request for public records under New Jersey's Open Public Records Act (OPRA), the common law right to public access, and any and all other freedom of information or public access laws, regulations, or rights. I request from you, in electronic format to my email listed below, and within seven (7) business days or earlier as required by OPRA, the following records:

- a. All emails from or to Director of Counseling Services, Eric Swensen containing the words "testing", "table", "tables", "test prep", "Princeton", "Princeton Review", "college fair", "Brookdale College Fair", "vendor", "vendors", "Foley", "Foley Prep", "Robert Franek", "NJACAC", "MCDGA", "MCGDA", "Monmouth County Guidance Director Association", "NACAC", or "Catalyst", that were sent between January 1, 2016 and October 12, 2017.
- b. All emails from or to Director of Counseling Services, Eric Swensen from or to Francine Swift, Fran Swift, Bruce Marich, Jon Warner, Debra Sylvia, Joe Senerchia, Dana Lambert regarding the Princeton Review Test Preparation Program or containing the words "testing", "table", "tables", "test prep", "Princeton", "Princeton Review", "college fair", "Brookdale College Fair", "vendor", "vendors", "Foley", "Foley Prep", "Robert Franek", "NJACAC", "MCDGA", "MCGDA", "Monmouth County Guidance Director Association", "NACAC", or "Catalyst", that were sent between January 1, 2016 and October 12, 2017.

I certify that I am a citizen of the State of New Jersey, and have never been conceited of any indictable offense under the laws of New Jersey, any other state or the United States. I understand that my request is NOT subject to executing any form you may have adopted but if you wish me to do so, please send me the form. However, by agreeing to fill out any form I am expecting your response and access within the statutory requirement of seven (7) business days or earlier as may be applicable pursuant to this email request of [insert date].

If you contend that you will need to assess a special service charge, please advise me immediately of the anticipated charge. In addition, if you contend that any document is privileged in whole or in part from production under OPRA, please provide me with a index of the privilege or applicable provision of OPRA which you contend prohibits disclosure of the document or portion thereof.

You may contact me at [908-421-0210](tel:908-421-0210) or ronfoley@foleyprep.com.



Ron Foley
Train hard. Test easy.
Chief Education Officer
Foley Prep, Inc.
office: 732-412-1416
cell: 908-421-0210
Get Informed: Foley Prep's Latest Newsletter
Foley Prep Google Reviews - help us shine!
www.foleyprep.com
www.facebook.com/tutoring

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This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

EXHIBIT B

Barrett Christopher A

From: Foley Prep <ronfoley@foleyprep.com>
Sent: Thursday, December 07, 2017 7:35 AM
To: Barrett Christopher A
Subject: Fwd: OPRA Response

Holmdel said they needed until November 10th. I send them a reminder November 9th and never heard back...

----- Forwarded message -----

From: **Foley Prep** <ronfoley@foleyprep.com>
Date: Thu, Nov 9, 2017 at 3:29 PM
Subject: Re: OPRA Response
To: Paula Rispoli <prispoli@holmdelschools.org>

Hi Paula-
Any news on this?
Thanks-
RGF

On Fri, Oct 27, 2017 at 4:35 PM, Paula Rispoli <prispoli@holmdelschools.org> wrote:

Dear Mr. Foley,

Due to the extraordinary time and effort to accommodate your below OPRA request, we will need until November 10, 2017, to review and possibly redact the emails you seek. Review for redaction is necessary before the release of any emails to confirm that information contained therein is not disclosable under OPRA. Unfortunately, proper redaction of the documents can only be done by reviewing all pages. Under the circumstances, a special service charge based on a per hour cost of labor is justified and permissible under N.J.S.A. 47:1A-5(c).

We will let you know what the hourly rate will be and the approximate hours involved by next week. To avoid unnecessary work, please advise as to whether you will be willing to pay a special service charge, with payment due before the release of the documents.

We should note that the number of emails would be greatly reduced if we were to limit the search terms to proper nouns as opposed to proper nouns and common nouns. Please advise if you would like us to perform a more limited search utilizing proper nouns only.

Paula Rispoli

EXHIBIT C

Barrett Christopher A

From: Foley Prep <ronfoley@foleyprep.com>
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To: Barrett Christopher A
Subject: Fwd: OPRA Response

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We should note that the number of emails would be greatly reduced if we were to limit the search terms to proper nouns as opposed to proper nouns and common nouns. Please advise if you would like us to perform a more limited search utilizing proper nouns only.

Paula Rispoli

Christopher A. Barrett, Esquire (Attorney ID No. 020182012)

COOPER LEVENSON, P.A.

1125 Atlantic Avenue - 3rd Floor

Atlantic City, NJ 08401

Telephone (609) 572-7456

Facsimile (609) 572-7457

File No.:

Attorney for Plaintiff, Ronald G. Foley

RONALD G. FOLEY.

Plaintiff,

vs.

HOLMDEL BOARD OF EDUCATION AND
MICHAEL PETRIZZO, in his official capacity as
the Board's Records Custodian.

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

MONMOUTH COUNTY

DOCKET NO.: MON-L-

PROOF OF SERVICE

I hereby certify that on December 22, 2017 I filed an electronic copy of the Plaintiff's Verified Complaint, Brief, and related Certifications and documents in the above-captioned matter with the Superior Court of New Jersey via the Superior Court of New Jersey's Electronic Filing Service.

I hereby certify that on December 22, 2017 I mailed, via Certified Mail, a copy of the Plaintiff's Verified Complaint, Brief, and related Certifications and documents in the above-captioned matter to the following:

The Honorable Lisa P. Thorton, A.J.S.C.
Superior Court of New Jersey – Monmouth County
71 Monument St.
Freehold, New Jersey 07728

Paul H. Green, Esq., Attorney for the Defendant, Holmdel Board of Education
Schenk, Price, Smith & King, LLP
220 Park Avenue
Florham Park, New Jersey 07932

Michael Petrizzo
Records Custodian, Holmdel Board of Education
65 McCampbell Rd.
Holmdel, New Jersey 07733

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.



Christopher A. Barrett, Esq.
Attorney for Plaintiff,
Ronald G. Foley

Christopher A. Barrett, Esquire (Attorney ID No. 020182012)
 COOPER LEVENSON, P.A.
 1125 Atlantic Avenue - 3rd Floor
 Atlantic City, NJ 08401
 Telephone (609) 572-7456
 Facsimile (609) 572-7457
 File No.:
 Attorney for Plaintiff, Ronald G. Foley

RONALD G. FOLEY.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	MONMOUTH COUNTY
Plaintiff,	:	
	:	DOCKET NO.: MON-L-
vs.	:	
	:	ORDER TO SHOW CAUSE
HOLMDEL BOARD OF EDUCATION AND	:	
MICHAEL PETRIZZO, in his official capacity as	:	
the Board's Records Custodian.	:	
	:	
Defendants.	:	
	:	
	:	

This matter having been open to the Court by Christopher A. Barrett, Esq, Attorney for the Plaintiff and seeking relief by way of summary action pursuant to R. 4:6-7-1(a) based upon the facts set forth in the Verified Complaint and supporting papers filed herewith; and the Court having determined this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for other good cause shown,

IT IS on this _____ day of _____, 2017, ORDERED that the Defendants, Holmdel Board of Education and Michael Petrizzo, Custodian of Records for the Holmdel Board of Education show cause on _____ day of _____, 2018, before the Superior Court at the Monmouth County Courthouse in Freehold, New Jersey, at _____ a.m./p.m., or as soon thereafter as counsel can be heard, why judgment should not be entered:

- (a) Declaring Defendants in violation of OPRA and the common law right of access to public records;
- (b) Enjoining Defendants from denying access to nonexempt portions of government records as requested in Plaintiff's October 13, 2017 request for records pursuant to the Open Public Records Act and Common Law Right of Access (the "October 13 Request");
- (c) Compelling Defendants to immediately provide access to all of the nonexempt requested records as requested in the October 13 Request.
- (d) Granting attorney's fees and costs of suit pursuant to N.J.S.A. 47:1A-6; and

(e) Granting such other relief as the court deems equitable and just.

And it is further ORDERED that:

1. A copy of this order to show cause, verified complaint and all supporting affidavits and certifications submitted in support of this application shall be served upon the defendants within _____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.
2. The plaintiff must file with the court its proof of service of the pleadings on the defendants no later than three days before the return date.
3. Defendants shall file and serve a written answer, an answering affidavit or a motion returnable on the return date to this order to show cause and the relief requested in the verified complaint and proof of service of the same by _____, 2018. The answer, answering affidavit or a motion, as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to chambers of Judge _____.
4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by _____, 2018. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.
5. If the defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.
6. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three days before the return date.
7. Defendants take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer, and answering affidavit or a motion returnable on the return date to the order to show cause and proof of service before the return date of the order to show cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at:

https://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

Include a \$_____ filing fee payable to the “Treasurer State of New Jersey.” You must also send a copy of your answer, answering affidavit or motion to the plaintiff’s attorney whose name and address appear above, or to the plaintiff, if not attorney is named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion with the fee or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at:

http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

9. The court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

The Honorable Lisa P. Thorton, A.J.S.C.

Civil Case Information Statement

Case Details: MONMOUTH | Civil Part Docket# L-004580-17

Case Caption: RONALD G. FOLEY VS HOLMDEL BOARD OF EDUCATION

Case Initiation Date: 12/22/2017

Attorney Name: CHRISTOPHER ANDREW BARRETT

Firm Name: COOPER LEVENSON PA

Address: 1125 ATLANTIC AVE 3RD FL

ATLANTIC CITY NJ 08401

Phone:

Name of Party: PLAINTIFF : Ronald G. Foley

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

Document Type: Verified Complaint

Jury Demand: NONE

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

12/22/2017
Dated

/s/ CHRISTOPHER ANDREW BARRETT
Signed