

PAUL H. GREEN, ESQ. (ATTORNEY ID 002211981)

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Email: phg@spsk.com

Attorneys for Defendants

RONALD G. FOLEY,

Plaintiff,

v.

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. L-4580-17
CIVIL ACTION

ANSWER

Defendants, HOLMDEL BOARD OF EDUCATION AND MICHAEL PETRIZZO,
by way of Answer to the Complaint herein, say:

AS TO PRELIMINARY STATEMENT:

1. Paragraph 1 asserts legal citations or conclusions not requiring a response by
defendants, although defendants do not deny the basic nature of this action.

2. Defendants deny the allegations contained in Paragraph 2 of the Complaint.

AS TO PARTIES:

3. Defendants are without knowledge or information sufficient to form a belief as
to the truth of the allegations set forth in Paragraph 3 of the Complaint.

4. Defendants deny that the Defendant Board is a municipal entity but rather is a board of education formed and existing under New Jersey laws, but otherwise admit the allegations contained in paragraph 4 of the Complaint.

5. Defendants admit the allegations set forth in Paragraph 5 of the Complaint.

AS TO FACTUAL ALLEGATIONS:

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Complaint.

7. Defendants admit the allegations contained in Paragraph 7 of the Complaint and state that such document speaks for itself.

8. Defendants admit the allegations set forth in Paragraph 8 of the Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of the Complaint.

10. As to the allegations contained in Paragraph 10, Defendants admit that they did not provide the requested documents due to the extreme volume of unrelated documents produced by Plaintiff's search terms and the need to incur significant time and expense in culling out the relevant documents, thereby justifying a special service charge.

AS TO FIRST COUNT:

11. Defendants repeat their responses to the statements and allegations in Paragraphs 1 through 10 of the Complaint and incorporate same as if set forth at length herein.

12. The allegations of paragraph 12 are legal assertions which do not require a response from Defendants.

13. Defendants admit the allegations contained in Paragraph 13 of the Complaint, except that they leave Plaintiff to his proofs on whether the request was valid.

14. Defendants admit the allegations contained in Paragraph 14 of the Complaint.

15. Defendants are without knowledge or information at the present time sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Complaint, as this would require analysis of the specific e mails sought to determine whether they contain any content protected under the statute.

16. The allegations set forth in Paragraph 16 of the Complaint are legal assertions which do not require a response from Defendants.

17. The allegations set forth in Paragraph 17 of the Complaint are legal assertions or conclusions which do not require a response from Defendants.

18. Defendants admit the allegations set forth in Paragraph 18 of the Complaint.

19. Defendants admit the allegations set forth in Paragraph 19 of the Complaint.

20. The allegations set forth in Paragraph 17 of the Complaint are legal assertions or conclusions which do not require a response from Defendants.

AS TO SECOND COUNT:

21. Defendants repeat their responses to the statements and allegations in Paragraphs 11 through 20 of the Complaint and incorporate same as if set forth at length herein.

22. The allegations set forth in Paragraph 22 of the Complaint are legal assertions or conclusions which do not require a response from Defendants, and Defendants leave Plaintiff to his proofs.

23. The allegations set forth in Paragraph 23 of the Complaint are legal assertions or conclusions which do not require a response from Defendants, and Defendants leave Plaintiff to his proofs.

24. Defendants deny the allegations set forth in Paragraph 24 of the Complaint.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of R. 4:25-4, Paul H. Green, Esq. is hereby designated as trial counsel.

SCHENCK, PRICE, SMITH & KING, LLP
Attorneys for Defendant, Suzanne Atkin, M.D.

By: _____

Paul H. Green, Esq.

Dated: March 16, 2018

CERTIFICATION PURSUANT TO R. 4:5-1

PAUL H. GREEN, ESQ. hereby certifies and says:

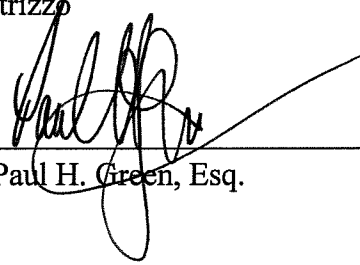
1. I am an attorney-at-law in the State of New Jersey and a member of the law firm of Schenck, Price, Smith & King, LLP, attorneys for defendants, Holmdel Board of Education and Michael Petrizzo, in the within action.
2. I hereby certify that I have no knowledge of any other pending or related actions or arbitration proceedings pertaining to the subject matter of this action and no other actions or arbitration proceedings are contemplated.
3. It is not anticipated at this time that there is any other party that should be joined in this action.
4. I further certify that this Answer was served within the time prescribed by the Rules of Court or lawful extension thereof.

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 made willfully false, I am subject to punishment.

SCHENCK, PRICE, SMITH & KING, LLP

Attorneys for Defendants, Holmdel Board of Education
and Michael Petrizzo

By: _____


Paul H. Green, Esq.

DATED: March 16, 2018

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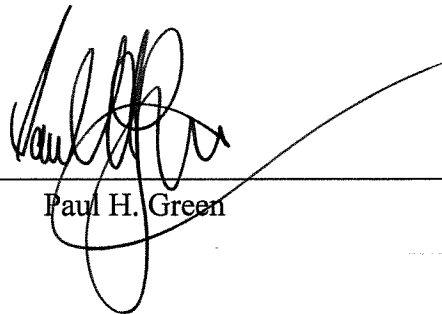
PROOF OF SERVICE

PAUL H. GREEN certifies as follows:

1. On March 16, 2018, I filed an electronic copy of the within Answer, Letter Brief and Certification of Michael Petrizzo on behalf of Defendants in this matter, with the Superior Court of New Jersey via its eCourts electronic filing service.

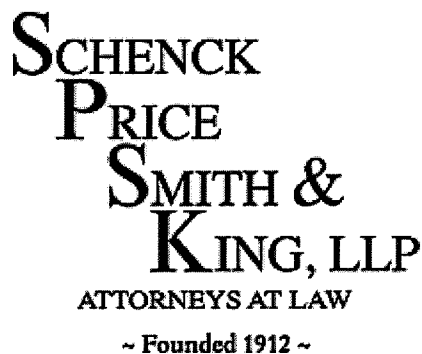
2. I also served a courtesy copy of the above papers with the Hon. Lisa P. Thornton, A.J.S.C. via Federal Express, addressed as follows:

Hon. Lisa P. Thornton, A.J.S.C.
Superior Court of New Jersey
Monmouth County Courthouse,
3rd Floor
71 Monument Park
Freehold, New Jersey 07728



Paul H. Green

DATED: March 16, 2018



**Serving Our Clients and Community
For Over 100 Years**

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March 16, 2018

Hon. Lisa P. Thornton, A.J.S.C.
Superior Court of New Jersey
Monmouth County Courthouse
71 Monument Park
Freehold, New Jersey 07728

**RE: *Ronald G. Foley v. Holmdel Board of Education, et al*
Docket No. MON-L-4580-17**

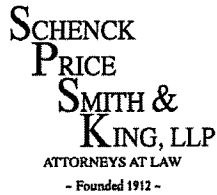
Dear Judge Thornton:

This firm represents the Holmdel Board of Education and Michael Petrizzo, defendants in the above-captioned action. Please accept this letter brief and accompanying certification of Michael Petrizzo in lieu of a more formal submission in opposition to Plaintiff's Order to Show Cause in this matter.

The essential facts in this matter are primarily undisputed. Plaintiff did submit a request to Defendant Holmdel Board of Education pursuant to the Open Public Records Act, *N.J.S.A. 47:1A-1 et seq.* ("OPRA") via e mail on October 13, 2017, seeking specific emails. The Plaintiff provided a date range of January 1, 2016 through October 15, 2016 and two different sets of search terms. The District conducted a search of its emails utilizing Plaintiff's search terms, which resulted in a response of 7,361 e mails. *See*, Certification of Michael Petrizzo, annexed hereto.

Plainly, the vast majority of these e mails have nothing to do with those sought by Plaintiff and are instead "false hits" generated because they simply contained one or more of Plaintiff's search terms. In order

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to produce the records sought by Plaintiff, it will be necessary for District personnel to go through all of the emails produced and pull out the relevant records. Mr. Petrizzo reasonably estimates this will take at least 30 hours.

We do not dispute that the specific records sought by Plaintiff constitute government records within the meaning of OPRA. It is also admittedly unlikely that any of those particular emails contain information excluded from production under the statute, although we would not know this for certain until the email contents are reviewed. The difficulty occurs in extracting the wheat from the chaff.

OPRA authorizes a public agency to impose a special service charge where the response to a request for production of government records will involve an extraordinary expenditure of time and effort. *N.J.S.A. 47:1A-5(c)*. See also, *Fisher v. Division of Law*, 400 *N.J.Super.* 61, 65 (App. Div. 2008). While neither statute nor regulation defines "extraordinary" in this context, a variety of factors were identified in *Courier Post v. Lenape Regional High School District*, 360 *N.J.Super.* 191, 202 (Law Div. 2002):

In the context of the Act, that term is incapable of a one-fits-all definition. There are many variables which require flexibility in the meaning of that term. The size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size, and number of documents sought, are but a few variables which can serve to modify the meaning of "extraordinary." Indeed, what may appear to be extraordinary to one school district might be routine to another.

Here, we are dealing with a relatively small central office and basically one employee available to perform the review. *Certification of Petrizzo*, par. 7. The amount of time necessary to plow through 7,361 individual e mails to identify and extract the relevant records clearly qualifies as extraordinary under the circumstances. Based on Mr. Petrizzo's reasonable estimate of the amount of time needed to perform the work, the Defendant Board is entitled to assert and receive a special service charge of at least \$1,340 if it is

to be required to review and produce the records sought. *Certification of Petrizzo*, par. 8. Irrespective of any possible lack of perfection in the District's response to the OPRA request, it would simply be inequitable to require it to conduct the necessary review needed to respond to the search without fair recompense for the extraordinary work involved.

CONCLUSION

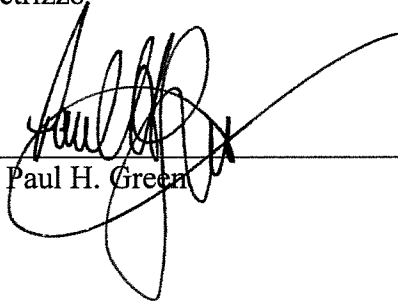
For the foregoing reasons, Defendants respectfully request that the Court require Plaintiff to pay a special service charge of \$1,340 as a condition to production of the government records it seeks in this action.

Respectfully submitted,

SCHENCK, PRICE, SMITH & KING, LLP
Attorneys for Defendants, Holmdel Board of Education
and Michael Petrizzo

By: _____

Paul H. Green



PHG:hs

c: William Donio, Esq. (via efile)

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY

DOCKET NO. L-4580-17
CIVIL ACTION

**CERTIFICATION OF MICHAEL
PETRIZZO**

MICHAEL PETRIZZO, of full age, certifies as follows:

1. I am the School Business Administrator/Board Secretary and the Government Records Custodian of the Board of Education of the Township of Holmdel, Monmouth County. I make this Paragraph 1 asserts legal citations or conclusions not requiring a response by defendants, although defendants do no deny the basic nature of this action.

2. The Plaintiff in this case, Ronald Foley, submitted a request for government records under the Open Public Records Act ("OPRA") via e mail on October 13, 2017, seeking certain e mails which might be stored on the school district's servers. Following

receipt of the request, I had my assistant work with the district's Director of Information Technology to perform a search for the requested e mails.

3. The Plaintiff had provided in his request two sets of terms to be used in the search, which Plaintiff identified as parts a. and b. We first performed a search on the second set of terms, part b., as those appeared to be more restrictive and therefore less likely to generate false "hits," i.e., irrelevant responses, to the search. That search generated 1,226 individual e mails which were responsive to the search terms.

4. The second search, using the broader set of terms provided by Plaintiff, generated 6,135 individual e mail responses. The total number of emails produced using Plaintiff's search terms was 7,361.

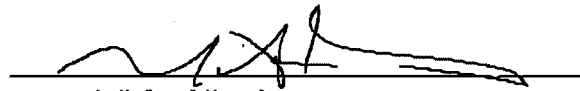
5. Clearly, the majority of the emails produced by the search had nothing to do with Plaintiff's request and were retrieved solely because they contained a particular search term. A cursory review of the emails reveals that most of them were sent or received by a variety of District employees other than the individual identified by Plaintiff; many of them contain confidential pupil or personnel information.

6. In her October 27, 2017 e mail to Plaintiff (Exhibit "C" to plaintiff's complaint), my administrative assistant informed him that the search had generated a large number of responses that would require review and redaction and therefore would justify a special service charge. In her email, my assistant suggested to Plaintiff that the volume of emails produced would be greatly reduced if the search were limited to proper nouns, and asked Plaintiff to advise if we should try that approach. Plaintiff did not respond to my assistant's email.

7. We are a small school district business office. I have one administrative assistant to perform all support tasks, and she is the only individual available to me to perform a review of the records in this matter. Having her diverted from her other tasks to do so will be burdensome, and the review would have to be done over an extended period of time.

8. The amount of work that would be required to review 7,361 e mails to cull the responsive ones is extraordinary and justifies a special service charge. Our Director of Technology has already spent 8 hours working on retrieving the emails, and my assistant has to date spent 3 hours. The Technology Director's effective hourly rate is \$81.89 and my assistant's is \$44.17. The District has already therefor incurred a cost of nearly \$800 in working on Plaintiff's OPRA request. I estimate it would reasonably take my assistant an additional 30 hours, and possibly more, to go through the emails to generate the requested record production. At my assistant's hourly rate, this would amount to a special service charge of \$1,340.

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.



Michael Petrizzo

DATED: March 16, 2018

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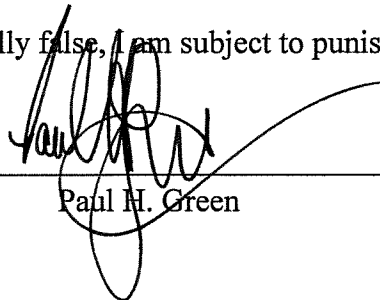
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY

DOCKET NO. L-4580-17
CIVIL ACTION
**CERTIFICATION OF ELECTRONIC
SIGNATURE**

PAUL H. GREEN, of full age, certifies as follows:

1. I am an attorney at law of New Jersey and a partner in the law firm of Schenck, Price, Smith and King, LLP, attorneys for Defendants in the above-captioned matter.
2. On the below date, Michael Petrizzo confirmed to me that he signed the original of the foregoing Certification in the within matter and sent an electronic copy of same to me. Michael Petrizzo has acknowledged the genuineness of his signature.
3. A copy of the original signature page will be filed if the Court or another party requests such filing.

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.



Paul H. Green

DATED: March 16, 2018

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: PAUL H GREEN

Firm Name: SCHENCK PRICE SMITH & KING, LLP

Address: 220 PARK AVENUE

FLORHAM PARK NJ 07932

Phone:

Name of Party: DEFENDANT : PETRIZZO, MICHAEL

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

Document Type: Answer

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? YES

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)

03/16/2018

Dated

/s/ PAUL H GREEN

Signed