

From: Chris Wood
Sent: Tuesday, February 25, 2020 4:20 PM
To: Karen Gallagher
Subject: FW: OPRA request - Ryan Troaino Dismissal and Illegal Rehiring by the Wild Fire Dep

RECEIVED

FEB 26

CITY CLERK'S OFFICE

-----Original Message-----

From: Greg Walsh [<mailto:opra+request-9848-21dc69b7@requests.opramachine.com>]
Sent: Tuesday, February 25, 2020 4:19 PM
To: Chris Wood
Subject: OPRA request - Ryan Troaino Dismissal and Illegal Rehiring by the Wild Fire Dep

Dear Wildwood City,

This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message.

Records requested:

please give the following information -

- all documentation to ryan troaino termination from the fire dep. while on probation
- all documentation on the rehiring of ryan troaino
- information on disorderly person offenses, public drunkenness, harrasement agains police officers and any other reports from the wpd on ryan troaino

Yours faithfully,

Greg Walsh

Please use deliver records electronically via email to the below UNIQUE address for all replies to this request:
opra+request-9848-21dc69b7@requests.opramachine.com

Is cwood@wildwoodnj.org the wrong address for OPRA requests to Wildwood City? If so, please contact us using this form:
https://opramachine.com/change_request/new?body=wildwood_city

Disclaimer: This message and any reply that you make will be published on the internet. Our privacy and copyright policies:
<https://opramachine.com/help/officers>

View this OPRA request & responses online:
https://opramachine.com/request/ryan_troaino_dismissal_and_illig

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an OPRA custodian, please ask your web manager to link to us from your organisation's website.



**CITY OF WILDWOOD
CITY CLERK'S OFFICE
4400 NEW JERSEY AVENUE
WILDWOOD, NJ 08260
(609)-522-2444**

March 4, 2020

Mr. Greg Walsh
opra+request-9848-21dc69b7@requests.opramachine.com

Dear Mr. Walsh:

The City of Wildwood received your Open Public Records Act (OPRA) request on February 26, 2020. The official Records Custodian, Christopher H. Wood received your OPRA request on February 26, 2020. As such, the seven (7) business day deadline to respond to your request is March 6, 2020. This response to your request is being provided to you on the 5th business day after the custodian's receipt of said request.

The table below identifies the records that being denied in whole or in part as well as the legal basis for each denial, as is required by N.J.S.A. 47:1A-6.

List of all records responsive to OPRA request (include the number of pages for each record).	List of all records provided, <u>with redactions</u>, or denied in their entirety.	If records are disclosed with redactions, give a general nature description of the redactions.	If records were denied in their entirety, give a general nature description of the record.	List the legal explanation and statutory citation for the denial of access to records in their <u>entirety</u> or <u>with redactions</u>.
1. All documentation to Ryan Troiano termination from the Fire Dep. while on probation.		These reports are being produced with redactions for privacy; personal identifying information		<u>N.J.S.A. 47:1A-9.a.</u> (allows exemptions from disclosure contained in other state statutes to apply under OPRA) and <u>N.J.S.A. 10:4-12</u> (allows governing bodies to exclude the public from discussions of personnel matters).

2. All documentation on the rehiring of Ryan Troiano.		These reports are being produced with redactions for privacy; personal identifying information		
3. Information on disorderly person offenses, public drunkenness, harassment against police officers and any other reports from the wpd on Ryan Troiano.			This request does not request a specific, identifiable government document.	

* A list of OPRA's exemptions is attached to this response letter.

These records are being transmitted to you via Email as per your request. Pursuant to N.J.S.A. 47:1A-5.b.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the [insert name of agency] to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,


Karen M. Gallagher,
Deputy City Clerk

OPRA EXEMPTIONS
(Exceptions are noted in italics)

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

- 1) Inter-agency or intra-agency advisory, consultative or deliberative material (Note: generally refers to draft documents or documents used in a deliberative process).
- 2) Legislative records. Specifically:
 - a. information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, *unless it is information the constituent is required by law to transmit;*
 - b. any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, *except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members.*
- 3) Medical examiner records – photographs, negatives, print, videotapes taken at the scene of death or in the course of post mortem examination or autopsy, *except:*
 - a. *when used in a criminal action or proceeding in this State which relates to the death of that person,*
 - b. *for the use as a court of this State permits, by order after good cause has been shown and after written notification of the request for the court order has been served at least five days before the order is made upon the county prosecutor for the county in which the post mortem examination or autopsy occurred,*
 - c. *for use in the field of forensic pathology or for use in medical or scientific education or research, or*
 - d. *or use by any law enforcement agency in this State or any other state or federal law enforcement agency.*
- 4) Criminal investigatory records - records which are not required by law to be made, maintained or kept on file that are held by a law enforcement agency which pertain to any criminal investigation or related civil enforcement proceeding. (Note: N.J.S.A. 47:1A-3.b. lists specific criminal investigatory information which must be disclosed).
- 5) Victims' records - an individually-identifiable file or document held by a victims' rights agency which pertains directly to a victim of a crime except that a victim of a crime shall have access to the victim's own records. "Victims' rights agency" means a public agency, or part thereof, the primary responsibility of which is providing services, including but not limited to food, shelter, or clothing, medical, psychiatric, psychological or legal services or referrals, information and referral services, counseling and support services, or financial services to victims of crimes, including victims of sexual assault, domestic violence, violent crime, child endangerment, child abuse or child neglect, and the Victims of Crime Compensation Board.
- 6) Trade secrets and proprietary commercial or financial information obtained from any source. Includes data processing software obtained by a public agency under a licensing agreement which prohibits its disclosure.
- 7) Any record within the attorney-client privilege.
- 8) Administrative or technical information regarding computer hardware, software and networks which, if disclosed would jeopardize computer security.

- 9) Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.
- 10) Security measures and surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software.
- 11) Information which, if disclosed, would give an advantage to competitors or bidders.
- 12) Information generated by or on behalf of public employers or public employees in connection with:
 - a. Any sexual harassment complaint filed with a public employer;
 - b. Any grievance filed by or against an individual; or
 - c. Collective negotiations, including documents and statements of strategy or negotiating position.
- 13) Information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office.
- 14) Information which is to be kept confidential pursuant to court order.
- 15) Certificate of honorable discharge issued by the United States government (Form DD-214) filed with a public agency, *except that a veteran or the veteran's spouse or surviving spouse shall have access to the veteran's own records.*
- 16) Personal identifying information. Specifically:
 - a. Social security numbers, *except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor.*
 - b. Credit card numbers
 - c. Unlisted telephone numbers
 - d. Drivers' license numbers.

Except for:

- a. *Use by any government agency, including any court or law enforcement agency, in carrying out its functions,*
 - b. *or any private person or entity acting on behalf thereof,*
 - c. *or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the Division of Motor Vehicles as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4);*
- 17) Certain records of higher education institutions:
 - a. Pedagogical, scholarly and/or academic research records and/or the specific details of any research project, *except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available.*
 - b. Test questions, scoring keys and other examination data pertaining to the administration of an examination for employment or academic examination.
 - c. Records of pursuit of charitable contributions or records containing the identity of a donor of a gift if the donor requires non-disclosure of the donor's identity as a condition of making the gift provided that the donor has not received any benefits of or from the institution of higher education in connection with such gift other than a request for memorialization or dedication.

- d. Valuable or rare collections of books and/or documents obtained by gift, grant, bequest or devise conditioned upon limited public access.
- e. Information contained on individual admission applications.
- f. Information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.

N.J.S.A. 47:1A-1.2

- 18) Biotechnology trade secrets.

N.J.S.A. 47:1A-2.2

- 19) Limitations to convicts - personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information. *Information may be released only if the information is necessary to assist in the defense of the requestor. A determination that the information is necessary to assist in the requestor's defense shall be made by the court upon motion by the requestor or his representative.*

N.J.S.A. 47:1A-3.a.

- 20) Ongoing investigations – any records pertaining to an investigation in progress by any public agency if disclosure of such record or records shall be detrimental to the public interest. *This provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced.*

N.J.S.A. 47:1A-5.k.

- 21) Public defender records that relate to the handling of any case, *unless authorized by law, court order, or the State Public Defender.*

N.J.S.A. 47:1A-9

- 22) Upholds exemptions contained in other State or federal statutes and regulations, Executive Orders of the Governor, Rules of Court, Constitution of this State, or judicial case law.

N.J.S.A. 47:1A-10

- 23) Personnel and pension records, *except specific information identified as follows:*

- a. *An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation, and the amount and type of any pension received,*
- b. *When required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest.*
- c. *Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information.*

N.J.S.A. 47:1A-1 (Legislative Findings)

- 24) Privacy Interest - “a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy.”

Burnette v. County of Bergen, 198 N.J. 408 (2009). Without ambiguity, the court held that the privacy provision “is neither a preface nor a preamble.” Rather, “the very language expressed in the privacy clause reveals its substantive

nature; it does not offer reasons why OPRA was adopted, as preambles typically do; instead, it focuses on the law's implementation." "Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests."

Executive Order No. 21 (McGreevey 2002)

- 1) Records where inspection, examination or copying would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.
- 2) Records exempted from disclosure by State agencies' promulgated rules are exempt from disclosure by this Order.
- 3) Executive Orders No. 9 (Hughes), 11 (Byrne), 79 (Byrne) and 69 (Whitman) are hereby continued to the extent that they are not inconsistent with this Executive Order.

Executive Order No. 9 (Hughes) exemptions that are still active:

- a. Questions on examinations required to be conducted by any State or local governmental agency;
- b. Personnel and pension records (same as N.J.S.A. 47:1A-10);
- c. Records concerning morbidity, mortality and reportable diseases of named persons required to be made, maintained or kept by any State or local governmental agency;
- d. Records which are required to be made, maintained or kept by any State or local governmental agency which would disclose information concerning illegitimacy;
- e. Fingerprint cards, plates and photographs and other similar criminal investigation records which are required to be made, maintained or kept by any State or local governmental agency;
- f. Criminal records required to be made, maintained and kept pursuant to the provisions of R. S. 53:1-20.1 and R. S. 53:1- 20.2;
- g. Personal property tax returns required to be filed under the provisions of Chapter 4 of Title 54 of the Revised Statutes; and
- h. Records relating to petitions for executive clemency.

Executive Order No. 11 (Byrne) exemptions are the same as N.J.S.A. 47:1A-10.

Executive Order No. 79 (Byrne) exemptions are the similar to # 8, 9, 10 above under N.J.S.A. 47:1A-1.1.

Executive Order No. 69 (Whitman) exemptions that are still active: Fingerprint cards, plates and photographs and similar criminal investigation records that are required to be made, maintained or kept by any State or local governmental agency.

Executive Order No. 26 (McGreevey 2002)

- 1) Certain records maintained by the Office of the Governor:
 - a. Any record made, maintained, kept on file or received by the Office of the Governor in the course of its official business which is subject to an executive privilege or grant of confidentiality established or recognized by the Constitution of this State, statute, court rules or judicial case law.
 - b. All portions of records, including electronic communications, that contain advisory, consultative or deliberative information or other records protected by a recognized privilege.
 - c. All portions of records containing information provided by an identifiable natural person outside the Office of the Governor which contains information that the sender is not required by law to transmit and which would constitute a clearly unwarranted invasion of personal privacy if disclosed.

- d. If any of the foregoing records shall contain information not exempted by the provision of the Open Public Records Act or the preceding subparagraphs (a), (b) or (c) hereof then, in such event, that portion of the record so exempt shall be deleted or excised and access to the remainder of the record shall be promptly permitted.
- 2) Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing. *The resumes of successful candidates shall be disclosed once the successful candidate is hired. The resumes of unsuccessful candidates may be disclosed after the search has been concluded and the position has been filled, but only where the unsuccessful candidate has consented to such disclosure.*
 - 3) Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments.
 - 4) Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.
 - 5) Information in a personal income or other tax return
 - 6) Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed.
 - 7) Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing.
 - 8) Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by a regulation of that department or agency adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.
 - 9) Records of a department or agency held by the Office of Information Technology (OIT) or the State Records Storage Center of the Division of Archives and Records Management (DARM) in the Department of State, or an offsite storage facility outside of the regular business office of the agency. Such records shall remain the legal property of the department or agency and be accessible for inspection or copying only through a request to the proper custodian of the department or agency. In the event that records of a department or agency have been or shall be transferred to and accessioned by the State Archives in the Division of Archives and Records Management, all such records shall become the legal property of the State Archives, and requests for access to them shall be submitted directly to the State Archives.

City of Wildwood Police Department

PUBLIC RECORDS REQUEST RESPONSE

TO: Greg Walsh

☐ The document or documents you requested are available to you upon your payment of the billed amount reported below.

☒ The document or documents listed below and requested by you are not being provided because the document or documents are not public records as provided by law, as noted below:

As to bullet point #3, this request does not request a specific, identifiable government document.

You have a right to appeal the decision that the document or documents are not public records. You may take your appeal to the Public Records Council or to the New Jersey Superior Court as provided by N.J.S.A. 47:1A-6 and -7.

Date: 03/02/20 Captain J. Flanigan

City of Wildwood Police Department

ACKNOWLEDGMENT

I hereby acknowledge that I have received the documents requested except for any documents specifically listed above on which a determination has been made that the documents will not be provided. If any documents have not been provided. I have received information on the procedures for any appeal of the determination.

Date: _____ Applicant _____

Payment Information

The fee for the documents provided is \$ _____.

Payment Method

Cash _____ Check # _____ Money Order _____
CHECKS OR MONEY ORDERS PAYABLE TO :
"CITY OF WILDWOOD TREASURER"

Wildwood Police Department

Date

City of Wildwood Payroll Status Change Report

Effective Date: 12/5/10 Social Security Number [REDACTED]

Name: Ryan Troiano Date of Birth [REDACTED]

Seasonal Address

Permanent Address

[REDACTED]

Wildwood NJ 08260

Phone [REDACTED] unlisted ☐ Phone [REDACTED] unlisted ☐

☒ Married ☐ Single ☐ Divorced ☐ Separated Gender: Male ☒ Female ☐ Race W

CHANGE: FROM

TO

Title & #	<u>Fire Fighter #006</u>	Title & #	<u>None</u>
Dept. & #	<u>Fire Dept #1041</u>	Dept. & #	<u>None</u>
Salary	<u>48,677 Contract Salary</u>	Salary	<u>-0-</u>
Allocations	<u>16090</u>	Allocations	<u>None</u>
Step	Grade	Step	Grade

Copy: W4 ☐ I-9 ☐ Driver's License ☐ Social Security ☐ Other Foreigner/work visa

New Hire ☐

Permanent ☐

Location FIRE

Re-Hire ☐

Provisional ☐

Dept. (Kronos) DPS

Demotion ☐

Seasonal ☐

Clock Code FIRE

Promotion ☐

Part Time ☐

Floating Holiday NO

Seasonal to Full Time ☐

Temporary ☐

Vacation yes

Transfer ☐

Unclassified ☐

Sick yes

Merit Increase ☐

Longevity no

Leave ☐

Union Dues yes

Termination ☒ Reason: Unsatisfactory Performance in working test period Last day worked 12/2/10

Authorized by: [Signature] Chief on Vacation N/A
Supervisor Date 12/16/10 Employee's signature and date

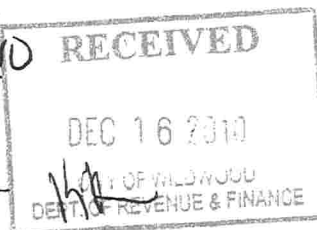
Reviewed by: Jane Dougherty 12/10/10
Personnel Date

Authorized by: [Signature] 12/15/10
Dale Goodreau, Municipal Administrator Date

Approve ☒ Disapprove ☐ [Signature] 12/15/10
Mayor Gary S. De Marzo Date

Approve ☐ Disapprove ☒ [Signature] 12/15/10
Commissioner Alexander Brannen Date

Approve ☒ Disapprove ☐ [Signature] 12-15-10
Commissioner Edward Harshaw Date





THE CITY OF WILDWOOD
OFFICE OF THE BOARD OF COMMISSIONERS
COMMISSIONER OF PUBLIC SAFETY & PUBLIC AFFAIRS

GARY S. DEMARZO
MAYOR

December 3, 2010

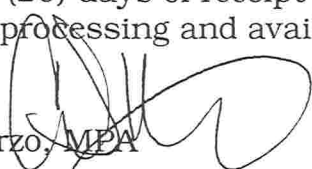
Mr. Ryan Troiano
[REDACTED]
Wildwood, NJ 08260

Re: **Rejection During Working Test Period**

Dear Mr. Troiano,

You will be separated at the end of your working test period, December 5, 2010. Your last day of work for the City of Wildwood is December 5, 2010. The reason for this separation is failure to maintain a valid State of New Jersey Drivers License, which is a requirement of employment. Your license was suspended by the State of New Jersey from your date of hire to April 6, 2010. During this time period, you operated City vehicles in the line of duty, putting the City at jeopardy. This is unsatisfactory performance.

You have the right to request a hearing before the Civil Service Commission regarding this separation pursuant to N.J.A.C. 4A:2-4.1 et seq. You must exercise your right to appeal within twenty (20) days of receipt of this notice. Contact the Human Resource Department for final processing and availability of COBRA benefits.

Mayor Gary S. DeMarzo, MPA


GSD/smm

cc: Board of Commissioners
Conrad Johnson, Fire Chief
Jerry Dropcho, Director of Human Resources
William Blaney, Esquire, City Labor Counsel

City of Wildwood Payroll Status Change Report

Effective Date: 8/2/11 Social Security Number [REDACTED]

Name: Ryan Troiano Date of Birth [REDACTED]

Seasonal Address

Permanent Address

[REDACTED]

Wildwood NJ 08260

Phone [REDACTED] unlisted ☐ Phone [REDACTED] unlisted ☐

☒ Married ☐ Single ☐ Divorced ☐ Separated Gender: Male ☐ Female ☐ Race W

CHANGE: FROM		TO
Title & #	<u>Fire Fighter #006</u>	Title & #
Dept. & #	<u>Fire #1041</u>	Dept. & #
Salary	<u>54,619 Per Current Contract</u>	Salary
Allocations	<u>100%</u>	Allocations
Step	Grade	Step Grade

Copy: W4 ☐ I-9 ☐ Driver's License ☐ Social Security ☐ Other Foreigner/work visa

New Hire ☐

Permanent ☐

Location FIRE

Re-Hire ☒

Provisional ☐

Dept. (Kronos) DPS

Demotion ☐

Seasonal ☐

Clock Code FIRE

Promotion ☐

Part Time ☐

Floating Holiday No

Seasonal to Full Time ☐

Temporary ☐

Vacation Yes

Transfer ☐

Unclassified ☐

Sick Yes

Merit Increase ☐

Longevity Yes

Leave ☐

Union Dues Yes FMBA

Termination ☐ Reason: _____

Last day worked _____

Budgeted &

Authorized by: [Signature]
Supervisor Date

[Signature] 8/2/11
Employee's signature and date

See attached Order

Reviewed by: Jane Dougherty 8/2/11
Personnel Date

Authorized by: [Signature] 08/03/11
Mayor or Commissioner Date



RECEIVED

AUG 02 2011

CITY OF WILDWOOD
DEPT. OF PERSONNEL



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 125-11

AGENCY DKT. NO. 2011-2678

IN THE MATTER OF RYAN TROIANO,
CITY OF WILDWOOD, DEPARTMENT
OF PUBLIC SAFETY AND PUBLIC
AFFAIRS.

Brian E. Jacobs, Esq., for appellant (Helmer, Paul, Conley & Kasselmann,
attorneys)

William G. Blaney, Esq., for respondent (Gruccio, Pepper, DeSanto & Ruth,
attorneys)

Record Closed: July 11, 2011

Decided: July 29, 2011

BEFORE EDGAR R. HOLMES, ALJ, T/A:

PROCEDURAL HISTORY

Ryan Troiano, appellant, was terminated from his position as a firefighter in the City of Wildwood on December 5, 2010, at the conclusion of a working test period. He requested a hearing and the matter was transmitted to the Office of Administrative (OAL) on January 4, 2011, to be heard as a contested case pursuant to the

Administrative Procedure Act, N.J.S.A. 52:14B-1 to 15 and the Act creating the OAL, N.J.S.A. 52:14F-1 to 13. A settlement conference was held on June 22, 2011, and the parties agreed to resolve this case by way of summary decision. There are no disputed facts. Appellant filed his brief and supporting documentation by letter dated June 24, 2011. A response was filed by letter dated July 8, 2011, and a reply was filed on July 11, 2011, at which time the record closed.

STATEMENT OF THE CASE

The conditions of employment for a firefighter under the New Jersey Administrative Code (N.J.A.C.) include the satisfactory completion of a "working test period of twelve months." N.J.A.C. 4A:4-5.2(d). In case the employee's performance is unsatisfactory, the employee may be terminated at the end of the working test period, but the notice terminating the employee must be served within five days, either before or after the last day of the working test period. A notice served after this period creates a presumption that the employee has obtained permanent status. N.J.A.C. 4A:2-4.1.

In this case, the appellant alleges that the notice terminating his employment came ninety days after the conclusion of his working test period and therefore he is presumed to be a permanent employee who cannot be removed except for good cause. N.J.A.C. 4A:2-2.3.

Wildwood erroneously recorded the appellant's date of hire and therefore it concedes it cannot prevail on the facts. It argues only that petitioner should not be entitled to back pay and attorney's fees.

The petitioner is entitled to reinstatement.

SUMMARY OF THE RELEVANT FACTS

1. Appellant was hired as a firefighter in the City of Wildwood, New Jersey on September 5, 2009.
2. The date of hire was erroneously recorded as December 5, 2009.
3. The appellant's notice of termination was dated December 5, 2010.
4. Appellant was therefore employed as a firefighter by the City of Wildwood for fifteen months when he was given notice of termination.

SUMMARY OF RELEVANT LAW

N.J.A.C. 4A:2-4.1 provides, among other things, that unless a notice of termination is served within five days of the conclusion of a working test period, there is created a presumption that the appellant has attained permanent status.

The working test period for a firefighter is twelve months. N.J.A.C. 4A:4-5.1(a).

When an individual attains permanent status, he or she is entitled to all relevant civil service protections, including notice, the right to a hearing, favorable allocation of burden of proof, and other procedural requirements embodied in N.J.A.C. 4A:2-1.1 to 2.13.

CONCLUSION

I **CONCLUDE** that the appellant is presumed to have attained permanent status as a result of his continued employment for three months following the end of his working test period. As a permanent employee, the appellant cannot be removed without cause or due process as defined in N.J.A.C. 4A:2-1.1 to 2.13.

ORDER

I **ORDER** that appellant be reinstated to his position as a firefighter in the City of Wildwood effective December 5, 2010, with back pay and benefits from December 5, 2010. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned or that could have been earned by appellant during this period. Proof of income shall be submitted by or on behalf of appellant to the appointing authority within thirty days of issuance of this decision. Pursuant to N.J.A.C. 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 29, 2011

DATE



EDGAR R. HOLMES, ALJ, T/A

Date Received at Agency:

July 29, 2011

Date Mailed to Parties:

July 29, 2011

DOCUMENTS CONSIDERED

Appellant's Motion for Summary Decision

Respondent's Opposition to Motion for Summary Decision

Appellant's Reply