

CJ GRIFFIN
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February 5, 2020

VIA SERVICE PROCESSOR

Town of Morristown
200 South Street
Morristown, NJ 07960

Margot Kaye, Custodian of Records
Town of Morristown
200 South Street
Morristown, NJ 07960

RE: Kelly Montes v. Town of Morristown, et. al.
Docket No.: MRS-L-000300-20
Our File No.: 28828-001

Dear Sir/Madam:

On behalf of Plaintiff, Kelly Montes, enclosed herewith and served upon you are an executed Order to Show Cause, Track Assignment Notice, Civil Case Information Statement, Verified Complaint with Exhibits and Letter Brief.

Pursuant to the enclosed Order, the Hearing is scheduled for March 18, 2020 at 10:00 a.m. at the Superior Court of New Jersey, Morris County, 56 Washington Street, Morristown, New Jersey 07960 before the Honorable Stuart A. Minkowitz, A.J.S.C.

Please be guided accordingly.

Very truly yours,

CJ Griffin

CJG/mb
Enclosures

Received

FEB 7 2020

Morristown Administration

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February 5, 2020

Via E-Courts and UPS

Stuart A. Minkowitz, A.J.S.C.
Superior Court of New Jersey—Morris County
Morris County Courthouse
Washington & Court Streets
PO Box 910, 2nd Floor
Morristown, NJ 07963

Re: Kelly Montes v. Town of Morristown, et al.
Our File: 28828-001

Dear Judge Minkowitz:

This firm represents Plaintiff, Kelly Montes, in the above-referenced matter. Please accept this letter brief, in lieu of a more formal brief, in support of Plaintiff's application for an Order to Show Cause seeking relief from Defendant's unlawful denial of the Open Public Records Act ("OPRA") and common law right of access request identified in the Verified Complaint and discussed herein.

PRELIMINARY STATEMENT

Plaintiff's boyfriend received a traffic ticket in Morristown in early January 2020 for an expired motor vehicle registration. Plaintiff's boyfriend disputes the officer's version of events. To view the encounter between her boyfriend and the police, Plaintiff filed an OPRA seeking the dash cam and body cam videos from the motor vehicle stop.

Morristown responded to Plaintiff's OPRA request by granting access to the dash cam footage but claiming the body cam footage is exempt pursuant to OPRA's criminal investigatory records exemption. Plaintiff *twice* asked the Custodian to explain how this exemption could apply,

but the Custodian refused to answer and simply provided her information regarding her right to appeal the denial. Plaintiff now appeals that unlawful denial.

OPRA's criminal investigatory record does not apply. First, the body cam at issue does not pertain to any criminal investigation—the traffic stop was a routine traffic stop and Plaintiff's boyfriend was given a ticket for a violation of the motor vehicle laws. Second, body cam videos are required by law to be made, maintained, or kept on file by Attorney General Law Enforcement Directive 2015-1. Therefore, the exemption simply cannot apply.

For all of the reasons argued below, this Court should find Morristown in violation of OPRA, compel it to grant access to the body cam footage immediately, and declare Plaintiff a prevailing party entitled to an award of attorney's fees.

STATEMENT OF FACTS

Plaintiff is a resident of Morristown. Plaintiff's boyfriend received a traffic ticket for an expired vehicle registration on January 6, 2020 in Morristown. Plaintiff's boyfriend disputes the officer's version of events. Plaintiff, therefore, is interested in viewing videos from the traffic stop. Accordingly, Plaintiff filed an OPRA request on or about January 13, 2020 seeking the following records:

Dash cam & body cam footage from a traffic stop conducted on Jan. 6, 2020 by Officer Bryan Holmes at approx. 7 p.m. Stop resulted in the issuing of ticket E20 000166.

[Exhibit A to Verified Complaint.]

On January 23, 2020, the Custodian responded and stated that a disc was available to be picked up. Shortly thereafter, the Custodian clarified that the disc contained only the dash camera footage. She stated: "In my initial response to your OPRA request 20-34, I neglected to include a denial to your request for the body worn video. That part of your request is denied pursuant to

N.J.S.A. 47:1A-1.1, et seq. as a Criminal Investigatory Record.” [Exhibit B to Verified Complaint.]

The next day, Plaintiff responded and asked whether the dash cam video could be emailed. She further added, “Regarding your decision to deny request for BWC footage, could you please be more specific on “criminal investigatory record” and how it applies to this request.” Exhibit B.

On January 27, 2020, the Custodian responded that the file was too large to email but did not respond to Plaintiff’s inquiry about the body cam footage. Ibid. In response, that same date Plaintiff again wrote: “Regarding your decision to deny request for BWC footage, could you please be more specific on ‘criminal investigatory record’ and how it applies to this request.” Ibid.

The Custodian once again refused to explain how the criminal investigatory exemption applied and simply wrote the following on January 29, 2020:

Ms. Montes – your OPRA request has been satisfied.

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 denial of 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 PO Box 819, Trenton, NJ, 08625, by email at grc@dca.state.nj.us, or at their website at www.state.nj.us/grc. The GRC 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.

[Exhibit B.]

To date, Morristown has not produced the requested body cam footage even though it is not a criminal investigatory record or otherwise exempt from access under OPRA. Plaintiff seeks access to the body cam footage.

LEGAL ARGUMENT

I. MORRISTOWN VIOLATED OPRA BY DENYING ACCESS TO THE BODY CAM FOOTAGE OF A ROUTINE TRAFFIC STOP

OPRA'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) (quoting Lakewood Residents Assoc., Inc. v. Twp. of Lakewood, 294 N.J. Super. 207, 225 (Law Div. 1994)). It is well-recognized that "[a]n informed citizenry is essential to a well-functioning democracy." Paff v. Twp. of Galloway, 229 N.J. 340, 357 (2017). The "bedrock principle" underlying OPRA is that "our government works best when its activities are well-known to the public it serves." Burnett v. Cty. of Bergen, 198 N.J. 408, 414 (2009) (by reviewing a government agency's records, "citizens and the media can play a watchful role in curbing wasteful government spending and guarding against corruption and misconduct"). Where records relate to police-involved deadly shootings, transparency is even more important. N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 574 (2017).

OPRA defines "government records" broadly to include almost every document an agency makes or maintains in the course of its business. N.J.S.A. 47:1A-1.1. A citizen's right to access government records has been deemed "unfettered" absent a statutory exemption. Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 382-83 (App. Div. 2003). Accordingly, pursuant to OPRA,

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 [OPRA] shall be construed in favor of the public's right of access. . . .*

[N.J.S.A. 47:1A-1 (emphasis added).]

It is thus the *public agency's burden* to prove that denial of access is authorized by law. N.J.S.A. 47:1A-6. In this case, Defendants cannot meet that burden.

A. The Body Cam Footage is not a Criminal Investigatory Record

A “criminal investigatory record” is “a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.” N.J.S.A. 47:1A-1.1. “[A]n agency seeking to withhold a record from disclosure as a criminal investigatory record must satisfy ‘both prongs of the exception’ by demonstrating that the record is not required by law to be made, maintained or kept on file and that it ‘pertains’ to a criminal investigation or related civil enforcement proceeding.” Paff v. Ocean Cty. Prosecutor’s Office, 235 N.J. 1, 18 (2018) (citing N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 551 (2017)). In this case, neither prong is satisfied and therefore the exemption does not apply.

First, the body cam footage does not pertain to a criminal investigation. Plaintiff’s boyfriend was pulled over and issued a ticket for a simple violation of our motor vehicle laws for allegedly having an expired motor vehicle registration. A violation of a motor vehicle law is not a criminal violation and body cams of routine traffic stops are not subject to the criminal investigatory records exemption. Because this prong fails, the criminal investigatory records exemption simply cannot apply.

Second, the body cam footage *is* “required by law to be made, maintained or kept on file.” Specifically, Attorney General Law Enforcement Directive 2015-1 requires police departments to maintain all body cam videos for a period “not less than 90 days.” See Attorney General Law Enforcement Directive 2015-1 at 17, available online at https://www.nj.gov/oag/dcj/agguide/directives/2015-1_BWC.pdf. If the body cam video did

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pertain to a criminal investigation, which it does not, then the video would need to be maintained for even longer. Ibid. Because the second prong also fails, the criminal investigatory records exemption does not exempt the body cam video.

Ironically, Morristown granted access to the dash cam video even though the second prong of the criminal investigatory records exemption is satisfied because dash cam videos, unlike body cam videos, are not required by law to be made, maintained or kept on file. If that body cam video related to a criminal investigation, then Morristown would have been able to withhold it as a criminal investigatory record. Because it clearly does not, Morristown released it. For whatever reason, however, Morristown refuses to release the body cam video even though neither prong of the criminal investigatory records exemption applies.

This Court should compel Morristown to release the responsive body cam video.

II. PLAINTIFF IS ENTITLED TO THE VIDEO UNDER THE COMMON LAW

If for some reason this Court decides that the body cam video is subject to OPRA's criminal investigatory records exemption, this Court should grant access under the common law right of access. See N.J.S.A. 47:1A-1 ("[N]othing contained [OPRA] shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency").

At common law, a citizen has an enforceable right to require custodians of public records to make records available for reasonable inspection and examination. Irval Realty v. Bd. of Pub. Util. Comm'rs, 61 N.J. 366, 372 (1972). Even where a plaintiff is denied access under OPRA, the documents may be available through the right to access under the common law. MAG Entertainment LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 543 (App. Div. 2005). Whether the common law right to access a public record compels production is

determined by balancing the requestor's need for the record against the government's need for secrecy. Shuttleworth v. City of Camden, 258 N.J. Super. 573, 583 (App. Div. 1992). A requestor need not establish a personal interest as a public interest is sufficient. Id.

Here, Plaintiff has a personal interest in the records: the body cam video depicts her boyfriend's interactions with a Morristown police officer. Plaintiff desires to see the video to learn more about the incident, given that her boyfriend disputes the officer's account of events. The video may also be helpful to her boyfriend in defending against his traffic ticket. In contrast, Morristown has absolutely no need for confidentiality. Therefore, the balancing test easily weighs in favor of Plaintiff.

III. PLAINTIFF IS A PREVAILING PARTY ENTITLED TO AN AWARD OF ATTORNEY'S FEES

Plaintiff is entitled to reasonable attorney's fees and costs because Jersey City has violated OPRA. Pursuant to OPRA, "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. A requestor may prevail in two ways.

First, the requestor may obtain a judgment or order in their favor. Mason v. City of Hoboken, 196 N.J. 51, 76 (2008). As detailed above, Plaintiff is entitled to an order finding that Jersey City is in violation of OPRA for failing to comply with N.J.S.A. 47:1A-5(g) and instead deferring to the FBI. Therefore, the Court should enter a judgment in Plaintiff's favor compelling Jersey City to perform its statutory obligations to determine which records are exempt, which renders Plaintiff a prevailing party.

The second way a requestor may be entitled to attorney's fees is pursuant to the catalyst theory. Under this theory, a plaintiff is entitled to attorney's fees if it can demonstrate "1) a factual causal nexus between plaintiff's litigation and the relief ultimately achieved; and 2) that the relief ultimately secured by plaintiffs had a basis in law." Mason, 196 N.J. at 76; see also Smith v.

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Hudson Cnty. Register, 422 N.J. Super. 387, 394 (App. Div. 2011) (“A plaintiff may qualify as a prevailing party, and thereby be entitled to a fee award, by taking legal action that provides a ‘catalyst’ to induce a defendant’s compliance with the law.”). The same catalyst theory also applies to the award of attorney’s fees under the common law right of access. See Mason, 196 N.J. at 79 (“Absent an apparent, theoretical basis for such a distinction, we conclude that the catalyst theory applies to common law suits as well.”).

Here, Plaintiff made a valid OPRA request for government records and Morristown unlawfully denied the request. This litigation, if successful, will serve as the catalyst for Plaintiff obtaining government records that were not exempt and should have never been withheld, or, alternatively, should have been released under the common law. Therefore, Plaintiff is entitled to an award of attorney’s fees and costs of suit pursuant either to N.J.S.A. 47:1A-6 or the common law right of access.

CONCLUSION

For the foregoing reasons, Plaintiff asks the Court to grant her Order to Show Cause and enter an Order 1) finding Defendants in violation of OPRA; 2) ordering Defendants produce the requested body cam video under OPRA or, in the alternative, pursuant to the common law right of access; and 4) declaring Plaintiff a prevailing party entitled to an award of attorney’s fees.

Respectfully Submitted,

/s CJ Griffin, Esq.

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation

Court Plaza South

21 Main Street, Suite 200

Hackensack, NJ 07601

(201) 488-8200

cgriffin@pashmanstein.com

CJ GRIFFIN, ESQ. (#031422009)

Attorneys for Plaintiff

Kelly Montes

KELLY MONTES,

Plaintiff,

v.

TOWN OF MORRISTOWN and MARGOT

KAYE in her official capacity as Records

Custodian for the Town of Morristown,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: MORRIS COUNTY

DOCKET NO.:

Civil Action

ORDER TO SHOW CAUSE

THIS MATTER being brought before the court by Pashman Stein Walder Hayden, a Professional Corporation, attorneys for Plaintiff Kelly Montes (CJ Griffin, Esq. appearing), seeking relief by way of summary action pursuant to Rule 4:67-1(a), based upon the facts set forth in the Verified Complaint filed herewith; and the court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding pursuant to the Open Public Records Act, N.J.S.A. 47:1A-6 and common law right of access, and for good cause shown:

IT IS on this _____ day of _____, 2019, **ORDERED** that Defendants Town of Morristown and Margot Kaye, in her official capacity as Records Custodian for the Town of Morristown, shall appear and show cause on the _____ day of _____, 2020 before the Superior Court at the Morris County Courthouse in Morristown, New Jersey, at

_____ a.m./p.m., or as soon thereafter as counsel can be heard, why judgment should not be entered:

1. Declaring said actions of Defendants to be in violation of OPRA, N.J.S.A. 47:1A-1 *et seq.* by unlawfully denying access to government records;
2. Ordering Defendants to release the responsive government records immediately;
3. Declaring Defendants have violated Plaintiff's rights under the common law right of access in their handling of Plaintiff's request for public records;
4. Order the Defendants to provide the requested records under the common law;
5. Ordering Defendants to preserve the requested records pending resolution of these proceedings or as otherwise required by law;
6. Awarding counsel fees and costs pursuant to N.J.S.A. 47:1A-6 and the common law right of access;
7. Retaining jurisdiction so that Plaintiff may challenge Defendants' decision to withhold non-exempt records if necessary; and
8. For such other relief as the Court may deem just and equitable.

AND IT IS FURTHER ORDERED that:

1. A copy of this Order to Show Cause, Verified Complaint and all supporting affidavits or certifications submitted in support of this application be served upon Defendants personally or by Certified Mail, Return Receipt Requested, within ____ days of the date the Plaintiff received this Order, in accordance with *R. 4:4-3* and *R. 4:4-4*, this being original process.
3. The Plaintiff must file with the court its proof of service of the pleadings on the Defendants no later than three (3) days before the return date.

4. Defendants shall file and serve a written answer and opposition papers to this Order to Show Cause and the relief requested in the Verified Complaint and proof of service of the same by _____, 2020. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a courtesy of the papers must be sent directly to the chambers of Honorable Stuart A. Minkowitz, A.J.S.C. A copy must be served on Plaintiff that same date.

5. The Plaintiff must file and serve any written reply to the Defendants' opposition to the Order to Show Cause by _____, 2020. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a courtesy copy of the reply papers must be sent directly to the chambers of Stuart A. Minkowitz, A.J.S.C.

6. 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.

7. If 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 (3) days before the return date.

8. 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 opposition papers 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 <http://www.judiciary.state.nj.us/prose/10153deptyclerklawref.pdf>. Include a \$175 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer and opposition papers to the Plaintiffs' attorney whose name and address appear above, or to the Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer and opposition papers (with the fee) or judgment may be entered against you by default.

9. 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/10153deptyclerklawref.pdf>.

10. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause.

Hon. Stuart A. Minkowitz, A.J.S.C.

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation

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CJ GRIFFIN, ESQ. (#031422009)

Attorneys for Plaintiff

Kelly Montes

KELLY MONTES,

Plaintiff,

v.

TOWN OF MORRISTOWN and MARGOT
KAYE in her official capacity as Records
Custodian for the Town of Morristown,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: MORRIS COUNTY

: DOCKET NO.:

: Civil Action

: **VERIFIED COMPLAINT**

Plaintiff, Kelly Montes, through her undersigned counsel, Pashman Stein Walder Hayden,
A Professional Corporation, complains against the Defendants as follows:

1. This is an action alleging violation of the New Jersey Open Public Records Act,
N.J.S.A. 47:1A-1, et seq., ("OPRA") and the common law right of access, seeking government
records from the Town of Morristown relating to a motor vehicle traffic stop.

PARTIES

2. Plaintiff Kelly Montes is a resident of [REDACTED]

3. Defendant Town of Morristown ("Morristown") is a public entity formed under the
laws of the State of New Jersey, with its primary place of business located at 200 South Street,
Morristown, NJ 07690.

4. Defendant Margot Kaye is the Records Custodian for Morristown and is being sued in her official capacity only. She maintains an office at 200 South Street, Morristown, NJ 07690.

5. Morristown “ma[kes], maintain[s] or ke[eps] on file,” or “receive[s] in the course of ... its official business” government records, and is subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

JURISDICTION & VENUE

6. This Court has subject matter jurisdiction pursuant to N.J.S.A. 47:1A-6 and the common law.

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

FACTUAL ALLEGATIONS

8. Plaintiff’s boyfriend received a traffic ticket for an expired vehicle registration on January 6, 2020 in Morristown.

9. Plaintiff’s boyfriend disputes the officer’s version of events. Plaintiff, therefore, seeks to view videos from the traffic stop.

10. Accordingly, Plaintiff filed an OPRA request on or about January 13, 2020 seeking the following records:

Dash cam & body cam footage from a traffic stop conducted on Jan. 6, 2020 by Officer Bryan Holmes at approx. 7 p.m. Stop resulted in the issuing of ticket E20 000166.

[Attached hereto as **Exhibit A** is Plaintiff’s OPRA Request.]

11. On January 23, 2020, the Custodian responded and stated that a disc was available to be picked up. Shortly thereafter, the Custodian clarified that the disc contained only the dash camera footage. She stated: “In my initial response to your OPRA request 20-34, I neglected to

include a denial to your request for the body worn video. That part of your request is denied pursuant to N.J.S.A. 47:1A-1.1, et seq. as a Criminal Investigatory Record.” [Attached hereto as **Exhibit B** is a true and accurate copy of an email chain between the Custodian and Plaintiff.]

12. The next day, Plaintiff responded and asked whether the dash cam video could be emailed. She further added, “Regarding your decision to deny request for BWC footage, could you please be more specific on “criminal investigatory record” and how it applies to this request.” Exhibit B.

13. On January 27, 2020, the Custodian responded that the file was too large to email, but did not respond to Plaintiff’s inquiry about the body cam footage. Exhibit B.

14. That same date, Plaintiff again wrote: “Regarding your decision to deny request for BWC footage, could you please be more specific on ‘criminal investigatory record’ and how it applies to this request.” Exhibit B.

15. The Custodian once again refused to explain how the criminal investigatory exemption applied and simply wrote the following on January 29, 2020:

Ms. Montes – your OPRA request has been satisfied.

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 denial of 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 PO Box 819, Trenton, NJ, 08625, by email at grc@dca.state.nj.us, or at their website at www.state.nj.us/grc. The GRC 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.

[Exhibit B.]

16. To date, Morristown has not produced the requested body cam footage even though it is not a criminal investigatory record or otherwise exempt from access under OPRA.

17. Plaintiff seeks access to the body cam footage.

FIRST COUNT
(Violation of OPRA)

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

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

17. A “criminal investigatory record” is “a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.” N.J.S.A. 47:1A-1.1

18. The requested body cam video does not pertain to a criminal investigation, as Plaintiff's boyfriend received a simple traffic ticket relating to his motor vehicle registration.

19. The requested body cam is required by law to be made, maintained, or kept on file pursuant to Attorney General Law Enforcement Directive 2015-1.

20. Therefore, the requested body cam video footage is not subject to the criminal investigatory records exemption, nor is it exempt pursuant to any other provision of law.

21. Accordingly, Defendants have violated OPRA by:

a. Failing to make government records requested “readily accessible for inspection, copying, or examination” in violation of N.J.S.A. 47:1A-1;

b. Failing to grant access to government records within seven business days,
in violation of N.J.S.A. 47:1A-5(g);

- c. Failing to prove that the denial of access is authorized by law, in violation of N.J.S.A. 47:1A-6.

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 provide access to a government record(s);
- b. Directing Defendants to release the requested records to Plaintiff immediately;
- d. Directing Defendants to preserve the requested records pending resolution of these proceedings or as otherwise required by law;
- e. Awarding counsel fees and costs pursuant to N.J.S.A. 47:1A-6; and
- f. For such other relief as the Court may deem just and equitable.

SECOND COUNT
(Violation of Common Law Right of Access)

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

23. The public enjoys a vested common law right of access to public records generated or maintained by public entities. See, e.g., Keddie v. Rutgers, 148 N.J. 36 (1997).

24. The requested body cam footage is a “public record” under the common law.

25. Plaintiff has a strong personal interest in the records.

26. Defendants have no confidentiality interest that outweighs Plaintiff’s interest.

27. Accordingly, Defendants have violated the common law right of access and should be compelled to release the responsive records to Plaintiff.

WHEREFORE, Plaintiff demands judgment:

- a. Declaring said actions of Defendants to be unlawful and invalid;

- b. Directing Defendants to release the requested records to Plaintiff forthwith;
- c. Directing Defendants to preserve the requested records pending resolution of these proceedings or as otherwise required by law;
- d. Awarding attorney's fees and costs of suit; and

For such other relief as the Court may deem just and equitable.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Kelly Montes

Dated: February 5, 2020

By: /s CJ GRIFFIN

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 other than that the video relates to a motor vehicle traffic ticket that is currently pending in municipal court and is likewise not the subject of any pending arbitration proceeding. Plaintiff further certifies that she has no knowledge of any contemplated action or arbitration regarding the subject matter of this action and that Plaintiff is not aware of any other parties who should be joined in this action.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Kelly Montes

Dated: February 5, 2020

By: /s CJ GRIFFIN

VERIFICATION

I, Kelly Montes, of full age, deposes and say:

1. I am a citizen of the State of [REDACTED], Plaintiff in the foregoing Verified Complaint.

2. The factual allegations of the Verified Complaint contained in are true. The said Verified Complaint is made in truth and good faith and without collusion, for the causes set forth herein.

3. 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.


KELLY MONTES

Dated: February 5, 2020

Exhibit A

Exhibit B

From: Margot Kaye <m-kaye@townofmorristown.org>
Date: January 29, 2020 at 3:26:18 PM EST
To: Kelly Montes <[REDACTED]>
Cc: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: OPRA 20-34

Ms. Montes – your OPRA request has been satisfied.

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 denial of 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 PO Box 819, Trenton, NJ, 08625, by email at grc@dca.state.nj.us, or at their website at www.state.nj.us/grc. The GRC 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.

Warm regards,

Margot

Margot G. Kaye, Town Clerk
Town of Morristown
200 South Street
Morristown, NJ 07960
(973) 292-6636
m-kaye@townofmorristown.org

From: Kelly Montes <[REDACTED]>
Sent: Monday, January 27, 2020 10:58 AM
To: Margot Kaye <m-kaye@townofmorristown.org>
Subject: Re: OPRA 20-34

Ok, that's understandable. I will pick up CD. Also, see below...

Regarding your decision to deny request for BWC footage, could you please be more specific on "criminal investigatory record" and how it applies to this request.

Kelly Montes

On Jan 27, 2020, at 9:04 AM, Margot Kaye <m-kaye@townofmorristown.org> wrote:

Due to the size of the file, I am unable to email it.

Warm regards,

Margot

Margot G. Kaye, Town Clerk
Town of Morristown
200 South Street
Morristown, NJ 07960
(973) 292-6636
m-kaye@townofmorristown.org

From: Kelly Montes <[REDACTED]>
Sent: Friday, January 24, 2020 1:19 PM
To: Margot Kaye <m-kaye@townofmorristown.org>
Subject: Re: OPRA 20-34

Thank you for your response.

In my request, I requested records to be transmitted electronically through email. Could you please email the dash cam footage you have made available for pick up.
Regarding your decision to deny request for BWC footage, could you please be more specific on "criminal investigatory record" and how it applies to this request.

Kelly Montes

On Jan 23, 2020, at 5:02 PM, Margot Kaye <m-kaye@townofmorristown.org> wrote:

In my initial response to your OPRA request 20-34, I neglected to include a denial to your request for the body worn video. That part of your request is denied pursuant to N.J.S.A. 47:1A-1.1, et seq. as a Criminal Investigatory Record. I apologize for any confusion.

Get [Outlook for iOS](#)

From: Margot Kaye
Sent: Thursday, January 23, 2020 3:49:07 PM
To: Kelly Montes <[REDACTED]>
Cc: Steffanie Morales <s-morales@townofmorristown.org>
Subject: OPRA 20-34

Good afternoon,

I am in receipt of your OPRA request dated January 13, 2020 (our file no. 20-34). Please be advised that the disc is ready to be picked up in the Clerk's Office with a payment of \$1.00. Thank you.

Warm regards,

Margot

Margot G. Kaye, Town Clerk
Town of Morristown
200 South Street
Morristown, NJ 07960
(973) 292-6636
m-kaye@townofmorristown.org

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-000300-20

Case Caption: MONTES KELLY VS TOWN OF MORRISTOWN

Case Initiation Date: 02/05/2020

Attorney Name: CJ GRIFFIN

Firm Name: PASHMAN STEIN WALDER HAYDEN, PC

Address: COURT PLAZA SOUTH 21 MAIN ST STE 200

HACKENSACK NJ 076017054

Phone: 2014888200

Name of Party: PLAINTIFF : Montes, Kelly

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

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

Are sexual abuse claims alleged? 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:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

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)*

02/05/2020

Dated

/s/ CJ GRIFFIN

Signed

MORRIS COUNTY
SUPERIOR COURT
COURT STREET
MORRISTOWN NJ 07960

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (862) 397-5700
COURT HOURS 8:30 AM - 4:30 PM

DATE: FEBRUARY 05, 2020
RE: MONTES KELLY VS TOWN OF MORRISTOWN
DOCKET: MRS L -000300 20

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 1.

DISCOVERY IS 150 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON STUART A. MINKOWITZ

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001
AT: (862) 397-5700 EXT 5351.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

ATT: CJ GRIFFIN
PASHMAN STEIN WALDER HAYDEN, P
COURT PLAZA SOUTH
21 MAIN ST STE 200
HACKENSACK NJ 07601-7054

ECOURTS