SUMMONS

Attorney(s) Sciarra and Catrambone, LLC
Office Address 1130 Clifton Avenue
Town, State, Zip Code Clifton New Jersey 07013

Telephone Number 973-242-2442
Attorney(s) for Plaintiff Eric Petr

Superior Court of New Jersey

Morris County
Law Division
Docket No: MRS-L-2369-17

Plaintiff(s)

vs.
Township of Morristown

Defendant(s)

CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of $175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where 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.njcourts.gov/forms/10153_deptyclerklawref.pdf.

/s/
Clerk of the Superior Court

DATED: 11/03/2017

Name of Defendant to Be Served: Township of Morristown c/o Kevin D. Harris, Town Clerk

Address of Defendant to Be Served: 200 South Street 1st Floor, Morristown, New Jersey 07960

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, Plaintiff, v. TOWN OF MORRISTOWN, Defendant.	CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MORRIS COUNTY DOCKET NO. MRS-L-_____-17 VERIFIED COMPLAINT *ACTION IN LIEU OF PREROGATIVE WRITS* OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1.***

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to N.J.S.A. 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to N.J.S.A. 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

Submit by Email

2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6036 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC | MI: H | Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost _____
Est. Delivery Cost _____
Est. Extras Cost _____
Total Est. Cost _____
Deposit Amount _____
Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress Open _____
Denied Closed _____
Filed Closed _____
Partial Closed _____

AGENCY USE ONLY

Tracking Information

Tracking # _____
Rec'd Date _____
Ready Date _____
Total Pages _____

Final Cost

Total _____
Deposit _____
Balance Due _____
Balance Paid _____

Records Provided

6315

Custodian Signature _____ Date _____

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect. ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

N

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Read Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N48F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount	Balance
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00 Cr	40,866.50 Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00 Cr	41,726.50 Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00 Cr	44,331.50 Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00 Cr	46,711.50 Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTO WN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	***ORDER TO SHOW CAUSE***
Defendant.	

THIS MATTER, being opened to the Court by Sciarra & Catrambone, LLC, Jeffrey D. Catrambone, Esq., on behalf of Plaintiff Eric Petr ("Petr" or "Plaintiff"), pursuant to the Open Public Records Act ("OPRA") as provided by *N.J.S.A.* 47:1A-1 *et seq.*, R. 4:69-1 *et seq.*, and R. 4:67-1 *et seq.*, with a Verified Complaint / Action in Lieu of Prerogative Writs, with attachments, and supporting letter brief being filed with the Court herewith against Defendant Town of Morristown ("Defendant"), with the OPRA statute, *N.J.S.A.* 47:1A-6 providing that this matter shall proceed in a summary manner; and good cause having been shown therefore,

IT IS on this _____ day of _____, 2017,

ORDERED that Defendant show cause before the Superior Court of New Jersey, Honorable _____, _____

_____ County, located at Washington & Court Streets, Morris County Courthouse, Morristown, New Jersey on the _____ day of _____ 2017, at _____ am / pm, or as soon thereafter as Counsel can be heard, why Plaintiff is not entitled to all of the relief sought by way of Verified Complaint / Action in Lieu of Prerogative Writs filed herewith; and **IT IS FURTHER**

ORDERED that Plaintiff shall serve and file any additional affidavits, briefs and other papers in support of this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that Defendant shall serve and file any affidavits, briefs and other papers in opposition to this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that the Plaintiff shall serve and file any reply papers, on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that a copy of this filed Order to Show Cause shall be served upon Defendant within _____ days of the date hereof.

SO ORDERED.

_____

, J.S.C.

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	**VERIFIED COMPLAINT**
Defendant.	***ACTION IN LIEU OF PREROGATIVE WRITS***
	OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to *N.J.S.A.* 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1***.

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 *day of November 2017.*

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost _____
Est. Delivery Cost _____
Est. Extras Cost _____
Total Est. Cost _____
Deposit Amount _____
Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____
Denied - Closed _____
Filled - Closed _____
Partial - Closed _____

AGENCY USE ONLY

Tracking Information

Tracking # _____
Rec'd Date _____
Ready Date _____
Total Pages _____

Final Cost

Total _____
Deposit _____
Balance Due _____
Balance Paid _____

Records Provided

6314

Custodian Signature _____ Date _____

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

SUMMONS

Attorney(s) Sciarra and Catrambone, LLC
Office Address 1130 Clifton Avenue
Town, State, Zip Code Clifton New Jersey 07013

Telephone Number 973-242-2442
Attorney(s) for Plaintiff Eric Petr

Superior Court of New Jersey
Morris County
Law Division
Docket No: MRS-L-2369-17

Plaintiff(s)

vs.
Township of Morristown

Defendant(s)

CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of $175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where 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.njcourts.gov/forms/10153_deptyclerklawref.pdf.

/s/
Clerk of the Superior Court

DATED: 11/03/2017

Name of Defendant to Be Served: Township of Morristown c/o Kevin D. Harris, Town Clerk

Address of Defendant to Be Served: 200 South Street 1st Floor, Morristown, New Jersey 07960

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, Plaintiff, v. TOWN OF MORRISTOWN, Defendant.	CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MORRIS COUNTY DOCKET NO. MRS-L-_____-17 VERIFIED COMPLAINT *ACTION IN LIEU OF PREROGATIVE WRITS* OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 *et seq*. Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq*. and as a summary action pursuant to R. 4:67-1 *et seq*. An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1***.

5. That request for records is as follows: "*[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.*"

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to N.J.S.A. 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to N.J.S.A. 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

TOWN OF MORRISTOWN

Submit by Email

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

Submit by Email

2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost _____
Est. Delivery Cost _____
Est. Extras Cost _____
Total Est. Cost _____
Deposit Amount _____
Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress Open _____
Denied Closed _____
Filed Closed _____
Partial Closed _____

AGENCY USE ONLY

Tracking Information

Tracking # _____
Rec'd Date _____
Ready Date _____
Total Pages _____

Final Cost

Total _____
Deposit _____
Balance Due _____
Balance Paid _____

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect. ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

N

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Receipt Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X185530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount	Balance
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00 Cr	40,866.50 Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00 Cr	41,726.50 Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00 Cr	44,331.50 Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00 Cr	46,711.50 Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	***ORDER TO SHOW CAUSE***
Defendant.	

THIS MATTER, being opened to the Court by Sciarra & Catrambone, LLC, Jeffrey D. Catrambone, Esq., on behalf of Plaintiff Eric Petr ("Petr" or "Plaintiff"), pursuant to the Open Public Records Act ("OPRA") as provided by *N.J.S.A.* 47:1A-1 *et seq.*, R. 4:69-1 *et seq.*, and R. 4:67-1 *et seq.*, with a Verified Complaint / Action in Lieu of Prerogative Writs, with attachments, and supporting letter brief being filed with the Court herewith against Defendant Town of Morristown ("Defendant"), with the OPRA statute, *N.J.S.A.* 47:1A-6 providing that this matter shall proceed in a summary manner; and good cause having been shown therefore,

IT IS on this _____ day of _____, 2017,

ORDERED that Defendant show cause before the Superior Court of New Jersey, Honorable _____, _____

_____ County, located at Washington & Court Streets, Morris County Courthouse, Morristown, New Jersey on the _____ day of _____ 2017, at _____ am / pm, or as soon thereafter as Counsel can be heard, why Plaintiff is not entitled to all of the relief sought by way of Verified Complaint / Action in Lieu of Prerogative Writs filed herewith; and **IT IS FURTHER**

ORDERED that Plaintiff shall serve and file any additional affidavits, briefs and other papers in support of this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that Defendant shall serve and file any affidavits, briefs and other papers in opposition to this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that the Plaintiff shall serve and file any reply papers, on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that a copy of this filed Order to Show Cause shall be served upon Defendant within _____ days of the date hereof.

SO ORDERED.

_____

, J.S.C.

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	**VERIFIED COMPLAINT**
Defendant.	***ACTION IN LIEU OF PREROGATIVE WRITS***
	OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1***.

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost _____
Est. Delivery Cost _____
Est. Extras Cost _____
Total Est. Cost _____
Deposit Amount _____
Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____
Denied - Closed _____
Filled - Closed _____
Partial - Closed _____

AGENCY USE ONLY

Tracking Information

Tracking # _____
Rec'd Date _____
Ready Date _____
Total Pages _____

Final Cost

Total _____
Deposit _____
Balance Due _____
Balance Paid _____

Records Provided

6314

Custodian Signature _____ Date _____

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

SUMMONS

Attorney(s) Sciarra and Catrambone, LLC
Office Address 1130 Clifton Avenue
Town, State, Zip Code Clifton New Jersey 07013

Telephone Number 973-242-2442
Attorney(s) for Plaintiff Eric Petr

Plaintiff(s)

vs.
Township of Morristown

Defendant(s)

Superior Court of New Jersey
Morris County
Law Division
Docket No: MRS-L-2369-17

CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of $175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where 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.njcourts.gov/forms/10153_deptyclerklawref.pdf.

/s/
Clerk of the Superior Court

DATED: 11/03/2017

Name of Defendant to Be Served: Township of Morristown c/o Kevin D. Harris, Town Clerk

Address of Defendant to Be Served: 200 South Street 1st Floor, Morristown, New Jersey 07960

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, Plaintiff, v. TOWN OF MORRISTOWN, Defendant.	CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MORRIS COUNTY DOCKET NO. MRS-L-_____-17 VERIFIED COMPLAINT *ACTION IN LIEU OF PREROGATIVE WRITS* OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.

2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1.***

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: "*Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,*" with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to N.J.S.A. 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to N.J.S.A. 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6 3 14

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

Submit by Email

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress – Open
Denied – Closed
Filed – Closed
Partial – Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

Submit by Email

THE TOWN OF MORRISTOWN.

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect. ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependant upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

AGENCY USE ONLY

Est. Document Cost
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Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Read Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount		Balance	
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00	Cr	40,866.50	Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00	Cr	41,726.50	Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00	Cr	44,331.50	Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00	Cr	46,711.50	Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, **Plaintiff,** **v.** **TOWN OF MORRISTOWN,** **Defendant.**	**CIVIL ACTION** **SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION - MORRIS COUNTY** **DOCKET NO. MRS-L-_____-17** ***ORDER TO SHOW CAUSE***

THIS MATTER, being opened to the Court by Sciarra & Catrambone, LLC, Jeffrey D. Catrambone, Esq., on behalf of Plaintiff Eric Petr ("Petr" or "Plaintiff"), pursuant to the Open Public Records Act ("OPRA") as provided by *N.J.S.A.* 47:1A-1 *et seq.*, R. 4:69-1 *et seq.*, and R. 4:67-1 *et seq.*, with a Verified Complaint / Action in Lieu of Prerogative Writs, with attachments, and supporting letter brief being filed with the Court herewith against Defendant Town of Morristown ("Defendant"), with the OPRA statute, *N.J.S.A.* 47:1A-6 providing that this matter shall proceed in a summary manner; and good cause having been shown therefore,

IT IS on this _____ day of _____, 2017,

ORDERED that Defendant show cause before the Superior Court of New Jersey, Honorable _____, _____

_____ County, located at Washington & Court Streets, Morris County Courthouse, Morristown, New Jersey on the _____ day of _____ 2017, at _____ am / pm, or as soon thereafter as Counsel can be heard, why Plaintiff is not entitled to all of the relief sought by way of Verified Complaint / Action in Lieu of Prerogative Writs filed herewith; and **IT IS FURTHER**

ORDERED that Plaintiff shall serve and file any additional affidavits, briefs and other papers in support of this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that Defendant shall serve and file any affidavits, briefs and other papers in opposition to this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that the Plaintiff shall serve and file any reply papers, on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that a copy of this filed Order to Show Cause shall be served upon Defendant within _____ days of the date hereof.

SO ORDERED.

_____

, J.S.C.

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, **Plaintiff,** **v.** **TOWN OF MORRISTOWN,** **Defendant.**	**CIVIL ACTION** **SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION - MORRIS COUNTY** **DOCKET NO. MRS-L-_____-17** **VERIFIED COMPLAINT** ***ACTION IN LIEU OF PREROGATIVE WRITS*** **OPEN PUBLIC RECORDS ACT ("OPRA")**

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.

2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1***.

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to N.J.S.A. 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to N.J.S.A. 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 *day of November 2017.*

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost _____
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Est. Extras Cost _____
Total Est. Cost _____
Deposit Amount _____
Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

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In Progress - Open _____
Denied - Closed _____
Filled - Closed _____
Partial - Closed _____

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Tracking Information

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Total Pages _____

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Deposit _____
Balance Due _____
Balance Paid _____

Records Provided

6314

Custodian Signature _____ Date _____

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

SUMMONS

Attorney(s) Sciarra and Catrambone, LLC
Office Address 1130 Clifton Avenue
Town, State, Zip Code Clifton New Jersey 07013

Telephone Number 973-242-2442
Attorney(s) for Plaintiff Eric Petr

Superior Court of New Jersey
Morris County
Law Division
Docket No: MRS-L-2369-17

Plaintiff(s)

vs.
Township of Morristown

Defendant(s)

CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of $175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where 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.njcourts.gov/forms/10153_deptyclerklawref.pdf.

/s/
Clerk of the Superior Court

DATED: 11/03/2017

Name of Defendant to Be Served: Township of Morristown c/o Kevin D. Harris, Town Clerk

Address of Defendant to Be Served: 200 South Street 1st Floor, Morristown, New Jersey 07960

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, Plaintiff, v. TOWN OF MORRISTOWN, Defendant.	CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MORRIS COUNTY DOCKET NO. MRS-L-_____-17 VERIFIED COMPLAINT *ACTION IN LIEU OF PREROGATIVE WRITS* OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1.***

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." *(See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017).*

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

TOWN OF MORRISTOWN

Submit E

T TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TO MORRIS

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Info

Maximum Authorization Co

Select Payment

Cash ☐ Check ☐ M

Fees: Please see

Delivery: Delivery / pos additional dep delivery type.

Extras: Special servic dependent up

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note tha preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the reco be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature

Da

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

Submit by Email

2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC | MI: H | Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress – Open
Denied – Closed
Filed – Closed
Partial – Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6315

Custodian Signature | Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect. ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

V

AGENCY USE ONLY

Est. Document Cost

Est. Delivery Cost

Est. Extras Cost

Total Est. Cost

Deposit Amount

Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

In Progress - Open

Denied - Closed

Filed - Closed

Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #

Read Date

Ready Date

Total Pages

Final Cost

Total

Deposit

Balance Due

Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G64DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount	Balance
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00 Cr	40,866.50 Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00 Cr	41,726.50 Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00 Cr	44,331.50 Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00 Cr	46,711.50 Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	***ORDER TO SHOW CAUSE***
Defendant.	

THIS MATTER, being opened to the Court by Sciarra & Catrambone, LLC, Jeffrey D. Catrambone, Esq., on behalf of Plaintiff Eric Petr ("Petr" or "Plaintiff"), pursuant to the Open Public Records Act ("OPRA") as provided by *N.J.S.A.* 47:1A-1 *et seq.*, R. 4:69-1 *et seq.*, and R. 4:67-1 *et seq.*, with a Verified Complaint / Action in Lieu of Prerogative Writs, with attachments, and supporting letter brief being filed with the Court herewith against Defendant Town of Morristown ("Defendant"), with the OPRA statute, *N.J.S.A.* 47:1A-6 providing that this matter shall proceed in a summary manner; and good cause having been shown therefore,

IT IS on this _____ day of _____, 2017,

ORDERED that Defendant show cause before the Superior Court of New Jersey, Honorable _____, _____

_____ County, located at Washington & Court Streets, Morris County Courthouse, Morristown, New Jersey on the _____ day of _____ 2017, at _____ am / pm, or as soon thereafter as Counsel can be heard, why Plaintiff is not entitled to all of the relief sought by way of Verified Complaint / Action in Lieu of Prerogative Writs filed herewith; and **IT IS FURTHER**

ORDERED that Plaintiff shall serve and file any additional affidavits, briefs and other papers in support of this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that Defendant shall serve and file any affidavits, briefs and other papers in opposition to this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that the Plaintiff shall serve and file any reply papers, on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that a copy of this filed Order to Show Cause shall be served upon Defendant within _____ days of the date hereof.

SO ORDERED. _____

, J.S.C.

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	**VERIFIED COMPLAINT**
Defendant.	***ACTION IN LIEU OF PREROGATIVE WRITS***
	OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to *N.J.S.A.* 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1***.

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

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TOWN OF MORRISTOWN

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TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

2

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Payment Information

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Select Payment Method

Cash ☐ Check ☐ Money Order ☐

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AGENCY USE ONLY

Est. Document Cost _____
Est. Delivery Cost _____
Est. Extras Cost _____
Total Est. Cost _____
Deposit Amount _____
Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: if any part of request cannot be delivered in seven business days, detail reasons here.

In Progress * Open _____
Denied - Closed _____
Filled - Closed _____
Partial - Closed _____

AGENCY USE ONLY

Tracking Information

Tracking # _____
Rec'd Date _____
Ready Date _____
Total Pages _____

Final Cost

Total _____
Deposit _____
Balance Due _____
Balance Paid _____

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
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Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

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W

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
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OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

SUMMONS

Attorney(s) Sciarra and Catrambone, LLC
Office Address 1130 Clifton Avenue
Town, State, Zip Code Clifton New Jersey 07013

Telephone Number 973-242-2442
Attorney(s) for Plaintiff Eric Petr

Superior Court of New Jersey
Morris County
Law Division
Docket No: MRS-L-2369-17

Plaintiff(s)

vs.
Township of Morristown

Defendant(s)

CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of $175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where 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.njcourts.gov/forms/10153_deptyclerklawref.pdf.

/s/
Clerk of the Superior Court

DATED: 11/03/2017

Name of Defendant to Be Served: Township of Morristown c/o Kevin D. Harris, Town Clerk

Address of Defendant to Be Served: 200 South Street 1st Floor, Morristown, New Jersey 07960

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	**VERIFIED COMPLAINT**
Defendant.	***ACTION IN LIEU OF PREROGATIVE WRITS***
	OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

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1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

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3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

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6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

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COUNT THREE
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11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

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13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

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D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

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Cash ☐ Check ☐ Money Order ☐

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SEP 13 2017

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Ready Date
Total Pages

Final Cost
Total
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Records Provided

6314

Custodian Signature Date

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I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6036 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name	ERIC	MI	H	Last Name	PETR
E-mail Address	localpba43@gmail.com				
Mailing Address	163 Mount Kemble Avenue				
City	Morristown	State	NJ	Zip	07960
Telephone	+1 (973) 647-0018	FAX			

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature [signature] Date Sep 13, 2017

Payment Information

Maximum Authorization Cost $ ____

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost ____
Est. Delivery Cost ____
Est. Extras Cost ____
Total Est. Cost ____
Deposit Amount ____
Estimated Balance ____

Deposit Date ____

AGENCY USE ONLY

Disposition Notes
Custodian: if any part of request cannot be delivered in seven business days, detail reasons here.

In Progress		Open	
Denied	-	Closed	
Filled		Closed	
Partial	-	Closed	

AGENCY USE ONLY

Tracking Information

Tracking # ____
Rec'd Date ____
Ready Date ____
Total Pages ____

Final Cost

Total ____
Deposit ____
Balance Due ____
Balance Paid ____

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN.

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect. ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

V

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Read Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: **Town of Morristown Response to OPRA Request #6424**

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549, Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount	Balance
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00 Cr	40,866.50 Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00 Cr	41,726.50 Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00 Cr	44,331.50 Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00 Cr	46,711.50 Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	***ORDER TO SHOW CAUSE***
Defendant.	

THIS MATTER, being opened to the Court by Sciarra & Catrambone, LLC, Jeffrey D. Catrambone, Esq., on behalf of Plaintiff Eric Petr ("Petr" or "Plaintiff"), pursuant to the Open Public Records Act ("OPRA") as provided by *N.J.S.A.* 47:1A-1 *et seq.*, R. 4:69-1 *et seq.*, and R. 4:67-1 *et seq.*, with a Verified Complaint / Action in Lieu of Prerogative Writs, with attachments, and supporting letter brief being filed with the Court herewith against Defendant Town of Morristown ("Defendant"), with the OPRA statute, *N.J.S.A.* 47:1A-6 providing that this matter shall proceed in a summary manner; and good cause having been shown therefore,

IT IS on this _____ day of _____, 2017,

ORDERED that Defendant show cause before the Superior Court of New Jersey, Honorable _____, _____

_____ County, located at Washington & Court Streets, Morris County Courthouse, Morristown, New Jersey on the _____ day of _____ 2017, at _____ am / pm, or as soon thereafter as Counsel can be heard, why Plaintiff is not entitled to all of the relief sought by way of Verified Complaint / Action in Lieu of Prerogative Writs filed herewith; and **IT IS FURTHER**

ORDERED that Plaintiff shall serve and file any additional affidavits, briefs and other papers in support of this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that Defendant shall serve and file any affidavits, briefs and other papers in opposition to this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that the Plaintiff shall serve and file any reply papers, on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that a copy of this filed Order to Show Cause shall be served upon Defendant within _____ days of the date hereof.

SO ORDERED.

_____

, J.S.C.

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	**VERIFIED COMPLAINT**
Defendant.	***ACTION IN LIEU OF PREROGATIVE WRITS***
	OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to *N.J.S.A.* 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1***.

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

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See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

Submit by Email

2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

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MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ____ ☐ US Mail ____ ☐ On-Site Inspect ____ ☐ Fax ____ ☐ E-mail ____ ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost ____

Est. Delivery Cost ____

Est. Extras Cost ____

Total Est. Cost ____

Deposit Amount ____

Estimated Balance ____

Deposit Date ____

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open ____

Denied - Closed ____

Filled - Closed ____

Partial - Closed ____

AGENCY USE ONLY

Tracking Information

Tracking # ____

Rec'd Date ____

Ready Date ____

Total Pages ____

Final Cost

Total ____

Deposit ____

Balance Due ____

Balance Paid ____

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

W

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount		Balance	
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00	Cr	40,866.50	Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00	Cr	41,726.50	Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00	Cr	44,331.50	Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00	Cr	46,711.50	Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran

Deborah Masker Edwards*
Christopher A. Gray#
Frank Cioffi

Of Counsel
Cathie Perselay Seidman*
Alan Serrins ^

*Admitted NJ & NY Bars
^ Admitted NY Bar
# Admitted NJ & PA Bars

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Fax: 973-242-3118
www.sciarralaw.com

Hamilton Office
100 Horizon Center Blvd.
Hamilton, New Jersey 08691
Tel. 856-888-7066

New York Office
The Woolworth Building
Suite 2340
233 Broadway
New York, NY 10279
Tel: 212-384-0202

November 2, 2017

Via eCourts
Superior Court of New Jersey
Civil Division - Morris County
Washington & Court Streets
Morristown, NJ 07960

Re: *Eric Petr*
v.
Town of Morristown
Docket No.: MRS-L-_____-17

Plaintiff's Letter Brief in support of Order to Show Cause & Verified Complaint

Dear Sir / Madam:

The undersigned firm represents Plaintiff Eric Petr ("Plaintiff"), in the above-referenced matter. We respectfully request that the Court accept this letter brief in support of Plaintiff's Order to Show Cause and Verified Complaint, filed herewith.

For the reasons set forth below, this Court should execute the within Order to Show Cause, and, upon briefing and argument, rule in a summary manner in favor of Plaintiff, and order that Defendant

produce all documents sought by way of Plaintiff's requests as outlined in the Verified Complaint and attachments filed herein with the Court, under the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 *et seq.*, with an award of attorneys' fees and costs.

FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

The detailed allegations in, and attachments to, Plaintiff's Verified Complaint are incorporated herein in order to provide context to this Court regarding this OPRA matter.

LEGAL ARGUMENT

I. THE RECORDS SOUGHT HEREIN ARE SUBJECT TO DISCLOSURE UNDER OPRA.

The purpose of OPRA, N.J.S.A. 47:1A-1 *et seq.*, is "to insure that government records, unless exempted, are readily accessible to citizens of New Jersey for the protection of the public interest." Mason v. City of Hoboken, 196 N.J. 51, 57 (2008) (citing N.J.S.A. 47:1A-1). OPRA advances "the State's long-standing public policy favoring ready access to most public records." See Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 36 (App. Div. 2005) (other citation omitted).

OPRA manifests this State's public policy of government transparency. "The purpose of OPRA 'is to maximize public knowledge about public affairs in order to ensure an informed

citizenry and to minimize the evils inherent in a secluded process.'" Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (other citation omitted). Thus, OPRA directs 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...shall be construed in favor of the public's right of access. N.J.S.A. 47:1A-1.

To serve this policy and purpose, OPRA provides that "[t]he public agency shall have the burden of providing that the denial of access is authorized by law." N.J.S.A. 47:1A-6. As such, the agency "must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality. Absent such a showing, a citizen's right of access is unfettered." Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 383 (App. Div. 2003).

With regard to an OPRA request, "[t]he first inquiry is whether the requested documents meet the statutory definition of government record, and if so, whether any exemption established in or recognized by any other law bars disclosure of the requested documents." Wilson v. Brown, 404 N.J. Super. 557, 571 (App. Div. 2009), certif. denied, 198 N.J. 473 (2009).

OPRA defines "government record" or "record" broadly under N.J.S.A. 47:1A-1:

> [A]ny 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...or that has been received in the course of his or its official business. N.J.S.A. 47:1A-1.1.

Here, because the records sought herein do not fall under any exemption under the OPRA statute, Plaintiff is entitled to disclosure of the documents sought. Nonetheless, to date, Defendant have only produced a single document in response to any of Plaintiff's requests for records at issue herein. Further, Defendant has not asserted any exemption or any other legitimate rationale for their utter failure to respond to Plaintiffs' numerous requests as outlined in detail in Plaintiffs' Verified Complaint.[1]

In short, Plaintiff seeks specifically identified documents related to a specifically identified IRS Equitable Sharing Fund (*see Count One of Verified Complaint*); monthly statements for a specifically identified bank account, by account number, required

---

[1] Plaintiff will of course address any such arguments or any other issues raised by Defendant by way of our additional filing of papers, as appropriate.

to be maintained by the Town *(see Count Two of Verified Complaint)*; & purchase orders and sales invoices for Police vehicles specifically identified by Vehicle Identification Number *(see Count Three of Verified Complaint)*.

A review of the specific, targeted requests reveals requests which were made with "reasonable clarity" and are for records which are "identifiable". See, e.g., Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) (holding that request for records regarding EZ Pass benefits afforded to Port Authority retirees was not over-broad under OPRA); Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) (holding that attorney's request for settlement agreements without specification of matters to which they pertained constituted a request for specific documents, triggering the requirements of OPRA).

At issue in Burnett was a request for "any and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to the present". 415 N.J. Super. at 508 (emphasis added). The Appellate Division noted that "OPRA superseded the Right to Know Law. Its purpose is 'to maximize public knowledge about public affairs in order to ensure an informed citizenry'". Id. at 512. "OPRA requires that all government records be disclosed upon request except those exempted by statute, legislative resolution, administrative regulation,

executive order, rules of court, judicial decisions, or federal law." Ibid. The Court also noted the Legislative intent favoring disclosure:

> ... 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...shall be construed in favor of the public's right of access... Ibid., *citing* N.J.S.A. 47:1A-1.

Even though the request did not specify the matters to which the settlements pertained, the Court found that the plaintiff in Burnett did not make a "general request". Id. at 513. Plaintiff here nonetheless specifically identifies the subject matter of each request.

The Court in both Burnett and Burke distinguished the "broad generic request" for records to the ABC regarding cases involving liquor licenses prosecuted in the past which were at issue in MAG Entertainment LLC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). Similarly, the requests at issue here do not seek "general information" as was the case in Bent v. Twp. of Stafford Police Dept., 381 N.J. Super. 30 (App. Div. 2005).

Here, Plaintiff's requests for records are specific and descriptive, and cannot be considered "generic" in nature. The requests require Defendant to "search", or "to go or look carefully in order to find something missing or lost," as is permitted under OPRA, and not to "conduct research", which instead involves "a

close or careful study to find new facts or information". See Burnett, 415 N.J. Super. at 515. The retrieval of records sought by Plaintiff in the subject requests requires a search, not research, and thus the Town is obligated under OPRA to conduct that search and produce the records sought. Id. at 516.[2] Defendant concedes as much by way of its partial, informal disclosure, albeit of only a single document and an email exchange acknowledging that the records be disclosed. *(See Verified Complaint at ¶ 15-17, Ex. 4)*.

As was the case in Burke, the requests by Plaintiff here do not "require the custodian to conduct research, or to collect, collate and analyze data," nor can Defendant here demonstrate how that is the case with regard to any specific request. See Burke, 429 N.J. Super. at 177. There is likewise no credible suggestion that responding to Plaintiff's requests would in some way "substantially disrupt" the operations of the Town. See id. at 177; see also N.J.S.A. 47:1A-5(g).

The Court's language as follows in Burke is controlling here with regard to each of the individual requests:

> Because plaintiff described the records sought with the requisite specificity and narrowed the scope of the inquiry to a discrete and limited subject matter, we conclude his request was neither vague or overbroad. *The*

---

[2] Defendant does not, and cannot, dispute that all of the records sought herein are in their possession.

> *request sought the records themselves, not data, information or statistics to be extracted, gleaned or otherwise derived therefrom.* Involving no research or analysis, but only a search for, and production of, what proved to be identifiable records, plaintiff's properly circumscribed and tailored request was wrongly invalidated as overbroad. 429 N.J. Super. at 177-78 (emphasis added).

Here, Defendants cannot meet their burden to demonstrate how any of the requests at issue are not valid under OPRA.

Lastly, the undersigned will submit the appropriate certification as to our fees and costs incurred should Plaintiff prevail in this matter, pursuant to N.J.S.A. 47:1A-6.

CONCLUSION

For the foregoing reasons, this Court should enter the Order to Show Cause, and, after hearing this matter in a summary manner, award Plaintiff the relief sought in the Verified Complaint, including but not limited to Defendant's production of all government records sought, and an award of attorneys' fees.

We thank the Court for its courtesies and attention to this matter.

Respectfully submitted,
Sciarra & Catrambone, LLC

By: _____
Jeffrey D. Catrambone, Esq.

JDC/j
Attachments

cc: Kevin Harris, Morristown Town Clerk (*via NJ Lawyers Service & Email townclerk@townofmorristown.org w/att.'s*)
Vijayant Pawar, Morristown Town Attorney (*via NJ Lawyers Service & Email vpawar@pqrlawyers.com w/att.'s*)
Client

William J. Garces
William N. Grabler ♦
Lawrence A. LeBrocq, LL. M. ★□

Alan T. Grening ■□
Jonathan A. Kessous ◆♣◊
Arlindo B. Araujo □◆
Gary A. Cavalli
Pasquale O. Vella
Thomas M. Nicely □
Joseph T. Delgado
Michelle M. Tullio
Jared A. Geist
Ileana J. Montes
David E. Rehe ◆
Anna M. Buontempo ◆
Robert B. White, III □.
Nicholas L. Krochta

■ Member DC Bar
□ Member PA Bar
◆ Member NY Bar
♦ Certified by The Supreme Court of New Jersey as a Workers' Compensation Law Attorney
★ Certified by The Supreme Court of New Jersey as a Civil Trial Attorney

GARCES, GRABLER & LEBROCQ
A PROFESSIONAL CORPORATION

20 GREEN STREET
NEWARK, NJ 07102

908.251.6044 Direct Dial
973.848.1601 Fax

ragramonte@garcesgrabler.com

Se habla Español

2 South Broad Street
Elizabeth, N.J. 07202
(908) 436-0001
(908) 436-0002 Fax

6 Throckmorton Street
Freehold, N.J. 07728
(732) 414-5000
(732) 414-5001 Fax

235 Livingston Avenue
New Brunswick, N.J. 08901
(732) 249-1300
(732) 220-1555 Fax

502 Amboy Avenue
Perth Amboy, N.J. 08861
(732) 826-2300
(732) 826-4027 Fax

415 Watchung Avenue
Plainfield, N.J. 07060
(908) 769-3366
(908) 769-7893 Fax

253 E. Front Street
Trenton, N.J. 08611
(609) 393-0700
(609) 393-8581 Fax

325 South River Street
Hackensack, NJ 07601
(201) 857-8100
(201) 857-8101 Fax

Reply to: Newark

January 11, 2017

RECEIVED
JAN 19 2017
TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

VIA REGULAR MAIL, CERTIFIED MAIL, R.R.R., & VIA GUARANTEED SUBPOENA SERVICE
Township of Morristown
c/o Kevin D. Clark, Clerk
200 South Street, 1st Floor
Morristown, New Jersey 07960
Defendant

Re: GIVE THIS TO YOUR INSURANCE COMPANY. YOU HAVE BEEN SUED IN COURT.
Carvajal-Cardona v. Harrison, et al. Our File No.: 271541
Docket No.: MRS-L-2235-16 DC File No.: Not Available

Dear Sir or Madam:

Please be advised that this office represent **MARIA CARVAJAL-CARDONA,** in regards to the above referenced matter. Enclosed please find the Summons, Complaint, and Track Assignment which I hereby serve upon you, in accordance with New Jersey Court Rule 4:4-3(b), as amended on September 1, 1994.

At this time, kindly give the contents of this letter and the enclosed your prompt attention and forward the enclosed documents to your Insurance company, so they may appoint defense counsel in your behalf. Please be advised that you have 60 days from the date of service of the enclosed in which to file an Answer in order to prevent default and judgment for damages being entered against you. Failure to provide your insurance with these documents in a timely fashion can result in denial of coverage making you legally responsible for payment in regards to the above referenced claim.

PLEASE BE GUIDED ACCORDINGLY!

Very truly yours,

GARCES, GRABLER & LEBROCQ, P.C.
By: *Genevieve G. Redd, Esq. /ds/*
Genevieve G. Redd, Esq.
Plaintiff's Counsel

GGR/ds
Encl.
C.M.R.R.R. 7016-1970-0000-3983-6660

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran

Deborah Masker Edwards*
Christopher A. Gray#
Frank Cioffi

Of Counsel
Cathie Perselay Seidman*
Alan Serrins ^

*Admitted NJ & NY Bars
^ Admitted NY Bar
# Admitted NJ & PA Bars

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Clifton New Jersey 07013
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Fax: 973-242-3118
www.sciarralaw.com

Hamilton Office
100 Horizon Center Blvd.
Hamilton, New Jersey 08691
Tel. 856-888-7066

New York Office
The Woolworth Building
Suite 2340
233 Broadway
New York, NY 10279
Tel: 212-384-0202

November 2, 2017

Via Email & Lawyer's Service
Kevin Harris
Morristown Town Clerk
200 South Street
Morristown, NJ 07963

Via Email & Lawyer's Service
Vijayant Pawar, Esq.
Pawar Gilgallon & Rudy, LLC
6 South Street, Suite 201
Morristown, NJ 07960

Re: ***Eric Petr v.***
Town of Morristown
MRS-L-2369 -17

Dear Mr. Harris & Mr. Pawar:

The undersigned represents Plaintiff Eric Petr with regard to the above referenced matter. Enclosed please find the following documents which were filed today on eCourts.

1. Order to Show Cause
2. Verified Complaint with Attachments
3. Letter Brief

Thank you for your attention and courtesy.

Very truly yours,

Sciarra & Catrambone, LLC

By: *Jeffrey D. Catrambone/s/*
Jeffrey D. Catrambone, Esq.

JDC/mf
Enclosures
cc: Client

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 27, 2018 Government Records Council Meeting

Complaint No. 2017-95

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

At the March 27, 2018 public meeting, the Government Records Council ("Council") considered the March 20, 2018 Findings and Recommendations of the Council Staff and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 27th Day of March, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 29, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
March 27, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-95

v.

Town of Morristown (Morris)[2]
Custodial Agency

Record Relevant to the Complaint: "I would like the cost of the patrol supervisor overtime from June 1, 2014 to January 20, 2017. Specifically the amount of money spent on supervisor overtime for being the patrol supervisor."[3]

Custodian of Record: Kevin D. Harris
Request Received by Custodian: March 30, 2017
GRC Complaint Received: May 2, 2017
Response Made by Custodian: May 12, 2017

Background[4]

Request:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned record.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he submitted his request to the Custodian on March 30, 2017, and did not receive a response from the Custodian. The Complainant states that he requested a budgetary item and has been denied access to the information. The Complainant further states that he wants an immediate response from the Custodian.[5]

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[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq. (Morristown, NJ).
[3] The Complainant requested that the information be delivered to him via e-mail.
[4] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.
[5] N.J.S.A. 47:1A-5(e) provides that "[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." As such, paid overtime does constitute an immediate access record.

Response:

On May 12, 2017, the thirtieth (30th) business day following receipt of the request, and the eighth (8th) business day after the Complainant filed the complaint, the Custodian responded in writing informing the Complainant that his request seeks information, is not a valid OPRA request, and is denied. The Custodian further informed the Complainant that a custodian is not required to conduct research or create new records in response to an OPRA request.

Statement of Information:

On May 15, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on March 30, 2017, and responded in writing on May 12, 2017. The Custodian certifies that the Complainant's request was denied because it was not a valid OPRA request. The Custodian certifies that the request sought information and did not identify a specific government record. The Custodian further certifies that a custodian is not required to conduct research or create new records in response to an OPRA request. The Custodian cites MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) along with other Council decisions in support of his denial.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[6] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Custodian certified that he received the Complainant's request on March 30, 2017, but did not respond in writing to the request until May 12, 2017. The Custodian thus failed to respond in a timely manner to the Complainant's request.

As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the

[6] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Validity of Request

The New Jersey Appellate Division has held that:

> While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.
>
> [MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, at 546 (App. Div. 2005).]

The Court reasoned that:

> Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.
>
> [Id. at 549 (emphasis added).]

The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files." Id. at 549 (emphasis added). See also Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);[7] N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Here, the Complainant sought "... the cost of the patrol supervisor overtime ... the amount of money spent on supervisor overtime for being the patrol supervisor." The Town of Morristown maintains a website. On the Police Department page under the category of "Police Divisions" is the following descriptive information: "The patrol division is divided into two squads, 'A' side and 'B' side and is further broken down into platoons. Each platoon is overseen by a lieutenant who serves as the shift commander and a sergeant who acts as the road supervisor."[8] It is clear

[7] Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).
[8] http://www.townofmorristown.org/index.asp?SEC=AC7F09A7-EADC-43E3-9DC8-C969ABD691E1&Type=B_BASIC (accessed March 1, 2018).

from this description that the Morristown Police Department has more than one patrol supervisor; however the Complainant failed to identify the specific patrol supervisor for whom he was requesting the overtime expenditure.

To fulfill the Complainant's request the Custodian would have to conduct research to determine which supervisor, if any, received overtime pay from June 1, 2014 to January 20, 2017. Such actions on the part of the Custodian are beyond the scope of his duties under OPRA.

Therefore, the Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass'n, 390 N.J. Super. 166; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

March 20, 2017

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 27, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-96

At the February 27, 2018 public meeting, the Government Records Council ("Council") considered the February 20, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 27th Day of February, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 2, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
February 27, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-96

v.

Town of Morristown (Morris)[2]
Custodial Agency

Records Relevant to the Complaint: "I would like the total cost to the town of Morristown for the annual St. Patrick's Day Parade for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017."[3]

Custodian of Record: Kevin D. Harris
Request Received by Custodian: March 30, 2017
GRC Complaint Received: May 2, 2017
Response Made by Custodian: May 15, 2017

Background[4]

Request and Response:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On May 15, 2017, the thirty-first (31st) business day following receipt of the request, and the ninth (9th) business day after the Complainant filed the complaint, the Custodian responded in writing informing the Complainant that his request seeks information, is not a valid OPRA request, and is denied. The Custodian further informs the Complainant that a custodian is not required to conduct research or create new records in response to an OPRA request.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he submitted his request to the Custodian

[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq. (Morristown, NJ).
[3] The Complainant requested that the information be delivered to him via e-mail.
[4] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

on March 30, 2017, and did not receive a response from the Custodian. The Complainant states that he requested a budgetary item and has been denied access to the information.

Statement of Information:

On May 15, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on March 30, 2017, and responded in writing on May 15, 2017. The Custodian certifies that the Complainant's request was denied because it was not a valid OPRA request. The Custodian certifies that the request sought information and did not identify a specific government record. The Custodian further certifies that a custodian is not required to conduct research or create new records in response to an OPRA request. The Custodian cites MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) along with other Council decisions in support of his denial.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[5] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Custodian certified that he received the Complainant's request on March 30, 2017, but did not respond in writing to the request until May 15, 2017. The Custodian thus failed to respond in a timely manner to the Complainant's request.

As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Validity of Request

[5] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

The New Jersey Appellate Division has held that:

> While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.
>
> [MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, at 546 (App. Div. 2005)]

The Court reasoned that:

> Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.
>
> [Id. at 549 (emphasis added).]

The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files." Id. at 549 (emphasis added). *See also* Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);[6] N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Here, the Complainant failed to identify a government record with specificity, but rather sought the "total cost" to the town for an annual parade over a number of consecutive years. Although the Complainant asserted that the information he was requesting was a budgetary item, he did not ask for a budget, which is a government record. Instead, he sought the "total cost" of a parade. To fulfill the Complainant's request the Custodian would have to conduct research by gathering the costs of various municipal services from several departments, and then compile the several costs into a document reflecting the total costs. Such efforts on the part of the Custodian are beyond the scope of his duties under OPRA.

Therefore, the Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass'n,

[6] Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).

390 N.J. Super. 166; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App.

Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

February 20, 2017

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-97 and 2017-98

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious

wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 18th Day of December, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: December 20, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-97 and 2017-98

v.

Town of Morristown (Morris)[2]
Custodial Agency

Records Relevant to Complaint:

March 30, 2017 OPRA request:[3] Electronic copies via e-mail of vehicle maintenance records and associated costs for maintenance of all Town of Morristown ("Town") Bureau of Police vehicles from January 1, 2006 through March 30, 2017.

April 6, 2017 OPRA request:[4] Electronic copies via e-mail of every Police "outside work contract" for every Town officer from January 1, 2006 through April 6, 2017.

Custodian of Record: Kevin Harris[5]
Request Received by Custodian: March 30, 2017; April 6, 2017
Response Made by Custodian: May 15, 2017; May 2, 2017
GRC Complaint Received: May 2, 2017

Background[6]

Request:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records.

On April 6, 2017, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. The Complainant noted that he previously submitted the OPRA request on March 16, 2017.

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[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq., of Pawar, Gilgallon & Rudy, LLC (Morristown, NJ). Previously represented by Joni Noble McDonnell, Esq., of Inglesino, Webster, Wyciskala & Taylor (Parsipanny, NJ).
[3] This request is the subject of GRC 2017-97.
[4] This request is the subject of GRC 2017-98.
[5] The current Custodian of Record is Margot Kaye.
[6] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council ("GRC"). The Complainant contended that the Custodian failed to respond to either request, which sought budgetary items subject to immediate access. The Complainant asserted that he wanted immediate access to the information sought.

Response

GRC 2017-97

On May 15, 2017, the thirty-first (31st) business day after receipt of the OPRA request, the Custodian responded in writing denying the request as invalid because it failed to seek identifiable records. Citing Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

GRC 2017-98

On May 2, 2017, the seventeenth (17th) business day after receipt of the OPRA request, the Custodian responded in writing seeking an extension of ten (10) business days to respond to the request. On June 2, 2017, the Custodian again responded advising that a memory stick containing over 215 items was prepared because sending the records via e-mail would prohibitive. On the same day, the Complainant retrieved the memory stick from the Town and acknowledged receipt.

Statement of Information:

On June 20, 2018, the Custodian filed Statements of Information ("SOI") for both complaints.

GRC 2017-97

The Custodian certified that he received the Complainant's OPRA request on March 30, 2017. The Custodian certified that he responded in writing on May 15, 2017 denying access to the request as invalid.

The Custodian contended that he properly denied access to the March 30, 2017 OPRA request because it was invalid. The Custodian contended that the request sought information, as opposed to an identifiable "government record." The Custodian contended that the Council routinely upheld denials where the complainant sought information. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

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additional business days to respond. The Custodian certified that he again responded on June 2, 2017 granting access to the responsive records on a memory stick. The Custodian certified that the Complainant retrieved the memory stick on the same day.

The Custodian contended that no denial of access occurred because the Complainant received all records that existed on a memory stick on June 2, 2017. The Custodian noted that the responsive records comprised of over 215 items amounting to 925 megabytes. The Custodian noted that the voluminous nature of the request delayed production beyond the extended time frame.

Analysis

Immediate Access

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[7] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).[8] See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of immediate access records).

Here, the Complainant's March 30, 2017 OPRA request sought "vehicle maintenance records and associated costs" for police vehicles over an eleven-year period. This OPRA request does not appear to directly identify any type of records for which "immediate access" is required under N.J.S.A. 47:1A-5(e). For this reason, it is reasonable that the Custodian would not have recognized that this request required an immediate response.

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[7] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[8] OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. *See* Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

However, the Complainant's April 6, 2017 OPRA request sought "outside work contracts." Such contracts are categorically considered records subject to "immediate access." N.J.S.A. 47:1A-5(e). The evidence of record indicates that the Custodian did not initially respond to the Complainant's request until May 2, 2017, the seventeenth (17th) business day following receipt of the request, seeking an extension.[9] The Custodian had "an obligation to immediately" respond to a Complainant granting access, denying access, seeking clarification, or requesting an extension time, but failed to do so. See also Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013); Kaplan v. Winslow Twp. Bd. of Educ. (Camden), GRC Complaint No. 2011- 237 (Interim Order dated December 18, 2012).

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody, GRC 2005-98; Herron, GRC 2006-178; Harris, GRC 2011-65.

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[10] Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Having determined that the Complainant's March 30, 2017 OPRA request did not reasonably seek access to "immediate access" records, the GRC now turns to whether the request was nonetheless "deemed" denied. In the SOI, the Custodian certified that he received the request on March 30, 2017. The Custodian further affirmed that he responded to the request on May 15, 2017 denying it as invalid.[11] The GRC has calculated the response time at thirty-one (31) business days, clearly well beyond the statutory time frame. Thus, the evidence of record supports that the March 30, 2017 OPRA request was "deemed" denied.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access,

[9] The GRC notes that the Custodian ultimately provided access to responsive records on June 2, 2017.

[10] A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[11] The GRC does not address Custodian's denial of access based on the validity of the subject OPRA request because the issue was not raised by the Complainant at any point during the pendency of these complaints.

seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of

time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

December 11, 2018

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-97 and 2017-98

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

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Government Records Council
On The 18th Day of December, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: December 20, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
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Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[7] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).[8] See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of immediate access records).

Here, the Complainant's March 30, 2017 OPRA request sought "vehicle maintenance records and associated costs" for police vehicles over an eleven-year period. This OPRA request does not appear to directly identify any type of records for which "immediate access" is required under N.J.S.A. 47:1A-5(e). For this reason, it is reasonable that the Custodian would not have recognized that this request required an immediate response.

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[7] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[8] OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. *See* Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013)..

However, the Complainant's April 6, 2017 OPRA request sought "outside work contracts." Such contracts are categorically considered records subject to "immediate access." N.J.S.A. 47:1A-5(e). The evidence of record indicates that the Custodian did not initially respond to the Complainant's request until May 2, 2017, the seventeenth (17th) business day following receipt of the request, seeking an extension.[9] The Custodian had "an obligation to immediately" respond to a Complainant granting access, denying access, seeking clarification, or requesting an extension time, but failed to do so. See also Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013); Kaplan v. Winslow Twp. Bd. of Educ. (Camden), GRC Complaint No. 2011- 237 (Interim Order dated December 18, 2012).

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody, GRC 2005-98; Herron, GRC 2006-178; Harris, GRC 2011-65.

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[10] Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Having determined that the Complainant's March 30, 2017 OPRA request did not reasonably seek access to "immediate access" records, the GRC now turns to whether the request was nonetheless "deemed" denied. In the SOI, the Custodian certified that he received the request on March 30, 2017. The Custodian further affirmed that he responded to the request on May 15, 2017 denying it as invalid.[11] The GRC has calculated the response time at thirty-one (31) business days, clearly well beyond the statutory time frame. Thus, the evidence of record supports that the March 30, 2017 OPRA request was "deemed" denied.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access,

[9] The GRC notes that the Custodian ultimately provided access to responsive records on June 2, 2017.

[10] A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[11] The GRC does not address Custodian's denial of access based on the validity of the subject OPRA request because the issue was not raised by the Complainant at any point during the pendency of these complaints.

seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of

time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

December 11, 2018

2017-99 SR
GRC Use Only

New Jersey Government Records Council
Denial of Access Complaint

Please read these instructions before completing this form:

- ☒ This form is to be used only for claims of denial of access to government records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002, under "OPRA," the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).
- ☒ Please print or type your responses and provide ALL information requested. Incomplete forms will delay processing. This form may be submitted online or is available in downloadable format from the GRC web site at www.nj.gov/grc.
- ☒ Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- ☒ *The GRC recommends that you keep a copy of this complaint for your own files.*
- ☒ **MAIL, FAX, OR E-MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENATION TO:**

Government Records Council
PO Box 819
Trenton, NJ 08625-0819

Fax: (609) 633-6337
E-mail: Government.Records@dca.nj.gov
Online: cforms.mwg.nj.gov

RECEIVED
2017 MAY 2 AM 8:53
NJ GOVERNMENT RECORDS COUNCIL

1. About the Requester of the Records:

Full Name: Eric Petr

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip 07960

Please provide a phone number at which GRC staff can contact you between 9 A.M.-5 P.M., Monday-Friday: (973) 647-0018

Fax Number: _____

E-Mail Address: ericp155@gmail.com

If you are represented by an attorney in this matter, please provide:

Name: _____ Phone Number: _____

Address: _____ Fax Number: _____

E-mail Address: _____

If you are an attorney who requested records and are filing this complaint **on behalf of a client**, please state the client's name:

_____

2. About the Custodian of Records:

Name of the public agency from which records were requested: Town of Morristown Clerk's Office

Name of custodian to whom records request was submitted: Kevin Harris

Telephone Number: (973) 292-6636 E-Mail Address (if used): _____

Name of custodian who denied records request (if different from above): Same as Above

Telephone Number: _____ E-Mail Address (if used): _____

Fax Number: _____

3. About the Record Request:

Date your records request was provided to the custodian: 04/06/2017

Did you receive a reply to your request? Yes ☐ No ☒

If so, state the date your request was denied: _____

Have you previously filed a complaint with the GRC concerning the record request that is subject of this complaint?

Yes ☐ No ☒

If yes, provide the GRC complaint number and a copy of the GRC decision in the matter.

Date: _____ Complaint No.: _____

Have you spoken with or written to the GRC about the record request that is subject of this complaint?

Yes ☐ Date: _____ No ☒

Have you filed an action in the N.J. Superior Court concerning the record request that is subject of this complaint?

No ☒ Yes ☐ If Yes, Docket Number: _____

4. Mediation (please refer to the attached documents for details):

Are you interested in participating in mediation? Yes ☐ No ☒

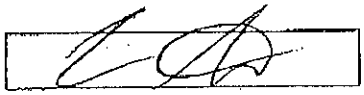
5. Documents to submit with this Form:

- ☒ **Complete** the attached **Records Denied List** to describe the records to which you were denied access.
- ☒ **Attach** a copy of the OPRA Records Request form you filed with the public agency and any correspondence between you and the record custodian(s) or custodial agency staff that concern the portion of your OPRA request that was denied. Be sure to include any e-mail, memoranda, phone messages, or any other documents such as affidavits, or certifications related to the request and the denial.
- ☒ **Summarize** the facts of this complaint by writing the content, time, and date of any interaction you had with the custodian regarding the OPRA records request that is the subject of this complaint. Use the attached **Detail Summary** for this purpose.
- ☒ **Provide** any legal arguments, allegations, or other information you would like the GRC to consider in deciding this complaint. Use the attached **Detail Summary** for this purpose.
- ☒ If applicable, until the Complainant's Counsel submits a formal letter of representation to all parties, the GRC will communicate exclusively with the Complainant. *See* N.J.A.C. 5:105-1.3 & 2.2;
- ☒ **Sign** the Agreement to Mediate if you wish to participate in the mediation process.

6. Verification of Complaint:

By signing this complaint, I affirm under penalty of perjury that:

- ☒ I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- ☒ The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim;
- ☒ I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me, which is an indictable offense under the laws of the State of New Jersey, or any other State, or pertaining to the family of that victim; and
- ☒ I am simultaneously providing a copy of this complaint to the Custodian of Records.
- ☒ 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 pursuant to the New Jersey Court Rule 1:4-4.

Signature Field 

Signature (required)

5/1/17

Date

New Jersey Government Records Council
Denial of Access Complaint - Detail Summary

Use this form to summarize the content, time, and date of any conversations regarding this complaint, along with the names of the participants and any witnesses.

On March 16, 2017 I delivered an OPRA request to the Town of Morristown Clerk's Office and hand delivered the request to Deputy Town Clerk Robin Kesselmeyer. She hand delivered it to the Town Clerk Kevin Harris the same day in his office. On 04/06/2017 I entered the Clerk's Office and asked the Clerk's Secretary, Wilma Lara, for a copy of the OPRA request I dropped off on 03/16/2017. She checked the Town's OPRA request records and advised there was no record of me ever delivering an OPRA request on 03/16/2017. I told her the request was for a copy of the Morristown Bureau of Police overtime book/ledger commonly referred to as the "Red Book". Robin Kesselmeyer assisted Wilma in looking for the request I submitted on 03/16/2017. I was eventually told that they have no record of the request and I would have to resubmit the request.

On 04/06/2017 I hand delivered a second request to Wilma Lara in the Morristown Clerk's Office for a copy of all Morristown Bureau of Police overtime books from 01/01/2006 through 04/06/2017 (this request was logged in as a received request, Town of Morristown OPRA request #5910). The request asks for copies of every overtime book from 01/01/2006 through the date of the filing, 04/06/2017. As of May 1, 2017 I have not received any communication from the Morristown Town Clerk's Office regarding my OPRA request. It is a budgetary item that I requested and I have been refused access to the information. I want an immediate response with the information I requested from the Town of Morristown.

New Jersey Government Records Council
Denial of Access Complaint – Records Denied List

Name of Complainant: Eric Petr

This is page 1 of 1.

Please fill out this form describing the record (or portion of it) to which access has been denied and the response to your request, including the reason given for denial of access. Submit additional pages if necessary.

Item #	Description of record (or portion)	Response to request
1	I requested copies of every overtime book that has been utilized by the Morristown Bureau of police from 01/01/2006 through 04/06/2017.	As of this date I have not received any response from the Town of Morristown regarding this request.

Add List | Remove List

New Jersey Government Records Council
Agreement to Mediate

By participating in mediation, I/we agree:

1. To engage in a good faith effort to resolve the above referenced complaint filed with the Government Records Council ("GRC") concerning access to records or related matters described in the Complaint;
2. That I will abide by any procedural rules set forth by the mediator. Such rules may include the establishment of a timetable for completion of mediation and/or phases of the mediation, a requirement that the parties periodically reduce settled issues to writing, a requirement that the parties personally meet with the mediator at a mutually convenient time and place and such other reasonable procedural rules deemed by the mediator to facilitate the mediation process.
3. That all discussions and documents arising during mediation are confidential unless otherwise legally obtainable. Documents provided in mediation cannot be used in a GRC hearing or appeal from a GRC determination unless those documents are public records or the party with control over the documents consents to their use in such a proceeding. Conversations with the mediator or with the other party during mediation will not constitute statements that can be used in a later GRC hearing or appeal from a GRC determination;
4. That I will not subpoena the mediator to testify or to produce any mediation materials whatsoever following the mediation. I acknowledge that the mediator will not testify on behalf of any party in any pending or future administrative or judicial proceeding, or disclose any information obtained during mediation unless the parties expressly consent to such disclosure, or unless law or court order requires disclosure. I further agree that the mediator will be held harmless for any claim arising from the mediation process;
5. That the mediation session will not be recorded (either video or audio) and that no transcript of the session will be produced;
6. That the mediator will not decide who is right or wrong, and that I shall not ask the mediator to act as my advocate. I acknowledge that the mediator will try to help the parties reach their own resolution of this dispute by encouraging discussion; however, if the mediator determines that the mediation process is no longer productive the mediator may unilaterally terminate said mediation and refer the matter back to the GRC for further processing;
7. That when a settlement is reached, it shall be put in writing and signed, and shall be binding upon all parties to the agreement. A copy shall be provided to the GRC. If the complaint is not resolved during mediation, the complaint will be transferred to the GRC for further processing.

The parties to this agreement, whose names and signatures appear below, are the only persons authorized to participate in the mediation process. The principal's representative, if any, affirms that he/she is authorized to act by, and on behalf of, the principal.

☐	YES, I want to participate in mediation.	☒	NO, I do not want to participate in mediation.

Name of Principal (Please Print) Signature Date

☐ I am the Complainant ☐ I am the Custodian

Name of Legal Representative (Please Print) Signature Date

Name of Representative (Please Print) Signature Date

Revised October 28, 2016

Open the Central Repository Home Page to start the Form Submission Process

TOWN OF MORRISTOWN

THE TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submitted Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information -- Please Print

First Name: Eric MI: H Last Name: Petr

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: 04/06/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached document.

APR 06 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

5910

Custodian Signature Date

04/06/2017

On 03/16/17 I hand delivered an OPRA request to the Morristown Clerks Office. I handed the request to Robin Kesselmeyer who hand delivered the request to Kevin Harris the same day in his office. I am requesting again, I be provided with a copy of every Morristown Bureau of Police outside overtime book, commonly referred to as the "REDBOOK", from 01/01/2006 thru today's date of 04/06/2017.

Eric Petr

Submit by Email

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information -- Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependant upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I want a copy of the Morristown Bureau of Police overtime Book/ledger (Commonly referred to as The Red Book) for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through today's date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, Plaintiff, v. TOWN OF MORRISTOWN, Defendant.	CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MORRIS COUNTY DOCKET NO. MRS-L-_____-17 VERIFIED COMPLAINT *ACTION IN LIEU OF PREROGATIVE WRITS* OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.

2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1.***

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

T TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ____ ☐ US Mail ____ ☐ On-Site Inspect ____ ☐ Fax ____ ☐ E-mail ____ ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $ ____

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost ____
Est. Delivery Cost ____
Est. Extras Cost ____
Total Est. Cost ____
Deposit Amount ____
Estimated Balance ____
Deposit Date ____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open ____
Denied - Closed ____
Filed - Closed ____
Partial - Closed ____

AGENCY USE ONLY

Tracking Information
Tracking # ____
Rec'd Date ____
Ready Date ____
Total Pages ____

Final Cost
Total ____
Deposit ____
Balance Due ____
Balance Paid ____

Records Provided

6314

Custodian Signature ____ Date ____

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name	ERIC	MI	H	Last Name	PETR
E-mail Address	localpba43@gmail.com				
Mailing Address	163 Mount Kemble Avenue				
City	Morristown	State	NJ	Zip	07960
Telephone	+1 (973) 647-0018	FAX			

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature [signature] Date Sep 13, 2017

Payment Information

Maximum Authorization Cost $ ____

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost ____
Est. Delivery Cost ____
Est. Extras Cost ____
Total Est. Cost ____
Deposit Amount ____
Estimated Balance ____

Deposit Date ____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress Open ____
Denied - Closed ____
Filed Closed ____
Partial - Closed ____

AGENCY USE ONLY

Tracking Information

Tracking # ____
Rec'd Date ____
Ready Date ____
Total Pages ____

Final Cost

Total ____
Deposit ____
Balance Due ____
Balance Paid ____

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN.

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

V

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN TOWN CLERK

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Read Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117682

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X185530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

Ol

Robir

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to governme Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please does not comply with OPRA standards. We are willing to produce docume specificity what documents you need. As we have repeatedly stated, OPRA is ended search of agency files nor is it intended as a research tool to force the Town information. We would be pleased to work with you to narrow down your request

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the Mag Entertainment, LLC v. Division of Alcoholic Bever 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep 37 (App. Div. 2005). In Mag Entertainment, the Cou intended as a research tool litigants may use to force gov and siphon useful information. Rather, OPRA simply o government records 'readily accessible for inspection, co **The Court further held that under "OPRA, agencie only identifiable government records . . . OPRA do ended searches of an agency's files." Id. At 549, F held that "a party cannot satisfy this requirement by agency's documents." Bent v. Stafford Police Depa 37.**

If you have any questions or comments, please feel free to contact our office at any

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount		Balance	
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00	Cr	40,866.50	Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00	Cr	41,726.50	Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00	Cr	44,331.50	Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00	Cr	46,711.50	Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTO WN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submitted by Email

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information -- Please Print

First Name: Eric MI: H Last Name: Petr

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: 04/06/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached document.

APR 06 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

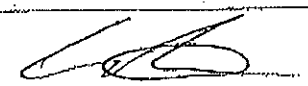
Records Provided

5910

Custodian Signature Date

04/06/2017

On 03/16/17 I hand delivered an OPRA request to the Morristown Clerks Office. I handed the request to Robin Kesselmeyer who hand delivered the request to Kevin Harris the same day in his office. I am requesting again, I be provided with a copy of every Morristown Bureau of Police outside overtime book, commonly referred to as the "REDBOOK", from 01/01/2006 thru today's date of 04/06/2017.



Eric Petr

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

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Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I want a copy of the Morristown Bureau of Police overtime Book/ledger (Commonly referred to as The Red Book) for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through today's date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

THE TOWN OF MORRISTOWN.

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN.

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Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I would like a copy of all Morristown Bureau of Police outside work contracts utilized by officers to get paid by outside contractors for all Morristown Police Officers for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through today's date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

04/06/2017

On 03/16/17 I hand delivered an OPRA request to the Morristown Clerks Office. I handed the request to Robin Kesselmeyer who hand delivered the request to Kevin Harris the same day in his office. I am requesting again, I be provided with a copy of every Morristown Bureau of Police "outside work contract" for every Morristown Police Officer from 01/01/2006 thru today's date of 04/06/2017.

Eric Petr

SUMMONS

Attorney(s) Sciarra and Catrambone, LLC
Office Address 1130 Clifton Avenue
Town, State, Zip Code Clifton New Jersey 07013

Telephone Number 973-242-2442
Attorney(s) for Plaintiff Eric Petr

Superior Court of New Jersey
Morris County
Law Division
Docket No: MRS-L-2369-17

Plaintiff(s)

vs.
Township of Morristown

Defendant(s)

CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of $175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where 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.njcourts.gov/forms/10153_deptyclerklawref.pdf.

/s/
Clerk of the Superior Court

DATED: 11/03/2017

Name of Defendant to Be Served: Township of Morristown c/o Kevin D. Harris, Town Clerk

Address of Defendant to Be Served: 200 South Street 1st Floor, Morristown, New Jersey 07960

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, Plaintiff, v. TOWN OF MORRISTOWN, Defendant.	CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MORRIS COUNTY DOCKET NO. MRS-L-_____-17 VERIFIED COMPLAINT *ACTION IN LIEU OF PREROGATIVE WRITS* OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1.***

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." *(See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017).*

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

T TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

Submit by Email

2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6036 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC | MI: H | Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress – Open
Denied – Closed
Filed – Closed
Partial – Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6315

Custodian Signature | Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect. ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

N

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB86424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount	Balance
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00 Cr	40,866.50 Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00 Cr	41,726.50 Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00 Cr	44,331.50 Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00 Cr	46,711.50 Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	***ORDER TO SHOW CAUSE***
Defendant.	

THIS MATTER, being opened to the Court by Sciarra & Catrambone, LLC, Jeffrey D. Catrambone, Esq., on behalf of Plaintiff Eric Petr ("Petr" or "Plaintiff"), pursuant to the Open Public Records Act ("OPRA") as provided by *N.J.S.A.* 47:1A-1 *et seq.*, R. 4:69-1 *et seq.*, and R. 4:67-1 *et seq.*, with a Verified Complaint / Action in Lieu of Prerogative Writs, with attachments, and supporting letter brief being filed with the Court herewith against Defendant Town of Morristown ("Defendant"), with the OPRA statute, *N.J.S.A.* 47:1A-6 providing that this matter shall proceed in a summary manner; and good cause having been shown therefore,

IT IS on this _____ day of _____, 2017,

ORDERED that Defendant show cause before the Superior Court of New Jersey, Honorable _____, _____

_____ County, located at Washington & Court Streets, Morris County Courthouse, Morristown, New Jersey on the _____ day of _____ 2017, at _____ am / pm, or as soon thereafter as Counsel can be heard, why Plaintiff is not entitled to all of the relief sought by way of Verified Complaint / Action in Lieu of Prerogative Writs filed herewith; and **IT IS FURTHER**

ORDERED that Plaintiff shall serve and file any additional affidavits, briefs and other papers in support of this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that Defendant shall serve and file any affidavits, briefs and other papers in opposition to this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that the Plaintiff shall serve and file any reply papers, on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that a copy of this filed Order to Show Cause shall be served upon Defendant within _____ days of the date hereof.

SO ORDERED. _____

, J.S.C.

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	**VERIFIED COMPLAINT**
Defendant.	***ACTION IN LIEU OF PREROGATIVE WRITS***
	OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to *N.J.S.A.* 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1***.

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: "*Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,*" with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

TOWN OF MORRISTOWN

Submit by Email

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

Submit by Email

2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ____ ☐ US Mail ____ ☐ On-Site Inspect ____ ☐ Fax ____ ☐ E-mail ____ ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost _____

Est. Delivery Cost _____

Est. Extras Cost _____

Total Est. Cost _____

Deposit Amount _____

Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____

Denied - Closed _____

Filed - Closed _____

Partial - Closed _____

AGENCY USE ONLY

Tracking Information

Tracking # _____

Rec'd Date _____

Ready Date _____

Total Pages _____

Final Cost

Total _____

Deposit _____

Balance Due _____

Balance Paid _____

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

W

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount		Balance	
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00	Cr	40,866.50	Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00	Cr	41,726.50	Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00	Cr	44,331.50	Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00	Cr	46,711.50	Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran

Deborah Masker Edwards*
Christopher A. Gray#
Frank Cioffi

Of Counsel
Cathie Perselay Seidman*
Alan Serrins ^

*Admitted NJ & NY Bars
^ Admitted NY Bar
# Admitted NJ & PA Bars

A Limited Liability Company
1130 Clifton Avenue
Clifton New Jersey 07013
Telephone: 973-242-2442
Fax: 973-242-3118
www.sciarralaw.com

Hamilton Office
100 Horizon Center Blvd.
Hamilton, New Jersey 08691
Tel. 856-888-7066

New York Office
The Woolworth Building
Suite 2340
233 Broadway
New York, NY 10279
Tel: 212-384-0202

November 2, 2017

Via eCourts
Superior Court of New Jersey
Civil Division - Morris County
Washington & Court Streets
Morristown, NJ 07960

Re: *Eric Petr*
v.
Town of Morristown
Docket No.: MRS-L-_____-17

Plaintiff's Letter Brief in support of Order to Show Cause & Verified Complaint

Dear Sir / Madam:

The undersigned firm represents Plaintiff Eric Petr ("Plaintiff"), in the above-referenced matter. We respectfully request that the Court accept this letter brief in support of Plaintiff's Order to Show Cause and Verified Complaint, filed herewith.

For the reasons set forth below, this Court should execute the within Order to Show Cause, and, upon briefing and argument, rule in a summary manner in favor of Plaintiff, and order that Defendant

produce all documents sought by way of Plaintiff's requests as outlined in the Verified Complaint and attachments filed herein with the Court, under the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 *et seq.*, with an award of attorneys' fees and costs.

FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

The detailed allegations in, and attachments to, Plaintiff's Verified Complaint are incorporated herein in order to provide context to this Court regarding this OPRA matter.

LEGAL ARGUMENT

I. THE RECORDS SOUGHT HEREIN ARE SUBJECT TO DISCLOSURE UNDER OPRA.

The purpose of OPRA, N.J.S.A. 47:1A-1 *et seq.*, is "to insure that government records, unless exempted, are readily accessible to citizens of New Jersey for the protection of the public interest." Mason v. City of Hoboken, 196 N.J. 51, 57 (2008) (citing N.J.S.A. 47:1A-1). OPRA advances "the State's long-standing public policy favoring ready access to most public records." See Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 36 (App. Div. 2005) (other citation omitted).

OPRA manifests this State's public policy of government transparency. "The purpose of OPRA 'is to maximize public knowledge about public affairs in order to ensure an informed

citizenry and to minimize the evils inherent in a secluded process.'" Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (other citation omitted). Thus, OPRA directs 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...shall be construed in favor of the public's right of access. N.J.S.A. 47:1A-1.

To serve this policy and purpose, OPRA provides that "[t]he public agency shall have the burden of providing that the denial of access is authorized by law." N.J.S.A. 47:1A-6. As such, the agency "must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality. Absent such a showing, a citizen's right of access is unfettered." Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 383 (App. Div. 2003).

With regard to an OPRA request, "[t]he first inquiry is whether the requested documents meet the statutory definition of government record, and if so, whether any exemption established in or recognized by any other law bars disclosure of the requested documents." Wilson v. Brown, 404 N.J. Super. 557, 571 (App. Div. 2009), certif. denied, 198 N.J. 473 (2009).

OPRA defines "government record" or "record" broadly under N.J.S.A. 47:1A-1:

> [A]ny 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...or that has been received in the course of his or its official business. N.J.S.A. 47:1A-1.1.

Here, because the records sought herein do not fall under any exemption under the OPRA statute, Plaintiff is entitled to disclosure of the documents sought. Nonetheless, to date, Defendant have only produced a single document in response to any of Plaintiff's requests for records at issue herein. Further, Defendant has not asserted any exemption or any other legitimate rationale for their utter failure to respond to Plaintiffs' numerous requests as outlined in detail in Plaintiffs' Verified Complaint.[1]

In short, Plaintiff seeks specifically identified documents related to a specifically identified IRS Equitable Sharing Fund (*see Count One of Verified Complaint*); monthly statements for a specifically identified bank account, by account number, required

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[1] Plaintiff will of course address any such arguments or any other issues raised by Defendant by way of our additional filing of papers, as appropriate.

to be maintained by the Town *(see Count Two of Verified Complaint)*; & purchase orders and sales invoices for Police vehicles specifically identified by Vehicle Identification Number *(see Count Three of Verified Complaint)*.

A review of the specific, targeted requests reveals requests which were made with "reasonable clarity" and are for records which are "identifiable". See, e.g., Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) (holding that request for records regarding EZ Pass benefits afforded to Port Authority retirees was not over-broad under OPRA); Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) (holding that attorney's request for settlement agreements without specification of matters to which they pertained constituted a request for specific documents, triggering the requirements of OPRA).

At issue in Burnett was a request for "any and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to the present". 415 N.J. Super. at 508 (emphasis added). The Appellate Division noted that "OPRA superseded the Right to Know Law. Its purpose is 'to maximize public knowledge about public affairs in order to ensure an informed citizenry'". Id. at 512. "OPRA requires that all government records be disclosed upon request except those exempted by statute, legislative resolution, administrative regulation,

executive order, rules of court, judicial decisions, or federal law." Ibid. The Court also noted the Legislative intent favoring disclosure:

> ... 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...shall be construed in favor of the public's right of access... Ibid., *citing* N.J.S.A. 47:1A-1.

Even though the request did not specify the matters to which the settlements pertained, the Court found that the plaintiff in Burnett did not make a "general request". Id. at 513. Plaintiff here nonetheless specifically identifies the subject matter of each request.

The Court in both Burnett and Burke distinguished the "broad generic request" for records to the ABC regarding cases involving liquor licenses prosecuted in the past which were at issue in MAG Entertainment LLC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). Similarly, the requests at issue here do not seek "general information" as was the case in Bent v. Twp. of Stafford Police Dept., 381 N.J. Super. 30 (App. Div. 2005).

Here, Plaintiff's requests for records are specific and descriptive, and cannot be considered "generic" in nature. The requests require Defendant to "search", or "to go or look carefully in order to find something missing or lost," as is permitted under OPRA, and not to "conduct research", which instead involves "a

close or careful study to find new facts or information". See Burnett, 415 N.J. Super. at 515. The retrieval of records sought by Plaintiff in the subject requests requires a search, not research, and thus the Town is obligated under OPRA to conduct that search and produce the records sought. Id. at 516.[2] Defendant concedes as much by way of its partial, informal disclosure, albeit of only a single document and an email exchange acknowledging that the records be disclosed. *(See Verified Complaint at ¶ 15-17, Ex. 4)*.

As was the case in Burke, the requests by Plaintiff here do not "require the custodian to conduct research, or to collect, collate and analyze data," nor can Defendant here demonstrate how that is the case with regard to any specific request. See Burke, 429 N.J. Super. at 177. There is likewise no credible suggestion that responding to Plaintiff's requests would in some way "substantially disrupt" the operations of the Town. See id. at 177; see also N.J.S.A. 47:1A-5(g).

The Court's language as follows in Burke is controlling here with regard to each of the individual requests:

> Because plaintiff described the records sought with the requisite specificity and narrowed the scope of the inquiry to a discrete and limited subject matter, we conclude his request was neither vague or overbroad. *The*

---

[2] Defendant does not, and cannot, dispute that all of the records sought herein are in their possession.

> *request sought the records themselves, not data, information or statistics to be extracted, gleaned or otherwise derived therefrom.* Involving no research or analysis, but only a search for, and production of, what proved to be identifiable records, plaintiff's properly circumscribed and tailored request was wrongly invalidated as overbroad. 429 N.J. Super. at 177-78 (emphasis added).

Here, Defendants cannot meet their burden to demonstrate how any of the requests at issue are not valid under OPRA.

Lastly, the undersigned will submit the appropriate certification as to our fees and costs incurred should Plaintiff prevail in this matter, pursuant to N.J.S.A. 47:1A-6.

CONCLUSION

For the foregoing reasons, this Court should enter the Order to Show Cause, and, after hearing this matter in a summary manner, award Plaintiff the relief sought in the Verified Complaint, including but not limited to Defendant's production of all government records sought, and an award of attorneys' fees.

We thank the Court for its courtesies and attention to this matter.

Respectfully submitted,
Sciarra & Catrambone, LLC

By: _____
Jeffrey D. Catrambone, Esq.

JDC/j
Attachments

cc: Kevin Harris, Morristown Town Clerk (*via NJ Lawyers Service & Email townclerk@townofmorristown.org w/att.'s*)
Vijayant Pawar, Morristown Town Attorney (*via NJ Lawyers Service & Email vpawar@pgrlawyers.com w/att.'s*)
Client

William J. Garces
William N. Grabler ♦
Lawrence A. LeBrocq, LL. M. ★□

Alan T. Grening ■□
Jonathan A. Kessous ◆♣◊
Arlindo B. Araujo □◆
Gary A. Cavalli
Pasquale O. Vella
Thomas M. Nicely □
Joseph T. Delgado
Michelle M. Tullio
Jared A. Geist
Ileana J. Montes
David E. Rehe ◆
Anna M. Buontempo ◆
Robert B. White, III □.
Nicholas L. Krochta

■ Member DC Bar
□ Member PA Bar
◆ Member NY Bar
♦ Certified by The Supreme Court of New Jersey as a Workers' Compensation Law Attorney
★ Certified by The Supreme Court of New Jersey as a Civil Trial Attorney

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New Brunswick, N.J. 08901
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(732) 220-1555 Fax

502 Amboy Avenue
Perth Amboy, N.J. 08861
(732) 826-2300
(732) 826-4027 Fax

415 Watchung Avenue
Plainfield, N.J. 07060
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(908) 769-7893 Fax

253 E. Front Street
Trenton, N.J. 08611
(609) 393-0700
(609) 393-8581 Fax

325 South River Street
Hackensack, NJ 07601
(201) 857-8100
(201) 857-8101 Fax

Reply to: Newark

January 11, 2017

RECEIVED
JAN 19 2017
TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

VIA REGULAR MAIL, CERTIFIED MAIL, R.R.R., & VIA GUARANTEED SUBPOENA SERVICE
Township of Morristown
c/o Kevin D. Clark, Clerk
200 South Street, 1st Floor
Morristown, New Jersey 07960
Defendant

Re: GIVE THIS TO YOUR INSURANCE COMPANY. YOU HAVE BEEN SUED IN COURT.
Carvajal-Cardona v. Harrison, et al. Our File No.: 271541
Docket No.: MRS-L-2235-16 DC File No.: Not Available

Dear Sir or Madam:

Please be advised that this office represent **MARIA CARVAJAL-CARDONA,** in regards to the above referenced matter. Enclosed please find the Summons, Complaint, and Track Assignment which I hereby serve upon you, in accordance with New Jersey Court Rule 4:4-3(b), as amended on September 1, 1994.

At this time, kindly give the contents of this letter and the enclosed your prompt attention and forward the enclosed documents to your Insurance company, so they may appoint defense counsel in your behalf. Please be advised that you have 60 days from the date of service of the enclosed in which to file an Answer in order to prevent default and judgment for damages being entered against you. Failure to provide your insurance with these documents in a timely fashion can result in denial of coverage making you legally responsible for payment in regards to the above referenced claim.

PLEASE BE GUIDED ACCORDINGLY!

Very truly yours,

GARCES, GRABLER & LEBROCQ, P.C.
By: *Genevieve G. Redd, Esq. /ds/*
Genevieve G. Redd, Esq.
Plaintiff's Counsel

GGR/ds
Encl.
C.M.R.R.R. 7016-1970-0000-3983-6660

Law Offices

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New York, NY 10279
Tel: 212-384-0202

November 2, 2017

Via Email & Lawyer's Service
Kevin Harris
Morristown Town Clerk
200 South Street
Morristown, NJ 07963

Via Email & Lawyer's Service
Vijayant Pawar, Esq.
Pawar Gilgallon & Rudy, LLC
6 South Street, Suite 201
Morristown, NJ 07960

Re: ***Eric Petr v.***
Town of Morristown
MRS-L-2369 -17

Dear Mr. Harris & Mr. Pawar:

The undersigned represents Plaintiff Eric Petr with regard to the above referenced matter. Enclosed please find the following documents which were filed today on eCourts.

1. Order to Show Cause
2. Verified Complaint with Attachments
3. Letter Brief

Thank you for your attention and courtesy.

Very truly yours,

Sciarra & Catrambone, LLC

By: *Jeffrey D. Catrambone/s/*
Jeffrey D. Catrambone, Esq.

JDC/mf
Enclosures
cc: Client

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 27, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-95

At the March 27, 2018 public meeting, the Government Records Council ("Council") considered the March 20, 2018 Findings and Recommendations of the Council Staff and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 27th Day of March, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 29, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
March 27, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-95

v.

Town of Morristown (Morris)[2]
Custodial Agency

Record Relevant to the Complaint: "I would like the cost of the patrol supervisor overtime from June 1, 2014 to January 20, 2017. Specifically the amount of money spent on supervisor overtime for being the patrol supervisor."[3]

Custodian of Record: Kevin D. Harris
Request Received by Custodian: March 30, 2017
GRC Complaint Received: May 2, 2017
Response Made by Custodian: May 12, 2017

Background[4]

Request:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned record.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he submitted his request to the Custodian on March 30, 2017, and did not receive a response from the Custodian. The Complainant states that he requested a budgetary item and has been denied access to the information. The Complainant further states that he wants an immediate response from the Custodian.[5]

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[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq. (Morristown, NJ).
[3] The Complainant requested that the information be delivered to him via e-mail.
[4] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.
[5] N.J.S.A. 47:1A-5(e) provides that "[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." As such, paid overtime does constitute an immediate access record.

Response:

On May 12, 2017, the thirtieth (30th) business day following receipt of the request, and the eighth (8th) business day after the Complainant filed the complaint, the Custodian responded in writing informing the Complainant that his request seeks information, is not a valid OPRA request, and is denied. The Custodian further informed the Complainant that a custodian is not required to conduct research or create new records in response to an OPRA request.

Statement of Information:

On May 15, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on March 30, 2017, and responded in writing on May 12, 2017. The Custodian certifies that the Complainant's request was denied because it was not a valid OPRA request. The Custodian certifies that the request sought information and did not identify a specific government record. The Custodian further certifies that a custodian is not required to conduct research or create new records in response to an OPRA request. The Custodian cites MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) along with other Council decisions in support of his denial.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[6] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Custodian certified that he received the Complainant's request on March 30, 2017, but did not respond in writing to the request until May 12, 2017. The Custodian thus failed to respond in a timely manner to the Complainant's request.

As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the

[6] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Validity of Request

The New Jersey Appellate Division has held that:

> While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.
>
> [MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, at 546 (App. Div. 2005).]

The Court reasoned that:

> Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.
>
> [Id. at 549 (emphasis added).]

The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files." Id. at 549 (emphasis added). See also Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);[7] N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Here, the Complainant sought "... the cost of the patrol supervisor overtime ... the amount of money spent on supervisor overtime for being the patrol supervisor." The Town of Morristown maintains a website. On the Police Department page under the category of "Police Divisions" is the following descriptive information: "The patrol division is divided into two squads, 'A' side and 'B' side and is further broken down into platoons. Each platoon is overseen by a lieutenant who serves as the shift commander and a sergeant who acts as the road supervisor."[8] It is clear

[7] Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).
[8] http://www.townofmorristown.org/index.asp?SEC=AC7F09A7-EADC-43E3-9DC8-C969ABD691E1&Type=B_BASIC (accessed March 1, 2018).

from this description that the Morristown Police Department has more than one patrol supervisor; however the Complainant failed to identify the specific patrol supervisor for whom he was requesting the overtime expenditure.

To fulfill the Complainant's request the Custodian would have to conduct research to determine which supervisor, if any, received overtime pay from June 1, 2014 to January 20, 2017. Such actions on the part of the Custodian are beyond the scope of his duties under OPRA.

Therefore, the Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass'n, 390 N.J. Super. 166; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

March 20, 2017

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 27, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-96

At the February 27, 2018 public meeting, the Government Records Council ("Council") considered the February 20, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 27th Day of February, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 2, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
February 27, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-96

v.

Town of Morristown (Morris)[2]
Custodial Agency

Records Relevant to the Complaint: "I would like the total cost to the town of Morristown for the annual St. Patrick's Day Parade for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017."[3]

Custodian of Record: Kevin D. Harris
Request Received by Custodian: March 30, 2017
GRC Complaint Received: May 2, 2017
Response Made by Custodian: May 15, 2017

Background[4]

Request and Response:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On May 15, 2017, the thirty-first (31st) business day following receipt of the request, and the ninth (9th) business day after the Complainant filed the complaint, the Custodian responded in writing informing the Complainant that his request seeks information, is not a valid OPRA request, and is denied. The Custodian further informs the Complainant that a custodian is not required to conduct research or create new records in response to an OPRA request.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he submitted his request to the Custodian

[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq. (Morristown, NJ).
[3] The Complainant requested that the information be delivered to him via e-mail.
[4] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

on March 30, 2017, and did not receive a response from the Custodian. The Complainant states that he requested a budgetary item and has been denied access to the information.

Statement of Information:

On May 15, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on March 30, 2017, and responded in writing on May 15, 2017. The Custodian certifies that the Complainant's request was denied because it was not a valid OPRA request. The Custodian certifies that the request sought information and did not identify a specific government record. The Custodian further certifies that a custodian is not required to conduct research or create new records in response to an OPRA request. The Custodian cites MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) along with other Council decisions in support of his denial.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[5] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Custodian certified that he received the Complainant's request on March 30, 2017, but did not respond in writing to the request until May 15, 2017. The Custodian thus failed to respond in a timely manner to the Complainant's request.

As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Validity of Request

[5] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

The New Jersey Appellate Division has held that:

> While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.
>
> [MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, at 546 (App. Div. 2005)]

The Court reasoned that:

> Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.
>
> [Id. at 549 (emphasis added).]

The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files." Id. at 549 (emphasis added). *See also* Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);[6] N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Here, the Complainant failed to identify a government record with specificity, but rather sought the "total cost" to the town for an annual parade over a number of consecutive years. Although the Complainant asserted that the information he was requesting was a budgetary item, he did not ask for a budget, which is a government record. Instead, he sought the "total cost" of a parade. To fulfill the Complainant's request the Custodian would have to conduct research by gathering the costs of various municipal services from several departments, and then compile the several costs into a document reflecting the total costs. Such efforts on the part of the Custodian are beyond the scope of his duties under OPRA.

Therefore, the Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass'n,

[6] Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).

390 N.J. Super. 166; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App.

Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

February 20, 2017

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-97 and 2017-98

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious

wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 18th Day of December, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: December 20, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-97 and 2017-98

v.

Town of Morristown (Morris)[2]
Custodial Agency

Records Relevant to Complaint:

March 30, 2017 OPRA request:[3] Electronic copies via e-mail of vehicle maintenance records and associated costs for maintenance of all Town of Morristown ("Town") Bureau of Police vehicles from January 1, 2006 through March 30, 2017.

April 6, 2017 OPRA request:[4] Electronic copies via e-mail of every Police "outside work contract" for every Town officer from January 1, 2006 through April 6, 2017.

Custodian of Record: Kevin Harris[5]
Request Received by Custodian: March 30, 2017; April 6, 2017
Response Made by Custodian: May 15, 2017; May 2, 2017
GRC Complaint Received: May 2, 2017

Background[6]

Request:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records.

On April 6, 2017, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. The Complainant noted that he previously submitted the OPRA request on March 16, 2017.

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[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq., of Pawar, Gilgallon & Rudy, LLC (Morristown, NJ). Previously represented by Joni Noble McDonnell, Esq., of Inglesino, Webster, Wyciskala & Taylor (Parsipanny, NJ).
[3] This request is the subject of GRC 2017-97.
[4] This request is the subject of GRC 2017-98.
[5] The current Custodian of Record is Margot Kaye.
[6] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council ("GRC"). The Complainant contended that the Custodian failed to respond to either request, which sought budgetary items subject to immediate access. The Complainant asserted that he wanted immediate access to the information sought.

Response

GRC 2017-97

On May 15, 2017, the thirty-first (31st) business day after receipt of the OPRA request, the Custodian responded in writing denying the request as invalid because it failed to seek identifiable records. Citing Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

GRC 2017-98

On May 2, 2017, the seventeenth (17th) business day after receipt of the OPRA request, the Custodian responded in writing seeking an extension of ten (10) business days to respond to the request. On June 2, 2017, the Custodian again responded advising that a memory stick containing over 215 items was prepared because sending the records via e-mail would prohibitive. On the same day, the Complainant retrieved the memory stick from the Town and acknowledged receipt.

Statement of Information:

On June 20, 2018, the Custodian filed Statements of Information ("SOI") for both complaints.

GRC 2017-97

The Custodian certified that he received the Complainant's OPRA request on March 30, 2017. The Custodian certified that he responded in writing on May 15, 2017 denying access to the request as invalid.

The Custodian contended that he properly denied access to the March 30, 2017 OPRA request because it was invalid. The Custodian contended that the request sought information, as opposed to an identifiable "government record." The Custodian contended that the Council routinely upheld denials where the complainant sought information. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

GRC 2017-98

The Custodian certified that he received the Complainant's OPRA request on April 6, 2017. The Custodian certified that he initially responded in writing on May 2, 2017 seeking ten (10)

additional business days to respond. The Custodian certified that he again responded on June 2, 2017 granting access to the responsive records on a memory stick. The Custodian certified that the Complainant retrieved the memory stick on the same day.

The Custodian contended that no denial of access occurred because the Complainant received all records that existed on a memory stick on June 2, 2017. The Custodian noted that the responsive records comprised of over 215 items amounting to 925 megabytes. The Custodian noted that the voluminous nature of the request delayed production beyond the extended time frame.

Analysis

Immediate Access

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[7] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).[8] See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of immediate access records).

Here, the Complainant's March 30, 2017 OPRA request sought "vehicle maintenance records and associated costs" for police vehicles over an eleven-year period. This OPRA request does not appear to directly identify any type of records for which "immediate access" is required under N.J.S.A. 47:1A-5(e). For this reason, it is reasonable that the Custodian would not have recognized that this request required an immediate response.

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[7] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[8] OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. *See* Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

However, the Complainant's April 6, 2017 OPRA request sought "outside work contracts." Such contracts are categorically considered records subject to "immediate access." N.J.S.A. 47:1A-5(e). The evidence of record indicates that the Custodian did not initially respond to the Complainant's request until May 2, 2017, the seventeenth (17th) business day following receipt of the request, seeking an extension.[9] The Custodian had "an obligation to immediately" respond to a Complainant granting access, denying access, seeking clarification, or requesting an extension time, but failed to do so. See also Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013); Kaplan v. Winslow Twp. Bd. of Educ. (Camden), GRC Complaint No. 2011- 237 (Interim Order dated December 18, 2012).

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody, GRC 2005-98; Herron, GRC 2006-178; Harris, GRC 2011-65.

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[10] Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Having determined that the Complainant's March 30, 2017 OPRA request did not reasonably seek access to "immediate access" records, the GRC now turns to whether the request was nonetheless "deemed" denied. In the SOI, the Custodian certified that he received the request on March 30, 2017. The Custodian further affirmed that he responded to the request on May 15, 2017 denying it as invalid.[11] The GRC has calculated the response time at thirty-one (31) business days, clearly well beyond the statutory time frame. Thus, the evidence of record supports that the March 30, 2017 OPRA request was "deemed" denied.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access,

[9] The GRC notes that the Custodian ultimately provided access to responsive records on June 2, 2017.

[10] A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[11] The GRC does not address Custodian's denial of access based on the validity of the subject OPRA request because the issue was not raised by the Complainant at any point during the pendency of these complaints.

seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of

time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

December 11, 2018

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-97 and 2017-98

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious

wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 18th Day of December, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: December 20, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-97 and 2017-98

v.

Town of Morristown (Morris)[2]
Custodial Agency

Records Relevant to Complaint:

March 30, 2017 OPRA request:[3] Electronic copies via e-mail of vehicle maintenance records and associated costs for maintenance of all Town of Morristown ("Town") Bureau of Police vehicles from January 1, 2006 through March 30, 2017.

April 6, 2017 OPRA request:[4] Electronic copies via e-mail of every Police "outside work contract" for every Town officer from January 1, 2006 through April 6, 2017.

Custodian of Record: Kevin Harris[5]
Request Received by Custodian: March 30, 2017; April 6, 2017
Response Made by Custodian: May 15, 2017; May 2, 2017
GRC Complaint Received: May 2, 2017

Background[6]

Request:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records.

On April 6, 2017, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. The Complainant noted that he previously submitted the OPRA request on March 16, 2017.

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[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq., of Pawar, Gilgallon & Rudy, LLC (Morristown, NJ). Previously represented by Joni Noble McDonnell, Esq., of Inglesino, Webster, Wyciskala & Taylor (Parsipanny, NJ).
[3] This request is the subject of GRC 2017-97.
[4] This request is the subject of GRC 2017-98.
[5] The current Custodian of Record is Margot Kaye.
[6] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council ("GRC"). The Complainant contended that the Custodian failed to respond to either request, which sought budgetary items subject to immediate access. The Complainant asserted that he wanted immediate access to the information sought.

Response

GRC 2017-97

On May 15, 2017, the thirty-first (31st) business day after receipt of the OPRA request, the Custodian responded in writing denying the request as invalid because it failed to seek identifiable records. Citing Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

GRC 2017-98

On May 2, 2017, the seventeenth (17th) business day after receipt of the OPRA request, the Custodian responded in writing seeking an extension of ten (10) business days to respond to the request. On June 2, 2017, the Custodian again responded advising that a memory stick containing over 215 items was prepared because sending the records via e-mail would prohibitive. On the same day, the Complainant retrieved the memory stick from the Town and acknowledged receipt.

Statement of Information:

On June 20, 2018, the Custodian filed Statements of Information ("SOI") for both complaints.

GRC 2017-97

The Custodian certified that he received the Complainant's OPRA request on March 30, 2017. The Custodian certified that he responded in writing on May 15, 2017 denying access to the request as invalid.

The Custodian contended that he properly denied access to the March 30, 2017 OPRA request because it was invalid. The Custodian contended that the request sought information, as opposed to an identifiable "government record." The Custodian contended that the Council routinely upheld denials where the complainant sought information. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

GRC 2017-98

The Custodian certified that he received the Complainant's OPRA request on April 6, 2017. The Custodian certified that he initially responded in writing on May 2, 2017 seeking ten (10)

additional business days to respond. The Custodian certified that he again responded on June 2, 2017 granting access to the responsive records on a memory stick. The Custodian certified that the Complainant retrieved the memory stick on the same day.

The Custodian contended that no denial of access occurred because the Complainant received all records that existed on a memory stick on June 2, 2017. The Custodian noted that the responsive records comprised of over 215 items amounting to 925 megabytes. The Custodian noted that the voluminous nature of the request delayed production beyond the extended time frame.

Analysis

Immediate Access

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[7] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).[8] See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of immediate access records).

Here, the Complainant's March 30, 2017 OPRA request sought "vehicle maintenance records and associated costs" for police vehicles over an eleven-year period. This OPRA request does not appear to directly identify any type of records for which "immediate access" is required under N.J.S.A. 47:1A-5(e). For this reason, it is reasonable that the Custodian would not have recognized that this request required an immediate response.

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[7] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[8] OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. *See* Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

However, the Complainant's April 6, 2017 OPRA request sought "outside work contracts." Such contracts are categorically considered records subject to "immediate access." N.J.S.A. 47:1A-5(e). The evidence of record indicates that the Custodian did not initially respond to the Complainant's request until May 2, 2017, the seventeenth (17th) business day following receipt of the request, seeking an extension.[9] The Custodian had "an obligation to immediately" respond to a Complainant granting access, denying access, seeking clarification, or requesting an extension time, but failed to do so. See also Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013); Kaplan v. Winslow Twp. Bd. of Educ. (Camden), GRC Complaint No. 2011- 237 (Interim Order dated December 18, 2012).

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody, GRC 2005-98; Herron, GRC 2006-178; Harris, GRC 2011-65.

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[10] Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Having determined that the Complainant's March 30, 2017 OPRA request did not reasonably seek access to "immediate access" records, the GRC now turns to whether the request was nonetheless "deemed" denied. In the SOI, the Custodian certified that he received the request on March 30, 2017. The Custodian further affirmed that he responded to the request on May 15, 2017 denying it as invalid.[11] The GRC has calculated the response time at thirty-one (31) business days, clearly well beyond the statutory time frame. Thus, the evidence of record supports that the March 30, 2017 OPRA request was "deemed" denied.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access,

[9] The GRC notes that the Custodian ultimately provided access to responsive records on June 2, 2017.

[10] A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[11] The GRC does not address Custodian's denial of access based on the validity of the subject OPRA request because the issue was not raised by the Complainant at any point during the pendency of these complaints.

seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of

time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

December 11, 2018

2017-99 SR
GRC Use Only

New Jersey Government Records Council
Denial of Access Complaint

Please read these instructions before completing this form:

- ☒ This form is to be used only for claims of denial of access to government records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002, under "OPRA," the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).
- ☒ Please print or type your responses and provide ALL information requested. Incomplete forms will delay processing. This form may be submitted online or is available in downloadable format from the GRC web site at www.nj.gov/grc.
- ☒ Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- ☒ *The GRC recommends that you keep a copy of this complaint for your own files.*
- ☒ **MAIL, FAX, OR E-MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENATION TO:**

Government Records Council
PO Box 819
Trenton, NJ 08625-0819

Fax: (609) 633-6337
E-mail: Government.Records@dca.nj.gov
Online: gform.mwg.nj.gov

RECEIVED
2017 MAY 2 AM 8:13
GRC

1. About the Requester of the Records:

Full Name: Eric Petr

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip 07960

Please provide a phone number at which GRC staff can contact you between 9 A.M.-5 P.M., Monday-Friday: (973) 647-0018

Fax Number: _____

E-Mail Address: ericp155@gmail.com

If you are represented by an attorney in this matter, please provide:

Name: _____ Phone Number: _____

Address: _____ Fax Number: _____

E-mail Address: _____

If you are an attorney who requested records and are filing this complaint **on behalf of a client**, please state the client's name:

_____

2. About the Custodian of Records:

Name of the public agency from which records were requested: Town of Morristown Clerk's Office

Name of custodian to whom records request was submitted: Kevin Harris

Telephone Number: (973) 292-6636 E-Mail Address (if used): _____

Name of custodian who denied records request (if different from above): Same as Above

Telephone Number: _____ E-Mail Address (if used): _____

Fax Number: _____

GRC Use Only

3. About the Record Request:

Date your records request was provided to the custodian: 04/06/2017

Did you receive a reply to your request? Yes ☐ No ☒

If so, state the date your request was denied: _____

Have you previously filed a complaint with the GRC concerning the record request that is subject of this complaint?

Yes ☐ No ☒

If yes, provide the GRC complaint number and a copy of the GRC decision in the matter.

Date: _____ Complaint No.: _____

Have you spoken with or written to the GRC about the record request that is subject of this complaint?

Yes ☐ Date: _____ No ☒

Have you filed an action in the N.J. Superior Court concerning the record request that is subject of this complaint?

No ☒ Yes ☐ If Yes, Docket Number: _____

4. Mediation (please refer to the attached documents for details):

Are you interested in participating in mediation? Yes ☐ No ☒

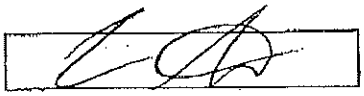
5. Documents to submit with this Form:

- ☒ **Complete** the attached **Records Denied List** to describe the records to which you were denied access.
- ☒ **Attach** a copy of the OPRA Records Request form you filed with the public agency and any correspondence between you and the record custodian(s) or custodial agency staff that concern the portion of your OPRA request that was denied. Be sure to include any e-mail, memoranda, phone messages, or any other documents such as affidavits, or certifications related to the request and the denial.
- ☒ **Summarize** the facts of this complaint by writing the content, time, and date of any interaction you had with the custodian regarding the OPRA records request that is the subject of this complaint. Use the attached **Detail Summary** for this purpose.
- ☒ **Provide** any legal arguments, allegations, or other information you would like the GRC to consider in deciding this complaint. Use the attached **Detail Summary** for this purpose.
- ☒ If applicable, until the Complainant's Counsel submits a formal letter of representation to all parties, the GRC will communicate exclusively with the Complainant. *See* N.J.A.C. 5:105-1.3 & 2.2;
- ☒ **Sign** the Agreement to Mediate if you wish to participate in the mediation process.

6. Verification of Complaint:

By signing this complaint, I affirm under penalty of perjury that:

- ☒ I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- ☒ The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim;
- ☒ I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me, which is an indictable offense under the laws of the State of New Jersey, or any other State, or pertaining to the family of that victim; and
- ☒ I am simultaneously providing a copy of this complaint to the Custodian of Records.
- ☒ 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 pursuant to the New Jersey Court Rule 1:4-4.

Signature Field  5/1/17

Signature (required) Date

New Jersey Government Records Council
Denial of Access Complaint - Detail Summary

Use this form to summarize the content, time, and date of any conversations regarding this complaint, along with the names of the participants and any witnesses.

On March 16, 2017 I delivered an OPRA request to the Town of Morristown Clerk's Office and hand delivered the request to Deputy Town Clerk Robin Kesselmeyer. She hand delivered it to the Town Clerk Kevin Harris the same day in his office. On 04/06/2017 I entered the Clerk's Office and asked the Clerk's Secretary, Wilma Lara, for a copy of the OPRA request I dropped off on 03/16/2017. She checked the Town's OPRA request records and advised there was no record of me ever delivering an OPRA request on 03/16/2017. I told her the request was for a copy of the Morristown Bureau of Police overtime book/ledger commonly referred to as the "Red Book". Robin Kesselmeyer assisted Wilma in looking for the request I submitted on 03/16/2017. I was eventually told that they have no record of the request and I would have to resubmit the request.

On 04/06/2017 I hand delivered a second request to Wilma Lara in the Morristown Clerk's Office for a copy of all Morristown Bureau of Police overtime books from 01/01/2006 through 04/06/2017 (this request was logged in as a received request, Town of Morristown OPRA request #5910). The request asks for copies of every overtime book from 01/01/2006 through the date of the filing, 04/06/2017. As of May 1, 2017 I have not received any communication from the Morristown Town Clerk's Office regarding my OPRA request. It is a budgetary item that I requested and I have been refused access to the information. I want an immediate response with the information I requested from the Town of Morristown.

New Jersey Government Records Council
Denial of Access Complaint – Records Denied List

Name of Complainant: Eric Petr

This is page 1 of 1.

Please fill out this form describing the record (or portion of it) to which access has been denied and the response to your request, including the reason given for denial of access. Submit additional pages if necessary.

Item #	Description of record (or portion)	Response to request
1	I requested copies of every overtime book that has been utilized by the Morristown Bureau of police from 01/01/2006 through 04/06/2017.	As of this date I have not received any response from the Town of Morristown regarding this request.

Add List Remove List

New Jersey Government Records Council
Agreement to Mediate

By participating in mediation, I/we agree:

1. To engage in a good faith effort to resolve the above referenced complaint filed with the Government Records Council ("GRC") concerning access to records or related matters described in the Complaint;
2. That I will abide by any procedural rules set forth by the mediator. Such rules may include the establishment of a timetable for completion of mediation and/or phases of the mediation, a requirement that the parties periodically reduce settled issues to writing, a requirement that the parties personally meet with the mediator at a mutually convenient time and place and such other reasonable procedural rules deemed by the mediator to facilitate the mediation process.
3. That all discussions and documents arising during mediation are confidential unless otherwise legally obtainable. Documents provided in mediation cannot be used in a GRC hearing or appeal from a GRC determination unless those documents are public records or the party with control over the documents consents to their use in such a proceeding. Conversations with the mediator or with the other party during mediation will not constitute statements that can be used in a later GRC hearing or appeal from a GRC determination;
4. That I will not subpoena the mediator to testify or to produce any mediation materials whatsoever following the mediation. I acknowledge that the mediator will not testify on behalf of any party in any pending or future administrative or judicial proceeding, or disclose any information obtained during mediation unless the parties expressly consent to such disclosure, or unless law or court order requires disclosure. I further agree that the mediator will be held harmless for any claim arising from the mediation process;
5. That the mediation session will not be recorded (either video or audio) and that no transcript of the session will be produced;
6. That the mediator will not decide who is right or wrong, and that I shall not ask the mediator to act as my advocate. I acknowledge that the mediator will try to help the parties reach their own resolution of this dispute by encouraging discussion; however, if the mediator determines that the mediation process is no longer productive the mediator may unilaterally terminate said mediation and refer the matter back to the GRC for further processing;
7. That when a settlement is reached, it shall be put in writing and signed, and shall be binding upon all parties to the agreement. A copy shall be provided to the GRC. If the complaint is not resolved during mediation, the complaint will be transferred to the GRC for further processing.

The parties to this agreement, whose names and signatures appear below, are the only persons authorized to participate in the mediation process. The principal's representative, if any, affirms that he/she is authorized to act by, and on behalf of, the principal.

☐	YES, I want to participate in mediation.	☒	NO, I do not want to participate in mediation.

Name of Principal (Please Print) Signature Date

☐ I am the Complainant ☐ I am the Custodian

Name of Legal Representative (Please Print) Signature Date

Name of Representative (Please Print) Signature Date

Revised October 28, 2016

Open the Central Repository Home Page to start the Form Submission Process

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Resubmitted by Email

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information -- Please Print

First Name: Eric | MI: H | Last Name: Petr

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ☐ | US Mail ☐ | On-Site Inspect ☐ | Fax ☐ | E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] | Date: 04/06/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached document.

APR 06 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

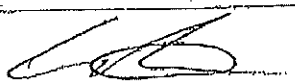
Records Provided

5910

Custodian Signature | Date

04/06/2017

On 03/16/17 I hand delivered an OPRA request to the Morristown Clerks Office. I handed the request to Robin Kesselmeyer who hand delivered the request to Kevin Harris the same day in his office. I am requesting again, I be provided with a copy of every Morristown Bureau of Police outside overtime book, commonly referred to as the "REDBOOK", from 01/01/2006 thru today's date of 04/06/2017.



Eric Petr

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I want a copy of the Morristown Bureau of Police overtime Book/ledger (Commonly referred to as The Red Book) for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through today's date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress – Open
Denied – Closed
Filled – Closed
Partial – Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, Plaintiff, v. TOWN OF MORRISTOWN, Defendant.	CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MORRIS COUNTY DOCKET NO. MRS-L-_____-17 VERIFIED COMPLAINT *ACTION IN LIEU OF PREROGATIVE WRITS* OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1.***

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: "*[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.*"

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: "*Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,*" with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC | MI: H | Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress – Open
Denied – Closed
Filed – Closed
Partial – Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN.

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

V

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

In Progress = Open
Denied = Closed
Filed = Closed
Partial = Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Receipt Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F146891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148692

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount		Balance	
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00	Cr	40,866.50	Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00	Cr	41,726.50	Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00	Cr	44,331.50	Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00	Cr	46,711.50	Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information -- Please Print

First Name: Eric MI: H Last Name: Petr

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 04/06/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached document.

APR 06 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

5910

Custodian Signature Date

04/06/2017

On 03/16/17 I hand delivered an OPRA request to the Morristown Clerks Office. I handed the request to Robin Kesselmeyer who hand delivered the request to Kevin Harris the same day in his office. I am requesting again, I be provided with a copy of every Morristown Bureau of Police outside overtime book, commonly referred to as the "REDBOOK", from 01/01/2006 thru today's date of 04/06/2017.

Eric Petr

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I want a copy of the Morristown Bureau of Police overtime Book/ledger (Commonly referred to as The Red Book) for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through today's date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes

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Tracking Information

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Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

THE TOWN OF MORRISTOWN.

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I would like a copy of all Morristown Bureau of Police outside work contracts utilized by officers to get paid by outside contractors for all Morristown Police Officers for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through today's date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
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AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

SUMMONS

Attorney(s) Sciarra and Catrambone, LLC
Office Address 1130 Clifton Avenue
Town, State, Zip Code Clifton New Jersey 07013

Telephone Number 973-242-2442
Attorney(s) for Plaintiff Eric Petr

Superior Court of New Jersey

Morris County
Law Division
Docket No: MRS-L-2369-17

Plaintiff(s)

vs.
Township of Morristown

Defendant(s)

CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of $175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where 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.njcourts.gov/forms/10153_deptyclerklawref.pdf.

/s/
Clerk of the Superior Court

DATED: 11/03/2017

Name of Defendant to Be Served: Township of Morristown c/o Kevin D. Harris, Town Clerk

Address of Defendant to Be Served: 200 South Street 1st Floor, Morristown, New Jersey 07960

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, Plaintiff, v. TOWN OF MORRISTOWN, Defendant.	CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MORRIS COUNTY DOCKET NO. MRS-L-_____-17 VERIFIED COMPLAINT *ACTION IN LIEU OF PREROGATIVE WRITS* OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1.***

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to N.J.S.A. 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to N.J.S.A. 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

TOWN OF MORRISTOWN

Submit by Email

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ____ ☐ US Mail ____ ☐ On-Site Inspect ____ ☐ Fax ____ ☐ E-mail ____ ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $ ____

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost ____
Est. Delivery Cost ____
Est. Extras Cost ____
Total Est. Cost ____
Deposit Amount ____
Estimated Balance ____
Deposit Date ____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open ____
Denied - Closed ____
Filled - Closed ____
Partial - Closed ____

AGENCY USE ONLY

Tracking Information
Tracking # ____
Rec'd Date ____
Ready Date ____
Total Pages ____

Final Cost
Total ____
Deposit ____
Balance Due ____
Balance Paid ____

Records Provided

6314

Custodian Signature ____ Date ____

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6036 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name	ERIC	MI	H	Last Name	PETR
E-mail Address	localpba43@gmail.com				
Mailing Address	163 Mount Kemble Avenue				
City	Morristown	State	NJ	Zip	07960
Telephone	+1 (973) 647-0018	FAX			

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature [signature] Date Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress		Open	
Denied	–	Closed	
Filled		Closed	
Partial	–	Closed	

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ____ ☐ US Mail ____ ☐ On-Site Inspect. ____ ☐ Fax ____ ☐ E-mail ____ ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

V

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Read Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount	Balance
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00 Cr	40,866.50 Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00 Cr	41,726.50 Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00 Cr	44,331.50 Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00 Cr	46,711.50 Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	***ORDER TO SHOW CAUSE***
Defendant.	

THIS MATTER, being opened to the Court by Sciarra & Catrambone, LLC, Jeffrey D. Catrambone, Esq., on behalf of Plaintiff Eric Petr ("Petr" or "Plaintiff"), pursuant to the Open Public Records Act ("OPRA") as provided by *N.J.S.A.* 47:1A-1 *et seq.*, R. 4:69-1 *et seq.*, and R. 4:67-1 *et seq.*, with a Verified Complaint / Action in Lieu of Prerogative Writs, with attachments, and supporting letter brief being filed with the Court herewith against Defendant Town of Morristown ("Defendant"), with the OPRA statute, *N.J.S.A.* 47:1A-6 providing that this matter shall proceed in a summary manner; and good cause having been shown therefore,

IT IS on this _____ day of _____, 2017,

ORDERED that Defendant show cause before the Superior Court of New Jersey, Honorable _____, _____

_____ County, located at Washington & Court Streets, Morris County Courthouse, Morristown, New Jersey on the _____ day of _____ 2017, at _____ am / pm, or as soon thereafter as Counsel can be heard, why Plaintiff is not entitled to all of the relief sought by way of Verified Complaint / Action in Lieu of Prerogative Writs filed herewith; and **IT IS FURTHER**

ORDERED that Plaintiff shall serve and file any additional affidavits, briefs and other papers in support of this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that Defendant shall serve and file any affidavits, briefs and other papers in opposition to this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that the Plaintiff shall serve and file any reply papers, on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that a copy of this filed Order to Show Cause shall be served upon Defendant within _____ days of the date hereof.

SO ORDERED.

_____

, J.S.C.

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	**VERIFIED COMPLAINT**
Defendant.	***ACTION IN LIEU OF PREROGATIVE WRITS***
	OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to *N.J.S.A.* 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1***.

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 *day of November 2017.*

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

TOWN OF MORRISTOWN

THE TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

Submit by Email

2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ____ ☐ US Mail ____ ☐ On-Site Inspect ____ ☐ Fax ____ ☐ E-mail ____ ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost ____

Est. Delivery Cost ____

Est. Extras Cost ____

Total Est. Cost ____

Deposit Amount ____

Estimated Balance ____

Deposit Date ____

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress * Open ____

Denied - Closed ____

Filed - Closed ____

Partial - Closed ____

AGENCY USE ONLY

Tracking Information

Tracking # ____

Rec'd Date ____

Ready Date ____

Total Pages ____

Final Cost

Total ____

Deposit ____

Balance Due ____

Balance Paid ____

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ____ ☐ US Mail ____ ☐ On-Site Inspect ____ ☐ Fax ____ ☐ E-mail ____ ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

N

AGENCY USE ONLY

Est. Document Cost ____
Est. Delivery Cost ____
Est. Extras Cost ____
Total Est. Cost ____
Deposit Amount ____
Estimated Balance ____
Deposit Date ____

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

In Progress - Open ____
Denied - Closed ____
Filed - Closed ____
Partial - Closed ____

AGENCY USE ONLY

Tracking Information

Tracking # ____
Rec'd Date ____
Ready Date ____
Total Pages ____

Final Cost

Total ____
Deposit ____
Balance Due ____
Balance Paid ____

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount		Balance	
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00	Cr	40,866.50	Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00	Cr	41,726.50	Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00	Cr	44,331.50	Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00	Cr	46,711.50	Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran

Deborah Masker Edwards*
Christopher A. Gray#
Frank Cioffi

Of Counsel
Cathie Perselay Seidman*
Alan Serrins ^

*Admitted NJ & NY Bars
^ Admitted NY Bar
# Admitted NJ & PA Bars

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Fax: 973-242-3118
www.sciarralaw.com

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Hamilton, New Jersey 08691
Tel. 856-888-7066

New York Office
The Woolworth Building
Suite 2340
233 Broadway
New York, NY 10279
Tel: 212-384-0202

November 2, 2017

Via eCourts
Superior Court of New Jersey
Civil Division - Morris County
Washington & Court Streets
Morristown, NJ 07960

Re: *Eric Petr*
v.
Town of Morristown
Docket No.: MRS-L-_____-17

Plaintiff's Letter Brief in support of Order to Show Cause & Verified Complaint

Dear Sir / Madam:

The undersigned firm represents Plaintiff Eric Petr ("Plaintiff"), in the above-referenced matter. We respectfully request that the Court accept this letter brief in support of Plaintiff's Order to Show Cause and Verified Complaint, filed herewith.

For the reasons set forth below, this Court should execute the within Order to Show Cause, and, upon briefing and argument, rule in a summary manner in favor of Plaintiff, and order that Defendant

produce all documents sought by way of Plaintiff's requests as outlined in the Verified Complaint and attachments filed herein with the Court, under the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 *et seq.*, with an award of attorneys' fees and costs.

FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

The detailed allegations in, and attachments to, Plaintiff's Verified Complaint are incorporated herein in order to provide context to this Court regarding this OPRA matter.

LEGAL ARGUMENT

I. THE RECORDS SOUGHT HEREIN ARE SUBJECT TO DISCLOSURE UNDER OPRA.

The purpose of OPRA, N.J.S.A. 47:1A-1 *et seq.*, is "to insure that government records, unless exempted, are readily accessible to citizens of New Jersey for the protection of the public interest." Mason v. City of Hoboken, 196 N.J. 51, 57 (2008) (citing N.J.S.A. 47:1A-1). OPRA advances "the State's long-standing public policy favoring ready access to most public records." See Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 36 (App. Div. 2005) (other citation omitted).

OPRA manifests this State's public policy of government transparency. "The purpose of OPRA 'is to maximize public knowledge about public affairs in order to ensure an informed

citizenry and to minimize the evils inherent in a secluded process.'" Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (other citation omitted). Thus, OPRA directs 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...shall be construed in favor of the public's right of access. N.J.S.A. 47:1A-1.

To serve this policy and purpose, OPRA provides that "[t]he public agency shall have the burden of providing that the denial of access is authorized by law." N.J.S.A. 47:1A-6. As such, the agency "must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality. Absent such a showing, a citizen's right of access is unfettered." Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 383 (App. Div. 2003).

With regard to an OPRA request, "[t]he first inquiry is whether the requested documents meet the statutory definition of government record, and if so, whether any exemption established in or recognized by any other law bars disclosure of the requested documents." Wilson v. Brown, 404 N.J. Super. 557, 571 (App. Div. 2009), certif. denied, 198 N.J. 473 (2009).

OPRA defines "government record" or "record" broadly under N.J.S.A. 47:1A-1:

> [A]ny 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...or that has been received in the course of his or its official business. N.J.S.A. 47:1A-1.1.

Here, because the records sought herein do not fall under any exemption under the OPRA statute, Plaintiff is entitled to disclosure of the documents sought. Nonetheless, to date, Defendant have only produced a single document in response to any of Plaintiff's requests for records at issue herein. Further, Defendant has not asserted any exemption or any other legitimate rationale for their utter failure to respond to Plaintiffs' numerous requests as outlined in detail in Plaintiffs' Verified Complaint.[1]

In short, Plaintiff seeks specifically identified documents related to a specifically identified IRS Equitable Sharing Fund (*see Count One of Verified Complaint*); monthly statements for a specifically identified bank account, by account number, required

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[1] Plaintiff will of course address any such arguments or any other issues raised by Defendant by way of our additional filing of papers, as appropriate.

to be maintained by the Town *(see Count Two of Verified Complaint)*; & purchase orders and sales invoices for Police vehicles specifically identified by Vehicle Identification Number *(see Count Three of Verified Complaint)*.

A review of the specific, targeted requests reveals requests which were made with "reasonable clarity" and are for records which are "identifiable". See, e.g., Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) (holding that request for records regarding EZ Pass benefits afforded to Port Authority retirees was not over-broad under OPRA); Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) (holding that attorney's request for settlement agreements without specification of matters to which they pertained constituted a request for specific documents, triggering the requirements of OPRA).

At issue in Burnett was a request for "any and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to the present". 415 N.J. Super. at 508 (emphasis added). The Appellate Division noted that "OPRA superseded the Right to Know Law. Its purpose is 'to maximize public knowledge about public affairs in order to ensure an informed citizenry'". Id. at 512. "OPRA requires that all government records be disclosed upon request except those exempted by statute, legislative resolution, administrative regulation,

executive order, rules of court, judicial decisions, or federal law." Ibid. The Court also noted the Legislative intent favoring disclosure:

> ... 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...shall be construed in favor of the public's right of access... Ibid., *citing* N.J.S.A. 47:1A-1.

Even though the request did not specify the matters to which the settlements pertained, the Court found that the plaintiff in Burnett did not make a "general request". Id. at 513. Plaintiff here nonetheless specifically identifies the subject matter of each request.

The Court in both Burnett and Burke distinguished the "broad generic request" for records to the ABC regarding cases involving liquor licenses prosecuted in the past which were at issue in MAG Entertainment LLC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). Similarly, the requests at issue here do not seek "general information" as was the case in Bent v. Twp. of Stafford Police Dept., 381 N.J. Super. 30 (App. Div. 2005).

Here, Plaintiff's requests for records are specific and descriptive, and cannot be considered "generic" in nature. The requests require Defendant to "search", or "to go or look carefully in order to find something missing or lost," as is permitted under OPRA, and not to "conduct research", which instead involves "a

close or careful study to find new facts or information". See Burnett, 415 N.J. Super. at 515. The retrieval of records sought by Plaintiff in the subject requests requires a search, not research, and thus the Town is obligated under OPRA to conduct that search and produce the records sought. Id. at 516.[2] Defendant concedes as much by way of its partial, informal disclosure, albeit of only a single document and an email exchange acknowledging that the records be disclosed. *(See Verified Complaint at ¶ 15-17, Ex. 4)*.

As was the case in Burke, the requests by Plaintiff here do not "require the custodian to conduct research, or to collect, collate and analyze data," nor can Defendant here demonstrate how that is the case with regard to any specific request. See Burke, 429 N.J. Super. at 177. There is likewise no credible suggestion that responding to Plaintiff's requests would in some way "substantially disrupt" the operations of the Town. See id. at 177; see also N.J.S.A. 47:1A-5(g).

The Court's language as follows in Burke is controlling here with regard to each of the individual requests:

> Because plaintiff described the records sought with the requisite specificity and narrowed the scope of the inquiry to a discrete and limited subject matter, we conclude his request was neither vague or overbroad. *The*

---

[2] Defendant does not, and cannot, dispute that all of the records sought herein are in their possession.

> *request sought the records themselves, not data, information or statistics to be extracted, gleaned or otherwise derived therefrom.* Involving no research or analysis, but only a search for, and production of, what proved to be identifiable records, plaintiff's properly circumscribed and tailored request was wrongly invalidated as overbroad. 429 N.J. Super. at 177-78 (emphasis added).

Here, Defendants cannot meet their burden to demonstrate how any of the requests at issue are not valid under OPRA.

Lastly, the undersigned will submit the appropriate certification as to our fees and costs incurred should Plaintiff prevail in this matter, pursuant to N.J.S.A. 47:1A-6.

CONCLUSION

For the foregoing reasons, this Court should enter the Order to Show Cause, and, after hearing this matter in a summary manner, award Plaintiff the relief sought in the Verified Complaint, including but not limited to Defendant's production of all government records sought, and an award of attorneys' fees.

We thank the Court for its courtesies and attention to this matter.

Respectfully submitted,
Sciarra & Catrambone, LLC

By: _____
Jeffrey D. Catrambone, Esq.

JDC/j
Attachments

cc: Kevin Harris, Morristown Town Clerk (*via NJ Lawyers Service & Email townclerk@townofmorristown.org w/att.'s*)
Vijayant Pawar, Morristown Town Attorney (*via NJ Lawyers Service & Email vpawar@pqrlawyers.com w/att.'s*)
Client

William J. Garces
William N. Grabler ♦
Lawrence A. LeBrocq, LL. M. ★□

Alan T. Grening ■□
Jonathan A. Kessous ◆♣◊
Arlindo B. Araujo □◆
Gary A. Cavalli
Pasquale O. Vella
Thomas M. Nicely □
Joseph T. Delgado
Michelle M. Tullio
Jared A. Geist
Ileana J. Montes
David E. Rehe ◆
Anna M. Buontempo ◆
Robert B. White, III □.
Nicholas L. Krochta

■ Member DC Bar
□ Member PA Bar
◆ Member NY Bar
♦ Certified by The Supreme Court of New Jersey as a Workers' Compensation Law Attorney
★ Certified by The Supreme Court of New Jersey as a Civil Trial Attorney

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A PROFESSIONAL CORPORATION

20 GREEN STREET
NEWARK, NJ 07102

908.251.6044 Direct Dial
973.848.1601 Fax

ragramonte@garcesgrabler.com

Se habla Español

2 South Broad Street
Elizabeth, N.J. 07202
(908) 436-0001
(908) 436-0002 Fax

6 Throckmorton Street
Freehold, N.J. 07728
(732) 414-5000
(732) 414-5001 Fax

235 Livingston Avenue
New Brunswick, N.J. 08901
(732) 249-1300
(732) 220-1555 Fax

502 Amboy Avenue
Perth Amboy, N.J. 08861
(732) 826-2300
(732) 826-4027 Fax

415 Watchung Avenue
Plainfield, N.J. 07060
(908) 769-3366
(908) 769-7893 Fax

253 E. Front Street
Trenton, N.J. 08611
(609) 393-0700
(609) 393-8581 Fax

325 South River Street
Hackensack, NJ 07601
(201) 857-8100
(201) 857-8101 Fax

Reply to: Newark

January 11, 2017

RECEIVED
JAN 19 2017
TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

VIA REGULAR MAIL, CERTIFIED MAIL, R.R.R.,
& VIA GUARANTEED SUBPOENA SERVICE
Township of Morristown
c/o Kevin D. Clark, Clerk
200 South Street, 1st Floor
Morristown, New Jersey 07960
Defendant

Re: GIVE THIS TO YOUR INSURANCE COMPANY. YOU HAVE BEEN SUED IN COURT.
Carvajal-Cardona v. Harrison, et al. Our File No.: 271541
Docket No.: MRS-L-2235-16 DC File No.: Not Available

Dear Sir or Madam:

Please be advised that this office represent **MARIA CARVAJAL-CARDONA,** in regards to the above referenced matter. Enclosed please find the Summons, Complaint, and Track Assignment which I hereby serve upon you, in accordance with New Jersey Court Rule 4:4-3(b), as amended on September 1, 1994.

At this time, kindly give the contents of this letter and the enclosed your prompt attention and forward the enclosed documents to your Insurance company, so they may appoint defense counsel in your behalf. Please be advised that you have 60 days from the date of service of the enclosed in which to file an Answer in order to prevent default and judgment for damages being entered against you. Failure to provide your insurance with these documents in a timely fashion can result in denial of coverage making you legally responsible for payment in regards to the above referenced claim.

PLEASE BE GUIDED ACCORDINGLY!

Very truly yours,

GARCES, GRABLER & LEBROCQ, P.C.
By: *Genevieve G. Redd, Esq. /ds/*
Genevieve G. Redd, Esq.
Plaintiff's Counsel

GGR/ds
Encl.
C.M.R.R.R. 7016-1970-0000-3983-6660

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran

Deborah Masker Edwards*
Christopher A. Gray#
Frank Cioffi

Of Counsel
Cathie Perselay Seidman*
Alan Serrins ^

*Admitted NJ & NY Bars
^ Admitted NY Bar
# Admitted NJ & PA Bars

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www.sciarralaw.com

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Hamilton, New Jersey 08691
Tel. 856-888-7066

New York Office
The Woolworth Building
Suite 2340
233 Broadway
New York, NY 10279
Tel: 212-384-0202

November 2, 2017

Via Email & Lawyer's Service
Kevin Harris
Morristown Town Clerk
200 South Street
Morristown, NJ 07963

Via Email & Lawyer's Service
Vijayant Pawar, Esq.
Pawar Gilgallon & Rudy, LLC
6 South Street, Suite 201
Morristown, NJ 07960

Re: ***Eric Petr v.***
Town of Morristown
MRS-L-2369 -17

Dear Mr. Harris & Mr. Pawar:

The undersigned represents Plaintiff Eric Petr with regard to the above referenced matter. Enclosed please find the following documents which were filed today on eCourts.

1. Order to Show Cause
2. Verified Complaint with Attachments
3. Letter Brief

Thank you for your attention and courtesy.

Very truly yours,

Sciarra & Catrambone, LLC

By: *Jeffrey D. Catrambone/s/*
Jeffrey D. Catrambone, Esq.

JDC/mf
Enclosures
cc: Client

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 27, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-95

At the March 27, 2018 public meeting, the Government Records Council ("Council") considered the March 20, 2018 Findings and Recommendations of the Council Staff and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 27th Day of March, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 29, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
March 27, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-95

v.

Town of Morristown (Morris)[2]
Custodial Agency

Record Relevant to the Complaint: "I would like the cost of the patrol supervisor overtime from June 1, 2014 to January 20, 2017. Specifically the amount of money spent on supervisor overtime for being the patrol supervisor."[3]

Custodian of Record: Kevin D. Harris
Request Received by Custodian: March 30, 2017
GRC Complaint Received: May 2, 2017
Response Made by Custodian: May 12, 2017

Background[4]

Request:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned record.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he submitted his request to the Custodian on March 30, 2017, and did not receive a response from the Custodian. The Complainant states that he requested a budgetary item and has been denied access to the information. The Complainant further states that he wants an immediate response from the Custodian.[5]

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[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq. (Morristown, NJ).
[3] The Complainant requested that the information be delivered to him via e-mail.
[4] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.
[5] N.J.S.A. 47:1A-5(e) provides that "[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." As such, paid overtime does constitute an immediate access record.

Response:

On May 12, 2017, the thirtieth (30th) business day following receipt of the request, and the eighth (8th) business day after the Complainant filed the complaint, the Custodian responded in writing informing the Complainant that his request seeks information, is not a valid OPRA request, and is denied. The Custodian further informed the Complainant that a custodian is not required to conduct research or create new records in response to an OPRA request.

Statement of Information:

On May 15, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on March 30, 2017, and responded in writing on May 12, 2017. The Custodian certifies that the Complainant's request was denied because it was not a valid OPRA request. The Custodian certifies that the request sought information and did not identify a specific government record. The Custodian further certifies that a custodian is not required to conduct research or create new records in response to an OPRA request. The Custodian cites MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) along with other Council decisions in support of his denial.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[6] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Custodian certified that he received the Complainant's request on March 30, 2017, but did not respond in writing to the request until May 12, 2017. The Custodian thus failed to respond in a timely manner to the Complainant's request.

As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the

[6] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Validity of Request

The New Jersey Appellate Division has held that:

> While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.
>
> [MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, at 546 (App. Div. 2005).]

The Court reasoned that:

> Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.
>
> [Id. at 549 (emphasis added).]

The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files." Id. at 549 (emphasis added). See also Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);[7] N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Here, the Complainant sought "... the cost of the patrol supervisor overtime ... the amount of money spent on supervisor overtime for being the patrol supervisor." The Town of Morristown maintains a website. On the Police Department page under the category of "Police Divisions" is the following descriptive information: "The patrol division is divided into two squads, 'A' side and 'B' side and is further broken down into platoons. Each platoon is overseen by a lieutenant who serves as the shift commander and a sergeant who acts as the road supervisor."[8] It is clear

[7] Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).
[8] http://www.townofmorristown.org/index.asp?SEC=AC7F09A7-EADC-43E3-9DC8-C969ABD691E1&Type=B_BASIC (accessed March 1, 2018).

from this description that the Morristown Police Department has more than one patrol supervisor; however the Complainant failed to identify the specific patrol supervisor for whom he was requesting the overtime expenditure.

To fulfill the Complainant's request the Custodian would have to conduct research to determine which supervisor, if any, received overtime pay from June 1, 2014 to January 20, 2017. Such actions on the part of the Custodian are beyond the scope of his duties under OPRA.

Therefore, the Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass'n, 390 N.J. Super. 166; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

March 20, 2017

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 27, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-96

At the February 27, 2018 public meeting, the Government Records Council ("Council") considered the February 20, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 27th Day of February, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 2, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
February 27, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-96

v.

Town of Morristown (Morris)[2]
Custodial Agency

Records Relevant to the Complaint: "I would like the total cost to the town of Morristown for the annual St. Patrick's Day Parade for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017."[3]

Custodian of Record: Kevin D. Harris
Request Received by Custodian: March 30, 2017
GRC Complaint Received: May 2, 2017
Response Made by Custodian: May 15, 2017

Background[4]

Request and Response:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On May 15, 2017, the thirty-first (31st) business day following receipt of the request, and the ninth (9th) business day after the Complainant filed the complaint, the Custodian responded in writing informing the Complainant that his request seeks information, is not a valid OPRA request, and is denied. The Custodian further informs the Complainant that a custodian is not required to conduct research or create new records in response to an OPRA request.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he submitted his request to the Custodian

[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq. (Morristown, NJ).
[3] The Complainant requested that the information be delivered to him via e-mail.
[4] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

on March 30, 2017, and did not receive a response from the Custodian. The Complainant states that he requested a budgetary item and has been denied access to the information.

Statement of Information:

On May 15, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on March 30, 2017, and responded in writing on May 15, 2017. The Custodian certifies that the Complainant's request was denied because it was not a valid OPRA request. The Custodian certifies that the request sought information and did not identify a specific government record. The Custodian further certifies that a custodian is not required to conduct research or create new records in response to an OPRA request. The Custodian cites MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) along with other Council decisions in support of his denial.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[5] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Custodian certified that he received the Complainant's request on March 30, 2017, but did not respond in writing to the request until May 15, 2017. The Custodian thus failed to respond in a timely manner to the Complainant's request.

As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Validity of Request

[5] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

The New Jersey Appellate Division has held that:

> While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.
>
> [MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, at 546 (App. Div. 2005)]

The Court reasoned that:

> Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.
>
> [Id. at 549 (emphasis added).]

The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files." Id. at 549 (emphasis added). *See also* Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);[6] N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Here, the Complainant failed to identify a government record with specificity, but rather sought the "total cost" to the town for an annual parade over a number of consecutive years. Although the Complainant asserted that the information he was requesting was a budgetary item, he did not ask for a budget, which is a government record. Instead, he sought the "total cost" of a parade. To fulfill the Complainant's request the Custodian would have to conduct research by gathering the costs of various municipal services from several departments, and then compile the several costs into a document reflecting the total costs. Such efforts on the part of the Custodian are beyond the scope of his duties under OPRA.

Therefore, the Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass'n,

[6] Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).

390 N.J. Super. 166; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App.

Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

February 20, 2017

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-97 and 2017-98

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious

wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 18th Day of December, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: December 20, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-97 and 2017-98

v.

Town of Morristown (Morris)[2]
Custodial Agency

Records Relevant to Complaint:

March 30, 2017 OPRA request:[3] Electronic copies via e-mail of vehicle maintenance records and associated costs for maintenance of all Town of Morristown ("Town") Bureau of Police vehicles from January 1, 2006 through March 30, 2017.

April 6, 2017 OPRA request:[4] Electronic copies via e-mail of every Police "outside work contract" for every Town officer from January 1, 2006 through April 6, 2017.

Custodian of Record: Kevin Harris[5]
Request Received by Custodian: March 30, 2017; April 6, 2017
Response Made by Custodian: May 15, 2017; May 2, 2017
GRC Complaint Received: May 2, 2017

Background[6]

Request:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records.

On April 6, 2017, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. The Complainant noted that he previously submitted the OPRA request on March 16, 2017.

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[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq., of Pawar, Gilgallon & Rudy, LLC (Morristown, NJ). Previously represented by Joni Noble McDonnell, Esq., of Inglesino, Webster, Wyciskala & Taylor (Parsipanny, NJ).
[3] This request is the subject of GRC 2017-97.
[4] This request is the subject of GRC 2017-98.
[5] The current Custodian of Record is Margot Kaye.
[6] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council ("GRC"). The Complainant contended that the Custodian failed to respond to either request, which sought budgetary items subject to immediate access. The Complainant asserted that he wanted immediate access to the information sought.

Response

GRC 2017-97

On May 15, 2017, the thirty-first (31st) business day after receipt of the OPRA request, the Custodian responded in writing denying the request as invalid because it failed to seek identifiable records. Citing Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

GRC 2017-98

On May 2, 2017, the seventeenth (17th) business day after receipt of the OPRA request, the Custodian responded in writing seeking an extension of ten (10) business days to respond to the request. On June 2, 2017, the Custodian again responded advising that a memory stick containing over 215 items was prepared because sending the records via e-mail would prohibitive. On the same day, the Complainant retrieved the memory stick from the Town and acknowledged receipt.

Statement of Information:

On June 20, 2018, the Custodian filed Statements of Information ("SOI") for both complaints.

GRC 2017-97

The Custodian certified that he received the Complainant's OPRA request on March 30, 2017. The Custodian certified that he responded in writing on May 15, 2017 denying access to the request as invalid.

The Custodian contended that he properly denied access to the March 30, 2017 OPRA request because it was invalid. The Custodian contended that the request sought information, as opposed to an identifiable "government record." The Custodian contended that the Council routinely upheld denials where the complainant sought information. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

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The Custodian certified that he received the Complainant's OPRA request on April 6, 2017. The Custodian certified that he initially responded in writing on May 2, 2017 seeking ten (10)

additional business days to respond. The Custodian certified that he again responded on June 2, 2017 granting access to the responsive records on a memory stick. The Custodian certified that the Complainant retrieved the memory stick on the same day.

The Custodian contended that no denial of access occurred because the Complainant received all records that existed on a memory stick on June 2, 2017. The Custodian noted that the responsive records comprised of over 215 items amounting to 925 megabytes. The Custodian noted that the voluminous nature of the request delayed production beyond the extended time frame.

Analysis

Immediate Access

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[7] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).[8] See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of immediate access records).

Here, the Complainant's March 30, 2017 OPRA request sought "vehicle maintenance records and associated costs" for police vehicles over an eleven-year period. This OPRA request does not appear to directly identify any type of records for which "immediate access" is required under N.J.S.A. 47:1A-5(e). For this reason, it is reasonable that the Custodian would not have recognized that this request required an immediate response.

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[7] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[8] OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. *See* Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

However, the Complainant's April 6, 2017 OPRA request sought "outside work contracts." Such contracts are categorically considered records subject to "immediate access." N.J.S.A. 47:1A-5(e). The evidence of record indicates that the Custodian did not initially respond to the Complainant's request until May 2, 2017, the seventeenth (17th) business day following receipt of the request, seeking an extension.[9] The Custodian had "an obligation to immediately" respond to a Complainant granting access, denying access, seeking clarification, or requesting an extension time, but failed to do so. See also Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013); Kaplan v. Winslow Twp. Bd. of Educ. (Camden), GRC Complaint No. 2011- 237 (Interim Order dated December 18, 2012).

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody, GRC 2005-98; Herron, GRC 2006-178; Harris, GRC 2011-65.

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[10] Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Having determined that the Complainant's March 30, 2017 OPRA request did not reasonably seek access to "immediate access" records, the GRC now turns to whether the request was nonetheless "deemed" denied. In the SOI, the Custodian certified that he received the request on March 30, 2017. The Custodian further affirmed that he responded to the request on May 15, 2017 denying it as invalid.[11] The GRC has calculated the response time at thirty-one (31) business days, clearly well beyond the statutory time frame. Thus, the evidence of record supports that the March 30, 2017 OPRA request was "deemed" denied.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access,

[9] The GRC notes that the Custodian ultimately provided access to responsive records on June 2, 2017.

[10] A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[11] The GRC does not address Custodian's denial of access based on the validity of the subject OPRA request because the issue was not raised by the Complainant at any point during the pendency of these complaints.

seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of

time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

December 11, 2018

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-97 and 2017-98

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

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This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

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Government Records Council
On The 18th Day of December, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: December 20, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting

Eric Petr[1]
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GRC Complaint No. 2017-97 and 2017-98

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GRC 2017-98

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Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[7] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).[8] See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of immediate access records).

Here, the Complainant's March 30, 2017 OPRA request sought "vehicle maintenance records and associated costs" for police vehicles over an eleven-year period. This OPRA request does not appear to directly identify any type of records for which "immediate access" is required under N.J.S.A. 47:1A-5(e). For this reason, it is reasonable that the Custodian would not have recognized that this request required an immediate response.

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[7] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[8] OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. *See* Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013)..

However, the Complainant's April 6, 2017 OPRA request sought "outside work contracts." Such contracts are categorically considered records subject to "immediate access." N.J.S.A. 47:1A-5(e). The evidence of record indicates that the Custodian did not initially respond to the Complainant's request until May 2, 2017, the seventeenth (17th) business day following receipt of the request, seeking an extension.[9] The Custodian had "an obligation to immediately" respond to a Complainant granting access, denying access, seeking clarification, or requesting an extension time, but failed to do so. See also Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013); Kaplan v. Winslow Twp. Bd. of Educ. (Camden), GRC Complaint No. 2011- 237 (Interim Order dated December 18, 2012).

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody, GRC 2005-98; Herron, GRC 2006-178; Harris, GRC 2011-65.

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[10] Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Having determined that the Complainant's March 30, 2017 OPRA request did not reasonably seek access to "immediate access" records, the GRC now turns to whether the request was nonetheless "deemed" denied. In the SOI, the Custodian certified that he received the request on March 30, 2017. The Custodian further affirmed that he responded to the request on May 15, 2017 denying it as invalid.[11] The GRC has calculated the response time at thirty-one (31) business days, clearly well beyond the statutory time frame. Thus, the evidence of record supports that the March 30, 2017 OPRA request was "deemed" denied.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access,

[9] The GRC notes that the Custodian ultimately provided access to responsive records on June 2, 2017.

[10] A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[11] The GRC does not address Custodian's denial of access based on the validity of the subject OPRA request because the issue was not raised by the Complainant at any point during the pendency of these complaints.

seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of

time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

December 11, 2018

2017-99 SR
GRC Use Only

New Jersey Government Records Council
Denial of Access Complaint

Please read these instructions before completing this form:

- ☒ This form is to be used only for claims of denial of access to government records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002, under "OPRA," the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).
- ☒ Please print or type your responses and provide ALL information requested. Incomplete forms will delay processing. This form may be submitted online or is available in downloadable format from the GRC web site at www.nj.gov/grc.
- ☒ Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- ☒ *The GRC recommends that you keep a copy of this complaint for your own files.*
- ☒ **MAIL, FAX, OR E-MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENTATION TO:**

Government Records Council
PO Box 819
Trenton, NJ 08625-0819

Fax: (609) 633-6337
E-mail: Government.Records@dca.nj.gov
Online: cform.mwg.nj.gov

RECEIVED
2017 MAY 2 AM 8:53
NJ GOVERNMENT RECORDS COUNCIL

1. About the Requester of the Records:

Full Name: Eric Petr

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip 07960

Please provide a phone number at which GRC staff can contact you between 9 A.M.-5 P.M., Monday-Friday: (973) 647-0018

Fax Number: _____

E-Mail Address: ericp155@gmail.com

If you are represented by an attorney in this matter, please provide:

Name: _____ Phone Number: _____

Address: _____ Fax Number: _____

E-mail Address: _____

If you are an attorney who requested records and are filing this complaint **on behalf of a client**, please state the client's name:

_____

2. About the Custodian of Records:

Name of the public agency from which records were requested: Town of Morristown Clerk's Office

Name of custodian to whom records request was submitted: Kevin Harris

Telephone Number: (973) 292-6636 E-Mail Address (if used): _____

Name of custodian who denied records request (if different from above): Same as Above

Telephone Number: _____ E-Mail Address (if used): _____

Fax Number: _____

3. About the Record Request:

Date your records request was provided to the custodian: 04/06/2017

Did you receive a reply to your request? Yes ☐ No ☒

If so, state the date your request was denied: _____

Have you previously filed a complaint with the GRC concerning the record request that is subject of this complaint?

Yes ☐ No ☒

If yes, provide the GRC complaint number and a copy of the GRC decision in the matter.

Date: _____ Complaint No.: _____

Have you spoken with or written to the GRC about the record request that is subject of this complaint?

Yes ☐ Date: _____ No ☒

Have you filed an action in the N.J. Superior Court concerning the record request that is subject of this complaint?

No ☒ Yes ☐ If Yes, Docket Number: _____

4. Mediation (please refer to the attached documents for details):

Are you interested in participating in mediation? Yes ☐ No ☒

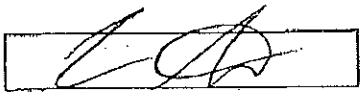
5. Documents to submit with this Form:

- ☒ **Complete** the attached **Records Denied List** to describe the records to which you were denied access.
- ☒ **Attach** a copy of the OPRA Records Request form you filed with the public agency and any correspondence between you and the record custodian(s) or custodial agency staff that concern the portion of your OPRA request that was denied. Be sure to include any e-mail, memoranda, phone messages, or any other documents such as affidavits, or certifications related to the request and the denial.
- ☒ **Summarize** the facts of this complaint by writing the content, time, and date of any interaction you had with the custodian regarding the OPRA records request that is the subject of this complaint. Use the attached **Detail Summary** for this purpose.
- ☒ **Provide** any legal arguments, allegations, or other information you would like the GRC to consider in deciding this complaint. Use the attached **Detail Summary** for this purpose.
- ☒ If applicable, until the Complainant's Counsel submits a formal letter of representation to all parties, the GRC will communicate exclusively with the Complainant. *See* N.J.A.C. 5:105-1.3 & 2.2;
- ☒ **Sign** the Agreement to Mediate if you wish to participate in the mediation process.

6. Verification of Complaint:

By signing this complaint, I affirm under penalty of perjury that:

- ☒ I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- ☒ The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim;
- ☒ I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me, which is an indictable offense under the laws of the State of New Jersey, or any other State, or pertaining to the family of that victim; and
- ☒ I am simultaneously providing a copy of this complaint to the Custodian of Records.
- ☒ 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 pursuant to the New Jersey Court Rule 1:4-4.

Signature Field 

Signature (required)

5/1/17

Date

New Jersey Government Records Council
Denial of Access Complaint - Detail Summary

Use this form to summarize the content, time, and date of any conversations regarding this complaint, along with the names of the participants and any witnesses.

On March 16, 2017 I delivered an OPRA request to the Town of Morristown Clerk's Office and hand delivered the request to Deputy Town Clerk Robin Kesselmeyer. She hand delivered it to the Town Clerk Kevin Harris the same day in his office. On 04/06/2017 I entered the Clerk's Office and asked the Clerk's Secretary, Wilma Lara, for a copy of the OPRA request I dropped off on 03/16/2017. She checked the Town's OPRA request records and advised there was no record of me ever delivering an OPRA request on 03/16/2017. I told her the request was for a copy of the Morristown Bureau of Police overtime book/ledger commonly referred to as the "Red Book". Robin Kesselmeyer assisted Wilma in looking for the request I submitted on 03/16/2017. I was eventually told that they have no record of the request and I would have to resubmit the request.

On 04/06/2017 I hand delivered a second request to Wilma Lara in the Morristown Clerk's Office for a copy of all Morristown Bureau of Police overtime books from 01/01/2006 through 04/06/2017 (this request was logged in as a received request, Town of Morristown OPRA request #5910). The request asks for copies of every overtime book from 01/01/2006 through the date of the filing, 04/06/2017. As of May 1, 2017 I have not received any communication from the Morristown Town Clerk's Office regarding my OPRA request. It is a budgetary item that I requested and I have been refused access to the information. I want an immediate response with the information I requested from the Town of Morristown.

New Jersey Government Records Council
Denial of Access Complaint – Records Denied List

Name of Complainant: Eric Petr

This is page 1 of 1.

Please fill out this form describing the record (or portion of it) to which access has been denied and the response to your request, including the reason given for denial of access. Submit additional pages if necessary.

Item #	Description of record (or portion)	Response to request
1	I requested copies of every overtime book that has been utilized by the Morristown Bureau of police from 01/01/2006 through 04/06/2017.	As of this date I have not received any response from the Town of Morristown regarding this request.

Add List | Remove List

New Jersey Government Records Council
Agreement to Mediate

By participating in mediation, I/we agree:

1. To engage in a good faith effort to resolve the above referenced complaint filed with the Government Records Council ("GRC") concerning access to records or related matters described in the Complaint;
2. That I will abide by any procedural rules set forth by the mediator. Such rules may include the establishment of a timetable for completion of mediation and/or phases of the mediation, a requirement that the parties periodically reduce settled issues to writing, a requirement that the parties personally meet with the mediator at a mutually convenient time and place and such other reasonable procedural rules deemed by the mediator to facilitate the mediation process.
3. That all discussions and documents arising during mediation are confidential unless otherwise legally obtainable. Documents provided in mediation cannot be used in a GRC hearing or appeal from a GRC determination unless those documents are public records or the party with control over the documents consents to their use in such a proceeding. Conversations with the mediator or with the other party during mediation will not constitute statements that can be used in a later GRC hearing or appeal from a GRC determination;
4. That I will not subpoena the mediator to testify or to produce any mediation materials whatsoever following the mediation. I acknowledge that the mediator will not testify on behalf of any party in any pending or future administrative or judicial proceeding, or disclose any information obtained during mediation unless the parties expressly consent to such disclosure, or unless law or court order requires disclosure. I further agree that the mediator will be held harmless for any claim arising from the mediation process;
5. That the mediation session will not be recorded (either video or audio) and that no transcript of the session will be produced;
6. That the mediator will not decide who is right or wrong, and that I shall not ask the mediator to act as my advocate. I acknowledge that the mediator will try to help the parties reach their own resolution of this dispute by encouraging discussion; however, if the mediator determines that the mediation process is no longer productive the mediator may unilaterally terminate said mediation and refer the matter back to the GRC for further processing;
7. That when a settlement is reached, it shall be put in writing and signed, and shall be binding upon all parties to the agreement. A copy shall be provided to the GRC. If the complaint is not resolved during mediation, the complaint will be transferred to the GRC for further processing.

The parties to this agreement, whose names and signatures appear below, are the only persons authorized to participate in the mediation process. The principal's representative, if any, affirms that he/she is authorized to act by, and on behalf of, the principal.

☐	YES, I want to participate in mediation.	☒	NO, I do not want to participate in mediation.

Name of Principal (Please Print) Signature Date

☐ I am the Complainant ☐ I am the Custodian

Name of Legal Representative (Please Print) Signature Date

Name of Representative (Please Print) Signature Date

Revised October 28, 2016

Open the Central Repository Home Page to start the Form Submission Process

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: Eric MI: H Last Name: Petr

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 04/06/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached document.

APR 06 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress – Open
Denied – Closed
Filled – Closed
Partial – Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

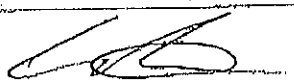
Records Provided

5910

Custodian Signature Date

04/06/2017

On 03/16/17 I hand delivered an OPRA request to the Morristown Clerks Office. I handed the request to Robin Kesselmeyer who hand delivered the request to Kevin Harris the same day in his office. I am requesting again, I be provided with a copy of every Morristown Bureau of Police outside overtime book, commonly referred to as the "REDBOOK", from 01/01/2006 thru today's date of 04/06/2017.



Eric Petr

Submit by Email

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I want a copy of the Morristown Bureau of Police overtime Book/ledger (Commonly referred to as The Red Book) for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through today's date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress – Open
Denied – Closed
Filled – Closed
Partial – Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	**VERIFIED COMPLAINT**
Defendant.	***ACTION IN LIEU OF PREROGATIVE WRITS***
	OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.

2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1***.

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: "*Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,*" with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to *N.J.S.A.* 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to *N.J.S.A.* 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN.

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Requestor Information – Please Print

First Name: ERIC | MI: H | Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ☐ | US Mail ☐ | On-Site Inspect ☐ | Fax ☐ | E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

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See attached sheet.

SEP 1

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress – Open
Denied – Closed
Filed – Closed
Partial – Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

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Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ____ US Mail ____ On-Site Inspect. ____ Fax ____ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

N

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Receipt Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117682

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F146891

2FAFP74WXWX169679

2FAFP74W61X185530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount		Balance	
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00	Cr	40,866.50	Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00	Cr	41,726.50	Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00	Cr	44,331.50	Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00	Cr	46,711.50	Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submitted by Email

Important Notice

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Requestor Information -- Please Print

First Name: Eric MI: H Last Name: Petr

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: 04/06/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached document.

APR 06 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

5910

Custodian Signature Date

04/06/2017

On 03/16/17 I hand delivered an OPRA request to the Morristown Clerks Office. I handed the request to Robin Kesselmeyer who hand delivered the request to Kevin Harris the same day in his office. I am requesting again, I be provided with a copy of every Morristown Bureau of Police outside overtime book, commonly referred to as the "REDBOOK", from 01/01/2006 thru today's date of 04/06/2017.

Eric Petr

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

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Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I want a copy of the Morristown Bureau of Police overtime Book/ledger (Commonly referred to as The Red Book) for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through today's date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

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AGENCY USE ONLY

Tracking Information

Tracking #
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Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

THE TOWN OF MORRISTOWN.

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

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MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

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E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I would like a copy of all Morristown Bureau of Police outside work contracts utilized by officers to get paid by outside contractors for all Morristown Police Officers for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through today's date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

SUMMONS

Attorney(s) Sciarra and Catrambone, LLC
Office Address 1130 Clifton Avenue
Town, State, Zip Code Clifton New Jersey 07013

Telephone Number 973-242-2442
Attorney(s) for Plaintiff Eric Petr

Superior Court of New Jersey
Morris ☑ County
Law Division
Docket No: MRS-L-2369-17

Plaintiff(s)

vs.
Township of Morristown

Defendant(s)

CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of $175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where 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.njcourts.gov/forms/10153_deptyclerklawref.pdf.

/s/
Clerk of the Superior Court

DATED: 11/03/2017

Name of Defendant to Be Served: Township of Morristown c/o Kevin D. Harris, Town Clerk

Address of Defendant to Be Served: 200 South Street 1st Floor, Morristown, New Jersey 07960

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, Plaintiff, v. TOWN OF MORRISTOWN, Defendant.	CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MORRIS COUNTY DOCKET NO. MRS-L-_____-17 VERIFIED COMPLAINT *ACTION IN LIEU OF PREROGATIVE WRITS* OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1.***

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to N.J.S.A. 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to N.J.S.A. 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

TOWN OF MORRISTOWN

Submit by Email

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE / HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

Submit by Email

2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC | MI: H | Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress	Open	
Denied	Closed	
Filed	Closed	
Partial	Closed	

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6315

Custodian Signature | Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

V

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Receipt Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount		Balance	
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00	Cr	40,866.50	Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00	Cr	41,726.50	Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00	Cr	44,331.50	Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00	Cr	46,711.50	Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	***ORDER TO SHOW CAUSE***
Defendant.	

THIS MATTER, being opened to the Court by Sciarra & Catrambone, LLC, Jeffrey D. Catrambone, Esq., on behalf of Plaintiff Eric Petr ("Petr" or "Plaintiff"), pursuant to the Open Public Records Act ("OPRA") as provided by *N.J.S.A.* 47:1A-1 *et seq.*, R. 4:69-1 *et seq.*, and R. 4:67-1 *et seq.*, with a Verified Complaint / Action in Lieu of Prerogative Writs, with attachments, and supporting letter brief being filed with the Court herewith against Defendant Town of Morristown ("Defendant"), with the OPRA statute, *N.J.S.A.* 47:1A-6 providing that this matter shall proceed in a summary manner; and good cause having been shown therefore,

IT IS on this _____ day of _____, 2017,

ORDERED that Defendant show cause before the Superior Court of New Jersey, Honorable _____, _____

_____ County, located at Washington & Court Streets, Morris County Courthouse, Morristown, New Jersey on the _____ day of _____ 2017, at _____ am / pm, or as soon thereafter as Counsel can be heard, why Plaintiff is not entitled to all of the relief sought by way of Verified Complaint / Action in Lieu of Prerogative Writs filed herewith; and **IT IS FURTHER**

ORDERED that Plaintiff shall serve and file any additional affidavits, briefs and other papers in support of this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that Defendant shall serve and file any affidavits, briefs and other papers in opposition to this application on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that the Plaintiff shall serve and file any reply papers, on or before the _____ day of _____, 2017; and **IT IS FURTHER**

ORDERED that a copy of this filed Order to Show Cause shall be served upon Defendant within _____ days of the date hereof.

SO ORDERED.

_____

, J.S.C.

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR,	**CIVIL ACTION**
Plaintiff,	**SUPERIOR COURT OF NEW JERSEY**
	LAW DIVISION - MORRIS COUNTY
v.	**DOCKET NO. MRS-L-_____-17**
TOWN OF MORRISTOWN,	**VERIFIED COMPLAINT**
Defendant.	***ACTION IN LIEU OF PREROGATIVE WRITS***
	OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.
2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1.***

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." (*See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017*).

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to N.J.S.A. 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to N.J.S.A. 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 2 *day of November 2017.*

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

TOWN OF MORRISTOWN

Submit by Email

THE TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

Submit by Email

2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost _____

Est. Delivery Cost _____

Est. Extras Cost _____

Total Est. Cost _____

Deposit Amount _____

Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____

Denied - Closed _____

Filed - Closed _____

Partial - Closed _____

AGENCY USE ONLY

Tracking Information

Tracking # _____

Rec'd Date _____

Ready Date _____

Total Pages _____

Final Cost

Total _____

Deposit _____

Balance Due _____

Balance Paid _____

Records Provided

6315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ____ ☐ US Mail ____ ☐ On-Site Inspect. ____ ☐ Fax ____ ☐ E-mail ____ ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

[signature]

AGENCY USE ONLY

Est. Document Cost ____

Est. Delivery Cost ____

Est. Extras Cost ____

Total Est. Cost ____

Deposit Amount ____

Estimated Balance ____

Deposit Date ____

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN TOWN CLERK

In Progress - Open ____

Denied - Closed ____

Filed - Closed ____

Partial - Closed ____

AGENCY USE ONLY

Tracking Information

Tracking # ____

Rec'd Date ____

Ready Date ____

Total Pages ____

Final Cost

Total ____

Deposit ____

Balance Due ____

Balance Paid ____

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117662

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584346

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

2FAFP74W61X195530

1FM5K8D85FGA45994

1D4HB48N46F148892

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG167771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

4

September 19, 2017
11:14 AM

The Town of Morristown
General Ledger Detail Inquiry

Page No: 1

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount		Balance	
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00	Cr	40,866.50	Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00	Cr	41,726.50	Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00	Cr	44,331.50	Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00	Cr	46,711.50	Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street,
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran

Deborah Masker Edwards*
Christopher A. Gray#
Frank Cioffi

Of Counsel
Cathie Perselay Seidman*
Alan Serrins ^

*Admitted NJ & NY Bars
^ Admitted NY Bar
# Admitted NJ & PA Bars

A Limited Liability Company
1130 Clifton Avenue
Clifton New Jersey 07013
Telephone: 973-242-2442
Fax: 973-242-3118
www.sciarralaw.com

Hamilton Office
100 Horizon Center Blvd.
Hamilton, New Jersey 08691
Tel. 856-888-7066

New York Office
The Woolworth Building
Suite 2340
233 Broadway
New York, NY 10279
Tel: 212-384-0202

November 2, 2017

Via eCourts
Superior Court of New Jersey
Civil Division - Morris County
Washington & Court Streets
Morristown, NJ 07960

Re: *Eric Petr*
v.
Town of Morristown
Docket No.: MRS-L-_____-17

Plaintiff's Letter Brief in support of Order to Show Cause & Verified Complaint

Dear Sir / Madam:

The undersigned firm represents Plaintiff Eric Petr ("Plaintiff"), in the above-referenced matter. We respectfully request that the Court accept this letter brief in support of Plaintiff's Order to Show Cause and Verified Complaint, filed herewith.

For the reasons set forth below, this Court should execute the within Order to Show Cause, and, upon briefing and argument, rule in a summary manner in favor of Plaintiff, and order that Defendant

produce all documents sought by way of Plaintiff's requests as outlined in the Verified Complaint and attachments filed herein with the Court, under the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 *et seq.*, with an award of attorneys' fees and costs.

FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

The detailed allegations in, and attachments to, Plaintiff's Verified Complaint are incorporated herein in order to provide context to this Court regarding this OPRA matter.

LEGAL ARGUMENT

I. THE RECORDS SOUGHT HEREIN ARE SUBJECT TO DISCLOSURE UNDER OPRA.

The purpose of OPRA, N.J.S.A. 47:1A-1 *et seq.*, is "to insure that government records, unless exempted, are readily accessible to citizens of New Jersey for the protection of the public interest." Mason v. City of Hoboken, 196 N.J. 51, 57 (2008) (citing N.J.S.A. 47:1A-1). OPRA advances "the State's long-standing public policy favoring ready access to most public records." See Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 36 (App. Div. 2005) (other citation omitted).

OPRA manifests this State's public policy of government transparency. "The purpose of OPRA 'is to maximize public knowledge about public affairs in order to ensure an informed

citizenry and to minimize the evils inherent in a secluded process.'" Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (other citation omitted). Thus, OPRA directs 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...shall be construed in favor of the public's right of access. N.J.S.A. 47:1A-1.

To serve this policy and purpose, OPRA provides that "[t]he public agency shall have the burden of providing that the denial of access is authorized by law." N.J.S.A. 47:1A-6. As such, the agency "must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality. Absent such a showing, a citizen's right of access is unfettered." Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 383 (App. Div. 2003).

With regard to an OPRA request, "[t]he first inquiry is whether the requested documents meet the statutory definition of government record, and if so, whether any exemption established in or recognized by any other law bars disclosure of the requested documents." Wilson v. Brown, 404 N.J. Super. 557, 571 (App. Div. 2009), certif. denied, 198 N.J. 473 (2009).

OPRA defines "government record" or "record" broadly under N.J.S.A. 47:1A-1:

> [A]ny 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...or that has been received in the course of his or its official business. N.J.S.A. 47:1A-1.1.

Here, because the records sought herein do not fall under any exemption under the OPRA statute, Plaintiff is entitled to disclosure of the documents sought. Nonetheless, to date, Defendant have only produced a single document in response to any of Plaintiff's requests for records at issue herein. Further, Defendant has not asserted any exemption or any other legitimate rationale for their utter failure to respond to Plaintiffs' numerous requests as outlined in detail in Plaintiffs' Verified Complaint.[1]

In short, Plaintiff seeks specifically identified documents related to a specifically identified IRS Equitable Sharing Fund (*see Count One of Verified Complaint*); monthly statements for a specifically identified bank account, by account number, required

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[1] Plaintiff will of course address any such arguments or any other issues raised by Defendant by way of our additional filing of papers, as appropriate.

to be maintained by the Town *(see Count Two of Verified Complaint)*; & purchase orders and sales invoices for Police vehicles specifically identified by Vehicle Identification Number *(see Count Three of Verified Complaint)*.

A review of the specific, targeted requests reveals requests which were made with "reasonable clarity" and are for records which are "identifiable". See, e.g., Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) (holding that request for records regarding EZ Pass benefits afforded to Port Authority retirees was not over-broad under OPRA); Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) (holding that attorney's request for settlement agreements without specification of matters to which they pertained constituted a request for specific documents, triggering the requirements of OPRA).

At issue in Burnett was a request for "any and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to the present". 415 N.J. Super. at 508 (emphasis added). The Appellate Division noted that "OPRA superseded the Right to Know Law. Its purpose is 'to maximize public knowledge about public affairs in order to ensure an informed citizenry'". Id. at 512. "OPRA requires that all government records be disclosed upon request except those exempted by statute, legislative resolution, administrative regulation,

executive order, rules of court, judicial decisions, or federal law." Ibid. The Court also noted the Legislative intent favoring disclosure:

> ... 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...shall be construed in favor of the public's right of access... Ibid., *citing* N.J.S.A. 47:1A-1.

Even though the request did not specify the matters to which the settlements pertained, the Court found that the plaintiff in Burnett did not make a "general request". Id. at 513. Plaintiff here nonetheless specifically identifies the subject matter of each request.

The Court in both Burnett and Burke distinguished the "broad generic request" for records to the ABC regarding cases involving liquor licenses prosecuted in the past which were at issue in MAG Entertainment LLC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). Similarly, the requests at issue here do not seek "general information" as was the case in Bent v. Twp. of Stafford Police Dept., 381 N.J. Super. 30 (App. Div. 2005).

Here, Plaintiff's requests for records are specific and descriptive, and cannot be considered "generic" in nature. The requests require Defendant to "search", or "to go or look carefully in order to find something missing or lost," as is permitted under OPRA, and not to "conduct research", which instead involves "a

close or careful study to find new facts or information". See Burnett, 415 N.J. Super. at 515. The retrieval of records sought by Plaintiff in the subject requests requires a search, not research, and thus the Town is obligated under OPRA to conduct that search and produce the records sought. Id. at 516.[2] Defendant concedes as much by way of its partial, informal disclosure, albeit of only a single document and an email exchange acknowledging that the records be disclosed. *(See Verified Complaint at ¶ 15-17, Ex. 4)*.

As was the case in Burke, the requests by Plaintiff here do not "require the custodian to conduct research, or to collect, collate and analyze data," nor can Defendant here demonstrate how that is the case with regard to any specific request. See Burke, 429 N.J. Super. at 177. There is likewise no credible suggestion that responding to Plaintiff's requests would in some way "substantially disrupt" the operations of the Town. See id. at 177; see also N.J.S.A. 47:1A-5(g).

The Court's language as follows in Burke is controlling here with regard to each of the individual requests:

> Because plaintiff described the records sought with the requisite specificity and narrowed the scope of the inquiry to a discrete and limited subject matter, we conclude his request was neither vague or overbroad. *The*

---

[2] Defendant does not, and cannot, dispute that all of the records sought herein are in their possession.

> *request sought the records themselves, not data, information or statistics to be extracted, gleaned or otherwise derived therefrom.* Involving no research or analysis, but only a search for, and production of, what proved to be identifiable records, plaintiff's properly circumscribed and tailored request was wrongly invalidated as overbroad. 429 N.J. Super. at 177-78 (emphasis added).

Here, Defendants cannot meet their burden to demonstrate how any of the requests at issue are not valid under OPRA.

Lastly, the undersigned will submit the appropriate certification as to our fees and costs incurred should Plaintiff prevail in this matter, pursuant to N.J.S.A. 47:1A-6.

CONCLUSION

For the foregoing reasons, this Court should enter the Order to Show Cause, and, after hearing this matter in a summary manner, award Plaintiff the relief sought in the Verified Complaint, including but not limited to Defendant's production of all government records sought, and an award of attorneys' fees.

We thank the Court for its courtesies and attention to this matter.

Respectfully submitted,
Sciarra & Catrambone, LLC

By: _____
Jeffrey D. Catrambone, Esq.

JDC/j
Attachments

cc: Kevin Harris, Morristown Town Clerk (*via NJ Lawyers Service & Email townclerk@townofmorristown.org w/att.'s*)
Vijayant Pawar, Morristown Town Attorney (*via NJ Lawyers Service & Email vpawar@pgrlawyers.com w/att.'s*)
Client

William J. Garces
William N. Grabler ♦
Lawrence A. LeBrocq, LL. M. ★□

Alan T. Grening ■□
Jonathan A. Kessous ◆♣◊
Arlindo B. Araujo □◆
Gary A. Cavalli
Pasquale O. Vella
Thomas M. Nicely □
Joseph T. Delgado
Michelle M. Tullio
Jared A. Geist
Ileana J. Montes
David E. Rehe ◆
Anna M. Buontempo ◆
Robert B. White, III □.
Nicholas L. Krochta

■ Member DC Bar
□ Member PA Bar
◆ Member NY Bar
♦ Certified by The Supreme Court of New Jersey as a Workers' Compensation Law Attorney
★ Certified by The Supreme Court of New Jersey as a Civil Trial Attorney

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New Brunswick, N.J. 08901
(732) 249-1300
(732) 220-1555 Fax

502 Amboy Avenue
Perth Amboy, N.J. 08861
(732) 826-2300
(732) 826-4027 Fax

415 Watchung Avenue
Plainfield, N.J. 07060
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(908) 769-7893 Fax

253 E. Front Street
Trenton, N.J. 08611
(609) 393-0700
(609) 393-8581 Fax

325 South River Street
Hackensack, NJ 07601
(201) 857-8100
(201) 857-8101 Fax

Reply to: Newark

January 11, 2017

RECEIVED
JAN 19 2017
TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

VIA REGULAR MAIL, CERTIFIED MAIL, R.R.R., & VIA GUARANTEED SUBPOENA SERVICE
Township of Morristown
c/o Kevin D. Clark, Clerk
200 South Street, 1st Floor
Morristown, New Jersey 07960
Defendant

Re: GIVE THIS TO YOUR INSURANCE COMPANY. YOU HAVE BEEN SUED IN COURT.
Carvajal-Cardona v. Harrison, et al. Our File No.: 271541
Docket No.: MRS-L-2235-16 DC File No.: Not Available

Dear Sir or Madam:

Please be advised that this office represent **MARIA CARVAJAL-CARDONA,** in regards to the above referenced matter. Enclosed please find the Summons, Complaint, and Track Assignment which I hereby serve upon you, in accordance with New Jersey Court Rule 4:4-3(b), as amended on September 1, 1994.

At this time, kindly give the contents of this letter and the enclosed your prompt attention and forward the enclosed documents to your Insurance company, so they may appoint defense counsel in your behalf. Please be advised that you have 60 days from the date of service of the enclosed in which to file an Answer in order to prevent default and judgment for damages being entered against you. Failure to provide your insurance with these documents in a timely fashion can result in denial of coverage making you legally responsible for payment in regards to the above referenced claim.

PLEASE BE GUIDED ACCORDINGLY!

Very truly yours,

GARCES, GRABLER & LEBROCQ, P.C.
By: *Genevieve G. Redd, Esq. /ds/*
Genevieve G. Redd, Esq.
Plaintiff's Counsel

GGR/ds
Encl.
C.M.R.R.R. 7016-1970-0000-3983-6660

Law Offices

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New York, NY 10279
Tel: 212-384-0202

November 2, 2017

Via Email & Lawyer's Service
Kevin Harris
Morristown Town Clerk
200 South Street
Morristown, NJ 07963

Via Email & Lawyer's Service
Vijayant Pawar, Esq.
Pawar Gilgallon & Rudy, LLC
6 South Street, Suite 201
Morristown, NJ 07960

Re: ***Eric Petr v. Town of Morristown***
MRS-L-2369 -17

Dear Mr. Harris & Mr. Pawar:

The undersigned represents Plaintiff Eric Petr with regard to the above referenced matter. Enclosed please find the following documents which were filed today on eCourts.

1. Order to Show Cause
2. Verified Complaint with Attachments
3. Letter Brief

Thank you for your attention and courtesy.

Very truly yours,

Sciarra & Catrambone, LLC

By: *Jeffrey D. Catrambone/s/*
Jeffrey D. Catrambone, Esq.

JDC/mf
Enclosures
cc: Client

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 27, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-95

At the March 27, 2018 public meeting, the Government Records Council ("Council") considered the March 20, 2018 Findings and Recommendations of the Council Staff and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 27th Day of March, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 29, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
March 27, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-95

v.

Town of Morristown (Morris)[2]
Custodial Agency

Record Relevant to the Complaint: "I would like the cost of the patrol supervisor overtime from June 1, 2014 to January 20, 2017. Specifically the amount of money spent on supervisor overtime for being the patrol supervisor."[3]

Custodian of Record: Kevin D. Harris
Request Received by Custodian: March 30, 2017
GRC Complaint Received: May 2, 2017
Response Made by Custodian: May 12, 2017

Background[4]

Request:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned record.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he submitted his request to the Custodian on March 30, 2017, and did not receive a response from the Custodian. The Complainant states that he requested a budgetary item and has been denied access to the information. The Complainant further states that he wants an immediate response from the Custodian.[5]

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[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq. (Morristown, NJ).
[3] The Complainant requested that the information be delivered to him via e-mail.
[4] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.
[5] N.J.S.A. 47:1A-5(e) provides that "[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." As such, paid overtime does constitute an immediate access record.

Response:

On May 12, 2017, the thirtieth (30th) business day following receipt of the request, and the eighth (8th) business day after the Complainant filed the complaint, the Custodian responded in writing informing the Complainant that his request seeks information, is not a valid OPRA request, and is denied. The Custodian further informed the Complainant that a custodian is not required to conduct research or create new records in response to an OPRA request.

Statement of Information:

On May 15, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on March 30, 2017, and responded in writing on May 12, 2017. The Custodian certifies that the Complainant's request was denied because it was not a valid OPRA request. The Custodian certifies that the request sought information and did not identify a specific government record. The Custodian further certifies that a custodian is not required to conduct research or create new records in response to an OPRA request. The Custodian cites MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) along with other Council decisions in support of his denial.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[6] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Custodian certified that he received the Complainant's request on March 30, 2017, but did not respond in writing to the request until May 12, 2017. The Custodian thus failed to respond in a timely manner to the Complainant's request.

As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the

[6] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Validity of Request

The New Jersey Appellate Division has held that:

> While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.
>
> [MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, at 546 (App. Div. 2005).]

The Court reasoned that:

> Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.
>
> [Id. at 549 (emphasis added).]

The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files." Id. at 549 (emphasis added). See also Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);[7] N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Here, the Complainant sought "... the cost of the patrol supervisor overtime ... the amount of money spent on supervisor overtime for being the patrol supervisor." The Town of Morristown maintains a website. On the Police Department page under the category of "Police Divisions" is the following descriptive information: "The patrol division is divided into two squads, 'A' side and 'B' side and is further broken down into platoons. Each platoon is overseen by a lieutenant who serves as the shift commander and a sergeant who acts as the road supervisor."[8] It is clear

[7] Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).
[8] http://www.townofmorristown.org/index.asp?SEC=AC7F09A7-EADC-43E3-9DC8-C969ABD691E1&Type=B_BASIC (accessed March 1, 2018).

from this description that the Morristown Police Department has more than one patrol supervisor; however the Complainant failed to identify the specific patrol supervisor for whom he was requesting the overtime expenditure.

To fulfill the Complainant's request the Custodian would have to conduct research to determine which supervisor, if any, received overtime pay from June 1, 2014 to January 20, 2017. Such actions on the part of the Custodian are beyond the scope of his duties under OPRA.

Therefore, the Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass'n, 390 N.J. Super. 166; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek an identifiable government record. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

March 20, 2017

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 27, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-96

At the February 27, 2018 public meeting, the Government Records Council ("Council") considered the February 20, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 27th Day of February, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 2, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
February 27, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-96

v.

Town of Morristown (Morris)[2]
Custodial Agency

Records Relevant to the Complaint: "I would like the total cost to the town of Morristown for the annual St. Patrick's Day Parade for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017."[3]

Custodian of Record: Kevin D. Harris
Request Received by Custodian: March 30, 2017
GRC Complaint Received: May 2, 2017
Response Made by Custodian: May 15, 2017

Background[4]

Request and Response:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On May 15, 2017, the thirty-first (31st) business day following receipt of the request, and the ninth (9th) business day after the Complainant filed the complaint, the Custodian responded in writing informing the Complainant that his request seeks information, is not a valid OPRA request, and is denied. The Custodian further informs the Complainant that a custodian is not required to conduct research or create new records in response to an OPRA request.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he submitted his request to the Custodian

[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq. (Morristown, NJ).
[3] The Complainant requested that the information be delivered to him via e-mail.
[4] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

on March 30, 2017, and did not receive a response from the Custodian. The Complainant states that he requested a budgetary item and has been denied access to the information.

Statement of Information:

On May 15, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on March 30, 2017, and responded in writing on May 15, 2017. The Custodian certifies that the Complainant's request was denied because it was not a valid OPRA request. The Custodian certifies that the request sought information and did not identify a specific government record. The Custodian further certifies that a custodian is not required to conduct research or create new records in response to an OPRA request. The Custodian cites MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) along with other Council decisions in support of his denial.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[5] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Custodian certified that he received the Complainant's request on March 30, 2017, but did not respond in writing to the request until May 15, 2017. The Custodian thus failed to respond in a timely manner to the Complainant's request.

As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Validity of Request

[5] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

The New Jersey Appellate Division has held that:

> While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.
>
> [MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, at 546 (App. Div. 2005)]

The Court reasoned that:

> Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.
>
> [Id. at 549 (emphasis added).]

The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files." Id. at 549 (emphasis added). *See also* Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);[6] N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Here, the Complainant failed to identify a government record with specificity, but rather sought the "total cost" to the town for an annual parade over a number of consecutive years. Although the Complainant asserted that the information he was requesting was a budgetary item, he did not ask for a budget, which is a government record. Instead, he sought the "total cost" of a parade. To fulfill the Complainant's request the Custodian would have to conduct research by gathering the costs of various municipal services from several departments, and then compile the several costs into a document reflecting the total costs. Such efforts on the part of the Custodian are beyond the scope of his duties under OPRA.

Therefore, the Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass'n,

[6] Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).

390 N.J. Super. 166; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't v. Div. of ABC, 375 N.J. Super. 534, 549 (App.

Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

3. The Custodian failed to respond to the Complainant's request in a timely manner; however, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

February 20, 2017

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-97 and 2017-98

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious

wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 18th Day of December, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: December 20, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-97 and 2017-98

v.

Town of Morristown (Morris)[2]
Custodial Agency

Records Relevant to Complaint:

March 30, 2017 OPRA request:[3] Electronic copies via e-mail of vehicle maintenance records and associated costs for maintenance of all Town of Morristown ("Town") Bureau of Police vehicles from January 1, 2006 through March 30, 2017.

April 6, 2017 OPRA request:[4] Electronic copies via e-mail of every Police "outside work contract" for every Town officer from January 1, 2006 through April 6, 2017.

Custodian of Record: Kevin Harris[5]
Request Received by Custodian: March 30, 2017; April 6, 2017
Response Made by Custodian: May 15, 2017; May 2, 2017
GRC Complaint Received: May 2, 2017

Background[6]

Request:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records.

On April 6, 2017, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. The Complainant noted that he previously submitted the OPRA request on March 16, 2017.

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[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq., of Pawar, Gilgallon & Rudy, LLC (Morristown, NJ). Previously represented by Joni Noble McDonnell, Esq., of Inglesino, Webster, Wyciskala & Taylor (Parsipanny, NJ).
[3] This request is the subject of GRC 2017-97.
[4] This request is the subject of GRC 2017-98.
[5] The current Custodian of Record is Margot Kaye.
[6] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council ("GRC"). The Complainant contended that the Custodian failed to respond to either request, which sought budgetary items subject to immediate access. The Complainant asserted that he wanted immediate access to the information sought.

Response

GRC 2017-97

On May 15, 2017, the thirty-first (31st) business day after receipt of the OPRA request, the Custodian responded in writing denying the request as invalid because it failed to seek identifiable records. Citing Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

GRC 2017-98

On May 2, 2017, the seventeenth (17th) business day after receipt of the OPRA request, the Custodian responded in writing seeking an extension of ten (10) business days to respond to the request. On June 2, 2017, the Custodian again responded advising that a memory stick containing over 215 items was prepared because sending the records via e-mail would prohibitive. On the same day, the Complainant retrieved the memory stick from the Town and acknowledged receipt.

Statement of Information:

On June 20, 2018, the Custodian filed Statements of Information ("SOI") for both complaints.

GRC 2017-97

The Custodian certified that he received the Complainant's OPRA request on March 30, 2017. The Custodian certified that he responded in writing on May 15, 2017 denying access to the request as invalid.

The Custodian contended that he properly denied access to the March 30, 2017 OPRA request because it was invalid. The Custodian contended that the request sought information, as opposed to an identifiable "government record." The Custodian contended that the Council routinely upheld denials where the complainant sought information. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

GRC 2017-98

The Custodian certified that he received the Complainant's OPRA request on April 6, 2017. The Custodian certified that he initially responded in writing on May 2, 2017 seeking ten (10)

additional business days to respond. The Custodian certified that he again responded on June 2, 2017 granting access to the responsive records on a memory stick. The Custodian certified that the Complainant retrieved the memory stick on the same day.

The Custodian contended that no denial of access occurred because the Complainant received all records that existed on a memory stick on June 2, 2017. The Custodian noted that the responsive records comprised of over 215 items amounting to 925 megabytes. The Custodian noted that the voluminous nature of the request delayed production beyond the extended time frame.

Analysis

Immediate Access

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[7] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).[8] See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of immediate access records).

Here, the Complainant's March 30, 2017 OPRA request sought "vehicle maintenance records and associated costs" for police vehicles over an eleven-year period. This OPRA request does not appear to directly identify any type of records for which "immediate access" is required under N.J.S.A. 47:1A-5(e). For this reason, it is reasonable that the Custodian would not have recognized that this request required an immediate response.

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[7] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[8] OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. *See* Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

However, the Complainant's April 6, 2017 OPRA request sought "outside work contracts." Such contracts are categorically considered records subject to "immediate access." N.J.S.A. 47:1A-5(e). The evidence of record indicates that the Custodian did not initially respond to the Complainant's request until May 2, 2017, the seventeenth (17th) business day following receipt of the request, seeking an extension.[9] The Custodian had "an obligation to immediately" respond to a Complainant granting access, denying access, seeking clarification, or requesting an extension time, but failed to do so. See also Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013); Kaplan v. Winslow Twp. Bd. of Educ. (Camden), GRC Complaint No. 2011- 237 (Interim Order dated December 18, 2012).

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody, GRC 2005-98; Herron, GRC 2006-178; Harris, GRC 2011-65.

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[10] Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Having determined that the Complainant's March 30, 2017 OPRA request did not reasonably seek access to "immediate access" records, the GRC now turns to whether the request was nonetheless "deemed" denied. In the SOI, the Custodian certified that he received the request on March 30, 2017. The Custodian further affirmed that he responded to the request on May 15, 2017 denying it as invalid.[11] The GRC has calculated the response time at thirty-one (31) business days, clearly well beyond the statutory time frame. Thus, the evidence of record supports that the March 30, 2017 OPRA request was "deemed" denied.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access,

[9] The GRC notes that the Custodian ultimately provided access to responsive records on June 2, 2017.
[10] A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.
[11] The GRC does not address Custodian's denial of access based on the validity of the subject OPRA request because the issue was not raised by the Complainant at any point during the pendency of these complaints.

seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of

time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

December 11, 2018

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Eric Petr
Complainant
v.
Town of Morristown (Morris)
Custodian of Record

Complaint No. 2017-97 and 2017-98

At the December 18, 2018 public meeting, the Government Records Council ("Council") considered the December 11, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious

wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 18th Day of December, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: December 20, 2018

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting

Eric Petr[1]
Complainant

GRC Complaint No. 2017-97 and 2017-98

v.

Town of Morristown (Morris)[2]
Custodial Agency

Records Relevant to Complaint:

March 30, 2017 OPRA request:[3] Electronic copies via e-mail of vehicle maintenance records and associated costs for maintenance of all Town of Morristown ("Town") Bureau of Police vehicles from January 1, 2006 through March 30, 2017.

April 6, 2017 OPRA request:[4] Electronic copies via e-mail of every Police "outside work contract" for every Town officer from January 1, 2006 through April 6, 2017.

Custodian of Record: Kevin Harris[5]
Request Received by Custodian: March 30, 2017; April 6, 2017
Response Made by Custodian: May 15, 2017; May 2, 2017
GRC Complaint Received: May 2, 2017

Background[6]

Request:

On March 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records.

On April 6, 2017, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. The Complainant noted that he previously submitted the OPRA request on March 16, 2017.

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[1] No legal representation listed on record.
[2] Represented by Vijayant Pawar, Esq., of Pawar, Gilgallon & Rudy, LLC (Morristown, NJ). Previously represented by Joni Noble McDonnell, Esq., of Inglesino, Webster, Wyciskala & Taylor (Parsipanny, NJ).
[3] This request is the subject of GRC 2017-97.
[4] This request is the subject of GRC 2017-98.
[5] The current Custodian of Record is Margot Kaye.
[6] The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Denial of Access Complaint:

On May 2, 2017, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council ("GRC"). The Complainant contended that the Custodian failed to respond to either request, which sought budgetary items subject to immediate access. The Complainant asserted that he wanted immediate access to the information sought.

Response

GRC 2017-97

On May 15, 2017, the thirty-first (31st) business day after receipt of the OPRA request, the Custodian responded in writing denying the request as invalid because it failed to seek identifiable records. Citing Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

GRC 2017-98

On May 2, 2017, the seventeenth (17th) business day after receipt of the OPRA request, the Custodian responded in writing seeking an extension of ten (10) business days to respond to the request. On June 2, 2017, the Custodian again responded advising that a memory stick containing over 215 items was prepared because sending the records via e-mail would prohibitive. On the same day, the Complainant retrieved the memory stick from the Town and acknowledged receipt.

Statement of Information:

On June 20, 2018, the Custodian filed Statements of Information ("SOI") for both complaints.

GRC 2017-97

The Custodian certified that he received the Complainant's OPRA request on March 30, 2017. The Custodian certified that he responded in writing on May 15, 2017 denying access to the request as invalid.

The Custodian contended that he properly denied access to the March 30, 2017 OPRA request because it was invalid. The Custodian contended that the request sought information, as opposed to an identifiable "government record." The Custodian contended that the Council routinely upheld denials where the complainant sought information. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

GRC 2017-98

The Custodian certified that he received the Complainant's OPRA request on April 6, 2017. The Custodian certified that he initially responded in writing on May 2, 2017 seeking ten (10)

additional business days to respond. The Custodian certified that he again responded on June 2, 2017 granting access to the responsive records on a memory stick. The Custodian certified that the Complainant retrieved the memory stick on the same day.

The Custodian contended that no denial of access occurred because the Complainant received all records that existed on a memory stick on June 2, 2017. The Custodian noted that the responsive records comprised of over 215 items amounting to 925 megabytes. The Custodian noted that the voluminous nature of the request delayed production beyond the extended time frame.

Analysis

Immediate Access

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond accordingly results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[7] Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).[8] See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of immediate access records).

Here, the Complainant's March 30, 2017 OPRA request sought "vehicle maintenance records and associated costs" for police vehicles over an eleven-year period. This OPRA request does not appear to directly identify any type of records for which "immediate access" is required under N.J.S.A. 47:1A-5(e). For this reason, it is reasonable that the Custodian would not have recognized that this request required an immediate response.

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[7] A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

[8] OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. *See* Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

However, the Complainant's April 6, 2017 OPRA request sought "outside work contracts." Such contracts are categorically considered records subject to "immediate access." N.J.S.A. 47:1A-5(e). The evidence of record indicates that the Custodian did not initially respond to the Complainant's request until May 2, 2017, the seventeenth (17th) business day following receipt of the request, seeking an extension.[9] The Custodian had "an obligation to immediately" respond to a Complainant granting access, denying access, seeking clarification, or requesting an extension time, but failed to do so. See also Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013); Kaplan v. Winslow Twp. Bd. of Educ. (Camden), GRC Complaint No. 2011- 237 (Interim Order dated December 18, 2012).

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody, GRC 2005-98; Herron, GRC 2006-178; Harris, GRC 2011-65.

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).[10] Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Having determined that the Complainant's March 30, 2017 OPRA request did not reasonably seek access to "immediate access" records, the GRC now turns to whether the request was nonetheless "deemed" denied. In the SOI, the Custodian certified that he received the request on March 30, 2017. The Custodian further affirmed that he responded to the request on May 15, 2017 denying it as invalid.[11] The GRC has calculated the response time at thirty-one (31) business days, clearly well beyond the statutory time frame. Thus, the evidence of record supports that the March 30, 2017 OPRA request was "deemed" denied.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access,

[9] The GRC notes that the Custodian ultimately provided access to responsive records on June 2, 2017.
[10] A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.
[11] The GRC does not address Custodian's denial of access based on the validity of the subject OPRA request because the issue was not raised by the Complainant at any point during the pendency of these complaints.

seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's April 6, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of

time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (August 2012).

2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 30, 2017 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian's failure to respond to the March 30, 2017 OPRA request until thirty-one business days after receipt resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to respond to the April 6, 2017 OPRA request immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the Custodian ultimately did respond to both requests either denying access or providing records on a memory stick. Further, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

December 11, 2018

2017-99 SR
GRC Use Only

New Jersey Government Records Council
Denial of Access Complaint

Please read these instructions before completing this form:

- ☒ This form is to be used only for claims of denial of access to government records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002, under "OPRA," the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).
- ☒ Please print or type your responses and provide ALL information requested. Incomplete forms will delay processing. This form may be submitted online or is available in downloadable format from the GRC web site at www.nj.gov/grc.
- ☒ Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- ☒ *The GRC recommends that you keep a copy of this complaint for your own files.*
- ☒ **MAIL, FAX, OR E-MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENATION TO:**

Government Records Council
PO Box 819
Trenton, NJ 08625-0819

Fax: (609) 633-6337
E-mail: Government.Records@dca.nj.gov
Online: cform.mwg.nj.gov

RECEIVED 2017 MAY 2 PM 8

1. About the Requester of the Records:

Full Name: Eric Petr

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip 07960

Please provide a phone number at which GRC staff can contact you between 9 A.M.-5 P.M., Monday-Friday: (973) 647-0018

Fax Number: _____

E-Mail Address: ericp155@gmail.com

If you are represented by an attorney in this matter, please provide:

Name: _____ Phone Number: _____

Address: _____ Fax Number: _____

E-mail Address: _____

If you are an attorney who requested records and are filing this complaint **on behalf of a client**, please state the client's name:

_____

2. About the Custodian of Records:

Name of the public agency from which records were requested: Town of Morristown Clerk's Office

Name of custodian to whom records request was submitted: Kevin Harris

Telephone Number: (973) 292-6636 E-Mail Address (if used): _____

Name of custodian who denied records request (if different from above): Same as Above

Telephone Number: _____ E-Mail Address (if used): _____

Fax Number: _____

3. About the Record Request:

Date your records request was provided to the custodian: 04/06/2017

Did you receive a reply to your request? Yes ☐ No ☒

If so, state the date your request was denied: _____

Have you previously filed a complaint with the GRC concerning the record request that is subject of this complaint?

Yes ☐ No ☒

If yes, provide the GRC complaint number and a copy of the GRC decision in the matter.

Date: _____ Complaint No.: _____

Have you spoken with or written to the GRC about the record request that is subject of this complaint?

Yes ☐ Date: _____ No ☒

Have you filed an action in the N.J. Superior Court concerning the record request that is subject of this complaint?

No ☒ Yes ☐ If Yes, Docket Number: _____

4. Mediation (please refer to the attached documents for details):

Are you interested in participating in mediation? Yes ☐ No ☒

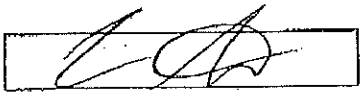
5. Documents to submit with this Form:

- ☒ **Complete** the attached **Records Denied List** to describe the records to which you were denied access.
- ☒ **Attach** a copy of the OPRA Records Request form you filed with the public agency and any correspondence between you and the record custodian(s) or custodial agency staff that concern the portion of your OPRA request that was denied. Be sure to include any e-mail, memoranda, phone messages, or any other documents such as affidavits, or certifications related to the request and the denial.
- ☒ **Summarize** the facts of this complaint by writing the content, time, and date of any interaction you had with the custodian regarding the OPRA records request that is the subject of this complaint. Use the attached **Detail Summary** for this purpose.
- ☒ **Provide** any legal arguments, allegations, or other information you would like the GRC to consider in deciding this complaint. Use the attached **Detail Summary** for this purpose.
- ☒ If applicable, until the Complainant's Counsel submits a formal letter of representation to all parties, the GRC will communicate exclusively with the Complainant. *See* N.J.A.C. 5:105-1.3 & 2.2;
- ☒ **Sign** the Agreement to Mediate if you wish to participate in the mediation process.

6. Verification of Complaint:

By signing this complaint, I affirm under penalty of perjury that:

- ☒ I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- ☒ The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim;
- ☒ I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me, which is an indictable offense under the laws of the State of New Jersey, or any other State, or pertaining to the family of that victim; and
- ☒ I am simultaneously providing a copy of this complaint to the Custodian of Records.
- ☒ 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 pursuant to the New Jersey Court Rule 1:4-4.

Signature Field  Signature (required)

5/1/17 Date

New Jersey Government Records Council
Denial of Access Complaint - Detail Summary

Use this form to summarize the content, time, and date of any conversations regarding this complaint, along with the names of the participants and any witnesses.

On March 16, 2017 I delivered an OPRA request to the Town of Morristown Clerk's Office and hand delivered the request to Deputy Town Clerk Robin Kesselmeyer. She hand delivered it to the Town Clerk Kevin Harris the same day in his office. On 04/06/2017 I entered the Clerk's Office and asked the Clerk's Secretary, Wilma Lara, for a copy of the OPRA request I dropped off on 03/16/2017. She checked the Town's OPRA request records and advised there was no record of me ever delivering an OPRA request on 03/16/2017. I told her the request was for a copy of the Morristown Bureau of Police overtime book/ledger commonly referred to as the "Red Book". Robin Kesselmeyer assisted Wilma in looking for the request I submitted on 03/16/2017. I was eventually told that they have no record of the request and I would have to resubmit the request.

On 04/06/2017 I hand delivered a second request to Wilma Lara in the Morristown Clerk's Office for a copy of all Morristown Bureau of Police overtime books from 01/01/2006 through 04/06/2017 (this request was logged in as a received request, Town of Morristown OPRA request #5910). The request asks for copies of every overtime book from 01/01/2006 through the date of the filing, 04/06/2017. As of May 1, 2017 I have not received any communication from the Morristown Town Clerk's Office regarding my OPRA request. It is a budgetary item that I requested and I have been refused access to the information. I want an immediate response with the information I requested from the Town of Morristown.

New Jersey Government Records Council
Denial of Access Complaint – Records Denied List

Name of Complainant: Eric Petr

This is page 1 of 1.

Please fill out this form describing the record (or portion of it) to which access has been denied and the response to your request, including the reason given for denial of access. Submit additional pages if necessary.

Item #	Description of record (or portion)	Response to request
1	I requested copies of every overtime book that has been utilized by the Morristown Bureau of police from 01/01/2006 through 04/06/2017.	As of this date I have not received any response from the Town of Morristown regarding this request.

Add List | Remove List

New Jersey Government Records Council
Agreement to Mediate

By participating in mediation, I/we agree:

1. To engage in a good faith effort to resolve the above referenced complaint filed with the Government Records Council ("GRC") concerning access to records or related matters described in the Complaint;
2. That I will abide by any procedural rules set forth by the mediator. Such rules may include the establishment of a timetable for completion of mediation and/or phases of the mediation, a requirement that the parties periodically reduce settled issues to writing, a requirement that the parties personally meet with the mediator at a mutually convenient time and place and such other reasonable procedural rules deemed by the mediator to facilitate the mediation process.
3. That all discussions and documents arising during mediation are confidential unless otherwise legally obtainable. Documents provided in mediation cannot be used in a GRC hearing or appeal from a GRC determination unless those documents are public records or the party with control over the documents consents to their use in such a proceeding. Conversations with the mediator or with the other party during mediation will not constitute statements that can be used in a later GRC hearing or appeal from a GRC determination;
4. That I will not subpoena the mediator to testify or to produce any mediation materials whatsoever following the mediation. I acknowledge that the mediator will not testify on behalf of any party in any pending or future administrative or judicial proceeding, or disclose any information obtained during mediation unless the parties expressly consent to such disclosure, or unless law or court order requires disclosure. I further agree that the mediator will be held harmless for any claim arising from the mediation process;
5. That the mediation session will not be recorded (either video or audio) and that no transcript of the session will be produced;
6. That the mediator will not decide who is right or wrong, and that I shall not ask the mediator to act as my advocate. I acknowledge that the mediator will try to help the parties reach their own resolution of this dispute by encouraging discussion; however, if the mediator determines that the mediation process is no longer productive the mediator may unilaterally terminate said mediation and refer the matter back to the GRC for further processing;
7. That when a settlement is reached, it shall be put in writing and signed, and shall be binding upon all parties to the agreement. A copy shall be provided to the GRC. If the complaint is not resolved during mediation, the complaint will be transferred to the GRC for further processing.

The parties to this agreement, whose names and signatures appear below, are the only persons authorized to participate in the mediation process. The principal's representative, if any, affirms that he/she is authorized to act by, and on behalf of, the principal.

☐	YES, I want to participate in mediation.	☒	NO, I do not want to participate in mediation.

Name of Principal (Please Print) Signature Date

☐ I am the Complainant ☐ I am the Custodian

Name of Legal Representative (Please Print) Signature Date

Name of Representative (Please Print) Signature Date

Revised October 28, 2016

Open the Central Repository Home Page to start the Form Submission Process

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Resubmit by Email

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information -- Please Print

First Name: Eric | MI: H | Last Name: Petr

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ☐ | US Mail ☐ | On-Site Inspect ☐ | Fax ☐ | E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] | Date: 04/06/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached document.

APR 06 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

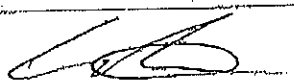
Records Provided

5910

Custodian Signature | Date

04/06/2017

On 03/16/17 I hand delivered an OPRA request to the Morristown Clerks Office. I handed the request to Robin Kesselmeyer who hand delivered the request to Kevin Harris the same day in his office. I am requesting again, I be provided with a copy of every Morristown Bureau of Police outside overtime book, commonly referred to as the "REDBOOK", from 01/01/2006 thru today's date of 04/06/2017.



Eric Petr

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependant upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I want a copy of the Morristown Bureau of Police overtime Book/ledger (Commonly referred to as The Red Book) for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through todays date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

SCIARRA & CATRAMBONE, L.L.C.
Jeffrey D. Catrambone, Esq.
Attorney I.D. 024491996
1130 Clifton Avenue
Suite #3 - Second Floor
Clifton, NJ 07013
(973) 242-2442
Attorneys for Plaintiff Eric Petr

ERIC PETR, Plaintiff, v. TOWN OF MORRISTOWN, Defendant.	CIVIL ACTION SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MORRIS COUNTY DOCKET NO. MRS-L-_____-17 VERIFIED COMPLAINT *ACTION IN LIEU OF PREROGATIVE WRITS* OPEN PUBLIC RECORDS ACT ("OPRA")

Plaintiff Eric Petr ("Plaintiff" or "Petr"), by way of Verified Complaint for a Summary Action, against Defendant Town of Morristown ("Defendant"), herein alleges as follows:

INTRODUCTION

1. This matter is brought under the New Jersey Open Public Records Act ("OPRA"), *N.J.S.A.* 47:1A-1 *et seq.* Defendant Town of Morristown ("Defendant") is a governmental entity and is thus subject to OPRA.

2. Plaintiff files the within Complaint as an Action in Lieu of Prerogative Writs, pursuant to R. 4:69-1 *et seq.* and as a summary action pursuant to R. 4:67-1 *et seq.* An Order to Show Cause is being filed herewith.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to N.J.S.A. 47:1A-6. Pursuant to that provision of OPRA, this matter shall proceed in a summary manner. Venue is properly laid in County of Morris.

COUNT ONE
(Request # 6314)

4. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 1***.

5. That request for records is as follows: *"[c]opies of all electronic communication, written communication and recorded telephonic communications between the Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund."*

6. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT TWO
(Request # 6315)

7. On September 13, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records is attached hereto as ***Exhibit 2***.

8. That request for records is as follows: *"[c]opies of all monthly statements for Account #7-12-0287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened."*

9. Defendant has been required, since in or about 2005, to maintain this account for replacement of marked Police vehicles, with the funds to be derived from the $10.00 per hour fee assessed by Defendant for payment by third party contractors for outside details which Morristown Police officers work.

10. Defendant provided no formal response to this request. Pursuant to N.J.S.A. 47:1A-5i, failure to respond to an OPRA request shall be deemed a denial. Thus, Defendant denied Plaintiff's valid request for government records, in violation of OPRA.

COUNT THREE
(Request # 6424)

11. On October 20, 2017, Plaintiff made a request for government records pursuant to the OPRA statute. A copy of that request for records and Defendant's response thereto dated October 27, 2017 is attached hereto as ***Exhibit 3***.

12. That request for records is as follows: *"Copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers ...,"* with a list of all police vehicle identification numbers being specifically identified and listed in Plaintiff's request.

13. By way of response dated October 27, 2017, Defendant stated that the request "does not identify with reasonable clarity the records sought." *(See Ex. 3 hereto, letter from Town Clerk to Plaintiff dated October 27, 2017).*

14. Defendant's denial of Plaintiff's valid OPRA request is without merit. Thus, Defendant's denial of Plaintiff's access to the records is in violation of OPRA.

15. Additionally, with regard to Request # 6314 (Count One) and Request # 6315 (Count Two), on or about October 5, 2017 Plaintiff appeared at the Town Clerk's Office to inquire as to the status of these requests, as he had not received a response.

16. At that time, an unidentified member of the Town Clerk's office staff provided to Plaintiff two documents attached hereto as ***Exhibit 4***, one entitled "General Ledger Detail Inquiry" and the other being what appears to be an internal email exchange.

17. These documents do not constitute a formal or complete request to Plaintiff's OPRA requests, but nonetheless belie any anticipated argument by Defendant as to those requests for

government records being valid under OPRA, thereby requiring a formal and complete production of those government records. The informal production of these documents (*see Ex. 4 hereto*) constitute Defendant's admission that all records sought are subject to full disclosure under OPRA.

WHEREFORE, Plaintiff seeks judgment against Defendant from this Court under the OPRA statute, N.J.S.A. 47:1A-1 *et seq.*, as follows:

A. Ordering that Defendant comply with Plaintiff's OPRA requests dated September 13, 2017 and October 20, 2017 and thereby produce all records responsive to that request;

B. Ordering an award of attorneys fees to Plaintiff pursuant to OPRA as a prevailing requestor pursuant to N.J.S.A. 47:1A-6;

C. Ordering an assessment of civil penalties and the imposition of disciplinary proceedings pursuant to N.J.S.A. 47:1A-11; and

D. Granting such other relief as the court deems equitable and just.

VERIFICATION

Eric Petr, of full age, hereby swears and/or affirms that the factual allegations of this Verified Complaint are true to the best of my knowledge and based upon the information available to me.

Eric Petr

Subscribed and sworn to before me this 1 day of November 2017.

Notary Public

MICHELE D. FERDINANDO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2347498
My Commission Expires 7/25/2021

DESIGNATION OF TRIAL COUNSEL

Please take notice that Jeffrey D. Catrambone, Esq. is hereby designated as trial counsel for Plaintiff in this matter, pursuant to Rule 4:25-4.

Respectfully submitted,
Sciarra & Catrambone, LLC
Attorneys for Plaintiff

By: _____
Jeffrey D. Catrambone

Dated: November 2, 2017

CERTIFICATION PURSUANT TO RULE 4:5-1

Following my initial review of this matter, it appears that there are no other persons who should be joined as parties. Further, this matter is not the subject of any other court or administrative proceedings other than those indicated herein.

The above statements are true and correct to the best of my knowledge, information and belief.

_____
Jeffrey D. Catrambone

Dated: November 2, 2017

Exhibit 1

Submit by Email

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC | MI: H | Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

SEP 13 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filed - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6314

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all electronic communication, written communication and recorded telephonic communications between The Town of Morristown Law Enforcement Officials and the Town of Morristown Administration and finance departments regarding the IRS Equitable Sharing Fund. To include all bank statements, accounting spreadsheets and all approvals and/or requests for expenditure by law enforcement officials for the monies received and expended from the IRS Equitable Sharing Fund.

Exhibit 2

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN.

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: Sep 13, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheet.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress		Open
Denied	–	Closed
Filed		Closed
Partial	–	Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

0315

Custodian Signature Date

Eric Petr OPRA request 09/13/2017

I would like copies of all monthly statements for Account #7-12-287-55-000-016 (Reserve for purchase of police vehicles) since the account was opened.

Exhibit 3

3

THE TOWN OF MORRISTOWN.

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: OCTOBER 20, 2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached sheets.

N

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

OCT 20 2017

TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

In Progress – Open
Denied – Closed
Filed – Closed
Partial – Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

6424

Custodian Signature Date

Eric Petr OPRA request October 20th, 2017 Page 1

I would like copies of the purchase orders, to include the source of funding, and all sales invoices for the below list of Vehicle Identification Numbers.

2FAHP71WX7X117682

2FAHP71W37X117664

2FAHP71W17X117663

2B3KA43H26H429872

1FM5K8ARXEGB90797

1FM5K8AR6FGB83363

2B3AA4CV2AH303103

2FAFP71W47X127420

1FM5K8AR1EGB85424

2C3CDXAG0DH584348

2B3AA4CV8AH303106

2C3CDXAG2DH584347

2FAFP71W06X106675

2B3AA4CV4AH303104

2B3AA4CV6AH303105

2B3AA4CVXAH303107

1D4HB48N66F152541

1FM5K8AR8FGB83364

1FAHP2MK1FG170038

1FAHP2MKXFG170037

1D4HB48N26F148891

2FAFP74WXWX169679

~~2FAFP74W61X195530~~

1FM5K8D85FGA45994

1D4HB48N46F148692

1FBNE31L56DB18083

1FM5K8D89DGB71479

1FMJU1J54DEF54879

1FMJU1G54DEF53626

1FM5K8D85EGA04103

1FAHP2MK1FG187771

1FAHP2MK9FG162012

THE TOWN OF
MORRISTOWN

OFFICE OF THE TOWN CLERK
Kevin D. Harris - Town Clerk
Robin J. Kesselmeyer - Deputy Town Clerk

VIA ELECTRONIC MAIL

October 27, 2017

Mr. Eric Petr
163 Mount Kemble Ave.
Morristown, NJ 07960

Localpba43@gmail.com

Re: Town of Morristown Response to OPRA Request #6424

Dear Mr. Peter,

On October 20, 2017, you submitted a request for access to government records under the Open Public Records Act, N.J.S.A. 47:1A et seq., for information stated below. Please understand that your request does not comply with OPRA standards. We are willing to produce documents if you can clarify with specificity what documents you need. As we have repeatedly stated, OPRA is not designed to be an open-ended search of agency files nor is it intended as a research tool to force the Town to identify and siphon useful information. We would be pleased to work with you to narrow down your request and make it more specific.

Request: "Per attached OPRA 6424"

Response: The request does not identify with reasonable clarity the records sought pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In Mag Entertainment, the Court held that OPRA is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Id. **The Court further held that under "OPRA, agencies are required to disclose only identifiable government records . . . OPRA does not countenance open-ended searches of an agency's files." Id. At 549. Further, in Bent the Court held that "a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent v. Stafford Police Department, 381 N.J. Super. at 37.**

If you have any questions or comments, please feel free to contact our office at anytime. Thank you.

Respectfully,

Kevin D. Harris
Town Clerk

cc: Vij Pawar, Esq.

Exhibit 4

G/L Acct No: 7-12-287-55-000-016
Description: RESERVE FOR PURCHASE OF POLICE VEHICLES Type: Liability
Starting Date: 0 Ending Date: 09/19/17

Date	Description	Amount		Balance	
01/05/16	Add Acct New: 0.00	0.00	Db	0.00	Cr
01/06/17	Change To Open Bal Old: 0.00 New: 5709.04	5,709.04	Cr	5,709.04	Cr
02/06/17	Change To Open Bal Old: 5709.04 New: 5599.78	109.26	Db	5,599.78	Cr
03/29/17	Manual Entry reclass from 12/23/16 Post Ref: G 8714 2	19,559.22	Cr	25,159.00	Cr
03/29/17	Reimbursement reclass veh admin per brandy Post Ref: B 2238 1	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 1	44,547.50	Db	25,159.00	Cr
06/01/17	Expenditure RECLASS POLICE OUTSIDE VEHICLE FEE TO CF Post Ref: B 2251 2	44,547.50	Cr	69,706.50	Cr
06/01/17	Expenditure OUTSIDE DUTY VEHICLE FEES TO REIM PD OE Post Ref: G 8883 4	44,547.50	Db	25,159.00	Cr
06/14/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18935 61	3,432.50	Cr	28,591.50	Cr
06/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 18999 61	1,975.00	Cr	30,566.50	Cr
07/10/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19037 61	1,495.00	Cr	32,061.50	Cr
07/20/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19230 61	1,075.00	Cr	33,136.50	Cr
07/27/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19252 61	2,650.00	Cr	35,786.50	Cr

Date	Description	Amount		Balance	
08/04/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19330 61	5,080.00	Cr	40,866.50	Cr
08/16/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19350 61	860.00	Cr	41,726.50	Cr
08/25/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19418 61	2,605.00	Cr	44,331.50	Cr
09/06/17	Cash Receipt CS/CK OUTSIDE POLICE SERVICES - VEHICLE Post Ref: R 19488 61	2,380.00	Cr	46,711.50	Cr

Steffanie Morales

From: Frank Mason
Sent: Tuesday, September 19, 2017 11:17 AM
To: Steffanie Morales
Cc: Vij Pawar
Subject: RE: for your review
Attachments: 6315 police vehicle.pdf

See attached for 6315.

6314 - bank statements and expenditures can be printed, just need a time frame.

Frank Mason
Chief Financial Officer
Town of Morristown
973-292-6661

From: Steffanie Morales
Sent: Thursday, September 14, 2017 12:01 PM
To: Frank Mason <f-mason@townofmorristown.org>
Subject: FW: for your review

See vij's response below

From: Vij Pawar [mailto:vpawar@pgrlawyers.com]
Sent: Thursday, September 14, 2017 11:57 AM
To: Steffanie Morales <s-morales@townofmorristown.org>
Subject: RE: for your review

6315 is fine
6314 is too broad especially on correspondence. Ask finance if there is a easy way to provide the IRS Equitable Sharing Fund details he is looking for.

From: Steffanie Morales [mailto:s-morales@townofmorristown.org]
Sent: Thursday, September 14, 2017 11:35 AM
To: Vijayant Pawar (vpawar@pgrlawyers.com) <vpawar@pgrlawyers.com>
Subject: for your review

Regards,

Steffanie Morales

Town of Morristown
Town Clerk's Office
200 South Street
P.O. Box 914
Morristown, New Jersey 07963-0914

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002369-17

Case Caption: PETR ERIC VS TOWNSHIP OF MORRISTOWN
Case Initiation Date: 11/02/2017
Attorney Name: FRANK CARMEN CIOFFI
Firm Name: SCIARRA & CATRAMBONE
Address: 1130 CLIFTON AVE
CLIFTON NJ 070130000
Phone:
Name of Party: PLAINTIFF : Petr, Eric
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)

11/02/2017
Dated

/s/ FRANK CARMEN CIOFFI
Signed

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information -- Please Print

First Name: Eric MI: H Last Name: Petr

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: 04/06/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached document.

APR 06 2017

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information

Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost

Total
Deposit
Balance Due
Balance Paid

Records Provided

5910

Custodian Signature Date

04/06/2017

On 03/16/17 I hand delivered an OPRA request to the Morristown Clerks Office. I handed the request to Robin Kesselmeyer who hand delivered the request to Kevin Harris the same day in his office. I am requesting again, I be provided with a copy of every Morristown Bureau of Police outside overtime book, commonly referred to as the "REDBOOK", from 01/01/2006 thru today's date of 04/06/2017.

Eric Petr

Submit by email

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I want a copy of the Morristown Bureau of Police overtime Book/ledger (Commonly referred to as The Red Book) for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through todays date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

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Total
Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

THE TOWN OF MORRISTOWN

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6638 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

THE TOWN OF MORRISTOWN

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: ERIC MI: H Last Name: PETR

E-mail Address: ericp155@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown State: NJ Zip: 07960

Telephone: +1 (973) 647-0018 FAX:

Preferred Delivery: Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: Date: 03/16/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I would like a copy of all Morristown Bureau of Police outside work contracts utilized by officers to get paid by outside contractors for all Morristown Police Officers for the following years: 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 through today's date.

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance
Deposit Date

AGENCY USE ONLY

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Partial - Closed

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Deposit
Balance Due
Balance Paid

Records Provided

Custodian Signature Date

04/06/2017

On 03/16/17 I hand delivered an OPRA request to the Morristown Clerks Office. I handed the request to Robin Kesselmeyer who hand delivered the request to Kevin Harris the same day in his office. I am requesting again, I be provided with a copy of every Morristown Bureau of Police "outside work contract" for every Morristown Police Officer from 01/01/2006 thru today's date of 04/06/2017.

Eric Petr

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Submit by Email

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: Eric | MI: H | Last Name: Petr

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ☐ | US Mail ☐ | On-Site Inspect ☐ | Fax ☐ | E-mail ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I *HAVE / HAVE NOT* been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] | Date: 04/06/2017

Payment Information

Maximum Authorization Cost $

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

See attached document.

RECEIVED

APR 06 2017

TOWN OF MORRISTOWN

AGENCY USE ONLY

Est. Document Cost
Est. Delivery Cost
Est. Extras Cost
Total Est. Cost
Deposit Amount
Estimated Balance

Deposit Date

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open
Denied - Closed
Filled - Closed
Partial - Closed

AGENCY USE ONLY

Tracking Information
Tracking #
Rec'd Date
Ready Date
Total Pages

Final Cost
Total
Deposit
Balance Due
Balance Paid

Records Provided

5909

Custodian Signature | Date

TOWN OF MORRISTOWN

OPEN PUBLIC RECORDS ACT REQUEST FORM

200 SOUTH STREET, PO BOX 914
MORRISTOWN, NJ 07963-0914
PHONE 973-292-6636 FAX 973-644-4374
KEVIN D. HARRIS, TOWN CLERK
TOWNCLERK@TOWNOFMORRISTOWN.ORG

Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name: Eric | MI: H | Last Name: Petr

E-mail Address: localpba43@gmail.com

Mailing Address: 163 Mount Kemble Avenue

City: Morristown | State: NJ | Zip: 07960

Telephone: +1 (973) 647-0018 | FAX:

Preferred Delivery: Pick Up ____ ☐ US Mail ____ ☐ On-Site Inspect ____ ☐ Fax ____ ☐ E-mail ____ ☒

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I ***HAVE / HAVE NOT*** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature: [signature] Date: 3/30/17

Payment Information

Maximum Authorization Cost $ ____

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Please see the 4th page

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

I would like copies of vehicle maintenance records and associated costs for the maintenance for all Morristown Bureau of Police vehicles from 1/1/2006 through 3/30/17.

AGENCY USE ONLY

Est. Document Cost ____
Est. Delivery Cost ____
Est. Extras Cost ____
Total Est. Cost ____
Deposit Amount ____
Estimated Balance ____

Deposit Date ____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

RECEIVED
MAR 3 0 2017
TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

	In Progress	Open
Denied	-	Closed ____
Filled	-	Closed ____
Partial	-	Closed ____

AGENCY USE ONLY

Tracking Information

Tracking # ____
Rec'd Date ____
Ready Date ____
Total Pages ____

Final Cost

Total ____
Deposit ____
Balance Due ____
Balance Paid ____

Records Provided

5885

Custodian Signature ____ Date ____