

Law Offices of
Walter M. Luers, LLC
105 Belvidere Ave.
P.O. Box 527
Oxford, New Jersey 07863
Telephone: 908.453.2147
Facsimile: 908.453.2164
wluers@luerslaw.com

May 17, 2010

Walter M. Luers, Esq.*

*Also admitted in New York

VIA HAND DELIVERY

Deputy Clerk of the Superior Court
Superior Court of New Jersey – Law Division
Local Filing Office
Mercer County Civil Courts
175 South Broad Street
Trenton, New Jersey 08650

Re: *John Paff v. Department of Law and Public Safety – Division on Civil Rights, et al.*

Dear Sir or Madam:

We represent Plaintiff John Paff in this action and, on his behalf, enclose for filing the following documents: (1) Original and two copies of Verified Complaint and Case Information Statement; (2) original of the Certification of Walter M. Luers; (3) original of the Certification of Facsimile Signature of Walter Luers; (4) filing fee of \$230; (5) original Letter Brief; (5) three copies of Order to Show Cause; and (6) three copies of our proposed order.

Because this matter alleges a violation of the Open Public Records Act, we respectfully request that this matter be assigned to Judge Feinberg.

If you have any questions, kindly contact us.

Respectfully submitted,

Walter M. Luers

LAW OFFICES OF WALTER M. LUERS, LLC
105 Belvidere Avenue
P.O. Box 527
Oxford, New Jersey 07863
Telephone: 908.453.2147
Facsimile: 908.453.2164
Attorneys for John Paff

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| <p>JOHN PAFF, Plaintiff, v. DEPARTMENT OF LAW AND PUBLIC SAFETY – DIVISION ON CIVIL RIGHTS, and PHILIP E. FREEMAN in his official capacity as Assistant Director/Custodian of Records, Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY</p> <p>DOCKET NO. _____</p> <p>CIVIL ACTION</p> <p>VERIFIED COMPLAINT</p> |
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Plaintiff John Paff, through his undersigned counsel Law Offices of Walter M. Luers, LLC, complaining of the Defendant, alleges as follows:

1. This is an action alleging a violation Open Public Records Act, *N.J.S.A.* 47:1A-1, *et seq.* (“OPRA”).
2. This action is being brought because the Defendant has denied access to a list of discrimination complaints filed with it during the month of August 2009.

THE PARTIES

3. Plaintiff Paff is a citizen of the State of New Jersey and a resident of Franklin Township, Somerset County, New Jersey.
4. Defendant Department of Law and Public Safety – Division on Civil Rights (“Division”) is a public agency whose principal office is located at 140 East Front Street, 5th Floor, Trenton, New Jersey 08625-0089.

5. Defendant Division is a “public agency” as that term is defined by OPRA, *N.J.S.A. 47:1A-1.1*.

6. Defendant Freeman is the “Custodian of a government record” for Defendant Division as that term is defined by OPRA, *N.J.S.A. 47:1A-1.1*.

7. On information and belief, Defendant Freeman’s principal office is located at 140 East Front Street, 5th Floor, Trenton, New Jersey 08625-0089.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction of this action pursuant to *N.J.S.A. 47:1A-6* and the common law.

9. Venue is proper in this Court pursuant to *R. 4:3-2(a)(2)* because the Defendant Division is a public agency located in Mercer County, and most of the events described herein occurred in Mercer County.

FACTUAL ALLEGATIONS

10. On March 18, 2010, Plaintiff submitted an OPRA request to the Division via the State of New Jersey’s centralized on-line OPRA request website. The confirmation number for Plaintiff’s OPRA request is W49487.

11. In that OPRA request, Plaintiff requested copies of a “computerized list, perhaps in Excel format, of complaints that are received either directly by the Division or through ‘dual filing’ from the EEOC.” Plaintiff requested that the list show complaints received during the month of August 2009. Finally, Plaintiff requested that he be furnished with all fields in the list.

12. Initially, the seven-business day period for the Division to respond to Plaintiff’s OPRA request lapsed, and the Division did not respond.

13. Subsequently, Plaintiff contacted Defendant Freeman, who advised Plaintiff that the Division had no record of Mr. Paff's March 18, 2010 OPRA request. Mr. Paff sent Defendant Freeman another copy of his original OPRA request.

14. On April 1, 2010, the Division denied access to the documents requested by Mr. Paff because Mr. Paff was "not a party in any case you are requesting information."

15. On April 9, 2010, Mr. Paff wrote to Mr. Freeman and objected to the denial. Mr. Paff noted that Mr. Freeman's denial of access did not contain any citation to any case, law, rule or regulation, and Mr. Paff requested that Mr. Freeman either provide a citation as the basis for his denial or provide copies of the requested records.

16. On April 22, 2010, Mr. Freeman again denied access to the records sought by Mr. Paff, citing "N.J.S.A. 47:1A-1.1 #10." Although N.J.S.A. 47:1A-1.1 does not contain any consecutively numbered exceptions to OPRA, it does list exceptions to disclosure. The tenth listed exception is "security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software." This exception clearly seems inapplicable.

17. Mr. Paff seeks disclosure of these records because he is gathering information regarding discrimination complaints filed against local municipal governments and agencies in New Jersey. Mr. Paff requires that information to learn the outcomes of those complaints and determine whether and how much those local municipal governments and agencies paid in settlements or judgments on those complaints.

18. Once Mr. Paff gains information about municipal settlements, he posts them on a blog that he has maintained and regularly updated since December 2008. Mr. Paff's

blog is located at <http://njcivilsettlements.blogspot.com>, which shows "settlements paid by New Jersey government agencies and their insurers to those who have sued them."

19. Mr. Paff's interest in gaining access to a list of complaints filed with the Division outweighs any interest in confidentiality that the Division may have in keeping that list secret. Mr. Paff also typically provides information regarding settlements to local journalists, who then frequently report those settlements.

COUNT I: VIOLATION OF OPRA

20. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-19 of Plaintiff's Complaint as though fully set forth at length herein.

21. Defendants have violated OPRA by not providing copies of the documents requested by Plaintiff.

COUNT II: VIOLATION OF COMMON LAW RIGHT OF ACCESS

22. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-21 of Plaintiff's Complaint as though fully set forth at length herein.

23. Plaintiff has a common law right of access to receive copies of the documents requested.

24. Plaintiff has a legitimate interest in the requested records.

25. Defendants have no legitimate interest in maintaining the secrecy of these documents.

26. Therefore, Defendants have violated Plaintiff's common law right of access.

WHEREFORE, Plaintiffs respectfully request that this Court enter Judgment against the Defendants:

- A. Ordering Defendants to provide copies of the requested documents, subject to any redactions that may be required by the Court;
- B. Awarding Plaintiff costs and reasonable attorneys' fees; and
- C. For such other or further relief as this Court deems just and equitable.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

CERTIFICATION PURSUANT TO R. 1:38-7(b)

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.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Walter M. Luers, Esq. is designated as trial counsel on behalf of Plaintiff.

Respectfully submitted,

LAW OFFICES OF WALTER M. LUERS, LLC

DATED: May 17, 2010

By: _____

Walter M. Luers, Member
105 Belvidere Avenue
P.O. Box 527
Oxford, New Jersey 07863
Telephone: 908.453.2147
Facsimile: 908.453.2164

VERIFICATION

John Paff, of full age, certifies as follows:

1. I am the Plaintiff in the action captioned “John Paff v. Department of Law and Public Safety – Division on Civil Rights, *et al.*” All of the facts stated in the verified complaint to which this Verification is attached are true, and as to those facts that are alleged on information and belief, I believe those facts to be true.

2. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

John Paff

Dated: May 16, 2010

LAW OFFICES OF WALTER M. LUERS, LLC
105 Belvidere Avenue
P.O. Box 527
Oxford, New Jersey 07863
Telephone: 908.453.2147
Facsimile: 908.453.2164
Attorneys for Plaintiff John Paff

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| <p>JOHN PAFF, Plaintiff, v. DEPARTMENT OF LAW AND PUBLIC SAFETY – DIVISION ON CIVIL RIGHTS, and PHILIP E. FREEMAN in his official capacity as Assistant Director/Custodian of Records, Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY</p> <p>DOCKET NO. _____</p> <p>CIVIL ACTION</p> <p>ORDER TO SHOW CAUSE</p> |
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THIS MATTER being brought before the Court by Law Offices of Walter M. Luers, LLC, attorneys for Plaintiff John Paff, seeking relief by way of summary action pursuant to *R. 4:67-1(a)*, based upon the facts set forth in the verified complaint filed herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to *N.J.S.A. 47:1A-6* and for good cause shown,

IT IS on this _____ day of May, 2010 *ORDERED* that the Defendants Department of Law and Public Safety – Division on Civil Rights and Philip E. Freeman appear and show cause on the ____ day of _____, 2010 before the Honorable Linda R. Feinberg, A.J.S.C., Superior Court, at Mercer County Civil Courts, 175 South Broad Street, Trenton, New Jersey at __ o'clock in the _____ noon or as soon thereafter as counsel can be heard, why judgment should not be entered:

- A. Ordering Defendants to provide copies of the requested documents, subject to any redactions that may be required by law;
- B. Awarding Plaintiff costs and reasonable attorneys' fees; and

C. For such other or further relief as this Court deems just and equitable.

And it is further *ORDERED* that:

1. A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon the Defendants personally or by certified mail, return receipt requested, within __ days of the date hereof, in accordance with *R. 4:4-3* and *R. 4:4-4*, this being original process.

2. The Plaintiff must file with the Court his proof of service of the pleadings on the Defendants no later than three (3) days before the return date.

3. Defendants shall file and serve a written answer and opposition papers to this order to show cause and the relief requested in the verified complaint and proof of service of the same by _____, 2010. The answer and opposition papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge Linda R. Feinberg, A.J.S.C.

4. The Plaintiff must file and serve any written reply to the Defendants' order to show cause opposition by _____, 2010. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge Linda R. Feinberg, A.J.S.C.

5. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with

return address and postage) must be submitted to the Court no later than three (3) days before the return date.

7. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer and opposition papers and proof of service before the return date of the order to show cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a \$135 filing fee payable to the “Treasurer State of New Jersey.” You must also send a copy of your answer and opposition papers to the Plaintiff’s attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer and opposition papers (with the fee) or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. 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 list of these numbers is also provided.

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

LINDA R. FEINBERG, A.J.S.C.

LAW OFFICES OF WALTER M. LUERS, LLC
105 Belvidere Avenue
P.O. Box 527
Oxford, New Jersey 07863
Telephone: 908.453.2147
Facsimile: 908.453.2164
Attorneys for Plaintiff John Paff

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|--|---|
| <p>JOHN PAFF, Plaintiff, v. DEPARTMENT OF LAW AND PUBLIC SAFETY – DIVISION ON CIVIL RIGHTS, and PHILIP E. FREEMAN in his official capacity as Assistant Director/Custodian of Records, Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY</p> <p>DOCKET NO. _____</p> <p>CIVIL ACTION</p> <p>CERTIFICATION OF WALTER M. LUERS</p> |
|--|---|

WALTER M. LUERS, of full age, hereby certifies and says:

1. I am an attorney licensed to practice law in the State of New Jersey and I am a member of the firm of Law Offices of Walter M. Luers, LLC, attorneys for Plaintiff John Paff. I am fully familiar with the facts set forth herein and make this Certification in support of Plaintiff's Order to Show Cause.

2. Annexed hereto as Exhibit 1 are true and correct copies of (1) Plaintiff's March 18, 2010 OPRA request to Defendants; (2) Defendants' April 1, 2010 correspondence to Plaintiff; (3) Plaintiff's April 9, 2010 correspondence to Defendants; and (4) Defendants' April 22, 2010 correspondence to Plaintiff.

3. The foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: May 17, 2010

WALTER M. LUERS

njhome | grc home | OPRANJ [OPRA central]

search OPRA

OPRA | New Jersey
Open Public Records Act

state of new jersey

about OPRA | about GRC | state request form | state services index | department/agency index | state faqs

The following Request for Information has been forwarded to the
Division on Civil Rights in the **Department of Law and Public Safety**.

Your confirmation number is **W49487**. Please write this number down or print this page as a reference.

Requestor Information**Payment Information**

| | | | |
|------------------------------------|------------------|------------------|------------------|
| First Name | MI | Last Name | |
| John | | Paff | |
| Company | | | |
| Mailing Address | | | |
| PO Box 5424 | | | |
| City | State | ZIP | |
| Somerset | New Jersey | 08875 - | |
| Email | | | |
| paff@pobox.com | | | |
| Day Time Telephone: | Area Code | Number | Extension |
| | 732 | 873 - 1251 | |
| Preferred Delivery: US Mail | | | |

Maximum Authorized Cost:
\$ 7

Payment Method:
Check

Fees: **Pages 1-10** **@ \$0.75**
 Pages 11-20 **@ \$0.50**
 Pages 21 - **@ \$0.25**

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

Extras: Extraordinary service fees
 dependent upon request.

Under penalty of N.J.S.A. 2C:28-3, I certify that I **Have Not** been convicted of any indictable offense under the laws of New Jersey, or any other state, or in United States.

Record Request Information:

Background: My understanding is that whenever the Equal Employment Opportunity Commission (EEOC) receives a complaint that is covered by New Jersey's anti-discrimination laws, the EEOC "dual files" the complaint with the New Jersey Division on Civil Rights (the Division). Conversely, whenever the Division receives a complaint that is also covered by federal anti-discrimination laws, the Division "dual files" the charge with the EEOC. Thus, regardless of whether the Division or the EEOC initially receives the complaint, the Division ultimately gets a copy of it. I am attempting to gather a list of anti-discrimination complaints and their outcomes filed against New Jersey local governments, including municipalities, counties, school boards, fire districts and other authorities and instrumentalities. I have no interest in anti-discrimination complaints filed against nongovernmental parties. I do not know if information regarding these complaints is public from the moment of filing or if there is some initial confidentiality that disappears at some point in the process. Also, I do not know how the Division retains its records so it somewhat challenging for me to make this request because I don't know exactly what I am asking for. It is not my intent to make fulfilling this request any more difficult than it needs to be, so if there is an easier way for me to get the information I want, I would greatly appreciate it if someone

from the Division would contact me. I would then be more than happy to withdraw the present request and refile one that is easier to fulfill. Records Requested: I imagine that the Division maintains some sort of computerized list, perhaps in Excel format, of complaints that are received either directly by the Division or through "dual filing" from the EEOC. Perhaps there are two lists, one for the complaints directly received and another that comes through the EEOC. I further imagine that there are several fields of data for each complaint, including things like "complainant name," "respondent name," "EEOC number," "Date filed" etc. I would like this (these) list(s), with all available data fields, to the extent that they show complaints received during the month of August 2009. I would like to receive this (these) list(s) electronically by e-mail, or on a CD if e-mailing them is not possible. Again, please call me at 732-873-1251 if there is an easier way for me to get this information. I clicked "US Mail" on your form only because your form does not show my preferred method of receiving this information.

[privacy notice](#) | [legal statement](#)



CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
TRENTON, NJ 08625-0089

PAULA T. DOW
ATTORNEY GENERAL

CHINH Q. LE, ESQ.
DIRECTOR

April 1, 2010

John Paff
PO Box 5424
Somerset, New Jersey 08875

RE: OPRA Request #W49487

Dear Mr. Paff:

Please be advised that your request to obtain records in connection with the above-mentioned request has been denied, in that you are not a party in any case you are requesting information. We sincerely apologize for not being able to fulfill this request. Therefore, we will close our records accordingly that this request has been "denied closed".

Thank you for contacting the NJ Division on Civil Rights.

Sincerely,

Philip E. Freeman
Assistant Director/Custodian of Records

ADDRESS REPLY TO:

Bureau of Policy
P.O. Box 089
Trenton, NJ 08625-0089
609-984-7091

Mediation Unit
P.O. Box 46001
Newark, NJ 07102
973-648-2700

Bureau of Enforcement

Atlantic City Office
26 S. Pennsylvania Ave. 3rd Fl.
Atlantic City, NJ 08401
609-441-3100

Camden Office
One Port Center
2 Riverside Drive
Suite 402
Camden, NJ 08103
856-614-2550

Newark Office
P.O. Box 46001
Newark, NJ 07102
973-648-2700

Paterson Office
100 Hamilton Plaza, 8th Fl.
Paterson, NJ 07505-2109
973-977-4500

Trenton Office
PO Box 090
Trenton, NJ 08625-0090
609-292-4605

Centralized Intake Bureau
P.O. Box 089
Trenton, NJ 08625-0089
609-292-2918

Housing Investigations Unit
PO Box 090
Trenton, NJ 08625-0090
609-292-4605



John Paff

P.O. Box 5424
Somerset, NJ 08875-5424
E-mail – paff@pobox.com
April 9, 2010

Telephone – 732-873-1251

Fax – 908-325-0129

Philip E. Freeman, Custodian of Records
Division on Civil Rights
P.O. Box 089
Trenton, NJ 08625-0089

RE: OPRA request No. W49487

Dear Mr. Freeman:

I am in receipt of your April 1, 2010 denial of my OPRA request. Your stated reason for denial was that “[I am] not a party in any case [I am] requesting information.”

I was expecting something along the lines of a statutory or N.J.A.C. citation that showed that I was not entitled to the requested records. If you had provided me with such a citation, I could look up the law and satisfy myself that you were correct.

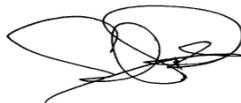
But, just telling me that I’m not entitled to the records because I am not a party does not, in my view, satisfy your duty to give me a specific, lawful reason as to why access is denied.

Suppose I were to have asked the Superior Court for civil lawsuits—which are clearly public records—and they responded that my request was denied because I wasn’t a party to any of the suits I asked for. What sense could I make of that response?

In sum, if there is a statute, rule or other authority that justifies your denial, please provide a citation to it. If there is not, please provide access to the requested records.

Thank you for your attention to this matter. I consider this matter open and await your reply.

Sincerely,



John Paff



CHRIS CHRISTIE
GOVERNOR

KIM GUADAGNO
LT. GOVERNOR

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
TRENTON, NJ 08625-0089

PAULA T. DOW
ATTORNEY GENERAL

CHINH Q. LE, ESQ.
DIRECTOR

April 22, 2010

John Paff
PO Box 5424
Somerset, New Jersey 08875

RE: OPRA Request #W49487

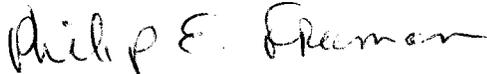
Dear Mr. Paff:

Please be advised that your request to obtain records in connection with the above-mentioned request has been denied, in that you are not a party in any case you are requesting information. Specifically, please refer to statute N.J.S.A. 47:1A-1.1 #10.

We sincerely apologize for not being able to fulfill this request. Therefore, we will close our records accordingly that this request has been "denied closed".

Thank you for contacting the NJ Division on Civil Rights.

Sincerely,


Philip E. Freeman
Assistant Director/Custodian of Records

ADDRESS REPLY TO:

- Bureau of Policy**
P.O. Box 089
Trenton, NJ 08625-0089
609-984-7091
- Mediation Unit**
P.O. Box 46001
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973-648-2700
- Bureau of Enforcement**
- Atlantic City Office**
26 S. Pennsylvania Ave. 3rd Fl.
Atlantic City, NJ 08401
609-441-3100
- Camden Office**
One Port Center
2 Riverside Drive
Suite 402
Camden, NJ 08103
856-614-2550
- Newark Office**
P.O. Box 46001
Newark, NJ 07102
973-648-2700
- Paterson Office**
100 Hamilton Plaza, 8th Fl.
Paterson, NJ 07505-2109
973-977-4500
- Trenton Office**
PO Box 090
Trenton, NJ 08625-0090
609-292-4605
- Centralized Intake Bureau**
P.O. Box 089
Trenton, NJ 08625-0089
609-292-2918
- Housing Investigations Unit**
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wluers@luerslaw.com

May 17, 2010

Walter M. Luers, Esq.*

*Also admitted in New York

Honorable Linda R. Feinberg, A.J.S.C.
Superior Court – Law Division
Mercer County Civil Courts
175 South Broad Street
Trenton, New Jersey 08650

Re: *John Paff v. Department of Law and Public Safety – Division on Civil Rights, et al.*

Dear Judge Feinberg:

We represent Plaintiff John Paff in this action initiated via verified complaint and order to show cause summary proceeding against Defendants Department of Law and Public Safety – Division on Civil Rights (“Division”) and Philip E. Freeman in his official capacity as Assistant Director/Custodian of Records. This action was brought because Defendants have denied Plaintiff access to a listing of discrimination complaints filed with the Division during the month of August 2009. According to the regulations that implement New Jersey’s Law Against Discrimination, *N.J.S.A. 10:5-1, et seq.*, the public may inspect and copy verified complaints, answers, final dispositions and the dispositions of any motions made during a case. *N.J.A.C. 13:4-13.3*. Therefore, a listing of discrimination complaints filed with the Division merely represents a compilation of information that is available to the public. For these reasons, which are set forth below in more detail below, the Court should order disclosure of the requested documents.

The facts, documents and relevant correspondence supporting Plaintiff's application are set forth in the enclosed Verified Complaint and Certification of Walter M. Luers, and we will not repeat them wholesale here.

This Action Should Proceed in a Summary Manner

"A person who is denied access to a government record by the custodian of the record, . . . may institute a proceeding to challenge the custodian's decision by filing an action in Superior Court." *N.J.S.A. 47:1A-6*. Once instituted, "[a]ny such proceeding shall proceed in a summary or expedited manner." *Id.* Here, because OPRA authorizes actions under it to proceed in a summary manner, the order to show cause should be granted so this matter may proceed in a summary manner. *R. 4:67-2(a)*.

This action involves one OPRA claim and an identical claim under the common law right of access. The claim is that Defendants have not provided copies of a listing of discrimination complaints filed with the Division during August 2009. Because Plaintiff's claims are based on documentary evidence that has been submitted to the Court, the facts underlying this action cannot reasonably be disputed. We do not anticipate that any discovery will be required. Any factual issues that may arise can be resolved by evidence submitted through certifications or affidavits by the parties. Therefore, in light of the foregoing and the Legislature's directive that OPRA actions proceed in a summary manner, we request that the Court sign the Order to Show Cause so that this action may proceed in a summary manner.

Open Public Records Act Claim

As the Court knows, the Open Public Records Act ("OPRA") mandates that "government records shall be readily accessible for inspection, copying, or examination by the

Hon. Linda R. Feinberg, A.J.S.C.
May 17, 2010
Page 3 of 7

citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded [under OPRA] as amended and supplemented, shall be construed in favor of the public's right of access." *Libertarian Party of Cent. New Jersey v. Murphy*, 384 N.J. Super. 136, 139 (App. Div. 2006) (citing N.J.S.A. 47:1A-1). "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) (quoting *Asbury Park Press v. Ocean County Prosecutor's Office*, 374 N.J. Super. 312, 329 (Law Div. 2004).

Here, Plaintiff seeks a listing of each complaint filed with the Division during the month of August 2009. (Verified Complaint ¶ 11). In his OPRA request, Plaintiff observed that such complaints may be received directly by the Division or may be received from the Equal Opportunity Employment Commission. (Verified Complaint ¶ 11).

Defendants denied access to the listing, on the basis that Mr. Paff was "not a party in any case you are requesting information." (May 17, 2010 Certification of Walter M. Luers, Exhibit 1 – April 22, 2010 Correspondence from Philip E. Freeman to John Paff). While the Division's "investigatory files" are confidential, N.J.A.C. 13:4-13.1. "Investigatory files" are defined as "all pleadings, dispositions and orders relating to verified complaint and all materials, documents, notes, statements, communications, including electronic communications, and recorded proceedings made or received by the Division during the course of the Division's investigation of the verified complaint." N.J.A.C. 13:4-1.4. However, non-parties are entitled to copies of certain categories of Division documents, including verified complaint, answer, final disposition of the case, and the disposition of any motion made during the case. N.J.A.C. 13:4-13.3.

In denying access to the list sought by Mr. Paff, Defendants have not claimed that the requested applications are not public records. *N.J.S.A. 47:1A-1.1* (broadly defining public records as “any paper, written or printed . . . document . . . that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof[.]”). Based on this broad definition of public records, a listing of complaints filed with the Division would be a “public record.” To the extent that the Division contends any such list is not a public record, the burden is on the Division to prove that the list is not a public record *and* that the denial of access was authorized by law. *N.J.S.A. 47:1A-6*.

Here, Mr. Paff is merely requesting a compilation of information that is already public. A compilation or list of the complaints filed with the Division would reflect the same information as if Mr. Paff sought copies of all of the complaints filed with the Division during the same time period.

Common Law Right of Access

If the Court were to determine that the records requested by Mr. Paff are not public records or are exempt from disclosure under the Open Public Records Act, we request that the requested documents be disclosed pursuant to the common law right of access. “Nothing contained in [OPRA] shall be construed as limiting the common law right of access to a government record, including criminal investigatory records of a law enforcement agency.” *N.J.S.A. 47:1A-8*; *see also North Jersey Media Group Inc. v. State, Dep’t of Personnel*, 389 N.J. Super. 527, 536 (Law. Div. 2006); *Bergen County Improvement Auth. v. N. Jersey Media Group, Inc.*, 370 N.J. Super. 504, 516 (App. Div. 2004). The right of access under the common law is broader than under OPRA. *North Jersey Media Group*, 389 N.J. Super. at 537.

The records sought here are public records because they would have been created by a public official in the course of their duties. *Higg-A-Rella, Inc. v. County of Essex*, 141 N.J. 35, 46 (1995) (defining a common-law record as one that is made by a public official in the exercise of their public function, either because the record was required or directed by law to be made or kept, or because it was filed in a public office). Mr. Paff has standing to request a list of complaints filed during the month of August 2009. “A citizen, and the press on its behalf, does not have to prove any personal interest in order to satisfy the common law standing requirement.” *Daily Journal v. Police Dep’t of City of Vineland*, 351 N.J. Super. 110, 122 (App. Div. 2002). Here, Mr. Paff’s interest in the requested documents is more particularized than a mere general interest. Mr. Paff gathers and posts information about municipal settlements of complaints and lawsuits on his blog, which he has maintained since December 2008. (Verified Complaint ¶ 18). Once Mr. Paff learns that a complaint has been filed against a municipal agency, he then seeks any settlement agreements that the municipality may have entered into. Mr. Paff then transmits information that he learns to local media, who frequently write stories regarding those settlements. (Verified Complaint ¶ 19).

After determining whether the documents requested are public records and determining Mr. Paff’s interest in them, the Court must determine whether Mr. Paff’s interest in disclosure outweighs Defendants’ interest in confidentiality. In weighing whether disclosure outweighs confidentiality, New Jersey courts have weighed several factors, including

- (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;
- (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance

that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decisionmaking will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policy-makers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials. *Id.* at 123.

All of these factors either weigh in favor of disclosure or disclosure. Regarding the first factor, Mr. Paff seeks information – the names of complaints and the municipalities against whom they have been filed – that is already available to the public. Therefore, no agency function can be impeded because those who file complaints with the Division know that the public will have access to their complaints. Regarding the second factor, to the extent that any person provided information in a verified complaint pursuant to *N.J.A.C.* 13:4-2.10 (complaints involving minors), the information regarding minors may be redacted or a pseudonym used. *N.J.A.C.* 13:4-13.3. Regarding the third factor, the information requested is not relevant to any agency decisionmaking that could be chilled by disclosure. Regarding the fourth factor, the requested information does not implicate any evaluative reports of policy makers. Regarding the fifth and sixth factors, these factors are neutral because disclosure of the names of complainants cannot implicate any agency actions, especially when the underlying documents – the verified complaints – are themselves subject to public disclosure.

Hon. Linda R. Feinberg, A.J.S.C.
May 17, 2010
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Award of Reasonable Attorneys' Fees

If the Court orders Defendants' to produce the documents at issue, the Court should find that Plaintiff is the prevailing party and, under OPRA's fee-shifting provision, award Plaintiff a reasonable attorneys' fee and costs. (*N.J.S.A. 47:1A-11*).

Respectfully submitted,

Walter M. Luers

LAW OFFICES OF
WALTER M. LUERS, LLC
105 Belvidere Avenue
P.O. Box 527
Oxford, New Jersey 07863
Telephone: 908.453.2147
Facsimile: 908.453.2164
Counsel for Plaintiff John Paff

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| <p>JOHN PAFF, Plaintiff, v. DEPARTMENT OF LAW AND PUBLIC SAFETY – DIVISION ON CIVIL RIGHTS, and PHILIP E. FREEMAN in his official capacity as Assistant Director/Custodian of Records, Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY</p> <p>DOCKET NO. _____</p> <p>CIVIL ACTION</p> <p>ORDER</p> |
|--|--|

THIS MATTER having been brought before the Court pursuant to *R. 4:67-1(a)* by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC by Verified Complaint and Order to Show Cause for an Order requiring Defendants Department of Law and Public Safety – Division on Civil Rights and Philip E. Freeman to provide Plaintiffs with copies of certain documents, and the Court having considered the papers submitted by the parties, and heard oral argument on _____, 2010; and for good cause appearing,

IT IS on this ___ day of _____, 2010

A. **ORDERED** that Defendants shall provide Plaintiff with the documents requested in Plaintiff's March 18, 2010 OPRA request, which is a list of all discrimination complaints filed with the Division on Civil Rights during the month of August 2009. The documents shall be provided to Plaintiff either via electronic mail or on a CD or DVD; and it is further

B. **ORDERED** that Plaintiff John Paff is the prevailing party in this matter and shall submit any bill of costs or petition for attorney's fees within 20 days after service of this order; and it is further

C. **ORDERED** that Plaintiff serve a copy of this Order upon Defendants within seven days of service of this Order.

LINDA R. FEINBERG, A.J.S.C.

OPPOSED _____

UNOPPOSED _____

LAW OFFICES OF WALTER M. LUERS, LLC
 105 Belvidere Avenue
 P.O. Box 527
 Oxford, New Jersey 07863
 Telephone: 908.453.2147
 Facsimile: 908.453.2164
 Attorneys for Plaintiff John Paff

CLERK OF SUPERIOR COURT
 SUPERIOR COURT OF N.J.
 MERCER COUNTY

A TRUE COPY

Sue Regan

SUE REGAN
 Deputy Clerk of Superior Court

MAY 18 2010

Sue Regan

SUE REGAN
 DEPUTY CLERK OF SUPERIOR COURT

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|---|---|
| <p>JOHN PAFF, Plaintiff, v. DEPARTMENT OF LAW AND PUBLIC SAFETY -- DIVISION ON CIVIL RIGHTS, and PHILIP E. FREEMAN in his official capacity as Assistant Director/Custodian of Records, Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY DOCKET NO. <u>MER-L-1224-10</u> CIVIL ACTION ORDER TO SHOW CAUSE</p> |
|---|---|

THIS MATTER being brought before the Court by Law Offices of Walter M. Luers, LLC, attorneys for Plaintiff John Paff, seeking relief by way of summary action pursuant to R. 4:67-1(a), based upon the facts set forth in the verified complaint filed herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for good cause shown,

IT IS on this 18th day of May, 2010 ORDERED that the Defendants Department of Law and Public Safety -- Division on Civil Rights and Philip E. Freeman appear and show cause on the 22nd day of June, 2010 before the Honorable Douglas Hurd ~~Linda R. Feinberg~~, J.S.C., Superior Court, at Mercer County Civil Courts, 175 South Broad Street, Trenton, New Jersey at 9 o'clock in the A.M. ~~noon~~ or as soon thereafter as counsel can be heard, why judgment should not be entered:

- A. Ordering Defendants to provide copies of the requested documents, subject to any redactions that may be required by law;
- B. Awarding Plaintiff costs and reasonable attorneys' fees; and

C. For such other or further relief as this Court deems just and equitable.

And it is further *ORDERED* that:

1. A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon the Defendants personally or by certified mail, return receipt requested, within 3 days of the date hereof, in accordance with *R. 4:4-3* and *R. 4:4-4*, this being original process.

2. The Plaintiff must file with the Court his proof of service of the pleadings on the Defendants no later than three (3) days before the return date.

3. Defendants shall file and serve a written answer and opposition papers to this order to show cause and the relief requested in the verified complaint and proof of service of the same by June 1, 2010. The answer and opposition papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge ^{Douglas HURD} ~~Linda R. Feinberg~~, J.S.C.

4. The Plaintiff must file and serve any written reply to the Defendants' order to show cause opposition by June 11, 2010. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge ^{Douglas HURD} ~~Linda R. Feinberg~~, J.S.C.

5. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with

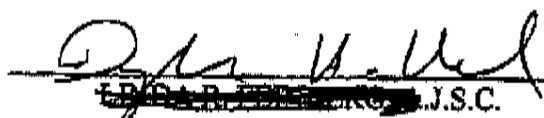
return address and postage) must be submitted to the Court no later than three (3) days before the return date.

7. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer and opposition papers and proof of service before the return date of the order to show cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a \$135 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer and opposition papers to the Plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer and opposition papers (with the fee) or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. 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 list of these numbers is also provided.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the Court and parties are advised to the contrary no later than 3 days before the return date.


~~EDGAR R. BREWER~~ J.S.C.

DOUGLAS H. HURD, J.S.C.