

Richard Gutman
Richard Gutman, P.C.
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Montclair, NJ 07043-1116
973-744-6038 (voice & fax)
rickggg@yahoo.com
Attorney for Plaintiff John Paff

JOHN PAFF,	:	
	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	ESSEX COUNTY
v.	:	DOCKET NO.
	:	
TOWNSHIP OF BLOOMFIELD,	:	Civil Action
Defendant.	:	

VERIFIED COMPLAINT

Plaintiff John Paff, by way of complaint against the Township of Bloomfield, states as follows:

1. This is an action under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-6, and the common law right of access to public records, seeking public access to an email from Essex County Prosecutor's Office Detective John Campo to Bloomfield Township Councilperson Patricia Spychala.

2. Plaintiff John Paff is an individual residing at 1605 Amwell Road, Somerset, New Jersey, 08873.

3. The Township, located in Essex County, is a political subdivision of the State of New Jersey.

4. On April 28, 2010, John Paff requested a copy of a November 5, 2009, email from Detective Campo to Councilwoman Spychala. (Pa4.)

5. On May 10, 2010, Bloomfield Municipal Clerk Louise M.

Palagano denied Paff access to the requested email, stating "[i]n reviewing recent information provided by the GRC as guidance, as well as the specific facts of this record, I am denying the above item due to NJSA 47:1A-1.1, attorney-client privilege." (Pa5.)

First Count
(Denial of Open Public Records Act Access)

6. The Township's denial of access to the email violated OPRA, N.J.S.A. 47:1A-1 to -11.

WHEREFORE, Plaintiff Paff demands judgment against the Township as follows:

A. A declaration that the Township violated OPRA by denying Paff access to the requested email;

B. An order that the Township grant Paff access to the requested email;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

Second Count
(Denial of Common Law Access)

7. Plaintiff repeats the allegations stated above as if set forth at length herein.

8. The public's need for access to this email of possible misconduct by a councilperson is greater than the Township's need for secrecy.

9. The Township's denial of access to the requested record

violated the common law right of access to public records.

WHEREFORE, Plaintiff Paff demands judgment against Township as follows:

A. A declaration that the Township violated the common law right of access by denying Paff access to the requested email;

B. An order that the Township grant Paff access to the requested email;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

Respectfully submitted,

Richard Gutman

May 19, 2010

Designation of Trial Counsel

Plaintiff designates Richard Gutman as trial counsel in this action.

Certification Pursuant to R. 4:5-1(b)

Plaintiff certifies that the matter in controversy is not the subject of any other action pending in any court or arbitration proceeding and that he is not contemplating any other action or arbitration proceeding regarding the subject matter of this action. Plaintiff is not aware of any other party that should be joined in this action.

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.

May 19, 2010

Richard Gutman

Certification of John Paff

I, John Paff, hereby certify and say as follows:

1. I am the plaintiff in John Paff v. Township of Bloomfield.

2. I have personal knowledge of the facts alleged in the Complaint and Brief.

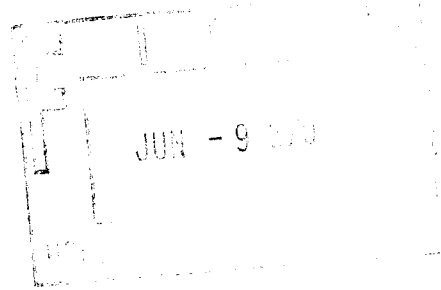
3. The factual allegations of the Complaint and Brief are true.

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.

Executed on May ____, 2010.

John Paff

Richard Gutman
 Richard Gutman, P.C.
 55 Warfield Street
 Montclair, NJ 07043-1116
 973-744-6038 (voice & fax)
 rickggg@yahoo.com
 Attorney for Plaintiff John Paff



JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
v.	:	ESSEX COUNTY
TOWNSHIP OF BLOOMFIELD,	:	DOCKET NO.
Defendant.	:	Civil Action
	:	ORDER TO SHOW CAUSE
	:	SUMMARY ACTION

THIS MATTER being brought before the Court by Richard Gutman, attorney 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 the Open Public Record Act, N.J.S.A. 47:1A-6, and for good cause shown.

IT IS on this 9 day of June, 2010, ORDERED that the defendant Township of Bloomfield appear and show cause on the 23rd day of July, 2010 before the Superior Court at the Essex County civil courthouse in Newark, New Jersey at 10 o'clock in the AM ~~noon~~, or as soon thereafter as counsel can be heard, why judgment should not be entered for:

1. A declaration that the Township violated the Open Public

Records Act and the common law right of access to public records by refusing to provide Paff access to the requested email;

2. An order that the Township grant Paff access to the requested email;

3. An award of costs and attorney's fees; and

4. Such other relief as the Court deems equitable and just.

And it is further ORDERED that:

1. A copy of this order to show cause, verified complaint, brief and all supporting affidavits or certifications submitted in support of this application be served upon the defendant personally within 5 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 defendant no later than three (3) days before the return date.

3. Defendant shall file and serve a written answer to this order to show cause and the relief requested in the verified complaint and proof of service of the same by June 28 2010. The answer 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 _____

Rothschild

4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by July 19

_____, 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 Rothschild.

5. If the defendant does 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. Defendant, 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 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 \$135.00 filing fee payable to the "Treasurer

State of New Jersey." You must also send a copy of your answer, 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 (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.

Jan S. Rothchild, Jr.

Richard Gutman
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rickggg@yahoo.com
Attorney for Plaintiff John Paff

JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION, CIVIL PART
Plaintiff,	:	ESSEX COUNTY
	:	DOCKET NO.
v.	:	
	:	
TOWNSHIP OF BLOOMFIELD,	:	Civil Action
Defendant.	:	
	:	RICHARD GUTMAN CERTIFICATION

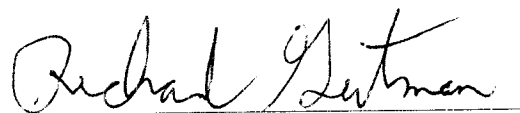
I, Richard Gutman, hereby certify and say as follows:

1. I am the attorney for plaintiff in John Paff v. Township of Bloomfield.

2. All attached documents are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents.

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.

Executed on May 19, 2010.


Richard Gutman

From: Danielle Christiano
To: Bonnie Triola,
Subject: Hire Legal Defense for Council
Date: Monday, November 16, 2009 2:33:09 PM

nope use this corrected copy. Thanks

2009 RESOLUTION – AUTHORIZATION TO HIRE LEGAL DEFENSE

WHEREAS, the Essex County Prosecutor’s Office has started a civil investigation into an alleged violation by the Township of the Open Public Meetings Act; and

WHEREAS, the Township Risk Manager, Lawrence Graham, has discussed the above reference matter with the Township Council and has recommended that all Council members that are questioned hire legal counsel to provide them with advice for the investigation in order to insure both they and the Township are protected in those matters; and

WHEREAS, in accordance with Chapter 16, Defense and Indemnification, of the Township Code, the Council has agreed to reimburse the any Council member for his/her reasonable attorney’s fees incurred, as long as at the conclusion of the proceedings the requirements of Section 16-2, Civil Actions, and Section 16-4, Limitations on defense and indemnification, have been met; and

WHEREAS, the Director of Finance has certified that funding is available to reimburse all Council members for the reasonable legal expenses he/she incurs in the above referenced matter.

NOW, THEREFORE, BE IT RESOLVED, that the Council of the Township of Bloomfield, County of Essex, State of New Jersey, hereby acknowledges that the Council has agreed to reimburse any Council member for the reasonable attorney’s fees he/she incurs in the above referenced matter, as long as at the conclusion of the proceedings the requirements of Section 16-2, Civil Actions, and Section 16-4, Limitations on defense and indemnification, have been met.

* * *

I hereby certify that the above resolution was duly adopted by the Mayor and Council of the Township of Bloomfield at a meeting of said Township Council held on November 16, 2009

Municipal Clerk of the Township of Bloomfield

Mayor of the Township of Bloomfield

ROLL CALL VOTE

MAYOR & COUNCIL	YES	NO	ABSTAIN	ABSENT
COUNCILWOMAN MALY				
COUNCILMAN JOANOW				
COUNCILMAN RUANE				
COUNCILWOMAN BARKER				
COUNCILWOMAN SPYCHALA				
COUNCILMAN HAMILTON				
MAYOR McCARTHY				

O:\Resolutions\2009 resolutions\Hire Legal Defense for Council.doc

Men in uniform support suits
Thursday, November 19, 2009
BY JEFF FRANKEL
Bloomfield Life
OF BLOOMFIELD LIFE

A packed chamber and several strongly-worded speeches attest to the strong support among law enforcement for BPD Capt. Christopher Goul and Detective John Sierchio, plaintiffs in the pending lawsuit against the township. Above, Bloomfield PBA Local #32 President Joe Corio speaks before the township council about the union's intent to back the plaintiffs.

Nearly a hundred police officers from Bloomfield and surrounding municipalities crammed into the council chambers and adjacent hallway Monday night in support of two officers who are suing the township and Police Chief Mark Leonard.

During the hour-long public comment portion of the Nov. 16 township council meeting, a slew of police voiced support for the officers. The nine-count civil action filed in Newark's Federal Court alleges that Leonard retaliated against officers and used ethnic slurs against one member of the force. The lawsuit also demands that Leonard be removed from his position.

The suit, involving Detective John Sierchio, state delegate to PBA (Police Benevolent Association) Local #32, and Bloomfield Police Department (BPD) Capt. Christopher Goul, alleges that Leonard referred to Sierchio as "Johnny Fontaine," a character from the movie The Godfather, and as "Johnny Olive Oil," both because of Sierchio's Italian-American heritage.

The suit also alleges that Goul is the rightful police chief, alluding to him scoring highest on a civil service test administered to him and Leonard before the latter was named chief via a 4-3 township council vote Feb. 2. Leonard replaced Michael Sisco.

Both Sierchio and Goul are represented by Anthony Toscano, a Caldwell lawyer who specializes in police litigation. Toscano previously said Goul is seeking \$750,000 in damages, while Sierchio is suing for up to \$1 million.

And a new bombshell was dropped that night, in the form of another pending lawsuit: Attorney Gina Mendola Longarzo of the Law Offices of Gina Mendola Longarzo, LLC, Madison, said her client, BPD Sgt. Joe Krentz, intends to file a lawsuit, though she did not specify the purpose. Attempts to contact Longarzo were not immediately returned Nov. 17.

"All the people on the council, and you know who you are, you will be brought to justice," said Mendola Longarzo to the council. "Look long and hard on how you used your authority in this town."

From the onset, the township and council have remained silent on the issue. Mayor Ray McCarthy and councilmen Bernard Hamilton and Robert Ruane have offered statements to Toscano as testimony, yet have otherwise remained muted.

By a 4-3 decision, the township will reimburse council members for all legal fees pertaining to an Essex County Prosecutor's Office civil investigation into an alleged Open Public Meetings Act violation earlier this year. Lawrence Graham, the township's risk manager, recommended that all council members hire legal counsel. This stems from an allegation that several council members met with Leonard before he was named chief. The council's legal representation against the Sierchio/Goul lawsuit will be provided for them and will not cost council members their own money, said Township Attorney Brian Aloia.

Councilwomen Pat Barker, Pat Spychala and Janice Maly and Councilman Nick Joanow voted in favor of the reimbursement, while McCarthy, Hamilton and Ruane voted against.

Highlighting all the alleged wrongdoings, PBA Local #32 President Joe Corio dubbed the council's latest actions "questionable," and said the council has refused to sit down and work out an agreement.

"As a resident, I ask you to fix our broken police department and return it to the best department in the state," said Corio.

Not all PBA members are in support of the lawsuit: In a letter sent to Bloomfield Life and others last week, Sgt. Michael Frazzano blasted Sierchio for his actions and even criticized his personal life. A 32-year veteran of the force, Frazzano served eight years as PBA Local #32 president and 18 years as chairman of PBA #32's Superior Officers Association.

Frazzano's letter reads: "Sierchio claims in his lawsuit that his 'police work record is impeccable,' that he has 'earned the respect of law enforcement statewide' and his 'reputation for honesty, truth and veracity are well known and unsurpassed.' In reality, Sierchio has attempted to use his position as an elected union official to influence council decisions to favor him and his political allies. I fully expect Sierchio to attempt to bring me up on PBA charges and throw me out of the PBA Local #32 for my part in writing this letter and exposing some of these secrets about him, but everything in this letter is a fact."

Silent since Leonard was selected by the council in February, the Bloomfield GOP also lent criticism of the council, saying politics got involved where it shouldn't have.

"This could have been avoided," said Bloomfield Republican Chairman Luis Linares after the meeting. "Like we said from the beginning, if politics were left out, the police chief (would be Goul)."

41 Nutley resident and Millburn PBA Local #34 President Gino Baldani condemned the alleged racial slurs. An Italian-American himself, Baldani said no one should put up with workplace discrimination.

"How can the police chief make racist remarks against his employees?" Baldani asked.

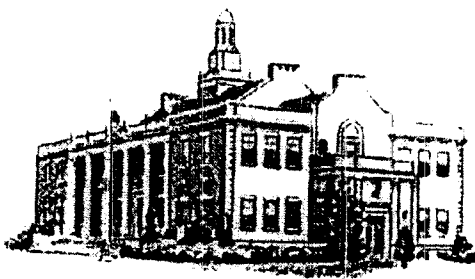
E-mail: frankel@northjersey.com

A packed chamber and several strongly-worded speeches attest to the strong support among law enforcement for BPD Capt. Christopher Goul and Detective John Sierchio, plaintiffs in the pending lawsuit against the township. Above, Bloomfield PBA Local #32 President Joe Corio speaks before the township council about the union's intent to back the plaintiffs.

DALE MINCEY/BLOOMFIELD LIFE

LOUISE M. PALAGANO
Municipal Clerk

BONITA L. TRIOLA
Deputy Municipal Clerk



Telephone
(973) 680-4015
Fax
(973) 680-0048

TOWNSHIP OF BLOOMFIELD

Bloomfield, New Jersey 07003-3487

March 6, 2010

Dear Mr. Paff,

I am in possession of your OPRA request dated February 19, 2010. In response to your request, we have the following documents:

A letter from Edward J. Kologi, Esq. Dated February 12, 2009, addressed to Brian Aloia, Esq, Township Attorney for Bloomfield.

An email from Brian Aloia to Fred Carr, Township Administrator dated February 19, 2010.

An email from Detective Campo, Essex County Prosecutor's Office to Councilwoman Pat Spsychala dated November 5, 2009.

Same email forwarded to Brian Aloia on November 5, 2009 and again forwarded to Ed Kologi, Esq.

An email from Brian Aloia to Ed Kologi dated February 3, 2010.

An email from Brian Aloia to Danielle Christiano dated February 19, 2010 regarding Frankel OPRA request, forwarded to Fred Carr, Bonnie Triola and Andrea Barba.

The above items cannot be released due to N.J.S.A. 47:1A-1.1 These items are considered to be Attorney-Client Privilege.

If you have any questions please feel free to call me at 973-680-4006.

Sincerely,

Frederick C. Carr
Township Administrator
Township of Bloomfield

OPRA Request

Township of Bloomfield

Submitted on 04/28/10 via E-Mail to btriola@bloomfieldtwpnj.com

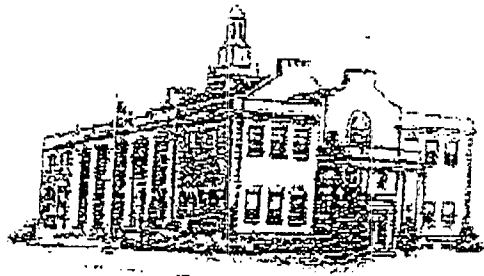
To the Custodian of Records: Please accept this as my request for government records. Please note that the Open Public Records Act (OPRA) is not the only basis for my request. I claim entitlement to the records sought under both OPRA and the Common Law right of access.

Requestor's Name: John Paff
Address: DO NOT use regular mail – Please use e-mail or fax
Phone: 732-873-1251
FAX: 908-325-0129
E-Mail: paff@pobox.com

Records Requested:

Mr. Carr's March 6, 2010 letter to me referred to "an email from Detective Campo . . . to Councilwoman Spsychala dated November 5, 2009 . . ." I would like a copy of this e-mail.

LOUISE M. PALAGANO
Municipal Clerk



Telephone
(973) 680-4015
Fax
(973) 680-0048

TOWNSHIP OF BLOOMFIELD
Bloomfield, New Jersey 07003-3487

May 10, 2010

Mr. John Paff

Faxed 908-325-0129

Dear Mr. Paff:

This is in response to your April 29th OPRA Request whereby you are requesting an email from Detective Campo...to Councilwoman Spychala dated November 5, 2009...."

In reviewing recent information provided by the GRC as guidance, as well as the specific facts of this record, I am denying the above item due to NJSA 47:1A-1.1, attorney-client privilege.

If you have any questions or need to contact me, please call 973-680-4191.

Sincerely,

Louise M. Palagano
Municipal Clerk

JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	ESSEX COUNTY
v.	:	DOCKET NO.
	:	
TOWNSHIP OF BLOOMFIELD,	:	Civil Action
Defendant.	:	

Brief of John Paff in Support of Order to Show Cause

Richard Gutman
Richard Gutman, P.C.
55 Warfield Street
Montclair, NJ 07043-1116
973-744-6038 (voice & fax)
rickggg@yahoo.com
Attorney for Plaintiff John Paff

May 19, 2010

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Statement of Facts

On November 5, 2009, Essex County Prosecutor's Office Detective John Campo sent an email to Bloomfield Township Councilperson Patricia Spychala. The same day she forwarded a copy of the email to Township Attorney Brian Aloia and Ed Kologi, Esq. (Pa6.)

Eleven days later the Township Council passed a resolution to reimburse any Council member his or her attorney's fees incurred because of a civil investigation by the Essex County Prosecutor's Office into an alleged violation by the Township of the Open Public Meetings Act. (Pa1.)

On April 28, 2010, John Paff requested under the Open Public Records Act and the common law right of access to public records a copy of an email from Detective Campo to Councilwoman Spychala dated November 5, 2009, (Pa7), referred to in a March 6, 2010 letter to Paff from Bloomfield Township Administrator Frederick C. Carr. (Pa7.)

On May 10, 2010, Bloomfield Municipal Clerk Louise M. Palagano denied Paff access to the requested email, stating "[i]n reviewing recent information provided by the [Government Records Council] as guidance, as well as the specific facts of this record, I am denying the above item due to NJSA 47:1A-1.1, attorney-client privilege. (Pa8.)

I. Paff Has a Statutory OPRA Right of Access

A. Both OPRA and the Attorney-Client Privilege Require That the Privilege be Narrowly Interpreted and That the Township Bear the Burden of Proof

The purpose of the attorney-client privilege is "to encourage clients to make full disclosure to their attorneys" because that relationship requires free discussion. Macey v. Rollins Environmental Services, 179 N.J. Super. 535, 539 (App. Div. 1981). However, like all evidentiary privileges, the attorney-client privilege can conflict with other important policies of our judicial system. Fellerman v. Bradley, 99 N.J. 493, 502 (1985). In particular, the privilege results in the suppression of evidence "and to that extent is at war with the truth." United Jersey Bank v. Wolosoff, 196 N.J. Super. 553, 561 (App. Div. 1984). The attorney-client privilege "is therefore to be strictly limited to the purposes for which it exists." In re Selser, 15 N.J. 393, 405 (1954).

A similar narrow construction is required by OPRA. The Legislature wrote OPRA to favor public access to government records rather than government secrecy. OPRA requires that "government records shall be readily accessible," and that the records "be subject to public access unless exempt from such access by" a specific exemption. N.J.S.A. 47:1A-1. Therefore, OPRA expressly requires that "any limitations on the right of access accorded

by [OPRA] shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1. Asbury Park Press v. County of Monmouth, 406 N.J. Supp. 1, 8 (App. Div. 2009) (trial court erred by failing to "follow this express policy directive of the Legislature to construe limitations narrowly").

Because of those policy considerations, the party asserting the attorney-client privilege has the burden of proving that each requirement for the existence of the privilege has been satisfied. Matter of Grand Jury Subpoenas Duces Tecum Served by Sussex County Grand Jury on Farber, 241 N.J. Super. 18, 34 (App. Div. 1989). OPRA places the same burden of proof upon any government agency denying access to records. "The public agency shall have the burden of proving that the denial of access is authorized by law." N.J.S.A. 47:1A-6. The government agency in possession of the requested record bears the burden of proof because only the government agency knows the facts as to the content of the record and the surrounding factual circumstances.

B. Township Has Burden of Proving That the Attorney-Client Privilege Applies to This Communication From a Detective to a Councilperson

New Jersey Rule of Evidence 504 and N.J.S.A. 2A:84A-20 set forth three requirements for the existence of the lawyer-client privilege: The communication must have been made (1) "between lawyer and his [or her] client," (2) "in the course of that relationship" and (3) "in professional confidence." United

Jersey Bank v. Wolosoff, 196 N.J. Super. 553, 562 (App. Div. 1984) ("the privilege accords the shield of secrecy only with respect to confidential communications made within the context of the strict relation of attorney and client").

If the party claiming the attorney-client privilege fails to prove that the communication satisfies each of those required characteristics, then the privilege does not apply. As one court has stated,

in meeting its burden, the public body may not simply treat the words "attorney-client privilege" or "legal advice" as some talisman, the mere utterance of which magically casts a spell of secrecy over the documents at issue. Rather, the public body can meet its burden only by providing some *objective* indicia that the exemption is applicable under the circumstances. (emphasis in original)

Illinois Education Association v. Illinois State Board of Education, 791 N.E.2d 522, 531 (Ill. 2003)

An attorney-client relationship between Detective Campo and Councilperson Spychala is far from self-evident. Nor is either identified as an attorney in the Township's response to Paff's record request. (Pa8.)

II. Paff Has a Common Law Right of Access

A. Applicability of an OPRA Exemption Would Not "Affect [] in Any Way" Common Law Right of Access

Assuming arguendo that the requested email is OPRA exempt,

that status would not affect in any way Paff's common law right of access.

New Jersey provides access to public records in three distinct ways: OPRA, the common law right of access to public records and litigation discovery procedures. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 543 (App. Div. 2005). Records that are not available through one basis may be available through another. Id.

The presence of an OPRA exemption does not limit a record requestor's right of access under the common law. OPRA expressly states, "[n]othing contained in [OPRA] shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency" (emphasis added). N.J.S.A. 47:1A-1.

As the Appellate Division has stated,

We glean from this straightforward language a legislative mandate to review and determine a citizen's common law petition for access using judicially developed common law principles, without permitting any of the provisions in OPRA, including the exclusions enumerated in N.J.S.A. 47:1A-1.1, to heavily influence the outcome of the analysis.

[Bergen County Imp. Authority v. North Jersey Media Group, Inc., 370 N.J.Super. 504, 521 (App. Div. 2004)]

B. Public's Need to Know Regarding Alleged Township Violation of the Open Public Meetings Act Outweighs Government's Need for Secrecy

The common law right of access to public records is determined by balancing the requestors' need for the record versus the government's need for secrecy. Michelson v. Wyatt, 379 N.J. Super. 611, 624 (App. Div. 2005). The need of the record requestor can be either a personal interest or a public interest. "As one citizen or taxpayer out of many, concerned with a public problem or issue, he might demand and be accorded access to public records bearing upon the problem, even though his individual interest may have been slight." Irval Realty, Inc. v. Board of Pub. Util. Comm'rs, 61 N.J. 366, 372, (1972).

Here, the public's need for the requested records outweighs any Township need for secrecy. First, Paff is seeking information regarding government, not private, activity. Burnett v. County of Bergen, 198 N.J. 408, 435 (2009) (court recognizes distinction between seeking information "to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process," and seeking government information about private citizens).

Second, the strongest cases for the public interest are those in which the information will serve to inform the public about alleged misconduct by government employees. Kuehne

Chemical Co., Inc. v. North Jersey Dist. Water Supply Com'n, 300 N.J.Super. 433, 440-42 (App. Div. 1997) ("An interest in ensuring the public entity's compliance with applicable law is sufficient to satisfy the personal interest requirement.")

Circumstantial evidence indicates that the email sought here concerns alleged misconduct by the Township. Eleven days after Councilperson Sychala received the email from Essex County Prosecutor's Detective Campo, the Township stated in a resolution that "the Essex County Prosecutor's Office has started a civil investigation into an alleged violation by the Township of the Open Public Meetings Act." (Pa1.)

Whatever justification for secrecy may have once existed regarding the November 5, 2009 email disappeared after the Township on November 16, 2009, publicly disclosed the existence and nature of the investigation, (Pa1), which was then reported in a November 19, 2009, newspaper article. (Pa4.)

Respectfully submitted,

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