

John Paff

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May 12, 2010

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Internal Affairs Unit

Garwood Police Department
403 South Ave

Garwood, NJ 07027 (via e-mail only to L-DiStefano@garwood.org)

Dear Sir or Madam:

Please accept this letter as my Internal Affairs complaint against Chief William Legg.

Facts

1. I am the plaintiff in a civil case captioned Paff v. Borough of Garwood, Docket No. UNN-L-1089-10. The object of my suit, which is presently pending, is to gain access to a surveillance video showing former Garwood Police Officer Gennaro Mirabella in the Garwood Municipal Building on August 19, 2009.

2. On or about March 26, 2010, Chief Legg, as part of the Borough's defense against my suit, executed a "Certification"¹ a true copy of which (without attachment) is attached as Exhibit Pages 1 through 3. Notably, ¶ 6 of the "Certification" states "Additionally, the Borough's safe, in which important records and other materials are kept, is depicted in the video." This claim was made in support of the Borough's argument that disclosure of the requested video would jeopardize the security of the building and create a safety risk.

3. On April 30, 2010, I observed a hearing of my lawsuit before Hon. Kathryn A. Brock, J.S.C. in Elizabeth. During the proceeding, it became clear that Judge Brock accepted as true Chief Legg's assertion that the safe was depicted in the video and that her acceptance of his assertion impacted upon her decision-making in the case.

4. During the latter part of the hearing, Judge Brock and the two lawyers, Richard Gutman of Montclair and Robert Renaud of Cranford,

¹ I put "Certification" in quotes because the document signed by Chief Legg did not contain the language required to R.1:4-4(b). The absence of the required language was noted by my attorney and Judge Brock, and on May 11, 2010 Chief Legg submitted a revised Certification which included the required language. The revised Certification and the cover letter are attached as Exhibit Pages 4 through 7.

retired into a back room to view the August 19, 2009 recording that is the subject of my lawsuit.

5. The conversation that then took place between Judge Brock and the lawyers after they emerged from the back room made it clear that the Borough's safe, which Chief Legg claimed to have been visible on the video, was NOT visible on video. Instead, according to Judge Brock, the video showed Officer Mirabella enter an office, open a door to a closet or an adjoining room, look through and then close that door, walk to a desk and open its drawers and then leave the room. The door that Mirabella opened was apparently visible on the video but the camera was positioned such that one could not see into the room that was behind the door.

6. I will quote Mr. Renauld's explanation as to why Chief Legg stated that the safe was visible on the video as best as I can remember: "Even though you can't see the safe itself, I know that there is a safe behind the door that Mirabella opened, Chief Legg knows that there's a safe there and the Clerk knows that there's a safe there." Judge Brock responded "But, I would have never known there was a safe behind that door unless you had told me."

Argument

N.J.S.A. 2C:28-3 states:

a. Statements "Under Penalty." A person commits a crime of the fourth degree if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

b. In general. A person commits a disorderly persons offense if, with purpose to mislead a public servant in performing his function, he:

(1) Makes any written false statement which he does not believe to be true;

(2) Purposely creates a false impression in a written application for any pecuniary or other benefit, by omitting information necessary to prevent statements therein from being misleading;

(3) Submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(4) Submits or invites reliance on any sample, specimen, map, boundary-mark, or other object which he knows to be false.

c. Perjury provisions applicable. Subsections c. and d. of section 2C:28-1 and subsection c. of 2C:28-2 apply to the present section.

Here, Chief Legg submitted, on March 26, 2010, a false written statement which he did not believe to be true (i.e. that the safe was depicted on the video) to Judge Brock, a public servant, which resulted in Judge Brock being misled. Further, he resubmitted the same false statement "under penalty" to Judge Brock on May 11, 2010. Accordingly, Chief Legg violated N.J.S.A. 2C:28-3.

Page 11-5 of the Attorney General's Internal Affairs Policy & Procedures (Revised November 2000)² states:

Other policy requirements which the Attorney General has determined are critical in nature and must be implemented by every law enforcement agency include . . . where preliminary investigation indicates the possibility of a criminal act on the part of the subject officer, the county prosecutor must be notified immediately. No further action should be taken, including the filing of charges against the officer, until directed by the county prosecutor.

Since at least the "possibility of a criminal act" exists, Garwood's Internal Affairs Unit should immediately notify the Union County Prosecutor. If the Prosecutor declines to file charges, I would then request that the matter be investigated as an internal affairs matter. I reserve my right to take other action, such as filing a citizen complaint against Chief Legg in accordance with R.7:2-2(a)(1) or initiating contempt proceedings against him in accordance with R.1:10-2.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Paff', with a stylized, overlapping loop structure.

John Paff

² http://www.state.nj.us/lps/dcj/agguide/internalaffairs2000v1_2.pdf

PALUMBO & RENAUD, ESQS.
190 North Avenue East
Cranford, New Jersey 07016
(908) 272-9700
Attorneys for Defendant

_____	:	SUPERIOR COURT OF NEW JERSEY
JOHN PAFF,	:	LAW DIVISION – UNION COUNTY
	:	DOCKET NO. UNN-L-1089-10
	:	
Plaintiff,	:	Civil Action
	:	
vs.	:	CERTIFICATION
	:	
BOROUGH OF GARWOOD,	:	
	:	
Defendant,	:	
_____	:	

William Legg hereby certifies as follows:

1. I am the Chief of Police of the Borough of Garwood. I am personally familiar with the facts set forth in this Certification.
2. This Certification is submitted in response to a request by John Paff to obtain a copy of a DVD of video surveillance of offices of the Borough of Garwood which was taken on August 19, 2009.
3. The requested DVD is not a “government record” as defined in *N.J.S.A.* 47:1A-1.1 of the Open Public Records Act for several reasons.
4. The DVD is not a “government record” because it is a “criminal investigatory record.”

5. The Garwood Borough Clerk's Office is not under constant video surveillance. In order to conduct video surveillance to detect possible criminal activities, in an area of the Municipal building which is not open to the public it was necessary to establish and locate surveillance equipment. This video surveillance was established for the specific purpose of investigating possible crime. How, why and where the video surveillance was established are "security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software." These issues also involve emergency or security information or procedures for the municipal building which, if disclosed, would jeopardize security of the building or persons therein.

6. As indicated, the areas of the municipal building which are depicted in the video surveillance are areas which are not open to the public. One viewing the DVD would easily see where and how video surveillance was established and could, thereby, defeat same. Additionally, the Borough's safe, in which important records and other materials are kept, is depicted in the video. This is something which, if disclosed, would also jeopardize the security of the building and create a risk to safety.

7. With respect to the "criminal investigatory record" issue, the DVD constitutes a record of and evidence of the investigation of possible criminal activity. When the investigation was undertaken, it was not known what "grade" of crime would ultimately be charged, only that a criminal investigation was being undertaken. Additionally, my office referred the matter, including what was disclosed in the DVD, to the Union County Prosecutor's Office for the purpose of a possible further criminal investigation or criminal charges.

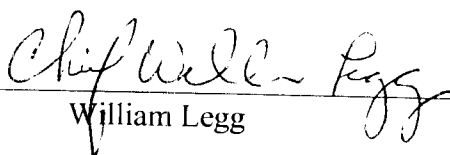
8. The fact that a disorderly persons offense or petty disorderly persons offense was

ultimately charged does not negate that a criminal investigation was undertaken. Additionally, investigation of events which ultimately result in disorderly persons or petty disorderly persons offenses being charged are still "criminal investigations."

9. Parenthetically, the DVD was not held by any non-law enforcement agency.

10. On or about March 15, 2010, I was served with the attached Order for Expungement dated March 5, 2010. As I understand the expungement law, I am not permitted to release any records pertaining to this case unless an order is issued under *N.J.S.A. 2C:52-9*.

11. This Certification is submitted for the purpose of opposition to the request under the Open Public Records Act for disclosure of the DVD of the video surveillance taken on August 19, 2009.



William Legg

Dated: March 26, 2010

PALUMBO & RENAUD
ATTORNEYS AT LAW

ANTHONY N. PALUMBO
MEMBER NJ, NY & TX BAR
ROBERT F. RENAUD
CERTIFIED BY THE SUPREME COURT OF
NEW JERSEY AS A CIVIL TRIAL ATTORNEY
CATHERINE M. DEAPPOLONIO
MEMBER NJ & NY BAR

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CRANFORD, NEW JERSEY 07016
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May 11, 2010

Hon. Kathryn A. Brock, J.S.C.
Union County Superior Court
Union County Court House
2 Broad Street
Elizabeth, NJ 07207

Re: Paff v. Borough of Garwood
Docket No. UNN-L-1089-10

Dear Judge Brock:

Enclosed please find Chief Legg's certification, which now has the appropriate certification language. This is in connection with the matter which is now deemed to be returnable on June 11, 2010. I understand that the matter will not actually be heard on that date, but June 11 is deemed to be the return date.

Very truly yours,

PALUMBO & RENAUD



Robert F. Renaud

RFR/kb
Enclosure
cc: Richard Gutman, Esq.

PALUMBO & RENAUD, ESQS.
190 North Avenue East
Cranford, New Jersey 07016
(908) 272-9700
Attorneys for Defendant

JOHN PAFF,

Plaintiff,

vs.

BOROUGH OF GARWOOD,

Defendant,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – UNION COUNTY
DOCKET NO. UNN-L-1089-10

Civil Action

CERTIFICATION

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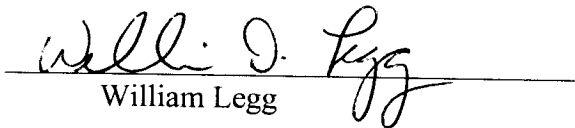
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I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


William Legg

Dated: March 26, 2010

UNION COUNTY PROSECUTOR'S OFFICE

**32 RAHWAY AVENUE
ELIZABETH, NEW JERSEY 07202-2155
(908) 527-4500
FAX: (908) 289-1267**

**THEODORE J. ROMANKOW
Prosecutor of Union County**

**ALBERT CERNADAS, JR.*
First Assistant Prosecutor**

**ANNE K. FRAWLEY*
Deputy First Assistant Prosecutor**

*** CERTIFIED CRIMINAL ATTORNEY**

July 30, 2010

Mr. John Paff
P.O. Box 5424
Somerset, N.J. 08875

Re: Allegations of unsworn falsification to authorities by Garwood Police Chief William Legg.

Dear Mr. Paff,

Please be advised that the Union County Prosecutor's Office has completed its investigation into the allegations you made against Garwood Police Chief William Legg. The results of this investigation was determined to be unfounded.

Should you have any questions regarding this matter, feel free to contact Sergeant Edward Koenig at (908) 527-4914.

Very truly yours,



Robert T. Buccino
Chief of Detectives

erk
c Richard M. Gutman, Esq.