

OPRA Request

City of Brigantine

Submitted on 07/13/10 via E-Mail to lsweeney@brigantinebeachnj.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 either for replying to this request or or sending me the responsive records.
Please use e-mail or fax instead.
Phone: 732-873-1251
FAX: 908-325-0129
E-Mail: paff@pobox.com

Background:

Attached is an April 15, 2010 two-page invoice regarding work done by the Archer & Greiner firm on a "Special Counsel Investigation." The invoice shows that nearly \$14,000 of public money was paid for an investigation, yet the invoice reveals nothing regarding the nature of the investigation, e.g. who or what was investigated, the reason why the investigation was undertaken, etc. The object of this request is to learn at least some of this information.

Records Requested:

1. The "correspondence from J. Barber" referenced in the 03/09/10 entry.
2. The "investigation memos" referenced in the 03/10/10 entry.
3. Any writing that identifies the employee with whom the meeting referenced in the 03/11/10 entry was held.
4. The "investigative report" that was produced in this matter.
5. The "agreement" referred to in the 03/25/10 entries.
6. The version of the "agreement" referred to in #5 above that was signed by all parties to it.

ARCHER & GREINER

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
ONE CENTENNIAL SQUARE
HADDONFIELD, NEW JERSEY 08033-0968
(856-795-2121)

JAMES BARBER, CITY MANAGER
CITY OF BRIGANTINE
CITY HALL
1417 W. BRIGANTINE AVE.
BRIGANTINE, NJ 08203-2186

Invoice Number: 1312184

Invoice Date: 04/15/10

Matter Number: BRI089.00806

CITY OF BRIGANTINE

T. A. Muccifori

Re: SPECIAL COUNSEL INVESTIGATION

FOR PROFESSIONAL SERVICES RENDERED THROUGH 03/31/2010 :

Date	Tkpr		Hours
03/09/10	SSH	Review correspondence from J. Barber.	0.10
03/10/10	SSH	Review investigation memos.	0.50
03/11/10	SSH	Meeting with employee re: personnel investigation.	1.60
03/12/10	SSH	Travel to/perform witness interviews for personnel investigation.	9.30
03/16/10	SSH	Meeting in Brigantine/interviews; review file notes/ conf. w/J. Barber.	6.50
03/17/10	SSH	Review notes/policies; begin drafting report.	6.40
03/18/10	SSH	Review interview materials; draft report.	5.80
03/22/10	SSH	Draft investigative report/ telephone conf. w/ J. Barber.	5.80
03/22/10	SSH	Draft investigation report.	1.80
03/23/10	SSH	Draft investigative report; telephone conf. w/ J. Barber.	6.90
03/24/10	SSH	Revise investigative report; telephone conf. w/ J. Barber; draft agreement; revise agreement.	7.50
03/25/10	SSH	Revise agreement; telephone conf. w/ J. Barber.	0.40
03/25/10	SSH	Telephone conf. w/ J. Barber re: status; revise agreement.	0.40
TOTAL HOURS			53.00

BRI089.00806 SPECIAL COUNSEL INVESTIGATION
04/15/10

TIMEKEEPER TIME SUMMARY:

<u>Timekeeper</u>	<u>Hours</u>	<u>Value</u>	
S. S. Hodges	53.00 Hrs	14,575.00	
		CURRENT FEES	<u>\$14,575.00</u>

ADJUSTMENTS

04/15/2010	LESS COURTESY DISCOUNT		<u>(\$600.00)</u>
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TOTAL AMOUNT OF THIS INVOICE \$13,975.00

1417 W. Brigantine Avenue; Brigantine, NJ 08203
PHONE: 609-266-7600 ext. 220 FAX# 609-266-6448



Fax

To: John Paff From: Lyra Sweeney
Fax: 908-325-0129 Pages: 9
Phone: _____ Date: 8-3-10
Re: _____ CC: _____

- Urgent For Review Please Comment Please Reply Please Recycle

• Comments:

MAGUIRE & MAGUIRE, P.C.
Attorneys at Law

Timothy Patrick Maguire
Member NJ Bar
Michelle D. Maguire
Member NJ Bar

200 Jackson Avenue
Northfield, New Jersey 08225
(609) 641-1166
Fax (609) 646-8586
magmaglaw@aol.com

July 27, 2010

John Paff

RE: Brigantine/OPRA Request

Dear Mr. Paff:

Please accept this answer on behalf of Custodian, Lynn Sweeney, concerning an OPRA Request you filed with the City of Brigantine via electronic mail on July 13, 2010.

First, let me express my thanks for your agreement to extend the date for a response until August 5, 2010. I am currently involved as a Municipal Attorney with a significant number of tax appeals and appreciate your courtesy regarding the extension.

I will relist each of your requests and the response of the City of Brigantine regarding the same.

1. **The "correspondence from J. Barber" referenced in the 03/09/10 entry.**

The above request refers to a letter cited in a copy of the bill submitted by the law firm of Archer & Greiner to the City of Brigantine regarding a particular investigation which was conducted in the City of Brigantine by said law firm. You obtained the billing pursuant to a previous OPRA request which was submitted and responded to. Please be advised that the requested document set forth in #1 of your most recent request of July 13, 2010 does not exist. I specifically spoke to representatives of the Archer & Greiner law firm as well as the City Manager, Jim Barber. The law firm confirmed that this was a typographical error set forth on the billing document. Mr. Barber confirmed that no such correspondence was issued by him on or about said date.

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2. **The "investigation memos" referenced in the 03/10/10 entry.**

This request is denied. All of the documents which you requested pursuant to your July 13, 2010 request deal with a matter involving a sexual harassment complaint or grievance filed by one municipal employee against another. While the overriding policy of the Open Public Records Act is to make disclosure of documents available to the public, there are specific documents which are excepted from said requirement pursuant to the plain language of the Act. Therefore, this request is denied pursuant to the language of N.J.S.A. 47:1A-1.1. The pertinent part of which states as follows:

"A government record shall not include the following information which is deemed to be confidential for the purposes of the Open Public Records Act as amended and supplemented:

Information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual..."

This portion of your request is also specifically denied pursuant to the language of N.J.S.A. 47:1A-1.1 which states that a government record shall not include "any record within the attorney/client privilege".

Further, your request pursuant to this section is specifically denied pursuant to N.J.S.A. 47:1A-10 which states as follows:

"Notwithstanding the provisions of the Open Public Records Act or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access..."

In summary, your request set fourth in Section Two (2) of your July 13, 2010 e-mail is denied. The records sought are not considered government records pursuant to the Open Public Records Act because the same involve

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information generated by or behalf of public employers or public employees in connection with a sexual harassment complaint filed with the public employer or grievance filed by or against an individual. Further, the records sought are contained within the personnel records of individuals employed by the City and relate to a grievance filed by or against said individuals.

Finally, the records requested were developed and forwarded pursuant to the attorney/client privilege.

3. **Section Three of your request sought "any writing that identifies the employee with whom the meeting referenced in the 03/11/10 entry was held".**

A copy of said document is attached. However, the name of the employee who brought the complaint has been deleted. Said employee and the professional acting on the employees behalf have made it perfectly clear that they expect complete confidentiality concerning this investigation. There is no compelling need which would override the governmental interest of maintaining the privacy of the investigation and the identities of those involved. Therefore for said reason and those stated in Section (2) above, the name has been deleted.

4. **The "investigative report" that was produced in this matter.**

This request is specifically denied for all of the reasons as set forth in response Number (2) set forth above.

5. **The "agreement" referred to in the 03/25/10 entries.**

This request is specifically denied for the reasons as set forth in response to Number (2) set forth above.

6. **The version of the "agreement" referred to in #5 above that was signed by all parties to it.**

This request is denied for reasons as set forth in response to Number (2) set forth above.

When making the determination to specifically deny the requests set forth in Number (5) and (6) of your e-mail, I reviewed the matter of Asbury Park Press v. County of Monmouth, 406 NJ Super 1, 966 A.2d 75 (Ad 2009) Certification granted 200 NJ 211, 976 A.2d 387, affirmed 201 N.J. 5, 986 A.2d 678 and believe the current request is significantly different. In said case, the Court based

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it's reasoning upon the fact that the victim in said case had filed a complaint in the Superior Court. By filing such a complaint which would be available to the public, the individual claiming sexual harassment had forfeited the right to confidentiality. The facts in this matter are clearly different than those in the Asbury case. No complaint has been made to a public agency or body and the individual who brought the complaint has specifically indicated that the same be kept confidential.

A certification and index is attached to this request and is specifically made a part hereby.

You may institute a proceeding to challenge the decision set forth in this letter by filing an action in the Superior Court or in lieu of filing an action in Superior Court file a complaint with the Government Records Council. You have 45 days in which to file such a complaint. You may contact the Government Records Council by toll free telephone at (856)850-0511 or mail at Post Office Box 819, Trenton, New Jersey 08625 or by e-mail at grc@dca.state.nj.us or at their website www.state.nj.us/grc.

Sincerely,

MAGUIRE & MAGUIRE, P.C.

BY:  TIMOTHY PATRICK MAGUIRE
Attorney at Law

TPM/b

CERTIFICATION

I, LYNN SWEENEY, of full age being duly sworn according to law upon my oath depose and state:

1. I am the Municipal Clerk of the City of Brigantine and am the Records Custodian for Open Public Records Act requests.
2. When I received the Open Public Records Act request of Mr. Paff, I directed the same to the City attorney.
3. The City attorney has specifically advised me that he has requested from the attorneys who handled this matter, the law firm of Archer & Greiner, any and all documents pursuant to such request.
4. Further, the City attorney has advised that he has spoken with the City Manager, James Barber, and asked that Mr. Barber provide any and all documents concerning said request.
5. A determination has been made pursuant to the letter submitted with this Certification and the attached index whether any document or parts thereof is considered confidential and the reason such information is considered confidential.
6. The City of Brigantine has a document retention/destruction policy which is in conformity with State law. No document concerning the matter referenced in the request of Mr. Paff has been destroyed or will be destroyed until this matter is finalized.

The above statements are true to the best of my information and belief. I realize that if any of the above statements are wilfully false, I am subject to punishment.

Lynn Sweeney

LYNN SWEENEY, RMC/CITY CLERK

August 3, 2010

Donna M. Brown

DONNA M. BROWN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 9, 2010

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Reason For Denial

1. Documents requested pursuant to request Number (2) of the July 13, 2010 OPRA Request of Mr. Paff which asked for "the investigation memos" referenced in the 03/10/10 entry. The documents are not considered government records pursuant to the OPRA as further clarified in the attached letter.

2. Documents requested pursuant to Request of John Paff which states "the investigative report that was produced in this matter." The document was not considered a government record for the reasons set forth in the attached letter.

3. The agreement requested in Numbers (5) and (6) of the July 13, 2010 OPRA request of John Paff. The document was not considered a government record for the reasons set forth in the attached letter.

Nature of Documents

- a. Investigative chronologically of Internal Affairs case consisting of two (2) pages.
- b. Investigative Internal Affairs report of Capt. Raymond Cox consisting of five (5) pages.
- c. Initial complaint to the Internal Affairs Unit of the Atlantic County Prosecutors Office consisting Of one (1) page.
- d. Internal Affairs Report of Capt. John B. Stone, Jr., consisting of One (1) page.

Said report was authored by Susan B. Hodges, Esquire of the law firm of Archer & Greiner and contained 15 pages.

Both the signed and unsigned copy of said agreement contained three (3) pages. The document was an agreement that resolved the dispute between the parties.

Hodges, Susan

From: Muccifori, Thomas
Sent: Tuesday, March 09, 2010 10:04 AM
To: Hodges, Susan
Subject: workplace investigation

Jim Barber called
the "victim" [REDACTED] does not want to be interviewed at City Hall. she has offered, and we have agreed, to
interview her here sometime thursday-
I have reserved conf room 1c from 2-5
Let me know what dates you are available to go to city hall to interview the rest of the cast of people
thanks for handling

Thomas A. Muccifori, Esq.

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ARCHER & GREINER, P.C.
ATTORNEYS AT LAW