

October 12, 2010

Superior Court of New Jersey
Hunterdon County Civil Courthouse
65 Park Avenue
Flemington, NJ

Re: John Paff v. Township of Readington

Dear Honorable Court:

I will be in Europe from October 14 to 31 and have motion dates scheduled for November 12, December 3 and December 17. Thank you for your consideration.

Respectfully submitted,

Richard Gutman
Attorney for 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
	:	HUNTERDON COUNTY
v.	:	DOCKET NO.
	:	
TOWNSHIP OF READINGTON,	:	Civil Action
Defendant.	:	

VERIFIED COMPLAINT

Plaintiff John Paff, by way of complaint against the Township of Readington ("Township"), 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 records regarding the Township police's seizure of money during an arrest.

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

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

First Count
(Open Public Records Act)

4. Patrolman Hartman issued a complaint, summons and warrant September 2, 2010, in Readington against Mayerlyn E. Reyes for possession of cocaine, marijuana, a controlled

dangerous substance, and drug paraphernalia, N.J.S.A. 2C:35-10(a)(1),(4) and 2C:36-2. (Pa5-6.)

5. Quoting from a newspaper article, John Paff on September 8, 2010, submitted a request to the Township under the Open Public Records Act and the common law right of access to public records for records indicating the amount of cash that was found in the automobile during Ms. Reyes' arrest and whether anyone either claimed or abandoned a claim of ownership to that cash. (Pa1.)

6. The next day the Township denied both requests on the following grounds: "your request is denied pursuant to N.J.S.A. 47:1A-3 which lists '*criminal investigatory records*' of information deemed to be confidential and thus exempt from disclosure under the Open Public Records Act (OPRA)." The Township's response did not mention the common law right of access to public records. (Pa2.)

7. On September 13, 2010, Paff filed a request for records to the Township under OPRA and the common law right for the complaints, the Township's evidence log and Hunterdon County Prosecutors Office's evidence log regarding the Reyes arrest. (Pa3.)

8. Two days later the Township granted Paff access to two complaints, denied access to the Township's evidence log for the same N.J.S.A. 47:1A-3 reason previously given, and stated that

it did not have the Prosecutor's evidence log. (Pa4.)

9. The Defendant Township's denial of access to the requested records violated OPRA.

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

- A. An order that the Township grant Paff access to the requested records;
- B. An award of costs and attorney's fees; and
- C. Such other relief as the Court deems equitable and just.

Second Count
(Common Law Right of Access to Public Records)

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

11. The public's need for access to these records is greater than the Township's need for secrecy.

12. The Defendant Township's denial of access to the requested records violated the common law right of access to public records.

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

- A. An order that the Township grant Paff access to the requested records;
- B. An award of costs and attorney's fees; and
- C. Such other relief as the Court deems equitable and just.

Respectfully submitted,

October 9, 2010

Richard Gutman

Designation of Trial Counsel

Plaintiff designates Richard Gutman as trial counsel in this action.

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

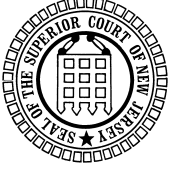

Plaintiff certifies that the matter in controversy is not the subject of any other action pending in any court or arbitration proceeding and that he is not contemplating any other action or arbitration proceeding regarding the subject matter of this action. Plaintiff is not aware of any other party that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

Executed on October 9, 2010

Richard Gutman

Appendix XII-B1

	<h2 style="margin:0;">CIVIL CASE INFORMATION STATEMENT (CIS)</h2> <p style="margin:0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</p>		FOR USE BY CLERK'S OFFICE ONLY
			PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA
			CHG/CK NO.
			AMOUNT:
			OVERPAYMENT:
		BATCH NUMBER:	
ATTORNEY / PRO SE NAME		TELEPHONE NUMBER	COUNTY OF VENUE
FIRM NAME (if applicable)		DOCKET NUMBER (when available)	
OFFICE ADDRESS		DOCUMENT TYPE	
		JURY DEMAND <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAME OF PARTY (e.g., John Doe, Plaintiff)	CAPTION		
CASE TYPE NUMBER (See reverse side for listing)	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE <i>N.J.S.A. 2A:53 A -27</i> AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input type="checkbox"/> No	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input type="checkbox"/> No			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .			
ATTORNEY SIGNATURE:			



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE – PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT – OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Centrally Managed Litigation (Track IV)

- 280 Zelnorm
- 285 Stryker Trident Hip Implants
- 288 Prudential Tort Litigation

Mass Tort (Track IV)

- | | |
|---------------------------------------|--|
| 248 CIBA GEIGY | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 282 FOSAMAX |
| 271 ACCUTANE | 283 DIGITEK |
| 272 BEXTRA/CELEBREX | 284 NUVARING |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 286 LEVAQUIN |
| 275 ORTHO EVRA | 287 YAZ/YASMIN/OCELLA |
| 277 MAHWAH TOXIC DUMP SITE | 601 ASBESTOS |
| 278 ZOMETA/AREDIA | 619 VIOXX |
| 279 GADOLINIUM | |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

Verbal Threshold

Putative Class Action

Title 59

JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	HUNTERDON COUNTY
v.	:	DOCKET NO.
	:	
TOWNSHIP OF READINGTON,	:	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

October 9, 2010

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STATEMENT OF FACTS

Patrolman Hartman issued a complaint, summons and warrant September 2, 2010, in Readington to Mayerlyn E. Reyes for possession of cocaine, marijuana, a controlled dangerous substance, and drug paraphernalia, N.J.S.A. 2C:35-10(a)(1),(4) and 2C:36-2. (Pa5-6.) Bail was set at \$10,000.00. (Pa5.)

John Paff on September 8, 2010, submitted a request for records to the Township of Readington under the Open Public Records Act and the common law right of access to public records, (Pa1), as follows:

The Hunterdon County Democrat printed:

Mayerlyn E. Reyes, 31 Allentown, PA On Thursday, September 2, 2010 at 0052 hours, [Readington] Patrolman [Joseph E.] Hartmann stopped Ms. Reyes for operating her 2006 BMW on State Route 22 eastbound with a burned out taillight. While speaking with Ms. Reyes and a female passenger, the patrolman detected the odor of marijuana emanating from the interior of the car. A subsequent search of the BMW revealed marijuana, cocaine, and a large amount of US currency. She was charged with possession of marijuana, possession of cocaine, and possession of CDS in a motor vehicle. She was lodged in the Hunterdon County jail.

Please send me any record on file that indicates:

1. The amount of cash that was found in the automobile
2. Whether or not Ms. Reyes, her passenger or any other party either claimed or abandoned a claim of ownership to that cash.

The next day the Township denied both requests on the following grounds: "your request is denied pursuant to N.J.S.A. 47:1A-3 which lists '*criminal investigatory records*' of

information deemed to be confidential and thus exempt from disclosure under the Open Public Records Act (OPRA)." The Township's response did not mention the common law right of access to public records. (Pa2.)

On September 13, 2010, Paff filed a second request for records to the Township under OPRA and the common law right. (Pa3.) It requested the following records:

For the September 2, 2010 arrest by Patrolman Joseph E. Hartmann of Mayerlyn (or Marilyn) E. Reyes:

1. the complaint(s) filed against the driver or any passenger in Reyes' vehicle . . .
2. Readington Township's evidence log
3. Hunterdon County Prosecutors Office's evidence log

Two days later the Township granted Paff access to two complaints, denied access to the Township's evidence log for the same N.J.S.A. 47:1A-3 reason as previously stated, and stated that it did not have the Prosecutor's evidence log. (Pa4.)

On September 16, 2010, Paff wrote the Township asking for an explanation of how disclosure of the amount of cash seized would jeopardize the police investigation. (Pa7.) On September 21, 2010, the Township responded as follows:

While an investigation is active, there is no way to determine the direction of an investigation and, therefore, impossible to know what information may or may not jeopardize the integrity of a case. A detail or piece of information that seems inconsequential now may develop into a crucial piece of information that is pivotal in the outcome. The Township cannot risk the integrity of a criminal investigation by releasing information that is specifically classified as an

exemption pursuant to OPRA regulations. (Pa8.)

ARGUMENT

I. Township Violated Open Public Records Act

A. OPRA Exemptions Are Interpreted in Favor of Access and Government Has Burden of Proof

The purpose of the Open Public Records Act (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." Mason v. Hoboken, 196 N.J. 51, 64-65 (2008), quoting Asbury Park Press v. Ocean County Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004).

OPRA has a presumption in favor of disclosure. It expressly 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.

Because of its presumption in favor of access, OPRA expressly places the burden of proof upon the 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 best 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 Failed to Satisfy its Burden of Proving that Disclosure of the Records Would be "Inimical to the Public Interest"

The Township denied Paff access to the requested records on the basis of N.J.S.A. 47:1A-3, which exempts records that pertain to investigations in progress. However, N.J.S.A. 47:1A-3(a) expressly limits this exemption to record disclosures that would be "inimical to the public interest."

The Township had the burden of proving that disclosure would be "inimical to the public interest." N.J.S.A. 47:1A-6. Yet, when Paff asked the Township to explain how disclosure of the amount of cash seized would jeopardize this investigation, the Township was unable to do so. Instead, the Township stated,

When an investigation is active, there is no way to determine the direction of an investigation, and, therefore, impossible to know what information may or may not jeopardize the integrity of a case. A detail or piece of information that seems inconsequential now may develop into a crucial piece of information that is pivotal in the outcome. The Township cannot risk the integrity of a criminal investigation by releasing information that is specifically classified as an exemption pursuant to OPRA regulations.
(Pa8.)

The Township's first sentence is not true. There are many situations where the public disclosure of specific information

would clearly jeopardize or not jeopardize an investigation. If the police know the name of a suspect who they have not yet arrested, it obviously would jeopardize the investigation to publicly disclose the suspect's name because he might flee or takes steps to hide his guilt. In contrast, if the suspect has already been arrested and released on bail, disclosing his name could not jeopardize the investigation because the suspect already knows that he is a suspect.

More importantly, the Township ignored its burden of proof. It assumed that all information about every on-going investigation can be withheld without any further showing by the Township. But OPRA requires the Township to satisfy its burden of proving that the disclosure of the specific record sought would be inimical to the public interest. It cannot rely merely on its speculative conclusion that the disclosure of any piece of information may be inimical to the public interest. Paff v. New Jersey Department of Labor, Board of Review, 379 N.J. Super. 346, 353-54 (App. Div. 2005) (conclusory certification insufficient in OPRA litigation); Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 382-83 (App. Div. 2003) (OPRA litigation requires "specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality").

The Township's second sentence is "[a] detail or piece of information that seems inconsequential now may develop into a

crucial piece of information that is pivotal in the outcome." (Pa8.) Of course. But the issue is not the evidence's importance but rather the effect of its public disclosure. A gun left at the scene of a shooting usually is pivotal in convicting the suspect but the disclosure of the fact that the criminal left a gun at the crime scene would not usually jeopardize an investigation because the criminal usually knows when he leaves his gun at the crime scene.

While Paff has been unable to find any New Jersey precedent, New York routinely discloses such information, suggesting that its disclosure is not normally "inimical to the public interest." Spencer v. New York State Police, 591 N.Y.S. 919, 921 (A.D.2d 1992) ("lists of evidence seized from a crime scene are generally not exempt from disclosure.").

As explained in Part II, (pp.10-12), it will be difficult for the Township to satisfy its burden of proving that disclosure to Paff would be "inimical to the public interest." The criminal defendant, Ms. Reyes, already knows the requested information, and the Township must disclose the amount seized by December 1, 2010 if it wishes to obtain ownership by means of forfeiture.

**C. Requested Records are Public Under OPRA
Exception for Information Regarding an Arrest**

In addition to the requested records regarding the seized

cash being OPRA public records because the Township has not satisfied its N.J.S.A. 47:1A-3(a) burden of proving that their disclosure would be "inimical to the public interest," these records are OPRA public records for a second reason: OPRA expressly requires the disclosure of extensive information regarding arrests.

According to OPRA Section 3(b), law enforcement agencies, notwithstanding the other OPRA provisions, are required to release the following information when an arrest occurs:

1. "if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information . . .,"

2. "information as to the text of any charges . . .,"

3. "information as to the identity of the investigating and arresting personnel . . .," and

4. "information of the circumstances immediately surrounding the arrest" (emphasis added).

In the case at bar, the money was present in the car when Ms. Reyes was arrested. (The Township has the OPRA burden of proving the contrary.) Because the presence of the money was one of the "circumstances immediately surrounding the arrest," information about it is public under N.J.S.A. 47:1A-3(b).

II. Township Violated Common Law Right of Access Because Public's Need to Know Regarding Money Seized by Police Outweighs Township's Need for Secrecy

Even if the Township were not required to grant Paff access under OPRA, it would still have been required to grant Paff access under the common law right of access to public records. New Jersey provides access to public records in three distinct ways: OPRA, the common law right of access to public records and the discovery procedures in civil litigation. 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.

OPRA expressly states, "[n]othing 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" (emphasis added). N.J.S.A. 47:1A-8. Thus, even if John Paff did not have a right to the requested records under OPRA, he may nevertheless have a common law right of access to that record and vice versa. Bergen County Imp. Authority v. North Jersey Media Group, Inc., 370 N.J. Super. 504, 521 (App. Div. 2004).

Referring to the common law right of access, the Appellate Division has stated that "in furtherance of good government the right of interested citizens and taxpayers to inspect public

records should be broadly recognized." Taxpayers Ass'n of Cape May v. Cape May, 2 N.J. Super. 27, 31, (App. Div. 1949). In order to access government records under the common law, a record requestor must meet three requirements. "(1) [T]he records must be common-law public documents; (2) the person seeking access must establish an interest in the subject matter of the material; and (3) the citizen's right to access must be balanced against the State's interest in preventing disclosure" (internal citations omitted). Keddie v. Rutgers, 148 N.J. 36, 50 (1997).

(1) Common Law Public Documents: Under the common law, public records available for inspection "include any records made by public officers in the exercise of their functions. As such, they include almost every document recorded, generated, or produced by public officials, whether or not required by law to be made, maintained, or kept on file" (citations omitted). Daily Journal v. Police Dep't of Vineland, 351 N.J. Super. 110, 122 (App. Div. 2002). The records sought in the present case satisfy that definition.

(2) Requestor's Interest: 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 Public Utility Com'rs, 61 N.J. 366, 372 (N.J. 1972). The public interest involved here is the public's need to know regarding the police's acquisition of large sums of money from private citizens and the controversial issue of forfeiture.

(3) Balance: The final step in the process is to balance the requestor's need for the record versus the government's need for secrecy. Michelson v. Wyatt, 379 N.J. Super. 611, 624 (App. Div. 2005). "[I]f the governmental need in confidentiality is slight or non-existent," the record requestor need show only good faith and citizen or taxpayer status. Loigman v. Kimmelman, 102 N.J. 98, 104-05 (1986).

Township's Need for Secrecy

As yet, the Township has not demonstrated a need for secrecy. The Township's September 21, 2010 letter is speculative, vague and conclusory. The Township has presented no logical or reasonable explanation as to why the specific information sought here requires confidentiality. In particular, withholding the information from Paff is pointless in light of the Township's disclosure of the information to the arrestee, Ms. Reyes, and its duty to soon disclose the information to the general public.

Attorney General Standard Operating Procedure "Accounting for Seized Currency" requires the Township Police Department to fill out a United States Currency Seizure Report, (Pa12),

stating the amount of money seized, have Ms. Reyes or her lawyer sign the Report and give a copy to Ms. Reyes or her lawyer.

(Pa9-10.) Thus, the principal reasons for keeping portions of an on-going investigation secret -- to keep the suspect from fabricating a defense, intimidating witnesses or destroying evidence -- do not apply here. When a third party is seeking information about an investigation that the potential target of the investigation already knows, any claims of interference with the investigation require special scrutiny. Campbell v. Dep't of Health & Human Servs., 682 F.2d 256, 265 (D.C. Cir. 1982).

In addition, N.J.S.A. 2C:64-3 requires that a civil action be filed within ninety days of seizure if forfeiture of the money is sought. In the resulting civil in rem forfeiture action, the amount of money seized is a named defendant in the lawsuit. See, for example, State v. One 1994 Ford Thunderbird and Four Thousand Six Hundred Dollars in United States Currency, 349 N.J. Super. 352 (App. Div. 2002). Thus, the information that Paff seeks has already been given the arrestee, Ms. Reyes, and has already been made public or will be made public on or before December 1, 2010. What is the need for keeping such demonstrably public information from Mr. Paff?

Although Paff has been unable to find any New Jersey precedent, New York routinely discloses such information. Spencer v. New York State Police, 591 N.Y.S. 919, 921 (A.D.2d

1992) ("lists of evidence seized from a crime scene are generally not exempt from disclosure.").

Public's Need for Access

John Paff has had a long-standing interest in the issue of forfeitures. Paff is a founding member and the New Jersey State Coordinator for the national organization, Forfeiture Endangers American Rights, <http://www.fear.org/> (select "FEAR State Coordinators").

However, Paff is relying in particular on the public's need for access to the requested information. "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, 61 N.J. at 372; Rosenberg v. State Department of Law and Public Safety, 396 N.J.Super. 565, 578 (App. Div. 2007).

Forfeiture is a controversial issue of great public importance. "[F]orfeitures remain disfavored in the law. One problem is that forfeitures result in the taking of private property for public use without compensation to the owner" (internal citations omitted). State v. 1979 Pontiac Trans Am, 98 N.J. 474, 481 (1985). Secondly, because forfeiture allows police departments and prosecutors' offices to retain money and property confiscated rather than having the money and property

go to the general fund, it raises the issue of whether law enforcement priorities are being transformed from impartial administration of justice to the pursuit of money and property.

The amount of money seized during Ms. Reye's arrest would shed light on Readington Police Department's performance of its statutory duties. It would assist the public in learning the importance of forfeiture in Readington Police Department's budget and whether forfeiture of money has the practical effect of mitigating criminal charges to lesser offenses. The information regarding abandonment of Ms. Reye's claim of ownership would assist in determining whether such abandonment occurs without a right to consult an attorney.

Respectfully submitted,

Richard Gutman

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

FILED

NOV 15 2010

JUDGE YOLANDA CICCONE

JOHN PAFF,
Plaintiff,

v.

TOWNSHIP OF READINGTON,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
HUNTERDON COUNTY
DOCKET NO. L-673-10

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 15TH day of November, 2010, ORDERED that the defendant Township of Readington appear and show cause on the 18TH day of January, 2011 before the Superior Court at the Somerset County Courthouse in Somerville, New Jersey at 9:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why judgment should not be entered for:

1. An order that the Township grant Paff access to the

requested records;

2. An award of costs and attorney's fees; and
3. 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 7 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 January 3 2011. 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 _____

YOLANDA CICCONE, A.J.S.C.

4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by January 5 2011. 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 _____.

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 1 days before the return date.



YOLANDA CICCONE, A.J.S.C.