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ATLANTIC COUNTY
LAW DIVISION

<p>JOHN PAFF, Plaintiff, v. EGG HARBOR TOWNSHIP, EILEEN M. TEDESCO in her official capacity and Records Custodian, MICHAEL J. MORRIS, JEFFREY LANCASTER, EGG HARBOR TOWNSHIP POLICE DEPARTMENT, and NORTHFIELD POLICE DEPARTMENT, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ATLANTIC COUNTY DOCKET NO. <u>L8976/11</u> CIVIL ACTION COMPLAINT IN LIEU OF PREROGATIVE WRIT</p>
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Plaintiff John Paff, through his undersigned counsel Law Offices of Walter M. Luers, LLC, complaining of the Defendants, alleges as follows:

1. This an action alleging a violation of the Open Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* ("OPRA") and the common law right of access and for declaratory judgment pursuant to the Declaratory Judgment Act, *N.J.S.A.* 2A:16-51.
2. This action is being brought because the Defendants Egg Harbor Township, Eileen M. Tedesco, Michael J. Morris, Jeffrey Lancaster, Egg Harbor Township Police Department, and Northfield Police Department (hereinafter, "Defendants") have denied Mr. Paff access to several documents requested by him pursuant to OPRA and the common law right of access.

Parties

3. Plaintiff John Paff is an individual residing at 1605 Amwell Road in Franklin Township, Somerset County, New Jersey. He chairs the New Jersey Libertarian Party's Police Accountability Project which seeks to hold police officers accountable to the public they serve.

4. Defendant Eileen M. Tedesco was, at all times relevant to the incidents related in this complaint, the Custodian of Government Records for the Township of Egg Harbor in Atlantic County, New Jersey.

5. Defendant Michael J. Morris was, at all times relevant to the incidents related in this complaint, was the Chief of Police in the Township of Egg Harbor in Atlantic County, New Jersey. He is named as a defendant in this complaint because he acted as the *de facto* Custodian of Government Records due to his August 15, 2011 denial of Plaintiff's records request.

6. Defendant Jeffrey Lancaster was, at all times relevant to the incidents related in this Complaint, a sworn police officer employed by Egg Harbor Township. While no direct relief is demanded against Defendant Lancaster, he is named as a defendant in this complaint because he may wish to assert a privacy or confidentiality concern regarding the records that are the subject of this lawsuit.

7. Defendant Egg Harbor Township Police Department is a municipal police department serving Egg Harbor Township, Atlantic County, New Jersey. While no direct relief is demanded against the police department, it is named as a defendant so that it can assert, if it chooses, any privacy or confidentiality concerns that it claims to have in the records that are the subject of this lawsuit.

8. Defendant Northfield Police Department is a municipal police department serving the City of Northfield, Atlantic County, New Jersey. While no direct relief is demanded against the police department, it is named as a defendant so that it can assert, if it chooses, any privacy or confidentiality concerns that it claims to have in the records that are the subject of this lawsuit.

9. All of the public agency defendants named herein are “public agencies” within the meaning of *N.J.S.A. 47:1A-1.1*. All of the records custodians named herein are custodians of a government record within the meaning of *N.J.S.A. 47:1A-1.1*.

JURISDICTION AND VENUE

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

11. Venue is proper in this court pursuant to *R. 4:3-2(a)(2)* because all of the relevant events occurred in this County, and the public agency Defendants are located within this County.

Factual Allegations

12. On February 17, 2011, at about 2:04 a.m. Northfield Police observed a black Mercedes sitting at a traffic light while the light went through multiple rotations. The vehicle, which was privately owned, was being operated by Defendant Egg Harbor Township Police Officer Jeffrey Lancaster, who was off-duty at the time.

13. Radio transmissions indicate that the Northfield officers had initial difficulty waking Defendant Lancaster and getting him to “open up” the car’s door. The transmissions indicate that the Northfield officers later realized that Lancaster was a fellow police officer and that they confirmed through the dispatcher that Defendant Lancaster was “still working” as a police officer for Egg Harbor Township.

14. According to audio recordings, Egg Harbor Township Police Sergeant Michael T. Hughes telephoned the Egg Harbor Township Police dispatch center. The dispatcher told Hughes that Defendant Lancaster was found asleep behind the wheel in Northfield. Hughes asked if Defendant Lancaster was “4-50” (presumably, whether he was in violation of *N.J.S.A. 39:4-50*—New Jersey’s drunk driving statute), the dispatcher said that he didn’t know and that the Northfield Police wanted to know if Defendant Lancaster still worked as an Egg Harbor Township officer and had inquired “who was the sergeant” that was on duty that morning. According to the audio, Hughes offered to have the Northfield Police call him on his cell phone, and the dispatcher, who was simultaneously speaking with both Hughes and the Northfield Police, said that the Northfield Police had reported Defendant Lancaster as being “A.O.B.” (which, in police parlance, means “alcohol on breath.”) Hughes, after asking “who was working” in Northfield, learned that “Peary” (presumably Martin L. Peary) was working and that Hughes went to the scene to “give [Lancaster] a ride home.”

15. In a later radio communication, an unidentified Northfield officer attempted to sanitize the event by saying that Defendant Lancaster was “definitely sound asleep” but “no A.O.B.” and attributed Defendant Lancaster falling sound asleep behind the wheel at two o’clock in the morning to “moonlighting.” Even though Defendant Lancaster was purportedly not drunk, Northfield Police inexplicably asked for “Mike” (presumably Sergeant Hughes) to report to the scene to “give [Lancaster] a ride home.”

16. On August 8, 2011, Plaintiff submitted a request for government records to Defendant Tedesco, the Egg Harbor Township Custodian of Government Records pursuant to the Open Public Records Act, *N.J.S.A. 47:1A-1* and the common law right of access. On the same date, Plaintiff sent a letter that contained the records request to Sergeant Michael Hughes.

Among the items requested was “any report or other writing written by or on behalf of Sgt. Hughes arising out of the Northfield PD’s February 17, 2011, 02:04 a.m. encounter with Egg Harbor Township Police Officer Jeffrey Lancaster.” Also among the records requested was “any preliminary notice of discipline, final notice of discipline or other writing relating to any action taken against Lancaster arising out of [the February 17, 2011, 02:04 a.m. incident].”

17. By letter dated August 15, 2011, Defendant Egg Harbor Township Police Chief Michael J. Morris responded to Plaintiff’s records request. As to Plaintiff’s request for “any report or other writing” written by Sergeant Hughes relating to his February 17 2011 contact with Officer Lancaster, Defendant Morris conceded that a such a report exists and “is recorded in Egg Harbor Township Police Department Affairs Investigative Case File #11002.” In response to Plaintiff’s request for disciplinary records, Defendant Morris informed Plaintiff that Defendant Lancaster was disciplined as a result of the investigation that found that he had violated “several departmental rules and regulations.” Yet, he denied Plaintiff access to any of those records claiming that they “are part and parcel to the internal affairs case file [and] are considered exempt from disclosure under N.J.S.A. 47:1A-10.”

18. Based on the available evidence, it appears that Defendant Lancaster wasn’t simply sleeping behind the wheel while his car was stopped at two o’clock in the morning at a Northfield intersection while the traffic light went through multiple rotations. Had he been merely sleeping there would have been no need for Sergeant Hughes to drive him home and there would have been no apparent basis for imposing discipline upon him. Rather, it appears that Defendant Lancaster was driving while intoxicated and that the Northfield Police, in strict obedience to the unwritten, discriminatory rules demanding preferential treatment of fellow

police officers, elected to subvert justice rather than treating Defendant Lancaster as they undoubtedly would have treated a private citizen.

19. The public has a great interest in learning whether Defendant Lancaster was intoxicated on February 17, 2011 at 2:04 a.m. and whether the discipline imposed upon him was related to him being intoxicated. If the records sought in this complaint are revealed, it will be evident that certain members of the Defendant Northfield Police Department, and possibly members of the Defendant Egg Harbor Township Police Department, subverted justice and violated the public's trust. The public's interest in identifying, publicly exposing and demanding discipline against any police officers who subverted justice or violated the public's trust is far greater than any confidentiality or privacy interests that any of the Defendants could assert.

Wherefore, Plaintiff demands judgment for:

A. A declaration (pursuant to the Declaratory Judgment Act, *N.J.S.A. 2A:16-51*) that the report Sergeant Hughes authored regarding his contact with Defendant Lancaster on February 17, 2011 is available to the Plaintiff in its entirety in accordance with *N.J.S.A. 47:1A-1* ("OPRA") or Plaintiff's common law right of access to that report.

B. As an alternative to the relief requested in ¶A above, a declaration (pursuant to the Declaratory Judgment Act, *N.J.S.A. 2A:16-51*) that the report Sergeant Hughes authored regarding his contact with Defendant Lancaster on February 17, 2011 is available to Plaintiff, as redacted by the Court to shield any legitimately confidential information, in accordance with OPRA or Plaintiff's common law right of access to that report.

C. An order compelling Defendants to immediately disclose a copy of the Hughes report to Plaintiff, subject to any necessary redactions as ordered by the Court, pursuant to *N.J.S.A. 47:1A-1* or the common law right of access.

D. A declaration that the disciplinary records related to Defendant Lancaster's conduct on February 17, 2011 are available to the Plaintiff in their entirety in accordance with Plaintiff's common law right of access to those records or OPRA, pursuant to the Declaratory Judgment Act, *N.J.S.A. 2A:16-51*.

E. As an alternative to the relief requested in ¶D above, a declaration that the disciplinary records related to Defendant Lancaster's conduct on February 17, 2011, as redacted by the Court to shield any legitimately confidential information, is available to Plaintiff in accordance with OPRA or Plaintiff's common law right of access to those records, pursuant to the Declaratory Judgment Act, *N.J.S.A. 2A:16-51*.

F. As an alternative to the relief requested in ¶D or ¶E above, a declaration that the disciplinary records related to Defendant Lancaster's conduct on February 17, 2011, redacted by the Court to shield everything except the minimal information needed to show whether or not the discipline was imposed upon Defendant Lancaster due to him being intoxicated, is available to Plaintiff in accordance with OPRA or Plaintiff's common law right of access to those records, pursuant to the Declaratory Judgment Act, *N.J.S.A. 2A:16-51*.

G. An order compelling Defendant Tedesco and Morris to immediately disclose a copy of records of Defendant Lancaster's discipline arising out of his February 17, 2011 misconduct to Plaintiff, subject to any redactions as ordered by the Court, pursuant to OPRA or Plaintiff's the common law right of access.

H. A reasonable attorney fee and costs of court.

I. Any other further relief this Honorable Court deems equitable and just.

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.

CERTIFICATION PURSUANT TO R. 4:69-4

I certify that no transcript of proceedings below exists, as this is a direct appeal from the agency's denial of access to records.

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 OFFICE OF WALTER M. LUERS, LLC

By: 

DATED: September 28, 2011

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