

Law Offices of
Walter M. Luers, LLC
Suite C203
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January 28, 2012

Walter M. Luers, Esq.*

*Also admitted in New York

Deputy Clerk of the Superior Court
Superior Court of New Jersey – Law Division
Central Processing Office
Courts Facility and County Office Building
49 Rancocas Road
Mount Holly, New Jersey 08060

Re: *Paff v. Township of Florence, et al.*

Dear Sir or Madam:

On behalf of the Plaintiff, I enclose (1) the original and two copies of our Verified Complaint and Case Information Statement; (2) check in the amount of \$200 for the requisite filing fee; and (3) Certification Pursuant to Rule 1:4-4. Kindly file these documents and return one copy of the Verified Complaint and CIS stamped as “filed/received” as well as the Track Assignment Notice to me in the enclosed self-addressed, stamped envelope.

We request that this matter be assigned to Judge Bookbinder, the designated OPRA judge for this vicinage, as this matter arises under the Open Public Records Act. Thank you. Please call me if you have any questions or concerns.

Sincerely,


Walter M. Luers

LAW OFFICES OF WALTER M. LUERS, LLC
Suite C203
23 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656
Facsimile: 908.894.5729
Attorneys for John Paff

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| <p>JOHN PAFF, Plaintiff, v. TOWNSHIP OF FLORENCE, RICHARD A. BROOK in his official capacity as the Administrator of the Township of Florence, JOY M. WEILER in her official capacity as the Clerk and Records Custodian of the Township of Florence and NICHOLAS J. COSTA, ESQ. in his official capacity as the Municipal Prosecutor of Florence Township, Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BURLINGTON COUNTY</p> <p>DOCKET NO. _____</p> <p>CIVIL ACTION</p> <p>COMPLAINT IN LIEU OF PREROGATIVE WRITS</p> |
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Plaintiff John Paff, through his undersigned counsel Law Offices of Walter M. Luers, LLC, complaining of the Defendant, allege as follows:

1. This is an action alleging a violation Open Public Records Act, *N.J.S.A.* 47:1A-1, *et seq.* (“OPRA”) and the common law right of access. This is also an action for declaratory judgment pursuant to the Declaratory Judgment Act, *N.J.S.A.* 2A:16-51, *et seq.*
2. This action is being brought because the Defendants have denied access to records showing payments of public funds from the Defendant Township to its prosecutor.

THE PARTIES

3. Plaintiff Paff is a citizen of the State of New Jersey and a resident of Somerset, New Jersey.

4. Defendant Township of Florence (“Florence” or “Township”) is a public body municipal and corporate whose principal office is located at Florence Township Municipal Complex, 711 Broad Street, Florence, New Jersey 08518-2323, and it may be served there.

5. Defendant Township is a “public agency” as that term is defined by OPRA, *N.J.S.A.* 47:1A-1.1.

6. Defendant Richard A. Brook is Florence’s Administrator. He is named in this action because he denied Plaintiff access to the records he requested.

7. Defendant Joy M. Weiler is Florence’s Clerk and, by operation of law, she is the “Custodian of a government record” for Defendant Florence as that term is defined by OPRA, *N.J.S.A.* 47:1A-1.1.

8. Defendants Brook and Weiler’s principal place of business is Florence Township Municipal Complex, 711 Broad Street, Florence, New Jersey 08518-2323, and they may be served there.

9. Defendant Nicholas J. Costa, Esq., is an attorney who practices law in the State of New Jersey and is currently the Municipal Prosecutor of Florence Township. Mr. Costa is named in this action to allow him to assert any privacy interest that he may have in the records requested by Plaintiff.

10. On information and belief, Defendant Costa’s principal place of business is 2039 Briggs Road, Mount Laurel, New Jersey 08054.

JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction of this action pursuant to *N.J.S.A.* 47:1A-6, New Jersey Court Rule 4:69-1 and the common law.

12. Venue is proper in this Court pursuant to *R.* 4:3-2(a)(2) because the

Defendant Township is a public agency located in Burlington County, and almost all of the events described herein occurred in Burlington County.

FACTUAL ALLEGATIONS

10. On December 1, 2011, Plaintiff submitted a written OPRA request to the Township in which he asked for copies of (1) Defendant Costa's "contract with the Township that covers his service as prosecutor during the year 2010"; (2) a "computer run from the Township's financial software (or any other more convenient record) that shows the total amount Florence paid Mr. Costa during 2010 for his services as prosecutor"; and (3) a copy of "both sides of any check written to Mr. Costa for prosecutorial services performed during 2010."

11. On December 15, 2011, Defendant Brook transmitted a written reply to Plaintiff.

12. In that December 15, 2011 reply, Defendant Brook provided Plaintiff with a copy of Defendant Costa's 2010 retention agreement with Florence and told Mr. Paff that Defendant Costa was paid \$22,814.04 in 2010 by the Township as an employee.

13. However, Defendant Brook denied Plaintiff access to "any check written to Mr. Costa for prosecutorial services performed during 2010."

14. Defendant Brook justified his denial of access by stating that "In my opinion, asking Florence Township to spend time delving into what a person may or may not have done with the salary they were paid to perform a service is outside the bounds of the intent of the OPRA law."

15. Defendant Brook continued: "[I]t is hard to understand why the municipality would have to require its finance personnel to try and produce front and back copies of payroll checks that essentially equates to prying into someone's personal private accounts."

16. Defendant Brook claimed that disclosure of the back of any check “can raise issues dealing with an employee’s identity, identity theft, and information that is really personal in nature.” For these reasons, Defendant Brook denied Plaintiff access to the front and back of any 2010 payroll check for Defendant Costa.

17. Plaintiff requested the front and back of any paycheck to Defendant Costa because Plaintiff is concerned that Defendant Costa may not be complying with New Jersey’s financial disclosure requirements for municipal officers. Plaintiff is in possession of a copy of Defendant Costa’s 2011 Financial Disclosure Statement, and disclosure of the front and back of a paycheck would clarify whether Defendant Costa is in compliance with New Jersey’s financial disclosure requirements.

18. Specifically, in Defendant Costa’s 2011 financial disclosure statement, Florence Township is not listed as a “source of income.” However, Defendant Brook stated that Defendant Costa is a township “employee” and that he earned more than \$2,000 in 2010. If Mr. Costa were a township “employee” making more than \$2,000 in 2010, he should have listed Florence Township as a source of income on his financial disclosure form. In addition, the agreement for legal services names Mr. Costa personally as the municipal prosecutor and assistant township solicitor, not Mr. Costa’s law firm.

19. The records requested by Mr. Paff are “public records” as defined by the Open Public Records Act and the common law right of access.

20. Mr. Paff has a wholesome public interest and legitimate private interest in obtaining the records requested.

21. Mr. Paff’s interest in gaining access to the front and back of a 2010 paycheck to Defendant Costa outweighs any interest in confidentiality that the Defendants may

have in keeping that information secret. No claim is made as to the account number of any bank account that may appear on the check.

COUNT I: VIOLATION OF OPRA

22. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-21 of Plaintiff's Complaint as though fully set forth at length herein.

23. Defendants have violated OPRA by not providing copies of the documents requested by Plaintiff in his December 1, 2011 request.

COUNT II: VIOLATION OF COMMON LAW RIGHT OF ACCESS

24. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-23 of Plaintiff's Complaint as though fully set forth at length herein.

25. Plaintiff has a common law right of access to receive copies of the documents requested in his December 1, 2011 request.

26. Plaintiff has a legitimate private interest in the requested records.

27. Defendants have no legitimate interest in maintaining the secrecy of these documents.

28. Therefore, Defendants have violated Plaintiff's common law right of access.

WHEREFORE, Plaintiffs respectfully request that this Court enter Judgment against the Defendants:

A. Ordering Defendants to provide copies of the front and back of any 2010 paycheck to Defendant Costa from Defendant Florence Township;

B. A declaration that the denial of access to the front and back of any 2010 paycheck to Defendant Costa from Defendant Florence Township violated the Open Public Records Act and common law right of access;

C. Awarding Plaintiff costs and reasonable attorneys' fees; and

D. For such other or further relief as this Court deems just and equitable.

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

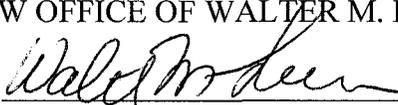
I certify that no transcript of proceedings below exists, as this is a direct appeal from the agency's denial of access to records.

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: 

Walter M. Luers, Member
Suite C203
23 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656
Facsimile: 908.894.5729

DATED: January 27, 2012

VERIFICATION

John Paff, of full age, certifies as follows:

1. I am the Plaintiff in the action captioned "John Paff v. Township of Florence, *et al.*" All of the facts stated in the verified complaint to which this Verification is attached are true, and as to those facts that are alleged on information and belief, I believe those facts to be true.

2. 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.



John Paff

Dated: January 27, 2012

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Suite C203
23 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656
Attorneys for Plaintiff John Paff

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| <p>JOHN PAFF, Plaintiff, v. TOWNSHIP OF FLORENCE, RICHARD A. BROOK in his official capacity as the Administrator of the Township of Florence, JOY M. WEILER in her official capacity as the Clerk and Records Custodian of the Township of Florence and NICHOLAS J. COSTA, ESQ. in his official capacity as the Municipal Prosecutor of Florence Township, Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BURLINGTON COUNTY</p> <p>DOCKET NO. _____</p> <p>CIVIL ACTION</p> <p>CERTIFICATION PURSUANT TO R. 1:4-4(c)</p> |
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I, WALTER M. LUERS, of full age, hereby certify:

1. I am an attorney of the State of New Jersey and a member of the law firm of Law Offices of Walter M. Luers, LLC, and counsel for Plaintiff John Paff.

2. Mr. Paff was not available to sign his Verification and has, therefore, provided a facsimile copy of his signature.

3. Mr. Paff has acknowledged to me the genuineness of his signature affixed to his Verification. A copy of the Verification with an original signature affixed will be filed if requested by the Court or a party.

Dated: January 27, 2012



WALTER M. LUERS

Appendix XII-B1

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|  | CIVIL CASE INFORMATION STATEMENT (CIS) | | FOR USE BY CLERK'S OFFICE ONLY | |
| | 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 | | 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 Walter M. Luers, Esq. | | TELEPHONE NUMBER (908) 894-5656 | COUNTY OF VENUE Burlington | |
| FIRM NAME (if applicable) Law Offices of Walter M. Luers, LLC | | DOCKET NUMBER (when available) | | |
| OFFICE ADDRESS Suite C203 23 West Main Street Clinton, NJ 08809 | | DOCUMENT TYPE Verified Complaint | | |
| | | JURY DEMAND <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | | |
| NAME OF PARTY (e.g., John Doe, Plaintiff) John Paff, Plaintiff | | CAPTION John Paff v. Township of Florence, et al. | | |
| CASE TYPE NUMBER (See reverse side for listing) 701 | | IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. | | |
| RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" 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 checked="" type="checkbox"/> NO | | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" 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 checked="" 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 This action is being initiated under the Open Public Records Act, NJSA 47:1A-1, and should proceed in a summary or expedited manner and should be assigned to the designated OPRA Judge for this vicinage. | | | | |
|  DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION | | |
| WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" 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: <i>Walter M. Luers</i> | | | | |