

## EDITORIAL: A year later, answers coming on Warren County generator case

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Judge Amy O'Connor.

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File Photo

More than 14 months after Superstorm Sandy, Warren County residents finally will get a look at the investigative report in the case of **county employees who took county-owned generators** for personal use after the storm.

That's too long, and the multiple legal filings in this case by John Paff, an open-government advocate, show how difficult it can be to make public information public.

After the **allegations surfaced a year ago** about county jail employees using generators — during a period in which much of Warren County was without power — county Prosecutor Richard Burke investigated and found no evidence of criminal behavior. He sent the case back to Sheriff David Gallant, whose office investigated and said it took **disciplinary action against the employees**, but little else — except to

say that no one was fired.

Paff, chairman of the New Jersey Libertarian Party's Open Government Advocacy Project, filed an Open Public Records Act request to see the investigative report. That request was rejected last June by Superior Court Judge Amy O'Connor. Paff then filed a complaint under common law, which O'Connor upheld earlier this month, ruling the prosecutor's office must release its entire file. The only question left hanging was whether a jail employee named in the prosecutor's report would be identified publicly. O'Connor ruled last week that the name should be withheld. The prosecutor's office has 60 days to release the report, assuming it doesn't appeal the judge's ruling.

So here's the upshot: The public (thanks to Paff's efforts) will get to see the what, when, where, why and how of this incident. But not the "who."

While it's important that the public be able to review the evidence compiled by the prosecutor and the sheriff's office, it's critical to know who was involved — those who were disciplined and those who were in charge of those employees. This was a misuse of public property by public servants; if those involved have been punished and moved on, what's the rationale for not disclosing all the details?

All of this could have been avoided had Gallant and Burke simply shared their findings and reports with the public when they made them, instead of requiring a year-long battle to get a judge to tell them to do so.

Some people may ask, why all the furor over a few generators? Because it speaks to government accountability in all

such cases, and it reaffirms that those in charge don't get to rewrite the rules in times of public emergency.

This case raises another disturbing question: Why is it that a "common law" suit by a citizen was required to release a public document, after rejection under the state's Open Public Records Act? How can a government record be ruled inaccessible under one law and declared public under another? O'Connor addressed this in her ruling, saying that common law "gives the citizen a right to inspect public documents if the documents are public records, the citizen has the requisite interest or standing to inspect the records and the interest in disclosing the records outweighs the need for confidentiality."

Why isn't that right outlined and granted to citizens under OPRA? Clearly, forcing information-seekers to prove "standing" — and resort to another level of litigation — exposes a weakness in the open records law.

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