
JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION, CIVIL PART
Plaintiff,	:	MERCER COUNTY
	:	DOCKET NO.
v.	:	
	:	
TOWNSHIP OF EWING,	:	Civil Action
	:	
Defendant.	:	

Brief of John Paff in Support of Order to Show Cause

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August 19, 2013

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STATEMENT OF FACTS

John Paff sent the following Open Public Records Act and common law request to the Township of Ewing:

I'm seeking to learn how much money employee Frederick K. Dow earned in 2012 from the Township of Ewing.

I know that the remuneration of police officers such as Dow consists of several elements such as "regular pay," longevity pay," "overtime pay" and pay for work done at the request of a third party contract (e.g. traffic control), etc. I would like a record that shows the 2012 year-to-date amounts of each separate element of Dow's pay, together with the total, such record having been issued at the end of the last pay period in calendar year 2012. (Pa1.)

On July 8, 2013, the Township of Ewing supplied John Paff with the requested salary record, but redacted one of the salary categories, the year-to-date amount for that salary category and the total year-to-date salary amount as private personnel records. (Pa2-5.) The Township also redacted Police Officer Dow's employee number and social security number, (Pa5), but John Paff is not seeking that information.

On July 30, 2013, John Paff's attorney faxed and emailed the Township of Ewing a letter, explaining why OPRA requires public access to the redacted salary information. Paff's attorney also stated that "to avoid litigation," the redacted salary information should be disclosed by August 14, 2013. (Pa6-7.) Neither John Paff nor his attorney has received any communication from the Township of Ewing in response to their July 30 letter.

ARGUMENT

I. OPRA Expressly Requires the Public Disclosure of "an Individual's . . . Salary, Payroll Record"

John Paff requested from the Township of Ewing "a record that shows the 2012 year-to-date amounts of each separate element of [Township employee Fredrick K.] Dow's pay, together

with the total, such record having been issued at the end of the last pay period in calendar year 2012.” (Pa1.)

OPRA¹ expressly states that government records include “an individual’s name, title, position, salary, payroll record . . . (emphasis added). N.J.S.A. 47:1A-10. Moreover, unlike most public records, which must be disclosed “as soon as possible, but not later than seven business days after receiving the request,” N.J.S.A. 47:1A-5i, “public employee salary and overtime information” require “immediate access.” N.J.S.A. 47:1A-5e. The Township did grant access to police officer Dow’s payroll record but redacted one of categories of “earning,” the year-to-date amount of that category of salary and the total salary. (Pa5.) (The Township also redacting Dow’s employee number and social security number, but John Paff is not seeking those portions of the payroll record.)

It is the Township itself, not John Paff, that has included the redacted category and the corresponding monetary amount as part of police officer Dow’s Township employee salary, together with his “regular” and “overtime” salary. (Pa5.) As salary listed in a Township payroll record, the portion of the record redacted is public under OPRA.

II. Township Has Failed to Satisfy its Burden of Proving That OPRA Personnel or Privacy Exemption Applies

A. Township Has Failed to Satisfy its Burden of Proving That Redacted Information Concerns Only “Off-Duty” Employment, and Does Not Concern “Extra-Duty” Employment

The Township’s July 8, 2013, denial of access letter describes the redactions at issue nine times as concerning “off-duty” work and describes the redactions one time as concerning “extra work.” (Pa2-4.) There are fundamental differences between “off-duty” work and “extra-duty”

¹ John Paff’s complaint does not include a common law claim.

work. Ewing Police Department General Order titled “Secondary Employment” defines “extra-duty employment” as “[a]ny employment that is conditioned on the actual or potential use of law enforcement powers by the police officer employee.” “Regular off-duty employment,” in contrast is defined as “[a]ny employment that will not require the use or potential use of law enforcement powers by the off-duty employee.” (Pa8.)

Other importance differences between extra-duty and off-duty employment are consequences of the fact that extra-duty, but not off-duty, employment involves police officers working as uniformed, Township police officers. The Township General Order states regarding extra-duty employment, but not off-duty employment, “[p]ayment for this duty is made from the employing company through the township (sic) of Ewing, to the officer.” (Pa8.) The reason that Township police officers working in police-related activities for private entities must be paid by the Township is that, if they were not paid by the Township, they would be required to possess a private detective license. (Pa12.)

Because extra-duty, but not off-duty, employment is part of official Township employment, the private entity must have a contract with the Township. The Ewing Police Department General Order states, “[p]olice officers may only engage in extra-duty employment as follows: Where a government, profit-making, or not-for-profit entity has a contract agreement with the police agency for police officers in uniform who are able to exercise their police duties. Those receiving the serve make payment for the services to Ewing Township.” (Pa9.)

Because extra duty employment is through the Township, it, unlike off-duty employment, is covered by the police officers’ Township worker’s compensation benefits, State accidental disability benefits and State death benefits. (Pa14.)

Thus, off-duty employment involves the private entity employing the police officer

directly to do non-police work. In contrast, extra-duty employment involves the private entity contracting with the Township and paying the Township, which in turn pays the police officer, to work for the private entity in the police officer's official capacity as a uniformed police officer, with the police officer's workmen's compensation, accidental disability and death benefits applicable.

The Township's repeated assertions that the redacted information concerns "off-duty" work is disproved by the very payroll record at issue. (Pa5.) The redactions at issue concerns earnings paid by the Township and considered by the Township to be part of police officer Frederick Dow's total Township salary. That is a characteristic of extra-duty compensation, not off-duty compensation, which is paid directly by the private entity to the off-duty police officer. Moreover, it is not John Paff's burden to prove that the compensation at issue concerned extra-duty work. Instead, it is the Township's burden to prove that the redactions at issue concern "off-duty" work. N.J.S.A. 47:1A-6. ("The public agency shall have the burden of proving that the denial of access is authorized by law.") Therefore, for the remainder of this brief, John Paff will assume that the redactions at issue concern extra-duty, not off-duty, employment.

OPRA Personnel Exemption's Exception for "Salary, Payroll Record" is Unrestricted; Moreover Including Quasi-Public Salaries Furthers OPRA's Intent

OPRA's personnel exemption has an exception for salary and payroll records. "[A]n individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount any type of any pension received shall be a government record." N.J.S.A. 47:1A-10. The Township's July 8, 2013, letter argues that OPRA's salary and payroll record exception does not apply because private entities, not the Township, funded police officer Dow's "off-duty" work. (Pa2-4.) But OPRA Section 10 does not limit the type of salary

and payroll record that is a government record. It does not state “salary that was funded by the public agency” or words to that effect. And if there were ambiguity as to the meaning of an OPRA exemption, it must be interpreted to favor openness. N.J.S.A. 47:1A-1. (“[A]ny limitations on the right of access accorded by [OPRA] shall be construed in favor of the public’s right of access.”)

Furthermore, OPRA’s purpose of maximizing public knowledge of governmental affairs is furthered by interpreting the “salary” and “payroll record” exceptions to include the record redactions at issue. Unlike private off-duty work, extra-duty work is both public and private. The private entities contract with the Township. (Pa9.) The police officer works in his or her official Township capacity as a uniformed police officer, (Pa8), often with a marked police car. (Pa13.) While working for the private entity, the police officer is covered by Township worker’s compensation and State accidental disability and death benefits. (Pa14.) The private entities pay the Township, which in turn pays the police officer. (Pa8.)

Because the police officer worked in his official capacity as Township uniformed police officer and the Township was involved in the extra-duty employment at issue, OPRA must apply to the redactions at issue if OPRA is to fulfill its purpose of informing the public of the Township and its employees’ official governmental activities.

C. Police Officer Dow Has No “Reasonable Expectation of Privacy” as to His Salary as an Official Township Police Officer Paid Through the Township

The Township’s July 8, 2013, letter asserted that police officer Dow has a right of privacy as to the redactions at issue because the salary was funded by private entities. (Pa3-4.) OPRA states, “a public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof

would violate the citizen's reasonable expectation of privacy." N.J.S.A. 47:1A-1.

But police officer Dow was not working as a private citizen. He was working "conditioned on the actual or potential use of law enforcement powers by the police officer employee." (Pa8.) Police officer Dow could have no "reasonable expectation of privacy" regarding his work in his official capacity as a uniformed Township police officer. Nor could police officer Dow have a "reasonable expectation of privacy" regarding payments made to him by the Township for such work.

Moreover, the Township's July 8, 2013, letter stated that the redacted information concerns payments to police officer Frederick K. Dow for working off-duty for private entities. (Pa2.) Therefore, the Township has now publicly revealed the category information redacted under the heading "EARNING." (Pa5.) Because that information no longer is private, the OPRA privacy exemption cannot apply to that redaction.

The Township's July 8, 2013, letter asserts that the redacted information is not part of police officer Dow's "public payroll record," (Pa2), or "public salary." (Pa3.) If by "public" the Township means "government," its assertions are demonstrably false. The record at issue demonstrates that the payments at issue were included, along with "regular" salary and "overtime" salary, as part of police officer Dow's total Township salary. (Pa5.)

III. North Jersey Media Group Decision is Inapposite Because it Did Not Involve Extra-Duty Work or Salary Records and Did Involve Security Concerns

The Township's July 8, 2013, letter relies on, and quotes extensively from, the decision North Jersey Media Group, Inc. v. Bergen County Prosecutor's Office, 405 N.J. Super. 386 (App. Div. 2009). (Pa3.) That decision is inapposite.

First, that case involved off-duty employment, not extra-duty employment as this case

does. The Bergen County Prosecutor's Office employees were not requesting extra-duty employment to work in their official capacity as Bergen County prosecutors.

Second, that case, unlike this case, did not involve salary, payroll records or any of the other exceptions to the OPRA personnel record exemption. On the contrary, the Bergen County Prosecutor's Office stated that it is authorized to disclose personnel information regarding the specific items listed in N.J.S.A. 47:1A-10. Id. at 390. Salary information is one of those specific items.

Third, North Jersey Media Group involved the identities of the prosecutors' private employers, raising security concerns. Id. at 390-92. In contrast, this case involves only a general category, such as "off-duty," "extra-duty" or "secondary," and a money figure. No private employer is identified and, therefore, no security threat is implicated.

Respectfully submitted,

Richard Gutman
Attorney for John Paff

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Montclair, NJ 07042-5029
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
	:	MERCER COUNTY
v.	:	DOCKET NO.
	:	
TOWNSHIP OF EWING:	:	Civil Action
	:	
Defendant.	:	
	:	Certification of John Paff

I, John Paff, hereby certify and say as follows:

1. I am the plaintiff in John Paff v. Township of Ewing.
2. I have personal knowledge of the facts alleged in the Complaint and Brief.
3. The factual allegations of the Complaint and Brief are true.
4. All attached documents are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents.

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 August 19, 2013

6/21/13

Ewing Township Mail - OPRA Request Township of Ewing

7-2-13 Recall
Ewing

6-21-13 Finance

OPRA Request Township of Ewing

John Paff <paff@pobox.com>

Thu Jun 20, 2013 at 5:44 PM

To: kmacellaro@ewingnj.org, paff@pobox.com

Township of Ewing

Please accept this e-mail/fax as my request for government records in accordance with the Open Public Records Act (OPRA) and the common law right of access. Please respond and send all responsive documents to me via e-mail at paff@pobox.com. If e-mail is not possible, please fax responses and responsive records to me at 908-325-0129. Also, I would appreciate it if you would acknowledge your receipt of this e-mail.

Records requested:


I'm seeking to learn how much money employee Frederick K. Dow earned in 2012 from the Township of Ewing.

I know that the remuneration of police officers such as Dow consists of several elements such as "regular pay," "longevity pay," "overtime pay" and pay for work done at the request of a third party contract (e.g. traffic control), etc. I would like a record that shows the 2012 year-to-date amounts of each separate element of Dow's pay, together with the total, such record having been issued at the end of the last pay period in calendar year 2012.

Thank you.

John Paff
(voice - 732-873-1251)

Attachment: This request as a text file.

 20130620T174440R.txt
2K

JUN 20 13

1a

THE TOWNSHIP OF EWING

Municipal Complex
2 Jake Garzio Drive
Ewing, NJ 08628



Phone: (609) 883-2900
Admin. Fax: (609) 538-0729
Clerk Fax: (609) 771-0480
Web Address: www.ewingnj.org

Mayor's Direct Dial: (609) 771-6321

July 8, 2013

John Paff
Via email at Paff@pobox.com

Re: June 20, 2013, 5:44 pm email OPRA Request

Dear Mr. Paff:

The Ewing Township Clerk's Office received your Open Public Records Act (OPRA) request on June 20, 2013 at 5:44 pm after the office was closed. As such, the official Records Custodian, Kim Macellaro, received your OPRA Request on June 21, 2013. Accordingly, the seven (7) business day deadline to respond to your request was July 2, 2013. Subsequent timely requests for extensions extended this response time until July 8, 2013.

The following record is being provided with redacted portions, pursuant to relevant OPRA exceptions:

1. I'm seeking to learn how much money employee Frederick K. Dow earned in 2012 from the Township of Ewing. I know that the remuneration of police officers such as Dow consists of several elements such as "regular pay," "longevity pay," "overtime pay" and pay for work done at the request of a third party contract (e.g. traffic control), etc. I would like a record that shows the 2012 year to date amounts of each separate element of Dow's pay, together with the total, such record having been issued at the end of the last pay period in calendar year 2012.

In response to your request, records as to the total salary, overtime and longevity paid to Officer Frederick K. Dow from the Township of Ewing are enclosed with personal information redacted. The redactions are to ensure the protection of private information falling under permitted exceptions to OPRA, including personal identifying information such as social security numbers of the officers and personnel records of off-duty time worked and paid by a third party through the Township.

Off duty payroll paid by third parties has been redacted from the record produced since the officer's payment for voluntary, off-duty work paid by a third party does not involve the expenditure of public funds and is not part of the public employment compensation of the employee and is not part of their public payroll record. It is not money Mr. Dow earned from the Township of Ewing. OPRA generally provides that records maintained by governmental entities are government records unless

{02938433}

they meet a permitted exception. Documents that fall under the exceptions are not considered "public" for the purposes of the Act. Personnel records are an **exception** to OPRA. The public entity has a companion duty to protect the privacy interests of those whose records they maintain. It is the Township's position that off-duty extra work performed by Township police officers for private employers, which does not involve the expenditure of taxpayer dollars and is not a requirement of their position with the Township, is a personnel record, subject to the privacy protections found in OPRA.

Courts in New Jersey have also come to similar conclusions with similar personnel information. In *North Jersey Media Group, Inc. v. Bergen County Prosecutor's Office*, 405 N.J. Super. 386, 387 (App. Div. 2009), a newspaper was denied an OPRA request to inspect the employment records of a prosecutor's office. The reporter was seeking records relating to those employees who sought approval for outside employment. *Id.* The court ultimately found that these documents were "personnel records exempt from disclosure and that the public interest in disclosing the information was outweighed by the individual public servant's rights to protect their privacy and security." *Id.* at 388-89. This court went on to recognize that "the *only* personnel information it is authorized to disclose are the specific items listed in N.J.S.A. 47:1A-10, and that . . . pursuant to N.J.S.A. 47:1A-1, it has an obligation to safeguard from public access a citizen's personal information . . . when disclosure thereof would violate the citizen's reasonable expectation of privacy." *Id.* at 390 (citation omitted). The court found that "[i]t is more than reasonable that an employee . . . in filing a request for outside employment, would assume that such a disclosure would be kept confidential; its content relates to employment and its production is at the demand of the employee manual. Such confidential communication between employee and employer should be protected." *Id.* at 388-89. The court explained that "plaintiff is a newspaper engaged in the reporting of information to the public. The dangers inherent in disclosure of confidential information for public dissemination are so obvious that we are compelled to conclude that the privacy interests of the [] employees prevail over the public interest in disclosing the information." *Id.* at 391.

Here, similarly, the privacy interests of the individual officers outweigh the requester's interest. The payroll record here is for the voluntary performance of private, off-duty work, not funded by public monies. The process must be administered by the Township as a result of the Attorney General's 1977 Directive to avoid conflicts of interest for off-duty work performed by police officers. Off-duty work is completely voluntary and although it is required by the Office of the Attorney General to be processed through the Township, it is not part of an officer's public salary or benefits and is not pensionable income. As such, although the Township is required by law to process this payroll and maintain these records, and such off-duty work must be facilitated through the Township by directive of the Office of the Attorney General, such compensation is not part of an employee's public salary or benefits and therefore not a public document subject to production.

OPRA specifically exempts personnel records from production under the Act as follows:

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Notwithstanding the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.) 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, except that:

an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;

N.J.S.A. 47:1A-10.

It is the Township's position that it has both a duty to produce public information but also a countervailing duty under OPRA to safeguard the privacy interests of its citizens and employees with respect to private information that it is required to maintain, and that payroll records related to the off duty work of its police officers that does not involve public funds falls under this exception.

The indicated records are being transmitted to you via email, as per your request. Pursuant to N.J.S.A. 47:1A-5.b., the cost associated with this request is \$0.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the Ewing Township Clerk's Office to file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ 08625, by email at grc@doa.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

NAME FREDERICK K. DOW
 EMP. NUM [REDACTED]
 BUSINESS TOWNSHIP OF EWING

SSN	STATUS	PERIOD BEG.	PERIOD END	HOUR/ SAL	PAYGROUP	PAY RATE	CHE DATE	CHE NUM
[REDACTED]	M-0	12/15/2012	12/28/2012	5	Bi-Weekly	4326.03	12/28/2012	13375
EARNING		UNITS	RATE	CURRENT AMOUNT	YTD UNITS	YTD AMOUNT		
Differential		0.00		0.00	0.00	12.08		
Group Term Life		0.00		27.40	0.00	659.40		
Longevity		0.00		0.00	0.00	2745.46		
Longevity Police		0.00		237.93	0.00	3321.87		
Overtime		0.00		0.00	133.50	10507.89		
[REDACTED]		0.00		0.00	0.00	[REDACTED]		
Regular		0.00		4326.03	2.50	110328.47		
Regular 1		0.00		0.00	61.00	3301.67		
TOTALS		0.00		4591.36	197.00	[REDACTED]		

TAXABLE EARNING

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9 PRESCOTT AVENUE
MONTCLAIR, NEW JERSEY 07042-5029

TELEPHONE & FAX
973-744-6038

E-MAIL:
rickggg@yahoo.com

July 30, 2013

Kim J. Macellaro
Municipal Clerk
Township of Ewing
609-771-0480 (fax)
kmacellaro@ewingnj.org
sbate@ewingnj.org

Re: June 20, 2013 OPRA Request of John Paff

Dear Ms. Macellaro:

I represent John Paff regarding his June 20, 2013, OPRA and common law request for a record indicating the total 2012 salary of police officer Frederick K. Dow.

As you may recall, you responded July 8, 2013, by sending him such a record but you redacted various portions, including one of the categories of "earning" and the corresponding year-to-date amount. You characterized the aforementioned redactions as the salary for off-duty work paid by a third party and claimed it was exempt as "a personnel record, subject to the privacy protections found in OPRA."

John Paff respectfully disagrees. As to OPRA's personnel record exemption, your letter acknowledges that OPRA contains an express exception for "salary" and "payroll record." OPRA does not limit "salary" and "payroll records" to those using public funds.

As to OPRA's privacy exemption, there is no reasonable expectation of privacy for work that a uniformed police officer does acting in his official capacity. Moreover, your own July 8 letter revealed that Frederick K. Dow receives payment for off-duty work, so the category you redacted under the title "earning" is no


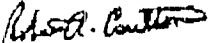
longer private.

Furthermore, you have not responded to John Paff regarding his common law right of access to the redacted earnings information. Mr. Paff wishes to know the off-duty or extra-duty earnings of Fredrick K. Dow because (1) he believes Ewing Township's requirement that certain private entities use uniformed police officers for certain activities is an unfair governmental monopoly, (2) he wishes to learn how large a proportion of the Ewing Township police officers' salaries come from private entities and (3) he wishes to know whether some favored Ewing Township police officers are benefiting financially from private entities more than other Ewing Township police officers who also wish off-duty work.

In order to avoid litigation, please send me the record at issue with the currently redacted earnings category and the currently redacted year to date amount unredacted by August 14, 2013. Thank you for your prompt attention to this matter.

Very truly yours,


Richard Gutman

	Ewing Police Department General Order		Issued Date: 02/11/2002
	Title: Secondary Employment		Order Number: A
Issuing Authority:  Robert A. Coulton, Chief of Police		Section: 9	
Accreditation Standard: 22.3.4		Effective Date: 10/16/2006	
References:			
Revision Date 07/06/2006	Number of Pages 5	Distribution B	Supersedes

I. PURPOSE

The purpose of this policy is to set forth guidelines to govern voluntary department overtime and secondary employment by members of this law enforcement agency.

II. POLICY

The policy of this agency is to provide guidelines to law enforcement employees to inform them of the types of secondary employment that are appropriate, and to establish procedures to maintain accountability for the welfare of the agency. These requirements are essential for the efficient operation of the agency and for the protection of officers, the agency and the community.

III. DEFINITIONS

Employment:

The provision of a service, whether or not in exchange for a fee or other service. Employment does not include volunteer work for charitable organizations.

Voluntary Department Overtime:

Overtime which is paid by the department at the officer's overtime rate for an assignment the Officer has willingly accepted.

Extra-Duty Employment:

Any employment that is conditioned on the actual or potential use of law enforcement powers by the police officer employee.

Payment for this duty is made from the employing company through the township of Ewing, to the officer.

Regular Off-Duty Employment:

Any employment that will not require the use or potential use of law enforcement powers by the off-duty employee.

IV. PROCEDURES

JL

There are two types of off-duty employment in which an employee may engage:

A. Regular Off-Duty Employment

A.

Employees may engage in regular off-duty employment that meets the following criteria:

1. Employment of a non-police nature in which vested police powers are not a condition of employment; the work provides no real or implied law enforcement service to the employer and is not performed during assigned hours of duty.
2. Employment that presents no potential conflict of interest between duties as a law enforcement officer and duties for the secondary employer. Some examples of employment representing a conflict of interest include, but are not limited to, the following:
 - a. Officers who work as a process server, reposessor, or bill collector; towing of vehicles; or any other employment in which police authority might be used to collect money or merchandise for private purposes.
 - b. Work involving personnel investigations for the private sector or any employment that might require the police officer to have access to police information, files, records, or services as a condition of employment.
 - c. Employment using the police uniform in the performance of tasks other than those of a police nature.
 - d. Employment that assists (in any manner) the case preparation for the defense in any criminal action or for either side in any civil action or proceeding.
 - e. Officers who work for a business or labor group that is on strike.
 - f. Officers who work in occupations that are regulated by, or that must be licensed through, the police agency or its civilian board.
3. Employment that does not constitute a threat to the status or dignity of law enforcement as a professional occupation. Examples of employment that constitute such a threat and should be denied include, but are not limited to:
 - a. Establishments that sell pornographic books or magazines, sexual devices or videos, or that otherwise provide entertainment or services of a sexual nature.
 - b. Any employment involving the sale, manufacture, or transport of alcoholic beverages as the principal business.
 - c. Any gambling establishment.
 - c.

B. Extra-Duty Employment

Police officers **may** only engage in extra-duty employment as follows:

1. Where a government, profit-making, or not-for-profit entity has a contract agreement with the police agency for police officers in uniform who are able to exercise their police duties. Those receiving the service make payment for the services to Ewing Township.
2. Types of extra-duty services that may be considered for contracting are as follows:
 - a. Traffic control and pedestrian safety
 - b. Crowd control
 - c. Security and protection of life and property
 - d. Routine law enforcement for public authorities
 - e. Plainclothes assignments
 - f. Any other type of assignment must be submitted to the Chief of Police for approval
3. Documentation of hours worked and scheduled shall be recorded and maintained by the supervisor in charge of extra-duty work

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- scheduled tour of duty. If a replacement cannot be found the member shall contact the Supervisor assigned to administer extra duty details. If the member is able to locate a substitute worker the member shall provide notification to the Supervisor who administers the extra work detail as well as the vendor. These notifications shall be completed as soon as possible.
- c. Members who are unable to provide coverage for their scheduled assignment shall be subject to disciplinary action unless approved by the supervisor of extra duty assignments. This action may include, but is not limited to, suspension from or permanent removal from extra work assignments. Suspension shall not be less than 30 days from the occurrence of the non-coverage.
 - d. Officers are reminded that extra duty assignments are of a voluntary nature, and if officers do not wish to follow extra work guidelines, policies, vendor requests, then those officers should not request extra duty assignment.
9. When an Officer is assigned to extra duty it is understood that the vendor is hiring a law enforcement officer to be present at the designated location by the vendor. Officers are not to absent themselves from the vendor location. If an officer makes an arrest he/she is not to absent themselves in order to process the arrestee. The arrestee is to be turned over to on duty personnel for processing. If a vehicle crash is reported, on duty personnel will be responsible to write the required crash report. It is to be understood that the vendor/merchant has hired the officer to be present at the location and not to complete or absent themselves to complete police processing of an offender. If the officer is needed to sign the complaint this action is to be completed in the same manner as a private security officer or merchant.
10. Any officer working an extra work assignment will adhere to all departmental rules and regulations as if the officer was working his/her regular tour of duty for the department.
11. If an officer is reassigned from an extra duty assignment in response to basic manpower requirement, the supervisor will be responsible for justifying this action to the supervisor in charge of extra work.
12. Officers working extra duty assignments are not to work in excess of seventeen (17) hours in any one twenty-four (24) hour period. Hours worked shall include regularly scheduled duty hours and all overtime hours, as well as all extra duty assignment hours.
13. Officers working extra duty assignments will utilize only the uniform and equipment approved by the department. No other uniform, equipment weapons, badges, or credentials may be utilized without the authorization of the Chief of Police. In the event that an officer working an extra duty assignment sustains an injury, same is to be reported in accordance with department policy and procedure.

V. MECHANICS

- 1. In order to employ an off-duty officer, the employer must first write a request letter or telephone the extra work coordinator stating the nature of the employment as well as

the times and dates the employment is requested.

2. The Chief's designee shall investigate the employer and duty conditions with recommendations and advise the Chief as well as the extra-work supervisor, with pertinent information i.e., number of officers, uniform, hours, utilization of police vehicles, etc.
3. Dates and times of employment shall be posted, qualified officers shall provide a work request slip to the extra work coordinator, who shall distribute the work in a fair manner, requests shall be turned in by the designated date of the preceding month.
4. It shall be permissible to utilize a police radio while employed off-duty.

Enter your Employee ID and Password in the spaces provided below.
The entry of your Employee ID indicates that you have read and understood this document.

User Name:

Password:

Sign

COLONEL CLINTON L. PAGANO, Superintendent
Division of State Police
Box 68
West Henton, New Jersey 08625

December 1, 1977

FORMAL OPINION 1977 No. 33

Dear Colonel Pagano:

You have asked for our opinion as to whether members of a municipal police department may, during their off-duty hours, engage in police related activities for private persons or entities such as serving as a patrolman to direct traffic at shopping centers or at construction sites or at office complexes during rush hours and the like as well as serving as a watchman at construction projects. It is our opinion that such activities are permissible for regular members of the police department if arrangements are made with the employing municipality to use the policemen in this fashion during off-duty hours. A direct relationship between the policeman and the private party would violate the requirements of the Private Detective Act of 1930:

With respect to the Private Detective Act, the definition of a "private detective business" and of a "private detective or investigator" would include a policeman or policeman who act in capacities such as those mentioned above during off-duty hours. The term "private detective business" is defined by N.J.S.A. 45:19-9(a) to mean:

... the furnishing for hire or reward of watchmen or guards of private patrolmen or other persons to protect persons or property, either real or personal, or for any purpose whatsoever.

A "private detective or investigator" has been defined to mean any person who singly and for his own account conducts a private detective business without the aid or assistance of any employees. N.J.S.A. 45:19-9(c). However, the Act provides certain exemptions for persons acting in their official capacity:

... The term [private detective business] shall not include and nothing in this act shall apply to any lawful activity of any board, body, commission or agency of the United States of America, or any county, municipality, school district, or any officer or employee solely, exclusively and regularly employed by any of the foregoing. N.J.S.A. 45:19-9(a) (Emphasis added)

It is therefore clear from this definitional section of the Act that in any instance where provision is made with a municipal police department to secure the services of a regular police officer for those purposes during his off-duty hours with remuneration channeled through the municipality, the police officer would be acting in his official capacity and would fall within the exemption to the licensing requirements of the Act.¹

This conclusion is reinforced by the legislative history of the Act. The predecessor to the present Act, Laws of 1931, c. 183, pp. 410-413, §§ 1-3, provided that nothing in that law applied "to any detective or officer duly appointed or elected

to the police force of the State or of any county or municipality thereof. . . . By this provision, however, the Legislature in the present Act narrowed the exemption to "employees solely, exclusively and regularly employed by a governmental body." This amendatory language suggests that whereas it may have been permissible for a police officer to engage in the private detective business without a license prior to 1939, the exemption is now available only when the police officer acts strictly in his official capacity.

You are therefore advised that only those police officers privately employed on their own account during their off-duty hours would wear the imputation of the Private Detective Act's Regular members of a police department may engage in police related activities for private persons or entities during off-duty hours where arrangements are made with the employing municipality to use them in this fashion.

Very truly yours,

WILLIAM F. HILLANIS

Attorney General

By ROBERT I. DEL TUCCO

First Assistant Attorney General

1. An officer who was licensed under the Act would of course be in a different category.
2. By its terms, the exemption refers only to regular police officers and does not include special police officers appointed pursuant to N.J.S.A. 40A:14-14b.
3. Moreover, in the construction of the literal terms of a statute, primary regard must be given to the fundamental purpose for which the legislation was enacted. *N.J. Builders' Dwggr. etc. v. Burd.*, 60 N.J. 330, 338 (1960). This strict interpretation of the exemption of municipal police officers from the purview of the Act is fully consistent with the underlying legislative policy to protect the public from the abuse inherent in the private detective business. *Schwinn v. Kelly*, 64 N.J. 364, 370-71 (1969). Formal Opinion No. 11 - 1961 dated August 1, 1961.
4. In *Formal Opinion No. 6 - 1976* dated February 10, 1976, and *Formal Opinion No. 6 - 1976* Supplement dated March 9, 1976, it was similarly concluded that a consable may not permissibly act as a private security guard for hire during off-duty hours without having obtained a license under the Private Detective Act from the Superintendent of State Police.

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Ewing Township Patrolmen's Benevolent Association, Local 111
P.O. Box 7306 - West Trenton, New Jersey 08628-0990

Fred Dow, *President*
John Stemler III, *Vice President*
Frank Labaw, *Secretary*
Rocco Maruca, *Treasurer*
Robert Girard, *State Delegate*
Michael Pellegrino, *Sergeant-at-Arms*



**AGREEMENT FOR MANAGING AND
ACCOUNTING FOR
OUTSIDE EMPLOYMENT FOR
POLICE OFFICERS**

The Township of Ewing, with both the SOA/PBA representatives has developed an internal administrative system to collect fees for the use of our police officers for outside employment. We have established and agreed upon the following procedure.

1. Hourly rate for commercial business, private persons or entities will be:

\$35.00 per/hr	Officers taxable wage
\$1.00 per/hr	Administrative cost
\$36.00 per/hr	Total cost to vendor

2. Construction projects, road projects, and inter in projects will be:

\$45.00 per/hr	Officers taxable wage
\$2.00 per/hr	Administrative cost
\$47.00 per/hr	Total cost to vendor

3. Use of police vehicles will be \$5.00 per/hr

All statutory requirements and formal opinion directives will be applied regarding funding and payment for these services.

All payments to individual officers will be made directly through the payroll system in a separate check to coincide with the regular pay week. Funds will be made available by the vendor prior to the

Township obligation for the associated payroll wages. Fees must be collected prior to payment received and work done.

All appropriate deductions and mandated taxes will be applied to the wages earned.

This new form of outside duty payment through Ewing Township will ensure worker's compensation at the Officer's normal rate. It will further provide State mandated benefits for Accidental Disability (NJSA 43:16A-7) and Death Benefits (NJSA 43:15A-49).

This program will be managed by an officer designated by and under the direction of the Chief of Police. All administrative decisions, as well as any procedural changes, shall be discussed with the Police, Township Administration and Representatives of the SOA/PBA units. Any party may open this agreement for review or change after one year.

Frank R. Walters
Business Admin.

Richard H. Lewis
PBA

Chris Kintner
Clerk

Robert A. Cantor *Dec. 17/02*
Chief of Police

General Jacobs
SOA

12/17/02
Date

Richard Gutman
9 Prescott Avenue
Montclair, NJ 07042-5029
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
	:	MERCER COUNTY
v.	:	DOCKET NO.
	:	
TOWNSHIP OF EWING,	:	Civil Action
	:	
Defendant.	:	

ORDER

This matter being opened to the Court by Richard Gutman, attorney for Plaintiff John Paff, by way of order to show cause, on notice to _____, attorney for Defendant Township of Ewing, and the Court having considered the papers submitted by the parties, and having heard oral argument on _____, 2013, and for good cause appearing,

IT IS on _____, 2013 ORDERED as follows:

1. The Township off Ewing shall grant John Paff within 30 days of service of this order upon it access to the requested record without the redaction of the salary category, salary category amount and total salary amount;
2. John Paff shall submit any bill of costs and petition for attorney’s fees within 30 days of service of this order; and
3. John Paff shall serve a copy of this order upon the Township of Ewing within 10 days of service of this order upon him.

Judge

Opposed _____

Unopposed _____

Richard Gutman
9 Prescott Avenue
Montclair, NJ 07042-5029
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
	:	MERCER COUNTY
v.	:	DOCKET NO.
	:	
TOWNSHIP OF EWING,	:	Civil Action
	:	
Defendant.	:	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 N.J.S.A. 47:1A-6 and for good cause shown.

IT IS on this _____ day of _____, 2013, ORDERED that the defendant Township of Ewing appear and show cause on the _____ day of _____, 2013, before the Superior Court at the County Courthouse in Trenton, New Jersey at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, why judgment should not be entered for:

- A. An order that Township of Ewing grant Mr. Paff access to the requested record without the redaction of the salary category, salary category amount and total salary amount;
- B. An award of costs and attorney's fees; and
- C. 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 ____ 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, a brief, an answering affidavit or a motion returnable on the return date to this order to show cause and the relief requested in the verified complaint and proof of service of the same by _____, 2013. The answer, brief, answering affidavit or a motion, as the case may be, 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 _____.

4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by _____, 2013. 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, an answering affidavit or a motion returnable on the return date to the order to show cause and proof of service before the return date of the order to show cause.

These documents must be filed with the Mercer County Clerk of the Superior Court. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf. Include a \$135.00 filing fee payable to the “Treasurer State of New Jersey.” You must also send a copy of your answer, brief, answering affidavit or motion to the plaintiff’s attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your answer, brief, answering affidavit or motion 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 or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). 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 directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

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 _____ days

before the return date.
