



**Township of Middle**  
**OFFICE OF TOWNSHIP CLERK**  
33 MECHANIC STREET  
CAPE MAY COURT HOUSE, NJ 08210

**KIMBERLY KRAUSS**  
Township Clerk

**SUZANNE STOCKER**  
Deputy Township Clerk

April 29, 2013

Albert Wilson  
PO Box 1044  
Wildwood, NJ 08260

Sent via email at : [Wilsonpi@comcast.net](mailto:Wilsonpi@comcast.net)

Dear Mr. Wilson,

The Township of Middle has received your Open Public Records Act (OPRA) request dated April 17, 2013. The official Records Custodian, Kimberly Krauss, received your OPRA request on April 18, 2013. As such, the seven (7) business day deadline to respond to your request is April 29, 2013.

Your request dated April 17, 2013 requested the following:

Pursuant to NJSA 47:1A-1 et seq., I am requesting the following records pertaining to a recent Zoning dispute resulting in charges in Twp. Court. Specifically, Middle Twp. v. Monterey Motel, Inc. and Furey Lerro. The property in question is located at 637 Shunpike Road and is a storage facility.

1. Copies of all intra-office and inter-office email, paper, and audio communications of all Township Offices including but no limited to Mayor and Committee, Township Prosecutor, Zoning Department, and Township Solicitor pertaining to the aforementioned matter including, but not limited to, communications regarding the fine to be assessed to the defendant, Monterey Motel, Inc. and Furey Lerro.

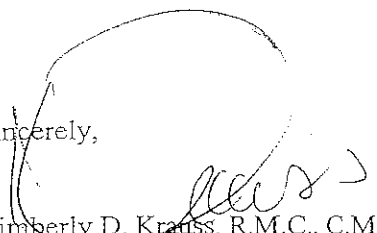


½ page	<p>Reply email dated 3/27/2013 sent by Zoning Official to Municipal Prosecutor, copied governing body and Township Clerk subject: State v. Monterey Motel Inc.; Request for Meeting</p> <p>Further correspondence date 4/1/2013, April 2, 2013 under same topic,</p>	n/a	Records covered under Attorney-Client Privilege	N.J.S.A. 47:1A-1.1 Section 7. Any record within the attorney-client privilege are exempt from OPRA
½ page	<p>Reply email dated 3/28/2013 sent by Mayor to Zoning Official and Municipal Prosecutor subject: State v. Monterey Motel Inc.; Request for Meeting</p>	n/a	Records covered under Attorney-Client Privilege	N.J.S.A. 47:1A-1.1 Section 7. Any record within the attorney-client privilege are exempt from OPRA
½ page	<p>Email dated 07/14/2012 sent by Business Administrator to governing body, Zoning Official and Municipal Solicitor subject: Burleigh Storage</p>	n/a	Records covered under Attorney-Client Privilege	N.J.S.A. 47:1A-1.1 Section 7. Any record within the attorney-client privilege are exempt from OPRA
½ page	<p>Reply Email dated 07/17/2012 sent by Deputy Mayor to Business Administrator, Zoning Official, Municipal Solicitor and Code Enforcement subject: Burleigh Storage</p>	n/a	Records covered under Attorney-Client Privilege	N.J.S.A. 47:1A-1.1 Section 7. Any record within the attorney-client privilege are exempt from OPRA

If your request for access to a government record has been denied or unfiled within the seven (7) business days required by law, you have a right to challenge the decision by the [insert name of agency] to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or 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 e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://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.

This completes your original OPRA request dated April 2, 2013

Sincerely,



Kimberly D. Krauss, R.M.C., C.M.R.  
Township Clerk / Registrar of Vital Statistics  
Deputy Business Administrator  
Township of Middle

CHRISTOPHER GILLIN-SCHWARTZ, ESQUIRE  
BARRY, CORRADO & GRASSI, P. C.  
2700 Pacific Avenue  
Wildwood, NJ 08260  
(609) 729-1333  
Attorneys for Plaintiff

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ALBERT F. WILSON,	:	SUPERIOR COURT OF NEW JERSEY
	:	CAPE MAY COUNTY, LAW DIVISION
	:	DOCKET NO. CPM-1-
Plaintiff,	:	
	:	Civil Action
v.	:	
	:	
	:	BRIEF IN SUPPORT OF
MIDDLE TOWNSHIP; and KIMBERLY	:	
KRAUSS, CLERK, in her official	:	ORDER TO SHOW CAUSE
capacity as custodian of	:	
records,	:	
	:	
Defendants.	:	

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Preliminary Statement

Albert F. Wilson files this summary action under N.J.S.A. 47:1A-6 in response to Middle Township and Kimberly Krauss custodian of records denying access to public records. R. 4:67-1(a). Albert F. Wilson submitted an OPRA request for the communications of all Township offices regarding Monterey Motel, Inc. and Eury Lerro. The defendants responded with a table denying access to six emails on the basis of attorney client privilege.

The table does not provide descriptions sufficient to justify the claim of privilege. The defendants base their claim of privilege solely on the list of recipients, which included

the municipal prosecutor and solicitor. The municipal prosecutor does not provide legal advice and is not in a relationship of professional confidence with Township officials. Emails to the solicitor included third parties and are not covered by attorney client privilege.

Albert F. Wilson respectfully requests the Court to order the defendants to show cause why the six email records should not be produced.

#### Facts

On April 17, 2013 Albert F. Wilson submitted an OPRA request to Middle Township Clerk Kimberly Krauss, in which he sought the following:

1. Copies of all intra-office and inter-office email, paper, and audio communications of all Township Offices including but not limited to Mayor and Committee, Township Prosecutor, Zoning Department, and Township Solicitor pertaining to the aforementioned matter including, but not limited to, communications regarding the fine to be assessed to the defendant, Monterey Motel, Inc. and Furey Lerro (Exhibit A to complaint).

On April 29, 2013 the township provided a partial response. Krauss transmitted five items to Wilson via email and denied six email records in their entirety (Exhibit B to complaint). Krauss included a table purporting to identify the records denied and the legal basis for each denial. Id. The table provides "if the

records were denied in their entirety, give a general nature description of the record." Id. The six records denied each have the same description stating "Records covered under the Attorney-Client Privilege." Id. On June 12, 2013 Wilson's attorney Christopher Gillin-Schwartz wrote to Krauss denying the claim of attorney client privilege and requesting immediate production of the six items (Exhibit C to complaint).

#### Legal Arguments

**A.) The defendants' table does not provide descriptions sufficient to justify the claim of privilege**

If documents are withheld from an OPRA response on the basis of privilege, the party withholding must produce a privilege log with a description of the records sufficient to justify the claimed privilege. Paff v. Dep't of Labor, 392 N.J. Super. 334, 341 (App. Div. 2004). An accurate index is necessary for substantive review by the requesting party as well as the reviewing court. Id.

The information provided in defendants' table does not sufficiently describe the emails and there is no justification provided for claiming attorney client privilege. The six emails withheld share the same description claiming they are "Records covered under the Attorney-Client Privilege" (Exhibit B to complaint). The only other information available about the email records are the official titles of the senders and recipients.

Id. The existence of attorney client privilege in this case cannot be demonstrated simply by including the prosecutor and solicitor in the list of email recipients. This limited information is not enough to justify withholding of public records under OPRA.

B.) There is no attorney client privilege attached to email records including the municipal prosecutor and municipal solicitor

Attorney client privilege attaches only if the communication is made between lawyer and client in the course of that relationship and in professional confidence. N.J.S.A. 2A:84A-20(1). A client, in the context of privilege, is a person who consults a lawyer for the purpose of retaining him or securing legal advice in his professional capacity. N.J.S.A. 2A:84A-20(3). Privilege does not attach simply by having an attorney privy to the conversation. Even if privilege attaches, it can be waived if a client voluntarily discloses privileged communications to a third party. Sicpa North America, Inc. v. Donaldson Enterprises, Inc., 179 N.J. Super. 56, 64 (1981).

There is no privilege attached to communications among the municipal prosecutor, mayor, zoning official, business administrator, and township clerk. Prosecutors are distinct from private attorneys. State v. Avena, 281 N.J. Super. 327, 336 (App. Div. 1995). The role of the municipal prosecutor is to advance the interests of the community and "see that justice is



done." State v. Ramseur, 106 N.J. 123, 320 (1987). While the prosecutor is an attorney, she is not retained for "legal advice" by anyone listed in the email chain. These individuals are not her clients and privilege does not attach to those communications. Email records including the municipal prosecutor have been unlawfully withheld and must be released immediately.

No attorney client privilege attaches to communications made to the municipal solicitor. On July 14, 2012 the business administrator sent an email to the governing body, zoning official, and the municipal solicitor regarding Burleigh storage (Exhibit B to complaint). Three days later, the deputy mayor sent an email to the business administrator, zoning official, code enforcement, and municipal solicitor regarding Burleigh storage. Id. The July emails included multiple parties in addition to the municipal solicitor.

Attorneys do not possess a Midas touch granting privilege to every communication with which they are involved. Merely including the solicitor in a pool of email recipients does not automatically transmit attorney client privilege to those communications. The defendants have failed to produce any information that tends to show the withheld records are privileged.

Conclusion

The defendants have violated OPRA and denied access to public records. They failed to provide sufficient information to allow the plaintiff and the Court to substantively determine the existence of attorney client privilege. While the defendants' log does not contain enough information to substantiate their claim of privilege, with what little they did reveal, the defendants demonstrated attorney client privilege does not attach to the records denied. The plaintiff respectfully requests the Court order the defendants to show cause why these records should not be produced.

Dated: 6/19/2013

BARRY, CORRADO & GRASSI P.C.

  
CHRISTOPHER GILLIN-SCHWARTZ, ESQ.

William J. Kaufmann, Esquire  
CAFIERO & BALLIETTE  
3303 New Jersey Avenue  
P.O. Box 789  
Wildwood, NJ 08260  
(609) 522-0511

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ALBERT F. WILSON	:	SUPERIOR COURT OF NEW JERSEY
	:	CAPE MAY COUNTY
Plaintiff,	:	LAW DIVISION
	:	
vs.	:	
	:	DOCKET # CPM-L-291-13
MIDDLE TOWNSHIP; and KIMBERLY	:	
KRAUSS, CLERK, in her official capacity :		Civil Action
as custodian of records,	:	
	:	
Defendants.	:	
	:	
	:	
	:	
	:	

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**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S DEMAND FOR JUDGMENT**

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**INTRODUCTION**

This is a case arising under the Open Public Records Act, N.J.S.A. 47:1A-1, *et seq.* ("OPRA"). The Plaintiff, Albert F. Wilson ("Wilson") contends that the Defendants, Middle Township and Kimberly Krauss, in her official capacity as Custodian of Records ("Krauss"), improperly withheld government records that were requested by him. On September 10, 2013 Honorable Nelson Johnson, J.S.C. signed an Order to Show Cause. That Order directed the Defendants to appear and "show cause" why judgment should not be entered:

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*Cafiero and Balliette*  
3303 NEW JERSEY AVENUE  
P. O. BOX 789  
WILDWOOD, N. J. 08260

- a. Ordering Defendant to provide copies of all of the documents requested by Plaintiff in his April 17, 2013 OPRA request;
- b. An award of costs of this action and reasonable attorney's fees; and
- c. Such other, further and different relief as the Court may deem equitable and just.

For the reasons more fully set forth below, Defendants contend that Wilson is not entitled to judgment by reason of the fact that the records that were withheld are exempt from disclosure by reason of the fact that they fall within the attorney-client privilege.

### STATEMENT OF FACTS

1. Middle Township is a New Jersey Municipality that is located in Cape May County and Kimberly Krauss, R.M.C. is the Township Clerk.
2. On April 18, 2013 Krauss received from Wilson an OPRA request dated April 17, 2013. Exhibit "A." In it he requested records concerning a zoning dispute that resulted in a municipal court prosecution. More specifically, he requested the following:

Copies of all intra-office and inter-office email, paper, and audio communications of all Township Offices including but not limited to Mayor and Committee, Township Prosecutor, Zoning Department, and Township Solicitor pertaining to the aforementioned matter including, but not limited to, communications regarding the fine to be assessed to the Defendant, Monterey Motel, Inc. and Furey Lerro.

3. The statutorily prescribed time for Krauss to respond to Wilson's request was April 29, 2013 and, on that date, under cover letter of even date Krauss responded to Wilson. Exhibit "B."
4. In her written response, Krauss identified five records that were being provided and she gave a full description of six records that were not being released. The

reason that Krauss cited for withholding of six records was: "Records Covered Under Attorney-Client Privilege."<sup>1</sup>

5. Plaintiff initiated this litigation and, as indicated above, on September 10, 2013 Honorable Nelson Johnson signed an Order to Show Cause.

### LEGAL ARGUMENT

#### **I. THE PLAINTIFF IS NOT ENTITLED TO THE RELIEF SOUGHT IN THE COMPLAINT BECAUSE THE TOWNSHIP CLERK PROPERLY WITHHELD DOCUMENTS BY REASON OF THOSE DOCUMENTS FALLING WITHIN THE ATTORNEY-CLIENT PRIVILEGE.**

In the Open Public Records Act the term "government record" is defined at N.J.S.A. 47:1A-1.1. That statute indicates that the term "government record" does not include "any record within the attorney-client privilege." N.J.S.A. 47:1A-1.1

In this case when Kraus received Wilson's OPRA request she assembled all the documents that would be responsive to the request without consideration of whether or not any statutory exemptions would apply. She then produced the material not covered by any exemption and withheld documents that were "within the attorney-client privilege." As a result, a threshold issue in this matter is whether Krauss' procedural actions complied with the mandate of the statute.

N.J.S.A. 47:1A-5g provides: "If the custodian is unable to comply with a request for access, the custodian shall indicate the basis therefore on the form and properly return it to the requestor. The custodian shall sign and date the form and return it to the requestor." In a table that was included as part of her response, Krauss described each document that was not being produced and cited the attorney-client privilege as the

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<sup>1</sup> On July 8, 2013 defense counsel released to Plaintiff's counsel two of the records that previously had

reason why each such described document was being withheld. That table has five columns. Each column has a heading. From the headings one can see that the table can be used in conjunction with: a) documents being released; b) documents being released in redacted form; c) documents being withheld; or d) any combination of a), b), and c). Here, Krauss used the table to describe only the documents that were being withheld.<sup>2</sup> In doing so, she provided a description of each document (e.g., "email") the parties to each document (e.g., "sent by Zoning Official to Mayor and Municipal Prosecutor") the subject of each document (e.g., "State v. Monterey Motel, Inc.") and a general description of the substance of each document (e.g., "request for meeting"). Then, as noted above, she indicated the reason that each document was being withheld was the attorney-client privilege.

The table that was included in Krauss' response to Wilson was in the nature of a privilege log. There are conflicting decisions as to whether such a log even must be provided to a requestor when material is being withheld. N.J.S.A. 47:1A-5g clearly does not require one. The decision in *Paff v. Dept. of Labor*, 392 N.J. Super 334 (App. Div. 2004), suggests that such a log is required. More recently, however, the Appellate Division has only indicated that the Court has authority to order preparation of a *Vaughn* index to assist a decisionmaker's review of documents to determine whether they contain privileged material. *Paff v. Division of Law*, 412 N.J. Super 140, 161 (App. Div. 2010). Parenthetically, N.J.A.C. 5:105-2.8 gives the Government Records Council the

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been withheld by Krauss.

<sup>2</sup> The documents that were being provided were not described in the table, but were described elsewhere in Krauss' written response.

authority to order an *in camera* review of documents that are withheld so that it can make a determination as to whether they properly were withheld.

In his brief Wilson contests the sufficiency of Krauss' response and seems to argue that, since her response was deficient she could not withhold documents by reason of the attorney-client privilege. Not only was Kraus' response fully compliant with N.J.S.A. 47:1A-5g, but Plaintiff's argument in that regard misunderstands the attorney-client privilege.

The United States Supreme Court has stated that the attorney-client privilege is the oldest privilege for confidential communications known to the common law. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). Similarly, the Appellate Division of the Superior Court of New Jersey has indicated that it is a privilege that long has been recognized by the Judiciary in New Jersey. *In Re Matter of Grand Jury Subpoenas*, 241, N.J. Super 18 (App. Div. 1989). The privilege now is statutory N.J.S.A. 2A:84A-20; N.J.R.E. 504.

"The purpose of the attorney-client privilege is 'to encourage clients to make full disclosure to their attorneys,' because such confidentiality is an 'indispensible ingredient of our legal system.'" *Tractenberg v. Township. of West Orange*, 416 N.J. Super 354 (App. Div. 2010), quoting *Macy v. Rollins Env'tl. Servs.*, 179 N.J. Super 535, 539 (App. Div 1981), and *In Re Grande Jury Subpoenas*, 241 N.J Super 18, 28 (App. Div. 1989). N.J.R.E. 504 (1) provides that communications between a lawyer and client "in the course of that relationship and in professional confidence are privileged." "Email communications are 'obviously protected by the attorney-client privilege as a communication with counsel in the course of a professional relationship and in

confidence.” *Stengart v. Loving Care Agency, Inc.*, 408 N.J. Super. 54, 73 (App. Div. 2009), quoting *Seacoast Builders Corp. v. Rutgers*, 358 N.J. Super 524, 553 (App. Div. 2003). “Confidential communications are only those communications which the client either expressly made confidential or which he presumably assumes under the circumstances would be understood by the attorneys as so intended.” *State v. Shubert*, 235 N.J. Super 212, 221 (App. Div 1989), certif. den. 121 N.J. 597 (1990) (Emphasis added). “[A] mere showing...the communication was from client to attorney does not suffice, but the circumstances indicating the intention of secrecy must appear.” *Id.* at 220-21. The privilege extends to communications between a public body and the attorney retained to represent it. *In Re Grande Jury Subpoenas*, supra 241 N.J. Super at 28; *In Re State Commission of Investigation*, 226 N.J. Super 461 (App. Div. 1988). The privilege extends to any person who is or may be the agent of either the attorney or the client and includes any “necessary intermediaries...through whom the communications are made.” *State v. Kociolek*, 23 N.J. 400, 413 (1957). Communications such as discussions of litigation strategy, evaluation of liability, potential monetary exposure and settlement recommendations are considered to be privileged. *The Press of Atlantic City v. Ocean County Joint Insurance Fund*, 337 N.J. Super 480, 487 (Law Div. 2000).

In this case, of Defendants the six items that originally were withheld by Krauss, four continued to be withheld. In lieu of seeking an order for an *in camera* review of the type described in N.J.A.C. 5:105-2.8, the four items at issue are annexed as Exhibits C, D, E and F on the copy of this brief that is being submitted to Judge Johnson, but they are not annexed as exhibits to the original that has been filed with the Clerk and they are not annexed to the copy of this brief that has been provided to Plaintiff’s counsel. In



reviewing those four items, the Court will see that the requisites to a finding that they all are covered by the attorney-client privilege exists. That is to say, all four emails are to or from attorneys representing Middle Township and elected members of the governing body and/or appointed officials concerning an on-going prosecution of a zoning code violation in the Middle Township Municipal Court and strategy concerning that prosecution and possible future prosecutions. The attorneys involved were the Township Solicitor, Marcus H. Karavan, Esquire and the Township Prosecutor, Marian Ragusa, Esquire<sup>3</sup>

For example, Exhibit "C" is from the Municipal Prosecutor to the Mayor. In it she discusses the status of the municipal prosecution, plea negotiations, sentencing issues and future code enforcement issues. There can be no question that it is covered by the privilege.

Exhibits "D" and "F" are from the Zoning Official to the Municipal Prosecutor wherein he expresses an opinion to the Municipal Prosecutor regarding the issue of contact by a Municipal Official with the defense in the Municipal Court case in the light of the information that was set forth in Exhibit "C." That certainly is the type of communication contemplated by the decision in *The Press of Atlantic City v. Ocean County Joint Insurance Fund, supra*, as being within the scope of the privilege.

As to Exhibit "E," it is an email from the Deputy Mayor to the Township Solicitor wherein he provides the Township Solicitor with copies of Exhibits "C" and "D" along with an email from himself to the Zoning Official and requests the Solicitor to contact

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<sup>3</sup> In one of the emails the Solicitor is referred to by first name only. Exhibit "E." That email was from the Deputy Mayor to [mhkpc@comcast.net](mailto:mhkpc@comcast.net) which is the email address of the Township Solicitor; mkhpc

him to discuss the information that he providing. Again, that communication falls within the privilege when it is viewed in the context of the Deputy Mayor, by the act of providing the Township Solicitor with certain other privileged information, is expressing a type of opinion regarding the strategy that was discussed in the privileged communications to which the Township Prosecutor was a participant.

In this case one must consider what would happen if all of the parties to the emails were physically all together in a room at the same time and said to each other the exact same things that were said in emails. In such a situation there can be no question that the entire discussion concerned an on-going municipal court prosecution, the strategy being employed by the Municipal Prosecutor and whether or not a meeting with the defendant and its attorney should occur. In such a situation there can be absolutely no question that the entire discussion -*i.e.*, everything that was said by each person- would fall within the attorney-client privilege. Various sentences from the conversation could not be extracted and then disclosed.

Fifteen or 20 years ago such an in-person meeting or a telephone conference call would have been about the only way such a multi-participant discussion with the Township's attorneys could have taken place. Today, however, in the 21<sup>st</sup> century such a discussion frequently takes place by some electronic means; typically by email or by text messaging. As a result, the participants in the conversation are not physically with each other and the discussion actually may take place over a longer period of time than it did 20 years ago since the electronic communication methodology preserves one's words for a lengthier period of time than was the situation 20 years ago. Those facts, however, do

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standing for Marcus H. Karavan, P.C.

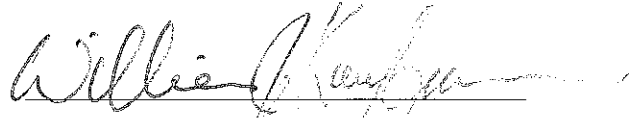
not mean that some portion of the electronic conversation loses the protection from disclosure that it would have had 20 years ago. On the contrary, the entire electronic conversation in the virtual conference room afforded by technology must have the same protection from disclosure today as the in-person conversation had 20 years ago. The advance of technology cannot be used as a tool to erode the attorney-client privilege as the Plaintiff would have the Court do. That is especially true given the Appellate Division's opinion that the privilege "must be given as broad a scope as its rationale requires." *Ervesun v. Bank of New York*, 99 N.J. Super 318, 329 (App. Div 1968), certif. den. 51 N.J. 394 (1968).

Finally, in his brief the Plaintiff argues that no communications amongst Township officials and the Municipal Prosecutor are covered by the attorney-client privilege because the Municipal Prosecutor is not retained by the officials to render legal advice. The Plaintiff did not cite any authority for such a proposition. The reason for the failure to cite any authority undoubtedly is because there is no judicial or other authority that supports such a preposterous proposition. Not only is the Municipal Prosecutor retained to prosecute cases in the Municipal Court, but her duties include giving advice to all municipal law enforcement officials in the Township and to report to the governing body as to law enforcement issues that must be addressed by the governing body with its law enforcement employees. Such law enforcement employees of course include code officials and zoning officials. Her duty in that regard is particularly heightened in cases such as this where the email communications to which the Municipal Prosecutor was a party concerned a local ordinance violation as opposed to a state statute violation. Plaintiff's arguments as to the Municipal Prosecutor are without merit.

## CONCLUSION

For all the reasons expressed above, coupled with such other facts as may be adduced at the hearing of this matter, Defendants contend that Plaintiff is not entitled to any of the relief sought in the Complaint and Defendants request entry of judgment dismissing the Complaint.

Dated: October 10, 2013



William J. Kaufmann, Esquire  
Attorney for Defendants, Middle Township  
and Kimberly Krauss, Clerk, in her official  
capacity as Custodian of Records.

LAW OFFICES

*Casiero and Ballietto*

3303 NEW JERSEY AVENUE

P. O. BOX 789

WILDWOOD, N. J. 08260

NOV 18 2013

FILED

NOV 14 2013

RUSSELL JOHNSON, J.S.C.

William J. Kaufmann, Esquire  
CAFIERO & BALLIETTE  
3303 New Jersey Avenue  
P.O. Box 789  
Wildwood, NJ 08260  
(609) 522-0511

ALBERT F. WILSON

Plaintiff,

vs.

MIDDLE TOWNSHIP, and KIMBERLY  
KRAUSS, CLERK, in her official capacity  
as custodian of records,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CAPE MAY COUNTY  
LAW DIVISION

DOCKET # CPM-L-291-13

Civil Action

FINAL JUDGEMENT

THIS MATTER, having been initiated by Plaintiff's filing of a Complaint with this Court seeking various relief at law and under the Open Public Records Act, N.J.S.A. 47:1A-1, et. seq.; and the Court, on September 10, 2013, having signed an Order to Show Cause directing the Defendants to show cause before this Court on October 31, 2013 why judgment for the relief sought by Plaintiff should not be granted; and the Court, in the September 10, 2013 Order to Show Cause, having directed the Defendants to submit their written reply to the Order to Show Cause, which the Defendants did, and having further allowed Plaintiff to submit a written reply, which he did; and, on the October 31, 2013 return date of the Order to Show Cause, this matter having come before the Court sitting without a jury pursuant to Rule 4:67 as a summary proceeding with

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*Cafiero and Balliette*  
3303 NEW JERSEY AVENUE  
P.O. BOX 789  
WILDWOOD, N.J. 08260

Plaintiff being represented by Christopher Gillin-Schwartz, Esquire of the firm Barry Corrado & Grassi, P.C. and the Defendants, having being represented by William J. Kaufmann, Esquire of the firm of Cafiero & Ballietto; and, the Court having carefully considered the written submissions of counsel as well as the oral arguments of counsel; and the Court, consistent with the requirements of Rule 1:7-4, having placed its findings of fact and conclusions of law on the record in open court on October 31, 2013; and, for the reasons expressed in open court and placed on the record as aforesaid and being of the opinion that Plaintiff is not entitled to any of the relief sought in the Complaint and that judgment should be entered on the merits in favor of Defendants;

IT IS on this 14 day of November, 2013 Ordered, that Final Judgment be entered in favor of Defendants and against Plaintiff dismissing Plaintiff's Complaint, without attorney's fees, and that Defendants recover from Plaintiff their costs to be taxed; and

IT IS further Ordered that, upon defense counsel's receipt from the Court of a copy of this Final Judgment, he serve a true copy thereof upon Plaintiff's counsel within \_\_\_\_\_ days.

  
\_\_\_\_\_  
Nelson C. Johnson, J.S.C.

LAW OFFICES  
*Cafiero and Ballietto*  
3303 NEW JERSEY AVENUE  
P.O. BOX 789  
WILLOWOOD, N.J. 08260