

CAPE MAY COUNTY DN - 203  
SUPERIOR COURT  
9 NORTH MAIN STREET  
CAPE MAY CRT HSE NJ 08210-3096

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (609) 463-6514  
COURT HOURS 8:30 AM - 4:30 PM

DATE: JUNE 13, 2014  
RE: PAFF VS CAPE MAY COUNTY PROSECUTOR'S OFFICE  
DOCKET: CPM L -000265 14

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK i.

DISCOVERY IS 150 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS  
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON J C. GIBSON

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001  
AT: (609) 463-6514.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A  
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE  
WITH R.4:5A-2.

ATTENTION:

ATT: RICHARD GUTMAN RICHARD M  
GUTMAN  
9 PRESCOTT AVENUE  
MONTCLAIR NJ 07042-5029

JUCKS2

Richard Gutman - 001081996  
Richard Gutman, P.C.  
9 Prescott Avenue  
Montclair, NJ 07042-5029  
973-744-6038 (voice & fax)  
rickggg@yahoo.com  
Attorney for Plaintiff John Paff

FILED  
JAN 14 2014  
CLERK OF COURT  
LAW DIVISION  
SUPERIOR COURT - CAPE MAY COUNTY

JOHN PAFF,  
Plaintiff,

v.

CAPE MAY COUNTY PROSECUTOR'S  
OFFICE,  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
CAPE MAY COUNTY  
DOCKET NO. *CAM-L-265-14*

Civil Action

**VERIFIED COMPLAINT**

Plaintiff John Paff, by way of complaint against the Cape May County Prosecutor's Office, states as follows:

1. John Paff is an individual residing at 1605 Amwell Road, Somerset, New Jersey.
2. The Prosecutor's Office, located in Cape May County, is a political subdivision of the State of New Jersey.
3. John Paff requested the following records from the Cape May County Prosecutor's Office pursuant to the Open Public Records Act (OPRA) and the common law right of access to public records:

**Background:**

The Supreme Court's 1963 decision in *Brady v. Maryland* imposed a duty on the prosecutors to disclose evidence that may be of an exculpatory nature, including officer untruthfulness findings, to defendants and their counsel.

**Records Requested:**

I would like all letters (or other forms of notification) made by the Cape May County Prosecutor's Office of such exculpatory or favorable information to defendants concerning the following Wildwood Crest Officers:

1. Chief DePaul
2. Captain Mayer
3. Lt Hawthorne (Paff Cert., Page 1a.)

4. The Prosecutor's Office denied access on the grounds that the records involved "inter-agency or intra-agency advisory, consulting or deliberating materials; criminal investigating records and records generated on behalf of a public employee concerning a grievance by or against an employee." (Paff Cert., Page 2a.)

5. Mr. Paff's attorney on May 18, 2014 faxed, emailed and mailed a letter to the Prosecutor's Office clarifying that the record request included attachments and accompanying records. (Paff Cert., Page 3a.)

6. In his letter Mr. Paff's attorney argued that the Brady letters could not be confidential because they were disclosed to criminal defense attorneys. (Paff Cert., Page 3a.)

7. In his letter Mr. Paff's attorney also argued that the deliberative process exemption does not apply because Brady letters are not recommendations in a decision-making process, the criminal investigatory exemption does not apply because the letters are "required by law to be made" and the grievance exemption does not apply because the records are not used as part of an internal grievance process. (Paff Cert., Page 3a.)

8. Although Mr. Paff's attorney's May 18, 2014, letter warned that access to the record was required to avoid litigation, (Paff Cert., Page 3a), the Prosecutor's Office has not substantively responded to Mr. Paff's attorney's fax/email/letter.

**First Count**  
**(Denial of Open Public Records Act Access)**

9. Plaintiff repeats the allegations stated above as if set forth at length herein.

10. The Defendant Prosecutor's Office's denial of access to the Brady letters violated OPRA.

WHEREFORE, Plaintiff Paff demands judgment against the Prosecutor's Office as follows:

- A. A declaration that the Prosecutor's denial of access violated OPRA.
- B. An order that the Prosecutor's Office grant Paff access to the requested records;
- C. An award of costs and attorney's fees; and
- D. Such other relief as the Court deems equitable and just.

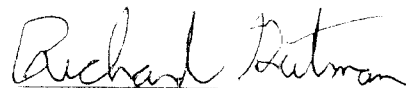
**Second Count  
(Denial of Common Law Access)**

- 11. Plaintiff repeats the allegations stated above as if set forth at length herein.
- 12. The public's need for access to the requested Brady letters is greater than the Prosecutor's Office's need for secrecy.
- 13. The Defendant Prosecutor's Office's denial of access to the requested records violated the common law right of access to public records.

WHEREFORE, Plaintiff Paff demands judgment against Defendant Prosecutor's Office as follows:

- A. A declaration that the Prosecutor's denial of access violated the common law right of access to public records;
- B. An order that the Prosecutor's Office grant Paff access to the requested records;
- C. An award of costs and attorney's fees; and
- D. Such other relief as the Court deems equitable and just.

Respectfully submitted,



Richard Gutman

June 4 2014

**Certification Pursuant to R. 4:25-4**

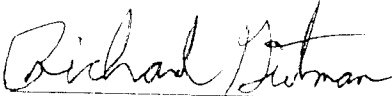
Plaintiff designates Richard Gutman as trial counsel in this action.

**Certification Pursuant to R. 4:69-4**

There are no necessary transcripts of local agency proceedings in the cause.

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.

June 4, 2014

  
Richard Gutman

Richard Gutman - 001081996  
Richard Gutman, P.C.  
9 Prescott Avenue  
Montclair, NJ 07042-5029  
973-744-6038 (voice & fax)  
rickggg@yahoo.com  
Attorney for Plaintiff John Paff

FILED  
JUN 4 2014  
CLERK OF COURT  
SUPERIOR COURT, CAPE MAY COUNTY

JOHN PAFF,  
Plaintiff,

v.

CAPE MAY COUNTY PROSECUTOR'S  
OFFICE,  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
CAPE MAY COUNTY  
DOCKET NO. *CPM-1-265-14*

Civil Action

**Certification of John Paff**

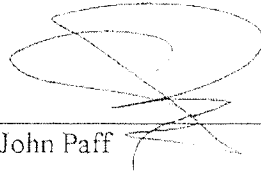
I, John Paff, hereby certify and say as follows:

1. I am the plaintiff in the above-titled lawsuit.
2. I have personal knowledge of the facts alleged in the Complaint.
3. The factual allegations of the Complaint 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 June 4, 2014

John Paff



### FAX COVER SHEET

TO	
COMPANY	
FAX NUMBER	16094654434
FROM	John Paff
DATE	2014-04-26 01:09:43 GMT
RE	Records Request

### COVER MESSAGE

Robert W. Johnson  
 First Assistant Prosecutor  
 Cape May County Prosecutor's Office  
 Via Fax only to 609-465-4434

Please accept this e-mail/fax as my request for government records pursuant to the Open Public Records Act and the common law right of access. Please respond to this request and send all responsive documents to me at paff@pobox.com. Thank you.

#### Background:

The Supreme Court's 1963 decision in in Brady v. Maryland imposed a duty on prosecutors to disclose evidence that may be of an exculpatory nature, including officer untruthfulness findings, to defendants and their counsel.

#### Records Requested:

I would like all letters (or other forms of notification) made by the Cape May County Prosecutor's Office of such exculpatory or favorable information to defendants concerning the following Wildwood Crest Officers:

1. Chief DePaul
2. Captain Mayer
3. Lt Hawthorne

\*John Paff P.O. Box 5424 Somerset, NJ 08875 Voice: 732-873-1251 Fax: 908-325-0129 e-mail: paff@pobox.com <paff@pobox.com>\*

OFFICE OF THE PROSECUTOR  
COUNTY OF CAPE MAY

ROBERT L. TAYLOR  
COUNTY PROSECUTOR

ROBERT W. JOHNSON  
First Assistant Prosecutor

KENNETH W. SUPER  
Chief of County Investigators



4 Moore Road, DN-110  
CAPE MAY COURT HOUSE  
NEW JERSEY 08210-1854

Phone: (609) 465-1155  
Fax: (609) 465-1347

May 5, 2014

John Paff  
P.O. Box 5424  
Somerset, New Jersey 08875

**RE:** *Your Request for Records – OPRA*

Dear Mr. Paff:

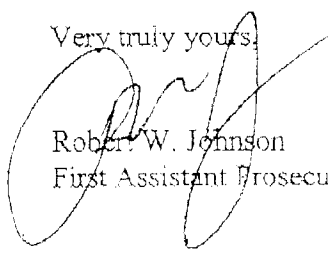
Please be advised that the Cape May County Prosecutor's Office is denying your request for records on Chief Tom DePaul, Captain Davis Mayer and Lieutenant Mike Hawthorne, since those records are exempt from production under N.J.S.A. 47:1A-1. The aforementioned records involve:

- Inter-agency or intra-agency advisory, consulting or deliberating materials
- Criminal investigating records
- Records generated on behalf of a public employee concerning a grievance by or against an employee.

Accordingly, the Cape May County Prosecutor's Office is denying you request for records pursuant to the Open Public Records Act (OPRA).

If you have any questions concerning this determination, please feel free to contact me.

Very truly yours,

  
Robert W. Johnson  
First Assistant Prosecutor

RWJ:ap

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**RICHARD GUTMAN, P. C.**  
ATTORNEY AT LAW  
9 PRESCOTT AVENUE  
MONTCLAIR, NEW JERSEY 07042-5029

TELEPHONE & FAX  
973-744-6038

E-MAIL:  
rickggg@yahoo.com

May 18, 2014

Robert W. Johnson  
First Assistant Prosecutor  
County of Cape May  
4 Moore Rd, DN-110  
Cape May Court House, NJ 08210-1654  
609-465-1347, -4434 (fax)  
prosecutor@cmcpros.net

Re: April 26, 2014 OPRA Request of John Paff

Dear Mr. Johnson:


I represent John Paff regarding his April 26, 2014, OPRA request for Brady v. Maryland communications regarding three Wildwood Crest police officials.

I wish to clarify that Mr. Paff's request for letters or other forms of notification includes attachments and accompanying records.

As you may recall, you denied access May 5 on the grounds of the deliberative process exemption, the criminal investigatory exemption and the public employee grievance exemption. Mr. Paff believes that such records cannot be confidential because they must be disclosed to criminal defenses attorneys. In addition, the deliberative process exemption does not apply because Brady letters are not recommendations in a decision-making process, the criminal investigatory exemption does not apply because the Brady letters are "required by law to be made" and the grievance exemption does not apply because the records are not used as part of an internal grievance process.

In order to avoid litigation, please supply me with the requested records by May 25, 2014.

Very truly yours,

  
Richard Gutman