

**FILED**

**JUN 10 2014**

**NELSON C. JOHNSON, J.S.C.**

COURT INITIATED

JOHN PAFF

PLAINTIFF(S)

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
ATLANTIC COUNTY  
DOCKET NO. ATL-L-5428-13

VS

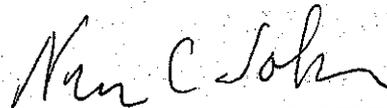
**ORDER**

GALLOWAY TOWNSHIP AND  
THALIA C. KAY, in her official capacity  
as Municipal Clerk and Records Custodial  
of Galloway Township

DEFENDANT(S)

THIS MATTER having been opened to the Court by Walter M. Luers, Esquire, attorney for the Plaintiff, John Paff; and in the presence of Michael Fitzgerald, Esquire, attorney for Galloway Township, et al.; and the Court having conducted two hearings at which time testimony was received and oral arguments were considered; and for the reasons set forth in the Court's Memorandum of Decision of even date herewith; and for good cause shown;

IT IS ON THIS 10<sup>th</sup> day of JUNE, 2014, ORDERED that the Township shall provide to Mr. Paff the log of emails as described in the Court's Memorandum of Decision of even date herewith, at a reasonable fee commensurate with the effort involved by the Township employee(s).



NELSON C. JOHNSON, J.S.C.



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1201 Bacharach Boulevard  
Atlantic City, NJ 08401-4527  
(609) 594-3384

**MEMORANDUM OF DECISION**

**TO:** Walter M. Luers, Esquire  
23 West Main Street  
Suite C203  
Clinton, New Jersey 08009  
*Attorney for Plaintiff*

Michael J. Fitzgerald, Esquire  
Fitzgerald, McGroarty & Malinsky  
401 New Road, Suite 104  
Linwood, New Jersey 08221  
*Attorney for Defendant*

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**RE:** Paff vs. Galloway Township, et al.

**DOCKET NO.** ATL-L-5428-13

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**THIS MATTER** comes before the Court on the petition of the Plaintiff, John Paff ("Mr. Paff"), who is represented by Walter M. Luers, Esquire. The Defendant, Galloway Township ("the Township"), is represented by Michael J. Fitzgerald, Esquire.

At the time this matter originally came before the Court, an Order to Show Cause was entered, with the intent being to proceed in an expeditious fashion. Thereafter, the Court conducted two hearings at which time testimony was received and oral arguments were considered. Upon conclusion of the same, the Court determined that it was essential for the parties to have the opportunity to engage in pre-hearing discovery, which was completed in a timely fashion. The only thing(s) which delayed this proceeding were winter storms which necessitated several re-schedulings. The entirety of the discovery materials exchanged by counsel is incorporated herein by reference and may be relied upon by either party in the event of an Appeal from this Ruling.

Based upon a review of all pleadings, certifications, exhibits, testimony and oral arguments of counsel, the court makes the following Findings of Fact.

## FINDINGS OF FACT

1. The plaintiff, John Paff, has a keen interest in what he terms “government transparency” and expresses his sincere concern that there is “oftentimes a nexus between local government corruption and lack of transparency.”
2. Notwithstanding the Plaintiff’s keen interests and concerns, generally, on this application he has not expressed any particular need for a specific item(s) of information, but rather seeks a list/log of emails involving two offices of Township Government.
3. While Plaintiff has made a carefully circumscribed request, namely, June 3 thru 17, 2013, it is nonetheless, quite broad in its effect. The two Township offices for which email logs are sought, namely, the Clerk and Chief of Police, are likely the two busiest offices in the municipality.
4. The Court won’t speculate on the number of emails involved in Mr. Paff’s request. Township witness, Eric McCarthy, offered to “guess”, but the Court would not permit him to do so. Suffice it to say, Mr. McCarthy estimates that the Township’s archival system archives approximately 25,000 emails per month – for all Township agencies and employees.
5. Based upon the pleadings and the representations of the Township’s attorney, it is undisputed that it “obviously has the technical ability to create such a log of emails” but has not done so because, “as Custodian she (the Township Clerk) is not required to create new records in response to an OPRA request and that if the record does not already exist, she may deny access on the basis that no records responsive exist.” [See Township legal brief of 10-17-13, at pg.2].
6. Notwithstanding its current position with regard to the creation of email logs, the Township concedes that in the past it acted pursuant to an “informal policy of voluntarily creating e-mail logs as a response to OPRA requests” but that it “was ended in late 2012 since such logs are not required to be created and the burden associated with voluntarily creating them could no longer be justified.” [See Township legal brief of 10-17-13, at pg.3].
7. On June 2, 2014, the Court conducted a Plenary Hearing at which time the Defendant presented the testimony of Township’s IT Specialist, Eric McCarthy, who was examined by Mr. Fitzgerald and cross-examined by Mr. Luers. Based upon Mr. McCarthy’s testimony, it does not appear there is any significant burden associated with producing the email log requested by the Plaintiff.

## ANALYSIS AND RULING

The Township's position, in substantial part, relies upon the Appellate Division's ruling in *MAG Entertainment, LLC vs. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534 (2005). As stated by the Township's counsel, Mr. Fitzgerald, at page 5 of his legal brief, *simply put, if it must be created, it is not a government record.*

Plaintiff's counsel argues that "metadata is a public record" and because the information sought is stored in the ordinary course of business, and can "with a few keystrokes" be retrieved in the form of a report. According to Plaintiff's counsel, what is important is that the data exists and it can be retrieved using the current technology of the Township. [See Mr. Luers' letter brief of 11-15-13, at pg. 2].

Of necessity, the Court begins its analysis by noting the purpose of the OPRA which is "to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." See Judge Serpentelli's decision in *Asbury Park Press vs. Ocean County Prosecutor's Office*, 374 N.J. Super. 312, 329, 6 (App. Div. 2004). As noted by Judge Serpentelli, "the Court must always maintain a sharp focus on the purpose of OPRA and resist attempts to limit its scope, absent a clear showing that one of its exemptions or exceptions incorporated in the statute by reference is applicable to the requested disclosure." *Ibid.*

To that end, the Statute defines a "government record" broadly. *Times of Trenton vs. Lafayette Yard Cmty.*, 183 N.J. 519, 535, 874 A.2d 1064 (2005), and is intended to include:

any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of . . . official business . . . or that has been received in the course of . . . official business

.....  
[N.J.S.A. 47:1A-1.1.]

While this definition excludes various types of information deemed confidential, thereby "reduc[ing] the universe of publicly-accessible information[.]" *Bergen Co. Improvement Auth. vs. North Jersey Media Group, Inc.*, 370 N.J. Super. 504, 516-17 (App. Div. 2004), given the

strong public policy underlying the OPRA, "any limitations on the right of access . . . shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1.

Notwithstanding the above, governmental agencies are only required to disclose identifiable government records. *MAG Entertainment, supra* at 549. OPRA "only allows requests for records, not requests for information." *Bent vs. Twp. of Stafford Police Dep't.*, 381 N.J. Super. 30, 37, 884 A.2d 240 (App. Div. 2005). In order for a request to comply it "must identify with reasonable clarity those documents that are desired." *Ibid.*

As noted above at Findings of Fact #s 3 and 7, the document(s) sought has been identified with reasonable clarity and despite its apparent breadth, can be created without burdening the Township.

Finally, the Court notes the language at N.J.S.A. 47:1A-5(g), particularly the final sentence, which reads in pertinent part:

A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian... *If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.*

It is apparent that the delivery of the requested information will not disrupt the Township's operations and, further, that no attempt was made to accommodate the Plaintiff in his effort to secure what his counsel refers to as "metadata."

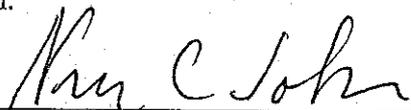
This Court's limited understanding of the term "metadata" is best described by the metaphor of a card catalogue in a library. Each card contains information about a particular book and the entire card catalogue system permits a patron to know what books are available at that library. With the advent of computers, our society has become increasingly digital; now, "metadata" describes the available digital data on a particular field of information through the compilation of abbreviated bits of information; whether cards for books, or, sender/receiver/date/time of email. The person examining the book catalogue or computer log knows the generalized/overall content without the benefit of what either the book or the email says. As this Court understands "metadata" it's main purpose is to facilitate the discovery of relevant information.

Despite the Township's purported concerns about disruption of police investigations, the request made by the Plaintiff affords him access to no more than the sender/receiver/date/time of emails between the dates of June 3 thru 17, 2013.

Whether termed "metadata" (which Plaintiff's counsel urges and Defendant rejects) or not, the fact remains that the emails of the Township Clerk and Chief of Police are public records as defined by the OPRA because they comprise "... information stored or maintained electronically... that has been made, maintained and kept on file in the course of his or its official business by any officer, commission, agency or authority of the state or any political subdivision thereof." By logical/reasonable extension, a log or list of emails that can be easily prepared, is likewise within the ambits of that definition.

For the reasons stated herein, the Court concludes that Mr. Paff is entitled to receipt of the log of emails he has requested, at a reasonable fee commensurate with the effort involved. In the event the Township wishes to appeal this ruling, Mr. Fitzgerald may submit to the undersigned an Order staying the relief granted herein, and the same will be entered.

An appropriate Order has been entered. Conformed copies accompany this Memorandum of Decision.



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NELSON C. JOHNSON, J.S.C.

Date of Decision: 6/10/14