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6/16/14



JOHN P. SCHMIDT

Plaintiff,

vs.

SWEDESBORO – WOOLWICH
BOARD OF EDUCATION and
MICHAEL GRIGGEL
Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
GLOUCESTER COUNTY

DOCKET NO. L 862-14

Civil Action

ORDER TO SHOW CAUSE

THIS MATTER being brought before the Court pursuant to R.4:67-1(a) by Ted M. Rosenberg, Esquire, the attorney for the Plaintiff, and based on the facts set forth in the Verified Complaint and supporting papers 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 19th day of June, 2014 ORDERED that the Defendants Swedesboro-Woolwich Board of Education and Michael Griggel appear and show cause on the 24th day of July, 2014 before the Honorable Georgia M. Curio, A.J.S.C., Superior Court, County of Gloucester, 1 N. Broad Street, Woodbury, New Jersey at 9:30 o'clock in

the AM am/pm or as soon thereafter as Plaintiffs can be heard, why judgment should not be entered:

1. Declaring that the Defendants Swedesboro-Woolwich Board of Education and Griggel, by failing to either: (a.) deny Schmidt's request, (b.) grant Schmidt's request, (c.) seek clarification of Schmidt's request or D d.) seek an extension of time within which to properly respond to Schmidt's request, violated N.J.S.A. 47:1A-5(i) which requires such a response within seven business days of a records custodian's receipt of a request.
2. Ordering the Defendants to provide Plaintiff and the Court copies of the current contract of the Superintendent of Schools.
3. Ordering the Defendants to provide Plaintiff and the Court copies of the current contract of the School Business Administrator.
4. Ordering the Defendants to provide Plaintiff and the Court copies of the nonpublic (i.e. "closed" or "executive") school board meeting minutes from 1/1/2011 to 12/31/2012, the closed session resolutions authorizing the closed/executive session(s) as required by N.J.S.A. 10:4-13 or in the case no resolutions were passed the page of the regular meeting minutes which contains the motion the board passed to enter into the nonpublic meeting.

And it is further ORDERED that:

A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon the Defendants personally or by certified mail, return receipt requested, within 5 days of the date hereof, in accordance with R.4:4-3 and R.4:4-4, this being original process pursuant to R.4:52-1(b). Plaintiffs must file with the Court their proofs of service of the pleadings on the Defendants no later than three (3) days before the return date.

Defendants shall file and serve a written answer and opposition papers to this order to show cause and the relief requested in the verified complaint and proof of service of the same by July 11, 2014. The answer and opposition papers must be filed with the Clerk of the Superior Court in Gloucester County and a copy of the papers must be sent directly to the chambers of the Judge Curio.

Plaintiffs must file and serve any written reply to the Defendants' order to show cause opposition by July 16, 2014. The reply papers must be filed with the Clerk of the Superior Court in Gloucester County and a copy of the reply papers must be sent directly to the chambers of Judge Curio.

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.

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.

The Defendants shall 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 you attorney, must file a written answer and opposition papers and proof of service before the return date of the order to show cause. These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. You must include a \$135 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer and opposition papers to the Plaintiff's

attorney whose name and address appear above, or to the Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer and opposition papers (with the fee) or judgment may be entered against you by default.

If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. The phone number is 856 848-5360. 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. The phone number is 856 848-4589.

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 3 days before the return date.



Hon. Georgia M. Curio, A.J.S.C.

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Attorney for Plaintiff

JOHN P. SCHMIDT	:	SUPERIOR COURT OF NEW JERSEY	:
	:	LAW DIVISION, CIVIL PART	:
Plaintiff,	:	GLOUCESTER COUNTY	:
	:		:
vs.	:	DOCKET NO.	:
	:		:
SWEDESBORO – WOOLWICH	:	Civil Action	:
BOARD OF EDUCATION and	:		:
MIKE GRIGGEL	:		:
Defendants	:	VERIFIED COMPLAINT	:
	:		:
	:		:

Plaintiff John Schmidt ("Schmidt"), by way of complaint against the Defendants Sweedsboro-Woolwich Board of Education ("the Board") and Mike Griggel ("Griggel") state as follows:

1. This is an action under the Open Public Records Act, N.J.S.A. 47:1A-1 et. seq. (OPRA), and the common law right of access for Defendants' failure to provide the current contracts of the Superintendent of Schools, School Business Administrator and closed/executive session meeting minutes and the resolutions that authorized the sessions/meetings.

The Parties

2. Plaintiff John P. Schmidt 1 W. Thompson Avenue, Gloucester City, New Jersey.

3. Defendant Sweedsboro-Woolwich Board of Education ("the Board") is a public body as that term is defined by N.J.S.A. 10:4-8(a).

4. Defendant Mike Griggel ("Griggel") is a "custodian of a government record" for the Board as that term is defined by N.J.S.A. 47:1A-1.1.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction of this action pursuant to N.J.S.A. 47:1A-6 and the common law right of access.

6. The Venue is proper in this court pursuant to R. 4:3-2(a)(2) because all of the relevant events offered in this County, and the public agency, the Defendant, is a municipal agency located within this County.

FACTUAL ALLEGATIONS

7. On June 1, 2014, Plaintiff submitted an OPRA request (Exhibit 1) in which he asked for the following:

- a. The current contract of the Superintendent of Schools.
- b. The current contract of the School Business Administrator
- c. The minutes of the nonpublic (i.e. "closed" or "executive") school board meeting minutes from 1/1/2011 to 12/31/2012 and closed the resolutions authorizing the closed/executive session as required by N.J.S.A. 10:4-13 or in the case no resolutions were passed the page of the regular meeting minutes which contains the motion the board passed to enter into the nonpublic meeting.

8. The seven business days in which the Custodian of Records had to respond to the request was June 12, 2014.

9. The documents requested by Plaintiff are public records and are subject to disclosure. Plaintiff's OPRA request was a valid OPRA request.

10. Plaintiff has a strong public interest and a legitimate private interest in obtaining the requested documents.

COUNT 1 – VIOLATION OF OPRA

11. The Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-10 of the Plaintiff's complaint as though fully set forth at length herein.

12. The Defendants have violated OPRA by not providing copies of the documents requested by Plaintiff.

COUNT 2 – VIOLATION OF COMMON LAW RIGHT OF ACCESS

13. The Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-18 of the Plaintiff's complaint as though fully set forth at length herein.

14. Plaintiff has a common law right of access to receive copies of the documents requested on June 1, 2014.

15. Plaintiff has a legitimate private interest and wholesome public interest in the requested records.

16. Defendants have no legitimate interest in maintain the secrecy of these documents. Therefore, the Defendants have violated Plaintiff's common law right of access.

WHEREFORE, Plaintiff demands judgment:

- A. Declaring that Griggel, by failing to either a.) deny Schmidt's request, b.) grant Schmidt's request, c.) seek clarification of Schmidt's request or d.) seek an extension of time within which to properly respond to Schmidt's request, violated N.J.S.A. 47:1A-5(i) which requires such a response within seven business days of a records custodian's receipt of a request.
- B. An order requiring Defendants provide Schmidt with the documents requested.
- C. Awarding the Schmidt his costs.

D. Such other relief as the Court deems equitable and just.

Designation of Trial Counsel

Plaintiff designate Ted M. Rosenberg as trial counsel

Certification Pursuant to R.1:38-7(b)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future

Certification Of No Other Actions

Pursuant to R.4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Dated: June ___ 2014

Ted M. Rosenberg

Verification

John P. Schmidt, of full age, certifies as follows:

1. I am the Plaintiff who filed the records requests in this matter against the Swedesboro-Woolwich Board of Education and Mike Griggel. All of the facts stated in this Verified Complaint to which this Verification is attached are true, and as to those facts that are alleged on information and belief, I believe them to be true.

2. 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.

Dated: March 5, 2014

John Schmidt

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June 12, 2014

Hon. Georgia M. Curio, A.J.S.C.
Superior Court of New Jersey - Law Division
1 N. Broad Street
Woodbury, NJ 08069

RE: Schmidt v. Woolwich-Sweedsboro Board of Education, et. Al.

Dear Judge Curio:

We are submitting this Letter Brief in lieu of a more formal brief in support of the First, Second and Third Counts of the Verified Complaint, which seek relief under the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1, et seq., and the common law right of access.

First, we discuss the facts of this case. Second, we discuss legal arguments why this matter should proceed in a summary manner and why Plaintiff is entitled to the relief requested.

STATEMENT OF FACTS

The Court is respectfully referred to the Verified Complaint for a complete recitation of the facts.

LEGAL ARGUMENT

POINT I

PLAINTIFF'S ACTION SHOULD PROCEED IN A SUMMARY MANNER.

"A person who is denied access to a government record by the custodian of the record, . . . may institute a proceeding to challenge the custodian's decision by filing an action in Superior Court." N.J.S.A. 47:1A-6. Once instituted, "[a]ny such proceeding shall proceed in a summary or expedited manner." Id. "This statutory language requires a trial court to proceed under the

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procedures prescribed in R. 4:67." Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 378 (App.Div. 2003). Any such action must be initiated by Order to Show Cause, supported by a verified Complaint. *Id.* (citing R. 4:67-2(a)). Here, because OPRA authorizes actions under it to proceed in a summary manner, and Plaintiff's request for an order to show cause is supported by a verified complaint, the relevant documents have been provided and certified as exhibits to the Verified Complaint, and the relevant facts should not reasonably be disputed, the order to show cause should be granted so this matter may proceed in a summary manner. R. 4:67-2(a).

POINT II
DEFENDANT GRIGGEL VIOLATED OPRA BY FAILING TO TIMELY RESPOND TO PLAINTIFF'S REQUEST AND PROVIDE REQUESTED RECORDS

OPRA mandates that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded [under OPRA] as amended and supplemented, shall be construed in favor of the public's right of access."

Libertarian Party of Cent. New Jersey v. Murphy, 384 N.J. Super. 136, 139 (App. Div. 2006) (citing N.J.S.A. 47:1A-1). "The purpose of OPRA '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.'" Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (quoting Asbury Park Press v. Ocean County Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)).

These lofty descriptions of the purposes of OPRA are not mere bromides or empty statements of legislative intent. Our Supreme Court has stated that "Those who enacted OPRA

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understood that knowledge is power in a democracy, and that without access to information contained in records maintained by public agencies citizens cannot monitor the operation of our government or hold public officials accountable for their actions." Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489, 502 (2011).

The Legislature sought to ensure that records would be "readily available" by imposing a strict response time requirement upon record custodians. OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). As also prescribed under N.J.S.A. 47:1A-5(i), a custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. In order for a response to be valid, it must be in writing and must either grant access, deny access, seek clarification or request an extension of time within the statutorily mandated seven (7) business days. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007)

Here, Schmidt submitted his request to Griggel via e-mail on Sunday June 1, 2014 (Exhibit 1). Thus, Griggel officially received the request on June 3, 2014 (the second business day following Schmidt's weekend submission of his request). Although asked, Griggel never acknowledged receipt of request.

Griggel was required to respond in writing to Schmidt's request by June 12, 2014, which is the seventh business day after it was received. Schmidt did not receive any response.

The burden of proof in showing that a denial of access was justified rests solely with the Records Custodian. N.J.S.A. 47:1A-6; Asbury Park Press v. Monmouth County, 406 N.J. Super.

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1, 7 (App. Div. 2009). Here, the documents sought by Plaintiff are “government records” within the meaning of OPRA. Under OPRA, a “government record”:

means 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 his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof.
N.J.S.A. 47:1A-1.1.

There is no doubt that the documents requested by Plaintiff are public records. Meeting minutes, resolutions and contracts qualify as public records under the broad definition set forth above.

POINT III
AWARD OF REASONABLE ATTORNEYS’ FEES

If the Court orders Defendants’ to produce the documents at issue, the Court should find that Plaintiff is the prevailing party and, under OPRA’s fee-shifting provision and the common law right of access, award Plaintiff a reasonable attorneys’ fee and costs. *N.J.S.A. 47:1A-6*, *Mason v. Hoboken*, 196 N.J. 51, 79 (2008) (concluding that catalyst theory applies to fee awards under both OPRA and the common law right of access)

Respectfully,