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September 3, 2014

Via Fax & Regular Mail

Honorable Travis L. Francis, A.J.S.C.
Superior Court of New Jersey
Middlesex County Courthouse, Chambers 201
56 Paterson Street, P.O. Box 964
New Brunswick, NJ 08903-0964

Re: John Paff v. City of Perth Amboy and Elaine M. Jasko
Docket No. MID-L-03674-14

Dear Judge Francis:

We were quite surprised to receive the Court's August 28, 2014 Order providing for limited discovery in the above matter. The Order was unexpected for two distinct reasons. First, on the return date of the Order to Show Cause, the Court's lengthy recitation on the record did not include any mention of discovery as an issue, nor did the Court's questioning of counsel raise that subject. Second, no legal authority was cited by Plaintiff to support the contention that a local police policy on incident reports has the force of law, thereby negating the criminal investigatory record exception explicitly set forth in OPRA, N.J.S.A.47:1A-1. The fact is that no such legal authority exists in this State. In fact, *dicta* indicate the contrary. Since a municipal police department's internal policies do not have the effect of law, there would no substantive basis for discovery concerning such policies.

The City of Perth Amboy continues to maintain that Plaintiff is not legally entitled to the police incident report under either OPRA or the common law right of access. Nonetheless, for the reasons that follow, the City of Perth Amboy has determined to conclude this litigation by providing to Plaintiff the only document at issue -- the Perth Amboy police incident report from February 24, 2010.

1. Either the filing of a motion for reconsideration, or engaging in discovery will require the City to expend precious financial resources on legal fees. As the lowest income and highest taxed municipality in the county, scarce tax dollars are better spent on critical needs;

2. Extended litigation also increases Plaintiff's legal fees, thereby raising the City's potential financial exposure in the event of a fee shifting award;
3. The information and documents previously posted on the internet by Plaintiff establish that for a considerable period of time he has been in possession of much more detailed information than is contained in the Perth Amboy police incident report; and
4. While some may consider re-publication of salacious details of a sexual assault to be an act of intentional infliction of emotional distress upon the victim, since the events happened more than four years ago, and the criminal and civil matters have been completed, the municipality's grant of access to the record will not interfere with the judicial or criminal process. Any potential liability for further publication, or the chilling effect that it may place on future victims, falls on the Plaintiff's shoulders.

By copy of this letter, we are enclosing the incident report to Plaintiff's counsel and the Court. Personal identifiers such as home addresses, telephone numbers and dates of birth have been redacted. Since the legal issue is now moot, there is no basis for the conduct discovery, any further legal argument, or a determination on the right of access to the document.

Thank you for your attention in this matter.

Respectfully submitted,



Mark J. Blunda

MJB:al

Enclosures

cc: Walter M. Luers, Esq. (w/ encl. via electronic and regular mail)

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**PERTH AMBOY POLICE DEPT
PERTH AMBOY, NJ**

<u>INCIDENT # / REPORT #</u>	<u>OFFICER</u>	<u>RANK</u>	<u>REVIEW STATUS</u>
10009645 / 0	MUNOZ, GUADALUPE	PATROLMAN	APPROVED

INCIDENT #10009645 DATA

As Of 02/24/2010 14:57:26

BASIC INFORMATION

<u>CASE TITLE</u>	<u>LOCATION</u>	<u>APT/UNIT #</u>
KARA SAKOWSKI	178 BARRACKS ST & NEW ST.	
<u>DATE/TIME REPORTED</u>	<u>DATE/TIME OCCURRED</u>	
02/24/2010 10:44:00	On or about 02/22/2010 08:30	

INCIDENT TYPE(S)/OFFENSE(S)

(219)SEX ASSAULT FORCE OTHER 2C:14-2

PERSONS

<u>ROLE</u>	<u>NAME</u>	<u>SEX</u>	<u>RACE</u>	<u>AGE</u>	<u>DOB</u>	<u>PHONE</u>
VICTIM	SAKOWSKI, KARA	FEMALE	WHITE	34	[REDACTED]	(HOME) [REDACTED]
	ADDRESS: [REDACTED]					(CELL) [REDACTED]

OFFENDERS

<u>STATUS</u>	<u>NAME</u>	<u>SEX</u>	<u>RACE</u>	<u>AGE</u>	<u>DOB</u>	<u>PHONE</u>
SUSPECT	COMBS, ERIKA	MALE	BLACK	31	[REDACTED]	(HOME) [REDACTED]
	ADDRESS: [REDACTED]					(CELL) [REDACTED]

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 10009645 - 0 / MUNOZ, GUADALUPE (195)

<u>DATE/TIME OF REPORT</u>	<u>TYPE OF REPORT</u>	<u>REVIEW STATUS</u>
02/24/2010 12:56:26	INCIDENT	APPROVED

NARRATIVE

At 10:44 hrs, 02/24/2010, I was dispatched to 178 Barrack St. on a sexual assault report. Upon arrival I spoke to Kara Sakowski who stated that between the above date and time she was sexually assaulted at the Wilentz School, located at 51 First St.. Same stated that while in her classroom # 14 at approximately 08:30 hrs, 02/22/2010, a teacher by the name of Erik A Combs came into the room and threw her against the wall and began to kiss her and touch her on the right breast and right upper leg area. Victim then was able to free herself and leave the classroom to report the incident to the school staff at the Wilentz School.

Suspect : Erick A Combs, black male, D.O.B [REDACTED]

Injuries : Pain to back of head and lower back, Victim refused medical treatment at scene.

Det : J. Vargas responded to the scene to conduct the investigation.

REPORT OFFICERS

Reporting Officer:	MUNOZ, GUADALUPE	195
Reviewing Officer:	GREGOWICZ, ROBERT	303
Approving Officer:	KONYA, THEODORE	2225