

FILED

NOV 18 2014

NELSON C. JOHNSON, J.S.C.



SUPERIOR COURT OF NEW JERSEY

NELSON C. JOHNSON, J.S.C.

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Atlantic City, NJ 08401-4527  
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MEMORANDUM OF DECISION

TO: Donald M. Doherty, Esquire  
125 North Route 73  
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*Attorney for Plaintiff*

Dominic P. DiYanni, Esquire  
Eric M. Bernstein & Associates  
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*Attorney for Defendant*

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RE: Demitroff vs. Buena Vista Township

DOCKET NO. ATL-L-5662-14

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This matter come before the Court on Plaintiff's petition seeking access to a video recording (audio non-existent) of the Municipal Defendant's public meeting room. The Defendant has denied Plaintiff's request. The Plaintiff, Mark Demitroff ("Demitroff") is a self-professed "open government activist." The Defendant, Buena Vista Township ("Township") is a body politic, organized and existing under the laws of New Jersey and is obligated to comply with the requirements of the Open Public Records Act, viz., N.J.S.A. 47:1A-1 et seq. ("OPRA").

This Court entered an Order to Show Cause on September 18, 2014. As a consequence of counsels' and the Court's schedule, this matter was not heard on until October 29, 2014. Prior to the hearing, the Court had the benefit of an *in camera* review of the video in question, together with the oral argument of counsel. Based upon the Court's review of counsels' pleadings, their oral arguments at the Order to Show Cause hearing, and the Court's review of the video in question, the Court makes the following Findings of Fact:

## FINDINGS OF FACT

1. On July 29, 2014, Demitroff requested a tape of the multipurpose public space, two wit, the municipal court room and meeting room of the Township Committee, and various Township agencies.
2. Plaintiff's request was in writing and was submitted by email. As noted by the contents of said email, Plaintiff's request was made under the OPRA.
3. The video tape requested by Demitroff is limited to a discrete period of time, namely, 10:30 to 11:30 PM, immediately following a Township Committee meeting on July 28, 2014.
4. The date and time in question for the video tape requested apparently coincides with the end of a Township Committee meeting, spanning the final portion of the meeting, and then recording the images of people both seated and moving about the room, until it was vacated and the room went dark.
5. By everyone's admission, the camera in operation on the date and time requested is a single camera in the meeting room and is mounted on the upper portion of a wall several feet from the meeting room dais, which also serves as the Bench for the Municipal Court. The camera is in plain view of anyone in the meeting room.
6. By means of an email from Township Clerk, Lisa Tilton, dated August 7, 2014 the Township denied Demitroff's request. In her email, Ms. Tilton advised that "The data you requested is exempt pursuant to N.J.S.A. 47:1A-1.1(9) ... and N.J.S.A. 47:1A-1.1(10)." Both of these provisions of the OPRA deal with security matters and concerns for safety of person and property.
7. In her Certification to the Court, Ms. Tilton advised that Buena Vista Township Municipal Court, Frank Raso, shared her concerns. Prior to ruling on the submissions made by legal counsel, the Court inquired whether or not Judge Raso would be permitted to provide a Certification detailing his purported safety concerns. The undersigned was advised by the Hon. Julio Mendez, A.J.S.C., Vicinaje One, that Judge Raso would not be submitting a Certification.
8. Prior to the Order to Show Cause hearing on October 29, 2014, the Court reviewed the entirety of the requested video tape, making an effort to appreciate the Township's safety concerns and the stated security exemption.

## ANALYSIS OF LAW AND RULING

The Court is satisfied that the requested video tape is a "government record" as contemplated by the OPRA. The definition used by the Legislature is sufficiently broad to

encompass a video of a public meeting and the recorded events in a public space subsequent to a public meeting. Whether the video or the CD is termed a type of “photograph,” “image processed document,” “information stored or maintained electronically,” or “by sound-recording or in a similar device,” the CD examined by the Court is a “government record.”

N.J.S.A. 47:1-1.1, which defines the term “government record,” likewise recites various exemptions to that term includes the following language:

- emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein;
- security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software;

It is apparent from a review of the aforesaid language that the first exemption is intended to address security of public buildings and facilities. The second exemption is intended to address security measures and techniques utilized by public officials. The Court knows of no case law interpreting the aforesaid statutory language nor applying these provisions to any dispute involving a request for government records which might involve security issues. Neither counsel has cited case law interpreting either exemption.

The Township’s Brief expresses confidence that a review of the video footage will “make it apparent” why the video should not be released to Mr. Demitroff. The Township’s Brief reads at p. 4-5, in pertinent part:

When the Judge views the footage *in camera* the security measures and/or security information disclosed *will make it apparent* why the concerns were raised by the Township’s Records Custodian and her reason for denying access to the videotape. The footage will disclose potential for a member of the public to gain access to the municipal courtroom and/or council meeting chambers without being seen on the camera. These “*blind spots*” and other issues are quite problematic and cause concern for the safety of individuals who are in the room, including the Municipal Court Judge whose view cannot be seen from the camera. (See Certification of Lisa Tilton, Records Custodian.)

...

The Township has very sincere and cause for concern if this footage were to be made available to the public.

...

... what Plaintiff has failed to disclose to the Court is the possibility that this one (1) hour of time which happened to be the time right after the conclusion of the Township Council meeting could disclose security measures such as lock down procedures for the Municipal Courtroom and Township Council Meeting Room.

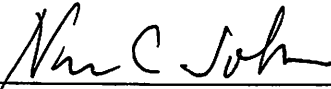
This Court's review doesn't arouse the concerns expressed by the Township. Ignoring the fact that several weeks earlier the Township released a similar such videotape to the Plaintiff, the Court is satisfied that there are no images contained in the video which would "jeopardize security of the [Township] building" nor does it disclose any security techniques which have the potential to "create a risk to the safety of persons, property" which the Township has a responsibility to protect.

It is not disputed that the existence of the camera and its location are in plain view for all to see. Anyone who is reasonably observant or circumspect when entering the Township's meeting room will notice that there is a camera mounted on the wall. They will also notice that it is the only camera in the room. While any interested person may not know the scope of the camera and the breadth of the images recorded, they will know that while the camera is capable of recording images in a large portion of the room, that there are admittedly "blind spots." These "blind spots" appear to be a concern for the Township, or as stated by the Township in its Brief are "quite problematic."

No doubt that the Township may be disappointed by this ruling, but the Court doesn't see it the same way. There is nothing in any of these images, nor can anything "problematic" be gleaned from what is *not* shown. From the Court's perspective, there is nothing of any particular value to someone seeking to do harm to persons or the property of the Township.

In the event the Township requests a stay of the release of the CD to Mr. Demitroff pending an Appeal to the New Jersey Appellate Division of the requested video, the same will be granted. Possibly the undersigned is missing something which the Township believes should be "apparent" and the Appellate Division will notice the Township's concerns.

Taking into consideration the frequency with which the Township Committee meets, any such request for a stay must be made to the Court within thirty-five (35) days hereof. No action will be taken on the Plaintiff's request for counsel fees during the interim. 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: 11/18/14

**FILED**

**NOV 18 2014**

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

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Attorney for the Plaintiff

Mark Demitroff,  
*Plaintiff,*

: NEW JERSEY SUPERIOR COURT  
: Atlantic County- LAW DIV.  
: DOCKET NO. ATL-L- 5662-14

vs.

Buena Vista Township & Lisa Tilton, Township Clerk,  
  
*Defendants.*

**ORDER**

This matter having been open to the court by Donald M Doherty, Jr., Esq., attorney for the Plaintiff Mark Demitroff, This matter having been open to the court by Donald M Doherty, Jr., Esq., attorney for the Plaintiff and the Court having reviewed the moving papers, opposition and reply and having heard oral argument;

IT IS ON THIS 18th DAY OF November, 2012<sup>14</sup> ORDERED:

1. The Defendants shall provide Plaintiff access to the videotape records sought within 1 business day. \*

*NCT*

Plaintiff is awarded counsel fees of \$ \*, with a contingent fee enhancement of \* %, for a total counsel fee sum due of \$ \* and costs of suit in the amount of \$ \*.

Nm C Johnson  
THE HONORABLE NELSON JOHNSON, JSC

\* see the Court's Memorandum of Decision or even date herewith.

*NCT*