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JOHN PAFF,  <i>Plaintiff,</i>  v.  BERGEN COUNTY and CAPTAIN WILLIAM EDGAR,  <i>Defendants.</i>
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SUPERIOR COURT OF NEW JERSEY  
  
LAW DIVISION  
  
BERGEN COUNTY  
  
DOCKET No. BER-L-7739-14  
  
CIVIL ACTION  
  
OPINION

**Argued: October 10, 2014**  
**Decided: October 16, 2014**

**Honorable Peter E. Doyme, A.J.S.C.**

Donald M. Doherty, Jr., Esq. appearing on behalf of the plaintiff, John Paff (The Law Office of Donald M. Doherty, Jr.).

John McCann, Esq. appearing on behalf of the defendants, Bergen County and Captain William Edgar (Office of the Bergen County Sheriff).

**Introduction**

Before the court is an action filed by counsel for plaintiff, John Paff (“plaintiff” or “Paff”) against defendants, the County of Bergen and Captain William Edgar (the “County” or “Captain Edgar” when referenced individually, “defendants” when referenced collectively). Plaintiff sought a judgment finding defendants in violation of the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 (“OPRA” or the “Act”), directing them to release the requested documents, awarding attorney’s fees and costs, and granting any other relief the court may deem just and equitable. Plaintiff also sought similar relief by way of the common law right of access to government records.

## **Facts/ Procedural History**

This matter arises from the partial denial of an OPRA request. On June 19, 2014, plaintiff, a self-proclaimed open government activist who investigates purportedly wasteful taxpayer spending, submitted the following request to the Custodian of Records at the Bergen County Sheriff's Office:

### Background:

I am interested in researching the frequency and nature of complaints brought, either internally or by an inmate or member of the public, against corrections officers who work at the Bergen County Jail. I believe that the type of complaint I am interested in might be referred to as "Internal Affairs" matters.

### Records Requested:

1. If the Jail maintains a log of such complaints (I would imagine the log, if it exists, would contain fields such as "complainant name" "officer name" "date of complaint" etc.), I would like a copy of such log showing all such complaints filed between January 1, 2012 and present date. If you consider denying access to this record, please first a) confirm to me in writing whether or not a responsive record exists and b) consider providing it [to] me in redacted form rather than suppressing it in its entirety.
2. Only if no document exists in response to #1 above, please provide me with the initial writing upon which each "Internal Affairs" complaint filed between January 1, 2012 and current date is based. I am referring to records such as a letter from an inmate or citizen complaining about a correctional officer's conduct or an initial charge levied internally against a corrections officer for violating a rule or policy. If you consider denying access to this category of records, please first a) confirm to me in writing of whether or not a responsive records [sic] within this category exist and b) consider providing it me [sic] records in redacted form rather than suppressing them in their entirety.

On June 25, 2014, Captain Edgar, in his capacity as the official Custodian of Records for the Office of the Bergen County Sheriff, responded on behalf of the County to plaintiff's OPRA request stating in relevant part:

The following records are being provided in their entirety and are responsive to your request.

1. Bergen County Sheriff's Office 2012 Internal Affairs Summary Report. 2 pages.
2. Bergen County Sheriff's Office 2013 Internal Affairs Summary Report. 2 pages.
3. Bergen County Sheriff's Office Internal Affairs Requirement 10 Summary, 2012-2014. 5 pages.

These records are being transmitted to you via email, as per your request. Pursuant to N.J.S.A. 47:1A-5.b., the cost associated with this request is, no fee.

If your request for access to a government record has been denied or unfiled within the seven (7) business days required by law, you have a right to challenge the decision by the Bergen County Sheriff's Office to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form.

Plaintiff asserts while he received the above-referenced documents, they were improperly redacted. Specifically, he contends defendants withheld the name of every employee and complainant for each complaint without providing an explanation for the redactions.

Subsequently, on August 8, 2014, plaintiff had filed a verified complaint with an order to show cause and a letter brief in support of the relief requested. The complaint alleged violations of OPRA and the common law right of access to government records. Plaintiff sought a judgment directing defendants to release the requested documents, awarding attorney's fees and costs, and granting any other relief the court may deem just and equitable.

On August 29, 2014, counsel for defendants submitted a letter brief in opposition to the order to show cause. Defendants assert plaintiff's OPRA request should be denied as the redacted portions of the documents produced by the County are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and are deemed confidential under guidelines established by the Attorney General for records of internal affairs.

On September 30, 2014, counsel for plaintiff filed a reply.

Oral argument was entertained on October 10, 2014.

### **Legal Standards**

#### **A. OPRA**

##### **1. Generally**

The purpose of OPRA, N.J.S.A. 47:1A-1 to -13, is plainly set forth in the statute: "to insure that government records, unless exempted, are readily accessible to citizens of New Jersey for the protection of the public interest." Mason v. City of Hoboken, 196 N.J. 51, 57 (2008) (citing N.J.S.A. 47:1A-1). The Act replaced the former Right to Know Law, N.J.S.A. 47:1A-1 to -4 (repealed 2002), and perpetuates "the State's long-standing public policy favoring ready access to most public records." Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 36 (App. Div. 2005) (quoting Serrano v. S. Brunswick Twp., 358 N.J. Super. 352, 363 (App. Div. 2003)). To accomplish that objective, OPRA establishes a comprehensive framework for access to public records. Mason, supra, 196 N.J. at 57. Specifically, the statute requires, among other things, prompt disclosure of records and provides different procedures to challenge a custodian's decision denying access. Ibid.

OPRA mandates “all government records shall be subject to public access unless exempt.” N.J.S.A. 47:1A-1. Therefore, records must be covered by a specific exclusion to prevent disclosure. Ibid. The Act defines “government record” as follows:

[A]ny 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. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

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

The OPRA framework contemplates a swift timeline for disclosure of government records. Mason, supra, 196 N.J. at 57. Unless a shorter time period is prescribed by statute, regulation or executive order, a records custodian must grant or deny access to a government record “as soon as possible, but not later than seven business days after receiving the request.” N.J.S.A. 47:1A-5(i). Failure to respond within seven business days “shall be deemed a denial of the request.” Ibid. If the record is in storage or archived, the custodian must report that information within seven business days and advise when the record will be made available. Ibid.

If access to a government record is denied by the custodian, the requestor may challenge that decision by filing an action in Superior Court or a complaint with the Government Records Council (“GRC”). N.J.S.A. 47:1A-6. The right to institute any proceeding under this section, however, belongs solely to the requestor. Ibid. If the requestor elects to file an action in Superior Court, the application must be brought within forty-five days of the denial. See Mason, supra, 196

N.J. at 70 (holding, explicitly, a 45-day statute of limitations applies to OPRA actions). The Act, however, specifically provides “a decision of the [GRC] shall not have value as precedent for any case initiated in Superior Court,” N.J.S.A. 47:1A-7, though such decisions are normally considered unless “arbitrary, capricious or unreasonable, or [violative of] legislative policies expressed or implied in the act governing the agency.” Serrano, supra, 358 N.J. Super. at 362 (citing Campbell v. Dep’t of Civil Service, 39 N.J. 556, 562 (1963)).

In OPRA actions, the public agency bears the burden of proving the denial of access is authorized by law. N.J.S.A. 47:1A-6. As such, an agency “seeking to restrict the public’s right of access to government records must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality.” Courier News v. Hunterdon Cnty. Prosecutor’s Office, 358 N.J. Super. 373, 382–83 (App. Div. 2003). Absent the necessary proofs, “a citizen’s right of access is unfettered.” Ibid. In assessing the sufficiency of the proofs submitted by the agency in support of its claim for nondisclosure, “a court must be guided by the overarching public policy in favor of a citizen’s right of access.” Ibid. If it is determined access has been improperly denied, such access shall be granted, and a prevailing party shall be entitled to a reasonable attorney’s fee. N.J.S.A. 47:1A-6.

## 2. OPRA Exemptions

Although OPRA defines “government record” broadly, the public’s right of access is not absolute. Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274, 284 (2009) (citing Mason, supra, 196 N.J. at 65). The statute excludes twenty-one categories of information, which are exempt from disclosure. Mason, supra, 196 N.J. at 65. Specifically, N.J.S.A. 47:1A-1 provides:

[A]ll government records shall be subject to public access unless exempt from such access by: [other provisions of OPRA]; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or

Executive Order of the Governor; Executive Order of the Governor;  
Rules of Court; any federal law, federal regulation, or federal order.

The Supreme Court noted these protected categories include “criminal investigatory records, victims’ records, trade secrets, various materials received or prepared by the Legislature, certain records relating to higher education, and other items.” Mason, supra, 196 N.J. at 65. The Court also noted “records within the attorney-client privilege or any executive or legislative privilege, as well as items exempted from disclosure by any statute, legislative resolution, executive order, or court rule” are excluded. Ibid.

### 3. OPRA Fees

Generally, in New Jersey, a prevailing party is not entitled to attorney’s fees from the losing party. Id. at 70 (citation omitted). Fees may be awarded, however, when a statute, court rule or contractual agreement so provides. Ibid. Under OPRA, “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6. The Supreme Court, interpreting legislative revisions to the Act, has held OPRA “mandate[s] rather than permit[s], an award of attorney’s fees to a prevailing party.” Mason, supra, 196 N.J. at 75.

As the mandatory fee-shifting provision of OPRA is triggered only when a requesting party prevails, there must be a determination what constitutes a “prevailing party.” The Supreme Court has adopted a two-part test (the “catalyst theory”) to ascertain whether a requesting party has prevailed under OPRA. Id. at 76. Under this test, requestors are entitled to fees, absent a judgment or an enforceable consent decree, when they can show: “(1) a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved; and (2) the relief ultimately secured by plaintiffs had a basis in law.” Ibid. (quoting Singer v. State, 95 N.J. 487, 495 (1984)) (internal quotation marks omitted). The Court has held requestors seeking fees are required to make this showing. Ibid.

## B. New Jersey Common Law

In addition to OPRA, disclosure can be sought under the common law. The Act provides “[n]othing contained in [OPRA] shall be construed as limiting the common law right of access to a government record.” N.J.S.A. 47:1A-8. Thus, even if the information requested falls within one of the exceptions to access under the statutory construct of OPRA, requestors may still prevail by resorting to the common law right to access public records. To constitute a government record under the common law, the item must be:

[O]ne required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements essential to constitute a public record are \* \* \* that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it.

[S. Jersey Pub. Co. v. N.J. Expressway Auth., 124 N.J. 478, 487–88 (1991) (quoting Nero v. Hyland, 716 N.J. 213, 222 (1978)).]

To reach this broader class of documents, requestors must satisfy a higher burden than required under OPRA: “(1) the person seeking access must establish an interest in the subject matter of the material; and (2) the citizen’s right to access must be balanced against the State’s interest in preventing disclosure.” Mason, *supra*, 196 N.J. at 67–68 (quoting Keddie v. Rutgers, 148 N.J. 36, 50 (1997)) (internal quotations and citations omitted). The Supreme Court has articulated several factors for a court to consider in performing its balancing:

(1) [T]he extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decisionmaking will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to



evaluative reports of policymakers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

[S. Jersey Pub., supra, 124 N.J. at 488 (quoting Loigman v. Kimmelman, 102 N.J. 98, 113 (1986)).]

## Analysis

Presented is an interesting question, among others, whether following the “Attorney General Guidelines” constitutes a recognized exception to OPRA’s general requirement favoring disclosure of government records. For the reasons set forth below, the court finds no such exception exists and orders defendants to produce the requested documents without redactions to plaintiff.

### A. OPRA

#### 1. Government Records

In order to trigger OPRA’s disclosure requirements, the information sought must qualify as a “government record.” The statute defines a government record as, in short, any document or recording made or received by any government entity, or any officer, authority or political subdivision thereof, in the course of his or its official business. See N.J.S.A. 47:1A-1.1. In this case, neither party has contested the status of the requested documents as government records. The court finds such documents are government records as they were created and/or maintained by the Bergen County Sheriff’s Office in the course of its official business.

#### 2. OPRA Exemptions

Once it has been determined the requested documents are government records, the record custodian must point to a specific statutory exclusion to prevent public access. OPRA excludes twenty-one categories of information from the definition of a government record. Ibid. These

protected categories include, inter alia, criminal investigatory records, victims' records, various materials received or prepared by the Legislature and certain records relating to higher education. Ibid. Moreover, N.J.S.A. 47:1A-1 provides the basis for the exclusion must be furnished by OPRA itself, any other statute, resolution of the Legislature, Executive Order or any regulation promulgated thereunder, Rules of Court or certain federal authorities.

The crux of defendants' opposition is the requested documents are exempt from public access under OPRA. Counsel for defendants, John McCann, Esq. ("McCann"), advances two arguments in support of this proposition. First, he argues the requested documents are confidential pursuant to the "Attorney General Guidelines,"<sup>1</sup> which have assertedly been adopted by the Bergen County Sheriff's Office. Second, he argues the requested documents are confidential pursuant to N.J.S.A. 47:1A-1.1 and/or N.J.S.A. 47:1A-10, in that they consist of sensitive information generated by or on behalf of a public employer or public employee, inter-agency or intra-agency advisory, consultative or deliberative material and/or the personnel or pension records of any individual in the possession of a public agency.

Counsel for plaintiff, Donald M. Doherty, Jr., Esq. ("Doherty"), argues principally the AG Guidelines are not among the enumerated exceptions to OPRA's general disclosure requirement. In addition, he argues even if the Bergen County Sheriff's Office had adopted the AG Guidelines, those guidelines only apply to law enforcement agencies, not correctional agencies such as the Bergen County Jail.

The court declines to accept defendants' arguments. Critically, defendants have failed to submit any evidence following the AG Guidelines constitutes a recognized exception under

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<sup>1</sup> Defendants' reference to the "Attorney General Guidelines" is intended to invoke the Attorney General's Internal Affairs Policy and Procedures (the "IAPP" or the "AG Guidelines"), which was promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety. N.J.S.A. 40A:14-181.

OPRA. As indicated previously, N.J.S.A. 47:1A-1 indisputably provides all government records are subject to public access unless exempt by OPRA itself, any other statute, resolution of the Legislature, Executive Order or any regulation promulgated thereunder, Rules of Court or certain federal authorities. Although the Legislature has decided certain classes of information are not subject to OPRA, the statute does not create a specific exemption for guidelines issued by the Attorney General. Moreover, defendants have not cited any binding authority for the position the AG Guidelines, particularly as they pertain to records of internal affairs, are exempt from disclosure.<sup>2</sup> Therefore, the court finds defendants' first argument without merit.<sup>3</sup>

Defendants have also failed to offer any explanation or support for their contention the requested documents are confidential pursuant to N.J.S.A. 47:1A-1.1 and/or N.J.S.A. 47:1A-10. OPRA clearly provides the burden is on the public agency to prove the denial of access is authorized by law. See N.J.S.A. 47:1A-6. As such, the appellate division has held an agency "seeking to [prevent disclosure of] government records must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality." Courier News, supra, 358 N.J. Super. at 383. In light of these guideposts, it is simply unacceptable for a public agency to merely list the purported statutory exemptions in support of its argument for nondisclosure without the necessary proofs. Therefore, the court finds defendants' second argument without merit.

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<sup>2</sup> Defendants urge the court to consider the GRC's decision in Rivera v. Borough of Keansburg Police Dep't, GRC Complaint No. 2007-222 (June 29, 2010). Although it appears the GRC found the requested documents to be confidential under the IAPP, the court is not prepared to recognize such an exception to OPRA. See the court's analysis at pp. 10–11 supra. Moreover, the council's legal analysis is not set forth in the decision for the court to review. Finally, the court is mindful of N.J.S.A. 47:1A-7(e), which provides "decision[s] of the [GRC] shall not have value as precedent for any case initiated in Superior Court."

<sup>3</sup> The court need not reach the issue whether the AG Guidelines apply to correctional agencies, as it holds such guidelines do not create an exception to OPRA. Suffice it to say, however, the IAPP was specifically designed for implementation by law enforcement agencies, while other agencies, such as state and county correctional facilities, are under no obligation to adopt the policy. See N.J.S.A. 40A:14-181; see also AG Guidelines at p. 5, available at <http://www.nj.gov/oag/dcj/agguide.htm>.

### 3. Redactions

Defendants' counsel submits two additional arguments as to why the requested documents should not be produced. First, he argues defendants articulated the basis for the redactions in their opposition, even though no explanation was initially afforded in response to plaintiff's OPRA request. Second, he argues the requested documents are confidential, and hence not subject to disclosure, pursuant to N.J.A.C. 10A:34-1.6. The court will address each of these arguments in turn.

Defendants' first argument is rejected. The Supreme Court has held OPRA contemplates a swift timeline for disclosure of public records. Mason, supra, 196 N.J. at 57. As such, the statute provides government custodians must grant or deny access to government records "as soon as possible, but not later than seven days after receiving the request." N.J.S.A. 47:1A-5(i). The statute further provides in the event a custodian is unable to comply with a request, she must "indicate the specific basis therefor on the request form and promptly return it to the [requesting party]." N.J.S.A. 47:1A-5(g). If it is later determined access has been improperly denied, such access shall be granted. N.J.S.A. 47:1A-6.

In this case, defendants offered no explanation for the redactions until after the filing of plaintiff's complaint. McCann asserts defendants' actions were benign and inadvertent, but that is of no moment, as OPRA does not make any exceptions for "good faith" denials. The Supreme Court has recognized "OPRA's framework calls for quick action in a number of areas." Mason, supra, 196 N.J. at 69. Just as OPRA calls for a requesting party to make a prompt decision whether to file suit, a public agency should also be required to swiftly respond to any record request. Ibid. Any other result would contravene the fundamental tenets of OPRA. Therefore, mindful of these policy considerations, the court finds defendants improperly denied plaintiff's request.

Defendants' second argument is also rejected. N.J.A.C. 10A:34-1.6(a)(2) provides in addition to those records designated as confidential under OPRA, internal affairs records shall not be considered government records subject to public access, "provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a detention facility." Defendants have failed to present the court with any competent evidence suggesting redactions are insufficient for these reasons.<sup>4</sup> To the contrary, it would seem defendants have conceded the requested documents are government records by producing them to plaintiff with redactions. Therefore, the court finds defendants improperly denied plaintiff's request.

#### B. Common Law Right of Access

Plaintiff also seeks relief under the common law right of public access. This right depends on three requirements: "(1) the records must be common-law public documents; (2) the person seeking access must establish an interest in the subject matter of the material; and (3) the citizen's right to access must be balanced against the State's interest in preventing disclosure." Keddie, supra, 148 N.J. at 50 (internal quotations and citations omitted).

The first determination under the common law analysis is whether the requested record constitutes a common law public document. The common law definition of a public document is broader than under OPRA. The Supreme Court has held "[c]ommon law records are any records made by public officers in the exercise of public functions. These materials include almost every document recorded, generated or produced by public officials whether or not required by law to be made, maintained or kept on file." Higg-A-Rella, Inc. v. County of Essex, 141 N.J. 35, 46 (1995) (internal quotations and citations omitted). In this case, neither party has asserted the requested records are not common law public documents. Therefore, the court finds such records

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<sup>4</sup> Counsel's suggestion the same is "self-evident" or should be the subject of judicial notice is rejected as not being commensurate with the burden imposed by the statute. See N.J.S.A. 47:1A-6; see also R. 1:6-6.

are public documents, as they were made and/or maintained by the Bergen County Sheriff's Office ("BCSO") in the course of its official recordkeeping function.

The second determination is whether the party seeking access has established an interest in the subject matter of the requested material. The Supreme Court has held the interest need not be purely personal, but rather "as one citizen or taxpayer out of many, concerned with a public problem or issue, he might demand and be accorded access to public records bearing upon the problem, even though his individual interest may be slight." S. Jersey Pub., supra, 124 N.J. at 487 (internal quotations and citations omitted). Here, plaintiff, as a citizen of New Jersey and a purported open government activist, clearly has a cognizable interest in gaining access to the requested documents.

The third determination, and the issue in this case, requires the court to balance the citizen's right of access against the State's interest in nondisclosure. The Supreme Court has described this process as "concretely focused upon the relative interests of the parties in relation to [the requested] materials." Loigman, supra, 102 N.J. at 103 (citation omitted). The Court has also set forth six factors for a court to consider in performing its balancing. See pp. 8–9 supra.

Defendants argue the State's interest in maintaining the confidentiality of the requested materials is greater than plaintiff's right of access, as plaintiff has allegedly failed to demonstrate a "true public problem." Defendants further argue disclosing the names of the complainants and the responding officers with the internal affairs reports would discourage the public from reporting future incidents of police misconduct and prevent the BCSO from monitoring such behavior. Plaintiff has denied these allegations.

The court declines to accept defendants' arguments. The first Loigman factor is the extent to which disclosure will impede agency functions by discouraging citizens from providing

information to the government. The court is by no means convinced disclosure of internal affairs reports with the names of the complainants and the responding officers will prevent the BCSO from conducting a thorough internal investigation into alleged police misconduct. Defendants have failed to present the court with any evidence the complaints were filed by citizens, rather than members of the administration or other officers. Moreover, and more importantly, defendants have failed to submit any facts as to how disclosure would impede agency functions. Therefore, the first factor weighs in plaintiff's favor.

The second factor is the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed. As with the the first factor, the court is not convinced disclosure will prevent members of the public from coming forward with allegations of police misconduct. Defendants have failed to submit any facts such complaints were filed in reliance on anonymity. Therefore, the second factor also weighs in plaintiff's favor.

The third and fourth factors should be considered together. The third factor is the extent to which agency self-evaluation, program improvement or other decisionmaking will be chilled by nondisclosure. The fourth is the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers. In this case, plaintiff seeks disclosure of certain internal affairs reports from the BCSO. Defendants initially produced these documents, but redacted the name of every complainant and employee-officer. This information is strictly factual and does not reveal the findings or conclusions of the BCSO. Moreover, defendants have failed to submit any evidence agency self-evaluation, program improvement or other decisionmaking will be affected by disclosure. Therefore, the third and fourth factors weigh in plaintiff's favor.

The fifth and sixth factors should also be considered together. The fifth factor is whether any findings of public misconduct have been insufficiently corrected by remedial measures initiated by the investigative agency. The sixth is whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials. Neither party has produced any evidence with respect to these factors. Therefore, the fifth and sixth factors do not shift the balance in either direction.

In summary, the totality of the Loigman factors weighs in favor of disclosure. As discussed, plaintiff is a citizen of New Jersey and a purported open government activist with a demonstrated interest in the requested materials. Defendants have failed to submit any evidence, whether competent or not, disclosure will impede an investigation by the BCSO or discourage the public from reporting allegations of police misconduct. Therefore, disclosure of the requested materials is warranted under the common law right of access.

### C. Attorney's Fees

Plaintiff also seeks an award of attorney's fees pursuant to N.J.S.A. 47:1A-6, which provides "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." The Supreme Court has held a requesting party is entitled to fees in the absence of a judgment or an enforceable consent decree when she can demonstrate: "(1) a factual causal nexus between plaintiff's litigation and the relief ultimately achieved; and (2) the relief ultimately secured by plaintiffs had a basis in law." Mason, supra, 196 N.J. at 76.

In this case, the court is ordering defendants to produce the requested documents; it is, therefore, unclear whether resort to the catalyst theory is necessary to determine the propriety of plaintiff's fee award. Even under that theory, however, it is clear plaintiff is entitled to fees. Defendants have failed to prove the denial of plaintiff's request was authorized by law. Thus,



plaintiff has a right to the requested documents under OPRA. Moreover, it is apparent defendants would not have produced the unredacted documents but for the filing of plaintiff's lawsuit. As such, plaintiff is entitled to a reasonable attorney's fee.

### **Conclusion**

OPRA is intended to be construed in favor of the public's right of access. The purpose of the statute 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." Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super 312, 329 (Law Div. 2004). To that end, "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. Likewise, the Supreme Court has held the common law right of access reflects the State's "commitment to public participation in government and to the corresponding need for an informed citizenry." S. Jersey Pub., supra, 124 N.J. at 486-87.

In light of these well-established policies, the court finds defendants have violated the terms, if not the spirit of OPRA and the common law by refusing to afford plaintiff access to the requested documents. Specifically, defendants have failed to demonstrate the requested documents are exempt from disclosure pursuant to one of OPRA's exemptions or one of the exceptions incorporated in the statute by reference. Defendants have also failed to demonstrate the State's interest in nondisclosure outweighs plaintiff's right of access to the requested materials under the common law. As such, plaintiff is a prevailing party under OPRA and therefore is entitled to a reasonable attorney's fee.

Counsel shall attempt to agree upon a reasonable quantum of fees to be afforded. Failing to accomplish the same, plaintiff's counsel shall submit certifications within ten (10) days of this decision and defendants shall have seven (7) days thereafter to respond.

Plaintiff's attorney is hereby directed to submit the appropriate order in conformity with this decision pursuant to the five-day rule.