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October 7, 2014

Honorable Nelson C. Johnson, J.S.C.
Superior Court of New Jersey
1201 Bacharach Boulevard
Atlantic City, NJ 08401

Re: John Paff v. Cape May County Prosecutor's Office

Dear Judge Johnson:

I represent Captain David J. Mayer, who is retired from the Wildwood Crest Police Department. I recently learned that he is a named subject in the above-entitled cause of action. He was neither noticed when the suit was filed, nor was he given an opportunity to participate in it. He only learned of it recently, after the court ruled. I did receive a copy of Mr. Arsenault's motion to reopen the case. Although my client is not a named litigant, he will be harmed by the court's ruling unless the case is reopened to allow all interested persons an opportunity to join in the case.

Disclosure of the letter of the Cape May Prosecutor, its implications, and the underlying facts will harm his reputation regarding a matter that was resolved precisely because it was to have been confidential.

I respectfully request an opportunity to be heard on Captain Mayer's behalf.

Thank you.

Most respectfully,

Joseph J. Rodgers

JJR:sk

cc: Richard Gutman, Esquire
Michael J. Donohue, Esquire
James B. Arsenault, Jr., Esquire
Mr. David J. Mayer

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October 12, 2014

Honorable Nelson C. Johnson, J.S.C.
Superior Court of New Jersey
Atlantic County Civil Court House
1201 Bacharach Blvd.
Atlantic City, NJ 08401-4527
609-343-2214 (fax)

Re: John Paff v. Cape May County Prosecutor's Office
Docket No. CPM-1.-264-14

Dear Judge Johnson:

The following is Plaintiff John Paff's response to attorney Joseph J. Rodgers' letter dated October 7, 2014, which I received yesterday. I will be out of my office until October 17.

Plaintiff Paff agrees with Captain Mayer that the Court should consider Captain Mayer's interests in adjudicating this lawsuit. Captains Mayer requests that the lawsuit be reopened. But it has already been reopened by the Cape May County Prosecutor's Office's motion to reconsider.

On page 3 of its September 15, 2014, letter brief in support of its motion for reconsideration, the CMCPPO argued the police officials' privacy interests, as follows:

That the officers may have an interest in the status of these letters is clear. At least one other Court, in an unpublished opinion, has quantified this interest as the protection against an "unreasonable invasion of individual privacy." See North Jersey Media Group, Inc. V. Bergen County Prosecutor's Office, 2013 N.J.Super. Unpub. LEXIS 2766 (Law Div. Nov. 15, 2013), at 40-41.

Now, Mr. Rodgers' letter supplement's the CMCPPO's brief by arguing, "[d]isclosure of the letter of the Cape May Prosecutor, its implications, and the underlying facts will harm his reputation regarding a matter that was resolved precisely because it was to have been confidential."

Mr. Rodgers' states that "it was to have been confidential" but does not claim that the Cape May County Prosecutor's Office was party to any confidentiality agreement. If CMCPPO was not a party to a confidentiality agreement, they are not bound by it. If CMCPPO was a party to a confidentiality agreement, Captain Mayer should file a copy with the court and serve a copy

on Plaintiff Paff. However, even if CMCPO was a party to such a confidentiality agreement, it would have no legal effect on this litigation. A public agency does not possess the legal authority to make a public record confidential. Asbury Park Press v. Monmouth, 406 N.J. Super. 1,9 (N.J. Super., 2009) (“The trial court found it significant that Melnick and the County included terms of confidentiality in their settlement agreement. But the parties' agreement cannot override the public's right of access under OPRA.”) The same principle applies to records that are public under the common law right of access.

As to Captain Mayer’s privacy interest, that consideration does not outweigh the public interest in knowing of “official misconduct” by police officials. (This Court’s August 21, 2014 Memorandum of Decision at page 5 states that “the letters contain findings of public official misconduct, which the public certainly has a heightened interest in knowing.”)

Police officers play a unique role in society. They have the power to arrest and to use deadly weapons. With such authority comes a critical need for public oversight. For that reason, New Jersey courts have repeatedly applied the common law to grant public access to records of investigations of possible misconduct by police officers. Shuttleworth v. City of Camden, 258 N.J. Super. 573 (App. Div. 1992); Asbury Park Press v. Lakewood Township Police Department, 354 N.J. Super. 146 (Law Div. 2002) (disclosure appropriate when prosecution is completed); Asbury Park Press, Inc. v. Borough of Seaside Heights, 246 N.J. Super. 62 (Law Div. 1990). Moreover, there is a greater public need to know about misconduct by a high-level police official, like Captain Mayor, than by a low-level police patrol officer.

As to CMCPO’s citation of North Jersey Media Group, Inc. v. Bergen County Prosecutor’s Office, Docket No. BER-L-6741 (Nov. 15, 2013), that decision is inapposite in two ways. First, that case concerned a private individual. This case involves government officials. Second, that case involved a mere investigation without any arrest or charges. This case involves findings of official misconduct. That a private individual has a reasonable expectation of privacy regarding unsubstantiated suspicions in no way demonstrates that a government official has a reasonable expectation of privacy regarding findings of official misconduct.

Captain Mayer has an opportunity to reply to this letter. There is no need to reopen the case beyond the reopening provided by the CMCPO’s motion to reconsider.

Respectfully submitted,



Richard Gutman

cc: James B. Arsenault, Jr. (by email and mail)
Joseph J. Rodgers (by fax, email and mail)
John Paff