

WALTER M. LUERS, ESQ. - 034041999
LAW OFFICES OF WALTER M. LUERS, LLC
Suite C202
23 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656
Attorneys for Plaintiff

DEPUTY CLERK/SUP CT
2010 JUL 21 P 4:03
NEW JERSEY DEPARTMENT OF
MERCER COUNTY

<p>JOHN PAFF, Plaintiff, v. NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY – DIVISION OF STATE POLICE and DETECTIVE SERGEANT FIRST CLASS MARCO RODRIGUEZ in his official capacity as Records Custodian of the Division of State Police, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY DOCKET NO. _____ CIVIL ACTION VERIFIED COMPLAINT</p>
---	--

Plaintiff John Paff, through his counsel Law Offices of Walter M. Luers, LLC, by way of verified complaint against the New Jersey Department of Law and Public Safety – Division of State Police and Detective Sergeant First Class Marco Rodriguez in his official capacity as Records Custodian of the New Jersey Department of Law and Public Safety – Division of State Police, alleges as follows:

PRELIMINARY STATEMENT

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 seeking to require disclosure of documents that relate to an incident in which a state trooper is alleged to have choked a citizen, including audio recordings of the incident and the CDR-1 form that was created as a result of the incident and for copies of the State Police’s standard operating procedures as it pertains to the State Police’s response to calls for service.

PARTIES

2. Plaintiff John Paff is a resident of Franklin Township, New Jersey. His mailing address is P.O. Box 5424 Somerset, NJ 08875.

3. Defendant New Jersey Department of Law and Public Safety – Division of State Police (“State Police”) is a public agency corporate and politic and is a division of the State of New Jersey that is organized under the laws of the State of New Jersey. The State Police’s principal place of business is State Police Headquarters, Building 15, River Road, West Trenton, New Jersey 08628. The State Police is a “public agency” as that term is defined by *N.J.S.A. 47:1A-1.1*.

4. Defendant Sergeant Detective First Class Marco Rodriguez is the Records Custodian of the State Police and the “Custodian of a government record” as that term is defined by *N.J.S.A. 47:1A-1.1*. His principal place of business is State Police Headquarters, Building 15, River Road, West Trenton, New Jersey 08628.

VENUE

5. Venue is properly laid in Mercer County because Defendant is a public agency located in Mercer County, because Defendant is a division of the State of New Jersey and because the cause of action arose in Mercer County. *R. 4:3-2(a)*.

FACTUAL ALLEGATIONS

6. On May 10, 2014, Plaintiff, as part of the New Jersey Libertarian Party Police Accountability Project, filed an internal affairs complaint with the State Police in which he alleged that on May 10, 2014 at about 5:15 p.m., a State Trooper (name unknown) used excessive force against an individual named Jackie Murphy at 216 Spring Road, Millville, New Jersey, which is physically located

in Commercial Township, Cumberland County. According to Plaintiff's internal affairs complaint, two troopers arrived at 216 Spring Road after receiving a report of an argument or disturbance there. The subject trooper who was in the house was Murphy, who is 33 years old and weighs about 90 pounds, tried to speak with the trooper. The trooper told Murphy to "Sit down and shut up." Murphy then offered her telephone to the Trooper and asked him to speak with her mother, who was on the phone, who Murphy said "could explain the whole thing." According to the internal affairs complaint, five witnesses then saw the trooper grab Murphy by the front of the throat and forcibly drag her down the front steps and into the front yard, where he forcibly slammed Murphy to the ground and put her kneecap on her throat, causing her to emit choking sounds. According to one of the witnesses, when a witness asked the subject trooper to let up, he reportedly said "We can do whatever the fuck we want."

7. Also on May 10, 2014, Plaintiff submitted a written OPRA request via New Jersey's online records request tool. Plaintiff's OPRA request was assigned Request Number W86508. In that request, Plaintiff asked for copies of (1) all use of force reports arising out of the Jackie Murphy incident described in Plaintiff's internal affairs complaint; (2) all police incident reports arising out of that incident; (3) all arrest reports arising out of that incident; (4) recordings of all telephone calls that reported the incident; (5) all radio transmissions that were made from the time the incident was reported to the time it was closed; (6) all mobile to mobile text transmissions that were made for that same time period; (7) all dash cam videos of the incident; and (8) all CDR or other forms of complaint that were issued to anyone as a result of this incident.

8. On May 12, 2014, Captain Bud Scott, Bureau Chief of the Intake and Adjudication Bureau of the Office of Professional Standards of the State Police wrote to Plaintiff and acknowledged receipt of the internal affairs complaint and was conducting a preliminary review of the complaint under investigation #2014-0251.

9. On May 12, 2014, Rodriguez acknowledged receipt of Plaintiff's OPRA request and stated that the Defendants were "currently canvassing the Division in an effort to determine if we make or maintain the records you seek."

10. On May 20, 2014, Rodriguez wrote to Plaintiff and gave himself an extension of time to respond to the request to June 3, 2014.

11. On June 3, 2014, Rodriguez wrote to Plaintiff and stated that he was in the process of obtaining and reviewing the records for potential redactions, and unilaterally extended his response time to June 17, 2014.

12. On June 5, 2014, Defendants denied access to the existing records requested by Plaintiff on the grounds that there was an open investigation and that the records were considered "Criminal Investigatory Records." Rodriguez stated that the incident was "recorded on an investigation report. Meaning, investigation reports are considered 'Criminal Investigatory Records' which are exempt from public access." Ultimately, the Defendants denied Plaintiff access to the CDR form, all radio transmissions, telephone recordings, incident reports and arrest reports on the basis that they were criminal investigatory records.

13. Regarding use of force reports, mobile to mobile text transmissions, and dash cam videos, Defendants stated that no responsive documents existed.

14. On July 12, 2014, Plaintiff submitted a second OPRA request in which he asked for copies of "all current State Police policies, directives or other authoritative writings that govern or require that all police actions, calls for service, patrol initiated responses and other police interactions with civilians be documented with written reports and/or computer aided dispatch (CAD) entries."

15. On July 15, 2014, Plaintiff denied access to this request on the grounds that standard operating procedures have been "designated confidential" pursuant to *N.J.A.C. 13:1E-3.2(a)(1)*.

16. The records requested by Plaintiff are public records within the definition of *N.J.S.A. 47:1A-1.1* and are not subject to any exception or exemption.

17. The records requested by Plaintiff are also public records within the definition of the common law right of access.

18. Plaintiff has a wholesome public interest and legitimate private interest in the documents being requested.

19. Plaintiff has a strong public interest and legitimate private interest in obtaining the requested documents. Plaintiff submits hundreds of OPRA requests to public agencies at all levels of government. Sometimes he does so to ensure compliance with OPRA or the Open Public Meetings Act or financial disclosure laws. Other times he reads about matters in the press, especially those involving official misconduct or police misconduct, and he files OPRA requests for information. Often Mr. Paff will frequently follow-up such OPRA requests by filing internal affairs complaints, ethics grievances or complaints with the Division of Local Government Services if warranted. Here, Plaintiff is concerned about the alleged police abuse that may have occurred here and that formed the basis of Plaintiff's internal affairs complaint. When Plaintiff receives public records that he believes are of significant public interest, he blogs about them, emails his blog posts to interested persons, and posts about them on social media. From time to time, print media pick up his stories. Most recently, *The Press of Atlantic City* ran a story about a report that was disclosed to Plaintiff after three years of litigation in which a superior officer described how he was required to transport an off-duty officer home after he was found asleep behind the wheel of his car at 2 a.m. and had a "strong odor of an alcoholic beverage."

20. Plaintiff also frequently litigates OPRA cases to gain access to public records and has been the Plaintiff in several published decisions about OPRA, including *Paff v. Monmouth County*,

201 N.J. 5 (2010) (affirming Appellate Division reversal of Trial Court and holding that confidentiality provision in settlement agreement is void); *Paff v. New Jersey State Firemen's Assoc.*, 431 N.J. Super. 278 (App. Div. 2013) (reversing Trial Court and holding in matter of first impression that State Firemen's Association was subject to OPRA); *Paff v. Division of Law*, 412 N.J. Super. 140 (App. Div. 2010) (holding that Administrative Agency Advice letters issued by the Division of Law are privileged); *Paff v. City of East Orange*, 407 N.J. Super. 221 (App. Div. 2009) (affirming GRC holding that Records Custodians have discretion to regulate methods of submitting OPRA requests); *Paff v. New Jersey Dep't of Labor*, 392 N.J. Super. 334 (App. Div. 2007); *Paff v. New Jersey Dep't of Labor, Board of Review*, 379 N.J. Super. 346 (App. Div. 2005) (reversing GRC and finding in Mr. Paff's favor); *Paff v. Director, Office of Attorney Ethics*, 399 N.J. Super. 632 (Law Div. 2007).

21. Plaintiff's interest in receiving copies of the documents requested is not outweighed by Defendants' continued interest in secrecy.

FIRST COUNT
(OPEN PUBLIC RECORDS ACT VIOLATION, N.J.S.A. 47:1A-1, *et seq.*)

22. Plaintiff hereby repeats and incorporates by reference paragraphs 1-21 of this Verified Complaint.

23. Defendants violated OPRA by not providing Plaintiff with copies of the documents requested by him in his two OPRA requests.

SECOND COUNT
(COMMON LAW RIGHT OF ACCESS)

24. Plaintiff hereby repeats and incorporates by reference paragraphs 1-23 of this Verified Complaint.

25. Defendants violated Plaintiff's common law right of access by denying him copies of the documents sought by him in his two OPRA requests.

26. Plaintiff and the public's interest in acquiring the documents outweigh any interest in continued secrecy that Defendants may have.

WHEREFORE, Plaintiff demands:

- A. A court judgment or order ordering disclosure of (1) the CDR-1 form requested by Plaintiff; (2) the arrest reports and incident reports requested by Plaintiff; (3) the records calls requested by Plaintiff; and (4) the Standard Operating Procedures requested by Plaintiff;
- B. An award of costs of this action and reasonable attorneys' fees;
- C. Such other, further and different relief as the Court may deem equitable and just.

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Walter M. Luers 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. To the best of my belief, no other action or arbitration proceeding is pending or 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.

Respectfully submitted,

Dated: July 21, 2014

LAW OFFICES OF
WALTER M. LUERS, LLC

By:



Walter M. Luers, Member
Suite C202
23 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656

VERIFICATION

John Paff, of full age, certifies as follows:

1. I am the Plaintiff in the action captioned "John Paff v. New Jersey Department of Law and Public Safety, *et al.*" All of the facts stated in the verified complaint to which this Verification is attached are true, and as to those facts that are alleged on information and belief, I believe those facts 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.



John Paff

Dated: July 21, 2014