

FILED

JAN - 9 2015

NELSON C. JOHNSON, J.S.C.

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Attorney for the Plaintiff

John Paff, <i>Plaintiff</i> ,	:	NEW JERSEY SUPERIOR COURT
vs.	:	Cape May County- LAW DIV.
	:	DOCKET NO. CPM-L- 592-14
	:	
Cape May Housing Authority & Custodian of Records of Cape May Housing Authority, <i>Defendants</i> .	:	ORDER TO SHOW CAUSE (OPRA)

This matter having been open to the court by Donald M Doherty, Jr., Esq., attorney for the Plaintiff John Paff, and seeking relief by way of summary action pursuant to rule 4:67-1 (a) based upon the facts set forth in the verified complaint and supporting papers filed here with; and the Court having determined this matter may be commenced by order show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for other good cause shown,

IT IS on this 9th day of January, 2014 **ORDERED** that Defendants Cape May Housing Authority and Custodian of Records of the Cape May Housing Authority, appear and show cause on the 17th day of February, 2015 before The Honorable Nelson Johnson, JSC, in the Atlantic County Civil Courthouse, 1201 Bacharach Blvd., Atlantic City, NJ 08401 at 10:00 o'clock or soon thereafter as counsel can be heard, why judgment should not be entered as follows:

- A. Ordering the Defendants to provide plaintiff with immediate access to the requested;
- B. Awarding plaintiff reasonable counsel fees and costs of suit;
- C. Awarding other such relief as the court would deem fair and equitable.

And it is **further ORDERED** that:

- 1. A copy of this order to show cause, verified complaint and all supporting certifications and other documents submitted in support of this application be served upon the defendants personally or by certified mail, return receipt requested, within 14 days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.
- 2. The plaintiff was file with this court proof of service of the pleadings on the defendants no later than three days before the return date.

3. Defendants shall file and serve a written answer and opposition papers to this order to show cause and the relief requested in the verified complaint by Feb 3, 2014. The answering opposition papers must be filed with the clerk of the Superior Court in the County listed above and a copy of the papers must be sent directly to the chambers of the judge.
4. Plaintiff must file any written reply to the defendants' opposition by Feb 11, 2014. The reply papers must be filed with the clerk of Superior Court in the County listed above a copy of the reply papers must be sent directly to the chambers of the judge.
5. If the defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.
6. If the plaintiff has not already done so, a proposed form of order address addressing the relief sought on the return date (along with a self-addressed return envelope would return address and postage) must be submitted to the court no later than three days before the return date.
7. Defendants take notice: the plaintiff has filed a lawsuit against you in the New Jersey Superior Court. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer and opposition papers and proof of service before the return date of the order to show cause. Paragraph 3 outlines the date by which you are required to respond. These documents must be filed with the clerk of the Superior Court in the County listed above. You must also send a copy of your answer and opposition papers to the plaintiff's attorney whose name and address appears above. A telephone call will not protect your rights; you must file and serve your answer and opposition papers (with the fee) or judgment may be entered against you by default.
8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services.
9. The court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised the contrary no later than 3 days before the return date.



THE HONORABLE NELSON JOHNSON, JSC

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Attorney for the Plaintiff

John Paff, <i>Plaintiff</i> ,	: NEW JERSEY SUPERIOR COURT
vs.	: Cape May County- LAW DIV.
	: DOCKET NO. CPM-L-
	: Civil Action
Cape May Housing Authority & Custodian of Records of Cape May Housing Authority, <i>Defendants</i> .	: Verified COMPLAINT : Open Public Records Act (OPRA)

Plaintiff, John Paff, complains against the Defendants as follows:

Count 1 - OPRA

1. Plaintiff John Paff sought government records from the Cape May Housing Authority.
2.
 - a. Defendant Cape May Housing Authority(CMHA) is a government entity or department located in New Jersey and subject to the Open Public Records Act.
 - b. Defendant Records Custodian for the Cape May Housing Authority is the person, unknown to the Plaintiff, charged with responding to OPRA requests.
3. Plaintiff first made an OPRA request to CMHA on October 29, 2014 by both e-mail and fax. The request is attached as Exhibit 1. The e-mail self confirms it was sent. The fax was successfully delivered. Exhibit 2.
4. The Defendants have not responded.
5. OPRA allows a custodian 7 business days to respond.
6. Defendants have failed to comply with OPRA.

WHEREFORE, Plaintiff requests judgement as follows:

- a. Directing the immediate release of the records sought;
- b. Awarding counsel fees and costs of suit;
- c. Awarding other such relief as may be fair, equitable and necessary.

DONALD M. DOHERTY, JR., Esq.

RULE 4:5-1 CERTIFICATION

The undersigned hereby certifies the matter in controversy is not the subject of any other action or arbitration proceeding. The undersigned does not know of the names of any parties who should be joined in the action.

DONALD M. DOHERTY, JR., Esq.

VERIFICATION

I, John Paff, do hereby verify the following statements on the following bases:

Paragraphs 1- 5, are made based upon my personal knowledge.

Paragraph 6 is made based upon information and belief, as I am not an attorney and this is my understanding of the law as it has been explained to me.

I certify the foregoing statements made by me are true and that if the statements are willfully false or misleading, I understand that I am subject to punishment.

John Paff



John Paff <opengovtissues@gmail.com>

OPRA Request to Cape May Housing Authority

1 message

John Paff <paff@pobox.com>

Wed, Oct 29, 2014 at 7:41 PM

To: 16098849028@j2send.com, cmha@capemayha.org

Attn: Records Custodian
Housing Authority of Cape May
639 Lafayette Street
Cape May, NJ 08204
via e-mail cmha@capemayha.org and fax to [609-884-9028](tel:609-884-9028)

Please accept this e-mail/fax as my request for government records pursuant to the Open Public Records Act and the common law right of access. Please respond to this request and send all responsive documents to me at paff@pobox.com. Thank you.

Records requested:

1. The OPRA log or list of OPRA requests submitted for March and April, 2014.
2. A copy of any request made by Frank Borin, Victoria Flynn, William Harla, Amy Shotmeyer or the DeCotiis, Fitzpatrick & Gluck law firm or anyone acting on behalf of the Gloucester Township Housing Authority.
3. All communications regarding item #2.
4. All records provided in response to item # 2.
5. Resolutions 2013-28, 2013-37 and 2013-47.
6. Minutes of June 17, 2013, September 16, 2013 and October 21, 2013 executive sessions.

John Paff
P.O. Box 5424
Somerset, NJ 08875
Voice: 732-873-1251
Fax: 908-325-0129
e-mail: paff@pobox.com



John Paff <opengovtissues@gmail.com>

Successful transmission to 16098849028. Re: OPRA Request to Cape May Housing Authority

1 message

send@mail.j2.com <send@mail.j2.com>
To: opengovtissues@gmail.com

Wed, Oct 29, 2014 at 7:43 PM



Dear John,

Re: OPRA Request to Cape May Housing Authority

The 1 page fax you sent through j2 to [16098849028](https://www.j2.com/jconnect/twa/page/help) was successfully transmitted at 2014-10-29 23:43:00 (GMT).

The length of transmission was 53 seconds.

The receiving machine's fax ID: [6098849028](https://www.j2.com/jconnect/twa/page/help).

If you need additional assistance, please visit our online help center at <https://www.j2.com/jconnect/twa/page/help>.

Thank you for using the jConnect service.

Best Regards,
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November 28, 2014

The Honorable Nelson Johnson, J.S.C.
Atlantic County Civil Courthouse
1201 Bacharach Blvd.
Atlantic City, NJ 08401

Re: Paff v. Cape May Housing Authority, et. als.
Docket No. CPM-L-

Dear Judge Johnson:

Plaintiff John Paff initiates this OPRA action via Verified Complaint and Order To Show Cause to proceed on a summary basis against Cape May Housing Authority and its (undisclosed) custodian. Defendants have denied Plaintiff access to records by their total refusal or inability to respond in accordance with OPRA.

STATEMENT OF FACTS

Plaintiff requested records under OPRA on October 29 by both fax and e-mail. There has been no response. More than 7 business days have passed. Over a month will have passed by the time Your Honor is holding these papers.

LEGAL ARGUMENT

I. THIS ACTION SHOULD PROCEED IN A SUMMARY MANNER

The Open Public records Act authorizes “[a] person who is denied access to a government record by the custodian of the record,.....may institute a proceeding to challenge the custodian’s decision by filing an action in Superior Court.” N.J.S.A. 47:1A-6 Once instituted, “[a]ny such proceeding shall proceed in a summary or

expedited manner.” Id. Here, because OPRA authorizes actions under it to proceed in a summary manner, the order to show cause should be granted so this matter may proceed in such fashion. R. 4:67-2(a) It a “procedural error” to deny a requester the ability to proceed in a summary manner and instead force OPRA cases through the litigation process and a summary judgment application. Courier News v. Hunterdon County Prosecutor’s Office, 358 N.J. Super. 373, 379 (App. Div. 2003)

This action involves an OPRA claim that is neither complicated nor procedurally complex. All that is “complex” is the fact that Plaintiff does not even know what records it is fighting to access because the Defendants refused to explain even what was being withheld.

Because Plaintiff’s claims are based on documentary evidence submitted to the Court (Verified Complaint, Ex. A), the facts underlying this action cannot reasonably be disputed. Discovery is not anticipated and any factual issues that may arise can be resolved by evidence submitted through certifications or affidavits by the parties.

Therefore, in light of the foregoing and the Legislature’s directive that OPRA actions proceed in a summary manner, it is requested the Court sign the Order to Show Cause so that this action may proceed in a summary manner and expedited resolution.

II. FAILING TO RESPOND TO A RECORDS REQUEST VIOLATES OPRA

As the Court knows, the Open Public Records Act (OPRA) mandates government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded [under OPRA] as amended and supplemented, shall be construed in favor of the public’s right of access. Libertarian Party of Cent. New Jersey v. Murphy, 384 N.J. Super. 136, 139 (App. Div. 2006) (citing N.J.S.A. 47:1A-1). The purpose of OPRA 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. Times of Trenton Publ’g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (quoting Asbury Park Press v. Ocean County Prosecutor’s Office, 374 N.J. Super. 312, 329 (Law Div. 2004)).

Here, the documents sought by Plaintiff are government records within the meaning of OPRA. Under OPRA, a government record :

.....means any 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.
N.J.S.A.47:1A-1.1.

Here, there is no doubt the documents requested by Plaintiff are government records.

Defendants have never asserted a defense that the records were not government records. They just do not respond. The very longest the custodian has to respond is seven business days. N.J.S.A. 47:1A-5(i) Failure to respond to a request is construed as a denial of the OPRA request. Id.

The burden of proving that a denial of access was justified rests solely with the Records Custodian. N.J.S.A. 47:1A-6; Asbury Park Press v. Monmouth County, 406 N.J. Super. 1, 7 (App. Div. 2009).

B. AN AWARD OF REASONABLE ATTORNEYS' FEES IS MANDATORY

If the Court orders Defendants to produce the documents at issue, the Court must also find that Plaintiff is the prevailing party. Under OPRA's fees-shifting provisions, Plaintiff must be awarded a reasonable attorneys' fee and costs. N.J.S.A. 47:1A-6; Mason v. Hoboken, 196 N.J. 51, 79 (2008).

CONCLUSION

Plaintiff is entitled to the records requested. Whether the Defendants' intention was to delay access or political issues have cascaded through its personnel or fear of liability prevents it from acting is no longer of any moment.

The Order To Show Cause mechanism allows - and OPRA in fact mandates - summary disposition of such simple issues.

Respectfully submitted,

Donald M. Doherty, Jr.