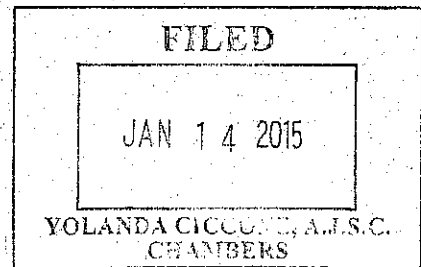


SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
20 NORTH BRIDGE STREET  
POST OFFICE BOX 3000  
SOMERVILLE, NEW JERSEY 08876



JOHN PAFF

Plaintiff,

v.

FRANKLIN TOWNSHIP FIRE DISTRICT  
NO. THREE, et. al.

Defendant.

SUPERIOR COURT OF NEW JERSEY  
SOMERSET COUNTY  
LAW DIVISION

DOCKET NO. SOM-L-1474-14

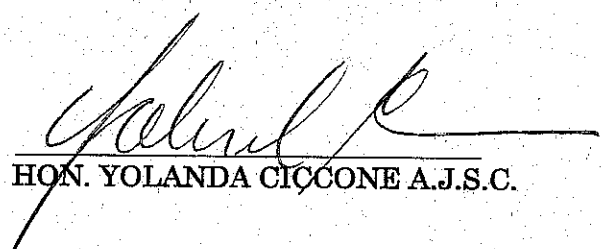
**ORDER**

IT IS on this 14th day of January, 2014, ORDERED that:

Plaintiff's order to show cause and verified complaint is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED AAIC's motion to dismiss is DENIED AS MOOT.

IT IS FURTHER ORDERED that a copy of the order must be served on all parties within seven days of receipt.

  
HON. YOLANDA CICCONE A.J.S.C.

**SUPERIOR COURT OF NEW JERSEY  
SOMERSET, HUNTERDON & WARREN COUNTIES  
VICINAGE 13**

**YOLANDA CICCONE  
ASSIGNMENT JUDGE**



**SOMERSET COUNTY COURT HOUSE  
P.O. BOX 3000  
SOMERVILLE, NEW JERSEY 08876  
(908) 231-7069**

**January 14, 2015**

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**Memo RE: Paff v. Franklin Township Fire District, et al.  
Docket No: SOM-L-1474-14**

Dear Counsel,

This letter serves as the Court's opinion regarding the Plaintiff's order to show cause.

**FACTS**

Plaintiff's Order to Show Cause seeks the Court to Order Defendant American Alternative Insurance Company/AAIC to provide Plaintiff with all documents requested by Plaintiff in his Open Public Records Act request, an award of costs of the action and reasonable attorneys' fees.

Plaintiff Paff is a resident of Franklin Township. Defendant Franklin Township Fire District No. 3 is a public municipal body corporate and politic whose principal place of business is within Somerset. District 3 pays insurance premiums to AAIC.

In 2011, Michael Gilliam filed a defamation lawsuit against District 3 and other individual firefighters which was docketed under docket number SOM-L-559-11. Upon Mr. Gilliam's filing of his complaint, AAIC's third party administrator Glatfelter Claim Management assigned Post Schell to represent all of the there defendants.

In February of 2014, this Court dismissed the District from the case reasoning that it could not be vicariously liable for willful or malicious conduct. Post Schell continued its representation of the individual defendants. The parties then entered into a settlement agreement and the case was dismissed by stipulation. The District's policy did not provide for the settlement payment by the individual defendants. The District was not a party to the agreement, nor does it have a copy of the agreement.

On July 1, 2014, Plaintiff submitted an Open Public Records Act request to the District for copies of the settlement agreement between Gilliam and the therein defendants.

In response to Plaintiff's request, counsel for Defendants, George Morris wrote to Plaintiff explaining that the settlement agreement had yet to be finalized. Mr. Morris denied the request but recommended that Plaintiff resubmit his request on August 10, 2014 as Mr. Morris anticipated that the settlement would be executed by that time.

On August 12, 2014, Plaintiff submitted a second OPRA request for the settlement agreement. Mr. Morris acknowledged receipt of the request on that day and indicated that he would "contact the insurance counsel directly to confirm whether the agreement [was] fully executed."

On August 28, 2014, Mr. Morris contacted Plaintiff to explain that the agreement was executed and that he expected to receive a copy shortly where he would then forward it to the Plaintiff. On September 29, 2014, Mr. Morris emailed Plaintiff to explain that he was forced to deny Plaintiff access to the agreement as it contained a confidentiality provision.

Plaintiff's complaint alleges a violation of N.J.S.A. 47:1A-1 the Open Public Records Act and a violation of the common law right of access. Plaintiff's order to show cause also seeks fees in connection with the summary action.

The individual Gilliam Defendants nor has Post Schell been brought into this action.

## ANALYSIS

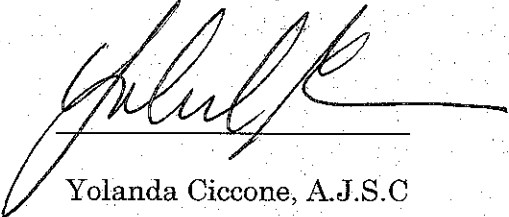
Defendants Township of Franklin, Community Fire Company, East Franklin Fire Department Station 27 and Franklin Township Fire District No. 3 were dismissed from the Gilliam v. Township of Franklin action on June 16, 2014. The matter was settled between the Plaintiff and the 5 individual Defendants on October 10, 2014.

OPRA provides that "government records shall be readily accessible for inspection, copying or examination by the citizens ...with certain exceptions for the protection of the public interest, and any limitations on the right of access ....shall be construed in favor of the public's right of access. Libertarian Party of Central New Jersey v. Murphy, 384 N.J. Super. 136 (App. Div. 2006).

At oral argument, the District and AAIC both argued, and the Plaintiff did not dispute, that they were not in possession of the document. Although N.J.S.A. 47:1A-6 provides that a proceeding to challenge a denial of access to a record shall proceed in a summary manner, the Plaintiff has not presented to the Court the evidence required to sustain the relief he requests by failing to bring in the individual defendants or Post Schell.

Accordingly, the Plaintiff's Order to Show Cause is DISMISSED WITHOUT PREJUDICE. AAIC's motion to dismiss is DENIED AS MOOT.

Very truly yours,



Yolanda Ciccone, A.J.S.C



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January 19, 2015

VIA FACSIMILE: 908-725-5827

VIA LAWYERS SERVICE

The Honorable Yolanda Ciccone, A.J.S.C.  
Superior Court of New Jersey  
Somerset Courthouse  
20 North Bridge Street, Third Floor  
Somerville, NJ 08876

RE: **PAFF, JOHN VS. FRANKLIN TWP FIRE DISTRICT, ET AL.**

Our File No. : 80186 ELH  
Docket No. : SOM-L-1474-14

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~Member of NY, NJ & DC Bar  
=Member of FL Bar

Please reply to New Jersey

Dear Judge Ciccone:

This office represents American Alternative Insurance Corp. ("AAIC") improperly pled as Volunteer Firemen's Insurance Services ("VFIS") in the above matter. On Monday, January 12, we appeared before Your Honor for plaintiff's Order to Show Cause.

During arguments, I advised the Court that AAIC was not in possession of the Gilliam settlement agreement; I have since learned that in fact Mr. Gebhauer, counsel for the defendants in the Gilliam case, provided this document to AAIC after settlement was effectuated.

I apologize to the Court for the inaccuracy of my representation. If Your Honor has any questions, please do not hesitate to contact me.

Respectfully submitted,

**METHFESSEL & WERBEL, ESQS.**

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