



**Paff v. Twp. of Chatham, et al.**

**Docket No. MRS-L-1793-14**

**STATEMENT OF REASONS**

**I. BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff John Paff ("Mr. Paff") is a resident of Franklin Township, New Jersey and receives mail at P.O. Box 5424 Somerset, New Jersey.

Defendant Township of Chatham ("Chatham") is a public municipal body with its principal place of business at 58 Meyersville Road, Chatham, New Jersey. Defendant Gregory J. LaConte ("Mr. LaConte") is Chatham's Municipal Clerk and Records Custodian. As a public agency, Chatham is subject to the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et. seq. ("OPRA").

By email dated May 23, 2014, plaintiff submitted an OPRA request to Mr. LaConte. Plaintiff requested six (6) documents: (1) the tort claim notice filed by police officer Michael Giannone ("Mr. Giannone"); (2) any lawsuit filed by Mr. Giannone; (3) any settlement agreement that explains the terms and conditions (including monetary payout) of any settlement of Patrolman Giannone's claim; (4) the tort claim notice filed by police officer Edward Gibney ("Mr. Gibney"); (5) any lawsuit filed by Mr. Gibney; (6) any settlement agreement that explains the terms and conditions (including monetary payout) of any settlement of Mr. Gibney's claim.

On June 4, 2014, Mr. LaConte provided a written response to Mr. Paff's OPRA request. Mr. LaConte first noted that neither Mr. Gibney nor Mr. Giannone filed lawsuits, and therefore no documents could be provided for those two requests. Mr. LaConte stated that the notice of tort claim filed by Mr. Gibney would be provided to plaintiff in its entirety. However, the notice of tort claim filed by Mr. Giannone would be provided with redactions due to confidentiality of a personnel record or information regarding a medical condition. In response to the request for settlement agreements, Mr. LaConte indicated that both Mr. Giannone and Mr. Gibney's settlement agreements arose from "personnel matters related to the job duties and performances of employees and are considered part of the employee's, whether current or former, personnel file and are not a government record." Luers Cert. at Exhibit B. Additionally, Mr. LaConte added that Mr. Giannone and Mr. Gibney, in respect to the settlement agreements and redacted portions of the notice, "have a reasonable expectation of privacy that their individual personnel matters will

not be disclosed absent a showing that the public interest in disclosure outweighs any personal interest in not disclosing the material.” Id. Lastly, Mr. LaConte pointed out that if plaintiff had any legal support for his requested disclosures beyond that noted that “the Township [would] consider that information and respond promptly.” Id.

On July 19, 2014, plaintiff filed a Verified Complaint and Order to Show Cause alleging violations of OPRA and the common law right of access seeking an Order (1) requiring defendants to provide copies of the Mr. Gibney and Mr. Giannone settlement agreements and an unredacted copy of the Mr. Giannone notice of tort claim; (2) awarding plaintiff costs and reasonable attorneys’ fees; and (3) such other relief as the Court deems appropriate and just.

On September 4, 2014, defendants filed their opposition to the Order to Show Cause, which included an answer, separate defenses, and a notice of motion pursuant to R. 4:10-3 for a protective order and in camera review.

Plaintiff filed a reply brief dated September 8, 2014.

On September 25, 2014, the Court entered an Order stating:

1. Michael Giannone and Edward Gibney are hereby joined as defendants;<sup>1</sup>
2. On or before Wednesday, October 1, 2014, counsel for the parties shall serve Michael Giannone and Edward Gibney with a copy of this Order and all pleadings and briefs filed to date;
3. Michael Giannone and Edward Gibney shall have until Wednesday, October 29, 2014 to respond to the relief sought in plaintiff’s Complaint; and plaintiff and the original defendants shall file and reply on or before Wednesday, November 12, 2014; and
4. The Court shall hear oral argument on plaintiff’s application on Monday, December 8, 2014 at 10:00 a.m.

[September 25, 2014 Order.]

On October 28, 2014, defendant Giannone filed an opposition to plaintiff’s Complaint. Defendant Gibney filed an opposition to plaintiff’s Complaint on October 29, 2014.

On November 12, 2014, plaintiff filed a reply to the submissions of Mr. Giannone and Mr. Gibney.

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<sup>1</sup> See Asbury Park Press v. County of Monmouth, 406 N.J. Super. 1, 5 (App. Div. 2009)(noting that the trial court directed that the person who settled her claim with the county and whose underlying records were the object of the OPRA request be joined as a party defendant).

The Court heard oral argument on December 8, 2014.

## II. STANDARD OF REVIEW

N.J.S.A. 47:1A-1, "Legislative findings, declarations," reads:

The Legislature finds and declares it to be the public policy of this State that:

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 by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access;

all government records shall be subject to public access unless exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; 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;

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

N.J.S.A. 47:1A-5 reads: "[t]he custodian of a government record shall permit the record to be inspected examined, and copied by any person during regular business hours." N.J.S.A. 47:1A-5(a). Subsection (b) addresses the fees prescribed for copying government records. Subsection (f) states

[t]he custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged.

In pertinent part, subsection (g) reads: “[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof.”

OPRA directs that “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 by [OPRA] as amended and supplemented, shall be construed in favor of the public's right of access.” N.J.S.A. 47:1A-1. “The purpose behind the Legislature’s enactment of OPRA was ‘to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.’” Kovalcik v. Somerset County Prosecutor's Office, 206 N.J. 581, 588 (2011)(quoting Mason v. City of Hoboken, 196 N.J. 51, 64 (2008)).

In a proceeding to challenge the denial of an OPRA request, the applicant may appeal the decision by filing an action with the Superior Court or filing a complaint with the Government Records Council (“GRC”). N.J.S.A. 47:1A-6. The custodian of the records has the burden of proof to show that denial was “authorized by law.” Id. A decision of the [GRC] shall not have value as a precedent for any case initiated in Superior Court pursuant to [N.J.S.A. 47:1A-6]. N.J.S.A. 47:1A-7. Should the applicant prevail in the Superior Court proceeding they shall be entitled to a reasonable attorney’s fee. Id.

OPRA defines a “government record” as

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

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

In other words, in order for a document to qualify as a government record, the applicant must demonstrate, on a threshold basis, that the public employee or entity made, maintained, kept, or received the requested document in the course of his or its official business. If not, the Court will affirm the denial of the request.

Furthermore, while “government records” under OPRA are broadly defined and made publicly accessible, Kovalcik, supra, 206 N.J. at 588, 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). To that extent, OPRA exempts from disclosure several categories of documents and information. See, e.g., N.J.S.A. 47:1A-1.1 (excluding certain categories of documents and information from disclosure; N.J.S.A. 47:1A-1.2 (limiting access to biotechnology trade secrets); N.J.S.A. 47:1A-3(a) (limiting access to records of ongoing investigations); N.J.S.A. 47:1A-10 (limiting access to personnel records).

### III. DISCUSSION

#### A. Plaintiff’s Brief

Plaintiff argues that Chatham violated OPRA and plaintiff’s common law right of access by denying him access to the two settlement agreements and to the full version of one notice of tort claim. Plaintiff’s Brief at p. 1. Plaintiff asserts that settlement agreements are public records and are subject to OPRA requests “even if they contained confidentiality clauses or settled claims of a personal nature.” Id.; Asbury Park Press v. County of Monmouth, 406 N.J. Super. 1 (App. Div. 2009). Additionally, plaintiff contends that settlement agreements cannot be construed as a personnel record because they “generally do not contain the type of sensitive personal information that would ordinarily be contained in a personnel file, such as employee evaluations, medical history, information about discipline, employment applications, and similar information.” Plaintiff’s Brief at p. 5. As to the request for the unredacted copy of the notice of tort claim, plaintiff states that “a notice of tort claim is a government record subject to disclosure.” Id. at 6 (citing Figueroa v. Nutley Board of Education, GRC Complaint No. 2012-266 at 6 (September 2013) (Findings and Recommendations of the Executive Director)). Plaintiff adds that while there are no published or unpublished New Jersey cases on point, two cases outside of the jurisdiction are consistent with the GRC’s holding. Id.; see Poway Unified School District v. Superior Court, 62 Cal. App. 4th 1496, 1505; see also Register Div. of Freedom Newspapers Inc. v. County of Orange, 158 Cal. App. 3d 893, 902. Plaintiff also argues that the public interest in disclosure outweighs confidentiality here because “there is no pending claim and there is no pending investigation” and

therefore “the public is entitled to know the consideration that was given in exchange for (what we assume were) releases, and to know the full extent of the claims made by the officers.” Plaintiff’s Brief at p. 9.

B. The Township and Mr. LaConte’s Opposition

In opposition, defendants the Township and Mr. LaConte assert that the settlement agreements and the redacted portions of the notice of tort claim constitute “personnel records,” for which the presumption is non-disclosure. Township Brief at p. 4. Defendants note that “it is not the nomenclature that a document is given” that deems it a personnel file, but “rather it is how the record functions.” Id. at 7. Defendants argue that the settlement agreements and the redacted portions of the notice of tort claim “contain information regarding internal affairs matters, discrimination and personal medical information.” Id. at 7 (citing LaConte Cert. at ¶ 9-10, Hennelly Cert. at ¶ 7-8). Specifically, defendants contend that Mr. Gibney’s settlement agreement is “prelitigational and related to an internal affairs matter,” which also includes personal medical information. Id. at 9. Mr. Giannone’s settlement agreement is “also prelitigational and related to a complaint of discrimination which the Township was obligated to investigate and involved an internal affairs matter and disclosure of personal medical information.” Id. at 9. Defendants add that when balancing confidentiality against public disclosure, the Court should consider that Mr. LaConte “expressed a desire to fully cooperate with the plaintiff,” which was “met by silence, followed by this lawsuit.” Id. at 15. Defendants also assert that an in camera review of the disputed documents is required under R. 4:10-3, and then request a protective order for the documents in question. Township Brief at p. 16.

C. Plaintiff’s Reply to the Township

In reply, plaintiff asserts that the “internal affairs exception only applies to documents that are required to be created as part of the internal affairs process,” and the settlement agreements do not fall under the internal affairs process as outlined in the Internal Affairs Police & Procedures manual (“IA manual”). Plaintiff’s Reply Brief at p. 3. Plaintiff also contends, in opposition to defendant’s argument, that there exists no distinction between settlement agreements in matters involving litigation and those that occur pre-litigation. Id. at 5-6. Plaintiff also argues that while discussing the confidentiality of the notice of tort claim, the “defendants offer no meaningful distinction” as to the differences between Mr. Gibney’s and Mr. Giannone’s notices of tort claim, and that both notices discuss “exactly the type of information” as one another. Id. at 7. Plaintiff

notes that defendants have not sustained their burden of proof under the common law right of access claim. Id. at 8. And plaintiff indicates that there is no objection to an in camera review of the documents in dispute, however, plaintiff highlights that it should be done under R. 1:38-11 instead of R. 4:10-3.

#### D. Giannone's Opposition

Defendant Giannone argues that "enforcement of alleged violations of [OPRA and common law] does not apply to a private citizen." Giannone Brief at pp. 3-4. He additionally asserts that "the confidential settlement agreement and general release is not the result of litigation and are personnel records by nature where the employee had an expectation of privacy and confidentiality and therefore not subject to disclosure under OPRA." Id. at 4. Mr. Giannone adds that "this agreement was **not** the result of public litigation where it would be unreasonable to expect privacy and confidentiality in that situation," and differentiates it from the public matter outlined in Asbury Park Press v. Monmouth County, 201 N.J. 5 (2010). Id. He also argues "that the Confidential Settlement Agreement and Release is a personnel record in its true form and represents the documented conclusion to a personnel matter handled within the confines of the Employment Setting and the confidentiality and privacy it affords." Id. at 5.

Mr. Giannone next argues that "a balancing under the common law favors non-disclosure of the confidential settlement agreement and general release ... because it is not a Public record by definition but also that because of the existence of Confidential Medical Information in its full form, it is disqualified from disclosure under the Common Law Right of Access." Id. at 6. He notes that "the notice of tort claim submitted contains information exempt from release under OPRA and there was an expectation of privacy by the employee." Id. at 7. He adds that "the actual language, descriptions, and contents" of the notice of tort claim including "confidential information which has the potential to negatively, and perhaps permanently impact [his] reputations [sic] unjustly." Giannone Brief at pp. 7-8. Lastly, Mr. Giannone asserts that a "balancing under the common law [also] favors non-disclosure of the notice of tort claim" because he had an "expectation of confidentiality and privacy upon submitting it." Id. at 8.

#### E. Gibney's Opposition

Defendant Gibney notes that he objected to the production of the settlement agreement and notice of tort claim on June 3, 2014 when he was provided with the OPRA request. Perelli Certification at Exhibit B. He then argues that "the settlement agreement is exempt from disclosure

because it is a personnel record.” Gibney Brief at p. 3. He adds that the New Jersey Government Records Counsel (“GRC”) in Fenichel v. Ocean City Bd. of Educ., GRC Complaint No. 2002-82 (2003), found that “[p]ersonnel information that identifies a specific individual government employee is exempt [from disclosure under OPRA] and therefore confidential.” Id. at 4-5. Mr. Gibney adds that “the GRC has generally found that documents found in personnel files which are not among the expressly enumerated exemptions of N.J.S.A. 47:1A-10, but which do relate to a specific employee, constitute personnel records.” Id. at 5. In relation to this OPRA matter, he notes that

[t]he personnel matter, which is the subject of the requested settlement agreement, began during Sgt. Gibney’s employment as a police officer for Chatham Township and involves public procedure matters associated with his employment. Moreover, the requested documents contain personnel information which identifies a specific, individual government employee and therefore confidential.

[Id. at 6.]

Mr. Gibney also argues that he “has a legitimate expectation of privacy when materials and documents are not filed with the Court as a result of formal litigation.” Id. He adds that

it is inaccurate that Plaintiff argues that because no such distinction has been made regarding pre- and post-litigation settlement agreements, no valid or legitimate argument exists. (Plaintiff’s Letter Brief at 5). Rather it is clear from the language in [Asbury Park Press, supra, 201 N.J. 5], that the Supreme Court took into account the fact that formal litigation had begun when analyzing and determining that no reasonable expectation of privacy exists with regard to a settlement agreement entered into post-suit.

[Id. at 7-8.]

Additionally, Mr. Gibney claims that “the Appellate Division makes a distinction between employer/employee disputes and formal complaints that are filed with a court of law as a result of employer/employee disputes. See Asbury Park Press v. County of Monmouth, 406 N.J. Super. 1 (App. Div. 2009).” Gibney Brief at p. 8. He argues that “because Sgt. Gibney never filed a formal civil suit, this Settlement Agreement is the result of private employment dispute, exempting its production pursuant to an OPRA request.” Id. at 9.

Defendant Gibney further argues that the settlement agreement “contains information and facts regarding an internal investigation regarding Sgt. Gibney’s employment” and therefore it is “confidential and should not be subjected to production pursuant to an OPRA request. Id. Additionally, he notes that the “settlement agreement contains confidential medical information ... [and] is also exempt from disclosure pursuant to N.J.S.A. § 47:1A-1 et seq.” Id. He asserts that “the Notice of Claim filed by Sgt. Gibney is also exempt from disclosure because confidential and private information is contained within the document. Like the Settlement Agreement, the Notice of Claim describes and explains Sgt. Gibney’s medical history as well as current medical condition ... Further, the subject matter included in the Notice of Claim relates to the internal affairs investigation conducted by the Township.” Id. at 10.

Lastly, Mr. Gibney argues that “balancing under the common law favors non-disclosure of the settlement agreement and notice of tort claim.” Id. at 11. He notes that “[i]t is clear that Sgt. Gibney expected these discussions and agreement to remain confidential and was an important factor to entering into negotiations with the Township regarding his employment ... [and therefore] the balance unquestionably weighs in favor of non-disclosure and access to these pre-litigation document should be denied.” Id. at 12.

F. Plaintiff’s Reply to Giannone and Gibney

Plaintiff asserts that “the arguments by Giannone and Gibney should be rejected because they are not supported by specific, certified statements. Rather, they supply the Court with generalized statements of harm that are not connected to any specific evidence.” Plaintiff’s Response at p. 4. Plaintiff also argues that “the Township believes both the notices of tort claims and the settlement agreements are public records that should be produced ... [because] it produced Gibney’s notice of tort claim over his objection.” Id. at 5. Plaintiff notes “[b]oth Giannone and Gibney seem to be arguing that, despite massive contrary, published authority both within and [outside] this jurisdiction, that the settlement agreements in this particular case are not public records.” Id. at 7. Plaintiff adds:

[t]o support their arguments, Gibney’s attorney cites three decisions of the [GRC], but none of these GRC decisions address settlement agreements. The GRC has held, without reservation, that settlement agreements are public records that must be disclosed. Paff v. City of Union City, GRC Complaint No. 2013-195 (April 2014); Paff v. Barrington School District, GRC Complaint No. 2009-55 (Oct. 2010).

[Id.]

Plaintiff argues that “there is no distinction between pre- and post-suit settlement agreements.” Id. at 9. Specifically plaintiff asserts that

[a] holding that settlement agreements that resolved pre-suit disputes were not subject to OPRA would be contrary to both the law and policy of OPRA. Such a holding would mean that any time any public employee entered into a severance agreement, separation agreement or some other type of agreement that resolved a dispute before a complaint was filed would not be subject to OPRA if it contained a confidentiality clause. Courts have already voided such clauses for both pre-suit and post-suit settlement agreements. Gibney has simply not supported his distinction with any policy, facts or law.

[Id.]

Plaintiff also asserts that “a record cannot both be a ‘personnel record’ and an ‘internal affairs’ record. In this case, the settlement agreement is not an ‘internal affairs’ record because it is not an investigative report or in any way reflective of investigatory work product.” Plaintiff’s Response at p. 11.

Plaintiff notes that “[a]n important factor for the Court to weigh is that Gibney and Giannone (or their agents) controlled what information about them went into the settlement agreements. This is not a situation where information about them was taken involuntarily or without their permission.” Id. at 12.

#### IV. ANALYSIS

The Court concludes, after an in camera review of the requested documents, that while the settlement agreements must be disclosed, only a unredacted version of the Giannone notice of tort claim should be released to defendants, because certain material amounts to an exempted government record under OPRA.

##### A. The Notice of Tort Claim

While no case law exists as to the disclosure of a pre-litigation notice of tort claim under OPRA, there is a New Jersey Executive Order that informs the Court’s decision. The Court construes certain language in the notice of tort claim as “generated ... in connection with a sexual harassment” complaint filed by an employee. See N.J.S.A. § 47:1A.

Although OPRA generally requires broad disclosure of government records, there are some exemptions that temper OPRA's scope. Asbury Park Press, *supra*, 406 N.J. at 9. One such exemption is N.J.S.A. § 47:1A-1.1, which concerns sexual harassment and maintains the confidentiality of

information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position. (emphasis added).

The court in Asbury Park Press made clear that the "statute limits the exclusion to sexual harassment complaints 'filed with a public employer'" rather than those filed with the Superior Court. *Id.* at 8. Unlike the claim filed in Asbury Park Press, Mr. Giannone's notice of tort claim was "generated ... by [a] public employee [ ] in connection with [a] sexual harassment complaint" and filed by him with the Township, not further disclosed in any court proceeding. See also Velez v. City of Jersey City, 180 N.J. 284, 290 (2004) (noting that a tort claims notice is designed, in part, "to allow the public entity at least six months for administrative review with the opportunity to settle meritorious claims prior to the bringing of suit"). Thus, this notice of tort claim falls under the exemption set forth in N.J.S.A. § 47:1A-1.1.

The Asbury Park court noted that "[t]he Legislature gave victims the opportunity to bring sexual harassment complaints to their public employers without public access." 406 N.J. *Super.* at 10. The filing of a tort claim notice, while a prerequisite to the filing of a complaint against a public entity, is not the same as litigation, which "is done in a public forum and is subject to public knowledge." *Id.* Plaintiff relies upon Register Div. of Freedom Newspapers Inc. v. County of Orange, 158 Cal. App. 3d 893, 902 (1984) for the proposition that "medical records of a tort claimant are not exempt from disclosure because by filing the claim the claimant places his or her alleged physical injuries and the medical records substantiating them in issue and tacitly waives any expectation of privacy with respect to them." Plaintiff's Response at p. 6. That authority, however, is not only not binding on New Jersey courts, but also distinguishable because it relied upon an interpretation of California's "medical records" exemption, not the exemption governing "information generated by or on behalf of ... [a] public employee[ ] in

connection with any sexual harassment complaint filed with a public employer” set forth in OPRA. See N.J.S.A. § 47:1A-1.1.

Thus, the Court has redacted any such reference in the notice of tort claim, and hereby provides plaintiff and defendants Chatham and Giannone with a copy of same.

#### B. The Settlement Agreements

In regard to the release of the settlement agreements, the Court notes that OPRA generally requires the disclosure of settlement agreements post-litigation. Asbury Park Press, supra, 406 N.J. 1 (holding that a settlement agreement in a sexual harassment matter should be released to the public under OPRA). Even when the settlement agreement includes terms of confidentiality, the “parties’ agreement cannot override the public’s right of access under OPRA.” Id. at 9; see Lederman v. Prudential Life Ins. Co., 385 N.J. 307, 317-18 (App. Div. 2006), certif. denied. Additionally, “the policy favoring settlements is far outweighed by the importance of maintaining open government.” Asbury Park Press, supra, 406 N.J. at 11.

While Mr. Gibney indicates that the settlement agreement “explicitly makes reference to [his] personal medical condition and history,” the Court found no such reference in his settlement agreement during in camera review. Gibney Brief at p. 10. The Court, however, did note during in camera review one reference in Mr. Giannone’s settlement agreement about his medical condition and history, and has thus redacted such language pursuant to N.J.S.A. 47:1A-1, et seq., as amended and supplemented by Executive Order No. 26 ¶4(b)(1) (2002)(“information relating to medical, psychiatric or psychological history, diagnosis treatment or evaluation” is exempt from disclosure).

Finally, while defendants have requested a protective order for the settlement agreements, they have failed fail to meet their burden. Because protective orders have a “chilling effect” on assuring freedom of communication, “they should be used sparingly, and only after the entity that seeks to overcome the strong presumption of access establishes that the interest in secrecy outweighs the presumption.” Lederman, supra, 385 N.J. at 323. The settlement agreements should be released to plaintiff.

#### C. Counsel Fees

Here, plaintiff achieved prevailing party status because the Court has determined that the settlement agreements should be released, albeit minimally redacted as to Mr. Giannone’s settlement agreement. However, the Court has denied plaintiff’s request for an unredacted

version of the Giannone notice of tort claim. Accordingly, the Court declines to award attorney's fees associated with plaintiff's efforts to release an unredacted version of Giannone's notice of tort claim, as it concludes that the purpose of OPRA – to provide New Jersey citizens with ready access to government records – is not vindicated by that aspect of the litigation, as the exemption for the notice of tort claim proffered was done so in apparent good faith by the Township. To that extent, the Court concludes that it would be inequitable to grant all fees, as that would effectively penalize the Borough for correctly releasing a redacted version of Mr. Giannone's notice of tort claim, albeit for a different exemption ruled inapplicable by the Court.

Furthermore, the Court is satisfied that a partial award of fees and costs does not defeat the underlying purpose for fee-shifting statutes such as OPRA, which is “to ensure ‘that plaintiffs with bona fide claims are able to find lawyers to represent them[,] . . . to attract competent counsel in cases involving statutory rights . . . and to ensure justice for all citizens.’” New Jerseyans for a Death Penalty Moratorium v. N.J. Dep’t of Corrections, 185 N.J. 137, 153 (citing Coleman v. Fiore Bros., 113 N.J. 594, 598 (1989)). Plaintiff's counsel shall submit his certification of services within thirty (30) days hereof, together with an appropriate form of Order.

V. CONCLUSION

For the aforementioned reasons, the Court grants plaintiff's OPRA request for the Gibney settlement agreement, partially grants plaintiff's request for the Giannone settlement agreement, denies plaintiff's OPRA request for an unredacted version of the Giannone notice of tort claim, and grants plaintiff partial attorneys fees.