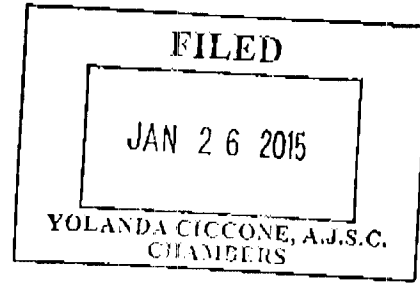


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JOHN PAFF,  
Plaintiff,

v.

BOROUGH OF BOUND BROOK  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
SOMERSET COUNTY  
DOCKET NO. *L-72-15*

Civil Action  
**ORDER TO SHOW CAUSE  
SUMMARY ACTION**

THIS MATTER being brought before the court by Richard M. Gutman, attorney for Plaintiff John Paff, seeking relief by way of summary action pursuant to R. 4:67-1(a), based upon the facts set forth in the verified complaint filed herewith; and the court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for good cause shown,

IT IS on this 26<sup>th</sup> day of January, 2015, ORDERED that the defendant Borough of Bound Brook appear and show cause on the 11<sup>th</sup> day of March, 2015, before the Superior Court in Somerset County 20 N. Bridge St Somerville, New Jersey at 9:00 o'clock in the fore noon, or as soon thereafter as counsel can be heard, why judgment should not be entered for:

A. A declaration that the Borough's denial of access to the entire "narrative description" and mri #s violated OPRA and/or the common law right of access to public records;

B. An order that the Borough grant Paff access to the requested "narrative description" and mri #s;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

And it is further ORDERED that:

1. A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon the defendant personally within 30 days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. The plaintiff must file with the court his proof of service of the pleadings on the defendant no later than three (3) days before the return date.

3. Plaintiff shall file and serve a supporting brief by February 18<sup>th</sup>, 2015 with the Clerk of the Superior Court in Somerset County. A copy must be sent directly to the chambers of Judge Ciccione.

3. Defendant shall file and serve a written answer, a brief, an answering affidavit or a motion returnable on the return date to this order to show cause and the relief requested in the verified complaint and proof of service of the same by February 25<sup>th</sup>, 2015. The answer, brief, answering affidavit or a motion, as the case may be, must be filed with the Clerk of the Superior Court in Somerset County. A copy of the papers must be sent directly to the chambers of Judge Ciccione.

4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by February 27<sup>th</sup>, 2015. The reply papers must be filed with the Clerk of the Superior Court in the county listed above. A copy of the reply papers must be sent directly to the chambers of Judge Ciccione.

5. If the defendant does 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 addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.


7. Defendant, take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. 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, an answering affidavit or a motion returnable on the return date to the order to show cause and proof of service before the return date of the order to show cause.

These documents must be filed with the Somerset County Clerk of the Superior Court. A directory of these offices is available in the Civil Borough Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf). Include a \$175.00 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer, brief, answering affidavit or motion to the plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your answer, brief, answering affidavit or motion 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 or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). 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. A

directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Borough Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).

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 to the contrary no later than 1 days before the return date.



YOLANDA CICCONE, A.J.S.C.

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JOHN PAFF,	:	
	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	SOMERSET COUNTY
v.	:	DOCKET NO.
	:	
BOROUGH OF BOUND BROOK	:	Civil Action
Defendant.	:	
	:	<b>VERIFIED COMPLAINT</b>

---

Plaintiff John Paff, by way of complaint against the Borough of Bound Brook, states as follows:

1. John Paff is an individual residing at 1605 Amwell Road, Somerset, Somerset County, New Jersey.
2. The Borough of Bound Brook is a political subdivision of the State of New Jersey and is located in Somerset County, New Jersey.
3. John Paff requested from the Borough under the Open Public Records Act (OPRA) the CAD (Computer Aided Dispatching) entries/screenshots for any calls for service or dispatches related to any incidents involving Kimberly Charnuska during 2014. (Paff Cert., Page 1.)
4. On December 12, 2014, the Borough granted Paff access to a redacted copy of an October 29, 2014 CAD incident report regarding Kimberly Charnuska. (Paff Cert., Page 3.)
5. The Borough redacted the entire “narrative description” section and the MNI #s of suspect Ms. Charnuska and reporting person Dan Gallagher. (Paff Cert., Page 5.)
6. The Borough claimed that the Paff’s record request was improper because it allegedly

lacked specificity. (Paff Cert., Pages 2-3.)

7. The Borough redacted the entire “narrative description” on the grounds that it allegedly was a criminal investigatory record. (Paff Cert., Page 3.)

8. The Borough gave no reason for redacting the MNI #s. (Paff Cert., Pages 2-3.)

**First Count  
(OPRA Right to Redacted “Narrative Description”)**

9. Plaintiff Paff repeats the allegations stated above as if set forth at length herein.

10. The Defendant Borough’s denial of access to the entire “narrative description” violated OPRA.

WHEREFORE, Plaintiff Paff demands judgment against the Borough as follows:

A. A declaration that the Borough’s denial of access to the entire “narrative description” violated OPRA.

B. An order that the Borough grant Paff access to the requested “narrative description”;

C. An award of costs and attorney’s fees; and

D. Such other relief as the Court deems equitable and just.

**Second Count  
(Common Law Right to Redacted “Narrative Description”)**

11. Plaintiff repeats the allegations stated above as if set forth at length herein.

12. The public’s need for access to the redacted “narrative description” is greater than the Borough’s need for secrecy.

13. The Defendant Borough’s denial of access to the redacted “narrative description” violated the common law right of access to public records.

WHEREFORE, Plaintiff Paff demands judgment against Defendant Borough as follows:

A. A declaration that the Borough’s denial of access to the entire “narrative description”

violated the common law right to public records;

- B. An order that the Borough grant Paff access to the requested “narrative description”;
- C. An award of costs and attorney’s fees; and
- D. Such other relief as the Court deems equitable and just.

**Third Count  
(OPRA Right to Redacted MNI #s)**

14. Plaintiff Paff repeats the allegations stated above as if set forth at length herein.

15. The Defendant Borough’s failure to state an alleged legal basis for denying access to the MNI #s violated OPRA.

16. The Borough failed to satisfy its burden of proving that its denial of access to the MNI #s was authorized by OPRA.

WHEREFORE, Plaintiff Paff demands judgment against Defendant Borough as follows:

- A. A declaration that the Borough’s denial of access to the MNI #s violated OPRA;
- B. An order that the Borough grant Paff access to the MNI #s;
- C. An award of costs and attorney’s fees; and
- D. Such other relief as the Court deems equitable and just.

**Fourth Count  
(Common Law Right to Redacted MNI #s)**

17. Plaintiff repeats the allegations stated above as if set forth at length herein.

18. There is an insignificant need for secrecy as regards the redacted MNI #s.

19. The Defendant Borough’s denial of access to the redacted MNI #s violated the common law right of access to public records.

WHEREFORE, Plaintiff Paff demands judgment against Defendant Borough as follows:

- A. A declaration that the Borough’s denial of access to the MNI #s violated the common

law right of access;

B. An order that the Borough grant Paff access to the MNI #s;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

Respectfully submitted,

January 15, 2015

\_\_\_\_\_  
Richard Gutman

**Certification Pursuant to R. 4:25-4**

Plaintiff designates Richard Gutman as trial counsel in this action.

**Certification Pursuant to R. 4:69-4**

There are no necessary transcripts of local agency proceedings in the cause.

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.

January 15, 2015

\_\_\_\_\_  
Richard Gutman



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JOHN PAFF,

Plaintiff,

V.

BOROUGH OF BOUND BROOK,

Defendant.

---

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
SOMERSET COUNTY  
DOCKET NO. L-72-15

Civil Action

**PLAINTIFF JOHN PAFF'S BRIEF  
IN SUPPORT OF ORDER TO SHOW CAUSE**

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January 28, 2015

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## **STATEMENT OF FACTS**

On October 29, 2014, Dan Gallagher of Bound Brook High School called 911 to report a suspicious incident at Bound Brook High School in which the suspect was 24-year old high school art teacher Kimberly L. Charnuska of 339 Codrington Pl., Bound Brook. (Paff Cert., Pages 4-5.) The alleged victim was a juvenile. (Paff Cert., Page 3.) Two Bound Brook Borough police officers were dispatched to the high school. (Paff Cert., Page 6.) The police “cleared” the call 26 minutes later. (Paff Cert., Page 6.) A 911 CAD (Computer Aided Dispatch) incident report and a related police investigatory report were created. (Paff Cert., Page 3.)

On the same day that the incident was reported, Bound Brook High School art teacher Kimberly Charnuska was suspended with pay. Four weeks later she was terminated at a November 24, 2014, Bound Brook Board of Education meeting. (Paff Cert., Page 7.)

The next day, John Paff, a resident of Somerset County, sent an email to the Borough of Bound Brook requesting records under both the Open Public Records Act (OPRA) and the common law right of access to public records. He noted that the Bound Brook Board of Education’s November 24, 2014 meeting agenda suggested that art teacher Kimberly Charnuska was suspended with pay on October 29, 2014 and terminated on November 24, 2014. Paff added that he was informed that there may have been a related incident reported to law enforcement. He requested the following records:

“1. CAD entries/screenshots for any calls for service or dispatches related to any incidents involving Charnuska during 2014.

2. Police incident reports regarding all incidents involving Charnuska during 2014.” (Paff Cert., Page 1.)

In Bound Brook Borough’s response, it characterized both requests as “improper,”

“unclear,” “overly broad” and “vague” because they allegedly “do not identify a record with specificity.” The Borough further asserted that Paff’s requests, “requir[e] the custodian to review every document in the Borough’s files and to guess whether any documents are responsive to your request” and that “there is no effective means of searching for such records with any certainty.” Yet, the Borough admitted that it located a 911 CAD Incident Report #14194153 and an associated police investigatory report that were responsive to Paff’s record requests. (Paff Cert., Pages 2-3.)

In addition to the grounds that Paff’s record request allegedly was “unclear,” the Borough denied access to the police investigatory report in its entirety on the grounds of OPRA’s exemption for “criminal investigatory records.” N.J.S.A. 47:1A-1.1. (Paff Cert., Page 3.) (This lawsuit does not seek access to the police investigatory report.)

The Borough granted access to the 911 CAD Incident Report in redacted form. It redacted all of the information regarding the juvenile victim. (This lawsuit does not seek access to the redacted information about the juvenile victim.) The Borough also redacted Kimberly Charnuska’s driver’s license number. (Paff Cert., Page 3.) (This lawsuit does not seek Ms. Charnuska’s driver’s license number.)

While acknowledging that “the Computer Aided Dispatching (CAD) records are generally accepted to be government records subject to disclosure,” the Borough also redacted the entire 911 CAD Incident Report’s Narrative Description on the grounds that it allegedly was exempt under OPRA as a “criminal investigatory record” as well as its general objection that Paff’s entire request was allegedly “unclear.” (Paff Cert., Pages 3.) The Borough also redacted the mni #s for both Kimberly Charnuska and Dan Gallagher without acknowledgment or explanation, other than its general objection that the entire record request was “unclear.” (Paff

Cert., Pages 2-5.)

The Borough also ignored John Paff's request for the records under the common law right of access to public records. (Paff Cert., Pages 2-3.)

On January 29, 2015, Paff's counsel mailed Kimberly Charnuska the signed order to show cause, complaint and John Paff certification with attachments. See January 28, 2015, Certification of Richard Gutman.

## **ARGUMENT**

Because the public agency denying access to records has the burden of proving that the denial of access is authorized by OPRA (N.J.S.A. 47:1A-6), Plaintiff Paff assumes for purposes of this litigation, until the Borough proves otherwise, that at the time of the creation of 911 CAD Incident Report #14194153, Dan Gallagher was the principal of Bound Brook High School.

### **I. Borough's Claim That Paff's Record Request is "Vague" is Disproved by the Borough's Identification, Location and Production of the Record Sought**

John Paff requested "CAD entries/screenshots for any calls for service or dispatches related to any incidents involving [art teacher Kimberly] Charnuska during 2014." (Paff Cert., Page 1.) Thus, Paff had requested specific types of records regarding a specific person during a specific time period.

The Borough denial of access letter began with a lengthy argument that Paff's record request was "improper" because it lacked "specificity." (Paff Cert., Pages 2-3.) On the contrary, Paff's record request was specific enough to identify and locate the request records with a reasonable amount of effort. Burke v. Brandes, 429 N.J.Super. 169, 176 (App. Div. 2012) (approving request for all records regarding a particular subject).

Moreover, the Borough, did, in fact, identify, locate and produce the October 29, 2014, 911 CAD Incident Report #14194153 regarding Ms. Charnuska. (Paff Cert., Page 3.) After

having identified and located the 911 CAD Incident Report, it is absurd for the Borough to now assert that Paff's record request was too "vague" and "unclear" for the Borough to identify or locate the record sought. As the Appellate Division has noted, "[i]ndeed, the fact that the custodian of records in this case actually performed a search and was able to locate and identify records responsive to plaintiff's request belies any assertion that the request was lacking in specificity or was overbroad." *Id.* at 177.

## **II. Borough's Denial of Access to the Entire "Narrative Description" Was Unlawful**

### **A. Borough Violated OPRA Because it Has Failed to Satisfy its Burden of Proving that the Criminal Investigatory Records Exemption Applies to the "Narrative Description"**

The Borough admits, "the Computer Aided Dispatching (CAD) records are generally accepted to be government records subject to disclosure." Nevertheless, the Borough denied access to the entire Narrative Description on the grounds that it allegedly is exempt as "criminal investigatory records." In the Borough's words, "the Borough's reporting software permits the investigating officers to insert notes relevant to their investigation of a complaint. Those notes, which are not required by law to be created, are criminal investigatory records." (Paff Cert., Page 3.)

OPRA expressly provides that "[t]he public agency shall have the burden of proving that the denial of access is authorized by law." N.J.S.A. 47:1A-6. Here, the Borough has failed to satisfy its burden of proving that the denial of the Narrative Description is authorized by OPRA.

OPRA defines a "criminal investigatory record," which is exempt, as "a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding."

N.J.S.A. 47:1A-1.1. Thus, in order to establish that a record is exempt under OPRA as a “criminal investigatory record,” the public agency must prove both that the record is not required by law and that it pertains to a criminal investigation or related civil enforcement proceeding. The Borough has proved neither.

### **1. 911 CAD Incident Reports are Required by Law to be Maintained**

Police 911 calls and CAD (Computer Aided Dispatch) entries are required by law to be maintained. “Each PSAP [Public Safety Answering Point] shall maintain the following: 1. Recordings produced by the logging recorder and all documents or records related to 911 calls in a secured area for no less than 31 days.” N.J.A.C. 17:24-2.4(a)(1). The 911 CAD Incident Report at issue indicates in the upper left-hand corner of its first page that it is a 911 record. (Paff Cert., Page 4.) Thus, because the law requires the maintenance of records related to 911 calls, the 911 CAD Incident Report is not an OPRA “criminal investigatory record.” As the Appellate Division has stated regarding a 911 tape, “because the law requires that such tapes be made and kept, it does not qualify as a ‘criminal investigatory record.’” Serrano v. South Brunswick Township, et al., 358 N.J. Super. 352, 365 (App. Div. 2003).

The Borough argues that OPRA’s criminal investigatory record exemption does apply to the Narrative Description because its notes “are not required by law to be created.” (Paff Cert., Page 3.) But, OPRA’s definition of “criminal investigatory records” excludes records that the law requires to be “made, maintained or kept on file” not merely “created.” N.J.A.C. 17:24-2.4(a)(1) requires the Borough to maintain for no less than 31 days the entire 911 CAD Incident Report at issue, including its Narrative Descriptive.

### **2. The 911 CAD Incident Report’s Narrative Description is Not an Investigatory Record**

The Borough argues that the Narrative Report at issue is OPRA exempt as a “criminal



investigatory record” because it is “relevant” to an investigation. (Paff Cert., Page 3.) But simply being relevant to a criminal investigation does not make a record, or part of a record, to be a “criminal investigatory record.”

The 911 CAD Incident Report at issue was created to record the circumstances of a 911 call from Principal Dan Gallagher regarding a “suspicious incident” at Bound Brook High School. The report describes how two police officers were sent to the location, where they remained from 7:56 A.M. to 8:22 A.M. (Paff Cert., Page 4-6.)

The 911 CAD Incident Report should not be confused with the associated police investigatory report, (Paff Cert., Page 3), which Bound Brook withheld in its entirety and is not sought by this lawsuit. The 911 CAD Incident Report is a report regarding the 911 call. It described activity preceding the police investigation described by the investigatory report.

The purpose of OPRA’s criminal investigatory exemption is to protect the confidentiality of investigations. It does not protect records that pre-existed or sparked the investigation or were merely used during the investigation. Unlike investigative records, the disclosure of records that predated the investigation would not reveal the specifics of the investigation and therefore their disclosure would not harm the investigation.

In O’Shea v. Township of West Milford, 410 N.J.Super. 371 (App. Div. 2009), the Township denied access to Use of Force Reports on the grounds, among others, that the reports might later be used in criminal investigations. Id. at 376-77. The trial court rejected the Township’s arguments and the Appellate Division affirmed primarily for the reasons stated by the trial judge. Id. at 376. As the Appellate Division explained, the trial judge,

said that the UFRs at issue did not qualify as criminal investigatory records both because they were not created as part of an investigation and because defendant had merely speculated that the documents sought would ever be used in an investigation.

The judge drew an “analog[y]” between a UFR and

an accident report that a police officer fills out. While [the document] may ultimately at some point become part of a criminal investigation and even a civil lawsuit, it is not done as a criminal investigatory action initially.

\* \* \*

Photos of an accident scene may be looked at as part of . . . a criminal investigation. That doesn’t mean they’re criminal investigatory records.

The judge’s “interpretation of a criminal investigatory record is a record created while a criminal investigation is going on[,]” or “the work product of . . . the people investigating.”

[Id. at 378.]

In conclusion, to the extent that the Narrative Description contains information regarding Principal Dan Gallagher’s 911 call, it is not a “criminal investigatory record” because it consists of information that the police obtained prior to the start of the investigation. Independently, none of the Narrative Description is a “criminal investigatory record” because it was required by law to be maintained for at least 31 days.

**B. Borough Violated Common Law Right of Access Because the Public’s and Paff’s Need to Know the Nature of the Official Misconduct by A Public Employee Resulting in Suspension and Termination Exceeds the Need for Secrecy**

New Jersey provides access to public records in three distinct ways: OPRA, the common law right of access to public records and the discovery procedures in civil litigation. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 543 (App. Div. 2005). Records that are not available by one means may be available through another. Id. As OPRA expressly states, “[n]othing contained in [OPRA] shall be construed as limiting the common law right of access to a government record, including criminal investigatory records of a law enforcement agency.” N.J.S.A. 47:1A-8. Thus, even if Plaintiff Paff did not have a right to

the requested Narrative Description under OPRA, he may nevertheless have a common law right of access to that record and vice versa. Bergen v. North Jersey Media, 370 N.J. Super. 504, 517 (App. Div. 2004).

The common law right of access to public records is determined by balancing the requestors' need for the record versus the government's need for secrecy. Michelson v. Wyatt, 379 N.J. Super. 611, 624 (App. Div. 2005). The common law interest of the record requestor can be either a personal interest or a public interest. Education Law Center v. New Jersey Department of Education, 198 N.J. 274, 302 (2009). Both are present here. Plaintiff Paff maintains blogs that are frequently the sources of news particles. See January 26, 2015, Certification of John Paff. Even without Paff's journalism, a public interest would exist for the records at issue. Both outweigh any need for secrecy.

Two principal characteristics of the Narrative Description generate a considerable public need for disclosure. First, the incident concerned a public matter. A government employee, Dan Gallagher, called the police to report suspected criminal activity by another government employee, Kimberly Charnuska, allegedly committed in her official capacity as a high school teacher. The information sought does not concern Ms. Charnuska's activities as a private individual.

Second, the information did not concern mere suspicions. The matter described in the Narrative Description was sustained to the extent that it resulted in Ms. Charnuska's suspension and termination. (Paff Cert., Page 7.)

There is a compelling public interest in sustained, or even unsustained, allegations of misconduct by government employees in the course of their official conduct. The great extent of that public interest is reflected in OPRA. Despite OPRA's broad exemption for personnel records,

it requires disclosure of the “reason” for a public employee’s “separation.” N.J.S.A. 47:1A-10. Similarly, despite OPRA’s broad exemption for criminal investigatory records and ongoing investigations, it requires disclosure of certain information regarding reported crimes and arrests. N.J.S.A. 47:1A-3b. Plaintiff Paff is not citing the foregoing OPRA provisions as determinative of the common law request, but rather as demonstrating the intense public interest in information regarding misconduct by public employees that results in termination.

Under the common law calculus, that public interest in disclosure must be weighed against the need for secrecy. Here, Ms. Charnuska could have little expectation of privacy once Principal Gallagher called the police regarding her suspected criminal activity. Moreover, much of the information regarding this incident is already a matter of public record. The Borough has already publicly disclosed that the police investigated an allegation by Dan Gallagher that 24 year old Bound Brook High School art teacher Kimberly Charnuska, residing at 339 Codrington Pl., Bound Brook, NJ, 08805, committed a crime against a juvenile at the High School, resulting in her suspension that very day and her termination four weeks later. (Paff Cert., Pages 3,5,7.)

In conclusion, the public’s need for information regarding a high school teacher’s suspected crime against a juvenile at the high school, resulting in her immediate suspension and later termination, outweighs any conceivable need for secrecy.

### **III. Borough’s Denial of Access to the MNI #s Was Unlawful**

#### **A. Borough Violated OPRA Because it Failed to State any Legal Basis for Denying Access to the MRI #s**

The Borough’s December 12, 2014, letter gave no reason for denying access to the mni #s of Kimberly Charnuska and Dan Gallagher. (Paff Cert., Pages 2-3,5.) Therefore, the Borough violated OPRA’s requirement that “[i]f the custodian is unable to comply with the request for access, the custodian shall indicate the specific basis therefor on the request form and promptly

return it to the requestor.” N.J.S.A. 47:1A-5g.

**B. Borough Violated OPRA Because it Has Failed to Satisfy its Burden of Proving that the Denial of Access to the MRI#s Was Authorized by Law**

The Borough has as yet not even attempted to satisfy its burden of proving that the denial of access to the mni #s of Charnuska and Gallagher is authority by law. N.J.S.A. 47:1A-6.

**C. Borough Violated Common Law Right of Access to the MRI #s Because There Was No Need for Secrecy**

As previously indicated, the Borough has not yet suggested any reason for denying the mni #s of Charnuska and Gallagher. “[I]f the governmental need in confidentiality is slight or non-existent, citizen-taxpayer status will ordinarily warrant that the matters be disclosed.”

Loigman v. Kimmelman, 102 N.J. 98, 105 (1986).

Respectfully submitted,

Richard M. Gutman

Richard M. Gutman - 001081996  
Richard Gutman, P.C.  
9 Prescott Avenue  
Montclair, NJ 07042-5029  
973-744-6038 (voice & fax)  
richardmgutman@gmail.com  
Attorney for Plaintiff John Paff

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JOHN PAFF,	:	
	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	SOMERSET COUNTY
v.	:	DOCKET NO.
	:	
BOROUGH OF BOUND BROOK	:	
	:	Civil Action
Defendant.	:	
	:	
	:	<b>Certification of John Paff</b>

---

I, John Paff, hereby certify and say as follows:

1. I am the plaintiff in the above-titled lawsuit.
2. I have personal knowledge of the facts alleged in the Complaint.
3. The factual allegations of the Complaint are true.
4. All attached documents are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents.

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.

Executed on January \_\_\_\_\_, 2015



John Paff &lt;opengovtissues@gmail.com&gt;

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**Records Request to Bound Brook and SCPO**

1 message

John Paff &lt;paff@pobox.com&gt;

Tue, Nov 25, 2014 at 4:52 PM

To: White@co.somerset.nj.us, Kathye Quick &lt;Quick@co.somerset.nj.us&gt;, Donna Godleski &lt;dgodleski@boundbrook-nj.org&gt;

I make this request to both the Somerset County Prosecutor's Office and the Bound Brook Police Department.

I ask both agencies to please accept this e-mail/fax as my request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records to me via e-mail to paff@pobox.com. Thank you.

**Background:**

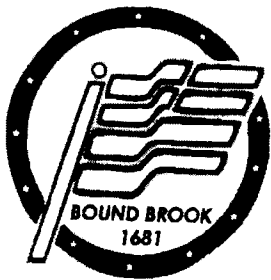
The agenda for the Bound Brook Education's November 24, 2014 meeting suggest that art teacher Kimberly Charnuska was suspended with pay on October 29, 2014 and terminated on November 24, 2014. I am informed that there may have been some specific incident(s) that were reported to law enforcement and that were related to Ms. Charnuska's suspension and termination.

**Records requested:**

1. CAD entries/screenshots for any calls for service or dispatches related to any incidents involving Charnuska during 2014.
2. Police incident reports regarding all incidents involving Charnuska during 2014.

If you claim that any records are exempt, please at least acknowledge their existence and provide me with a detailed description of each.

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



# BOROUGH OF BOUND BROOK

230 Hamilton St. • Bound Brook, NJ 08805  
(732) 356-0833 • Fax: (732) 356-8990  
[www.boundbrook-nj.org](http://www.boundbrook-nj.org)

Robert P. Fazen  
Mayor

December 12, 2014

VIA ELECTRONIC MAIL: [paff@pobox.com](mailto:paff@pobox.com)

John Paff

P.O. Box 5424

Somerset, NJ 08875

**Re: OPRA Request, Dated November 25, 2014**

Dear Mr. Paff:

The undersigned is the Custodian of Records for the Borough of Bound Brook. Your Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1.1. et seq., request, submitted via electronic mail sent on November 25, 2014, at 4:52 p.m. (after the close of business) was received by the Borough on November 26, 2014. Seven business days from that date was December 9, 2014. On December 5, 2014, the Borough requested, and you consented to a 2-week extension of time within which to respond to your request for the following records:

1. CAD entries/screenshots for any calls for service or dispatches related to any incidents involving [Kimberly] Charnuska during 2014.
2. Police incident reports regarding all incidents involving Charnuska during 2014.

Please be advised that a request pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA") must identify the records sought with specificity. Bart v. Passaic County Pub. Hous. Agency, 406 N.J. Super. 445, 451 (App. Div. 2009). OPRA does not permit open-ended requests for every document an agency has on file. Spectraserv, Inc. v. Middlesex Cnty. Utilities Auth., 416 N.J. Super. 565, 576 (App. Div. 2010). OPRA "is not intended as a research tool litigants may use to force government officials to identify and siphon useful information." MAG Entertainment, LLC vs. Division of Alcohol Beverage Control, 375, N.J. Super. 534, 546 (App. Div. 2005). As such, requests for "any and all" documents on a specific subject are considered overly broad. Bent v. Stafford Twp. Police Dept., 381 N.J. Super. 30, 37 (App. Div. 2005). A custodian may reject a request that is overly broad or vague so as to prevent identification of the records sought. New Jersey Builders Ass'n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 172 (App. Div. 2007).

As a preliminary matter, your requests for documents involving "any/all incidents involving Charnuska" are improper because they do not identify a record with specificity. It is



unclear what qualifies as an "incident" or what documents would qualify as "involving" Ms. Charnuska. As a result, there is no effective means of searching for such records with any certainty. These requests are overly broad and vague, requiring the custodian to review every document in the Borough's files and to guess whether any documents are responsive to your request. Your requests may therefore be denied. Notwithstanding the objectionable nature of your request, and without waiving same, the Bound Brook Police Department was able to identify one CAD Incident Report arguably responsive to your first request, and one related police investigation report, arguably responsive to your second request.

1. A copy of CAD Incident Report # 14194153 is being provided to you in response to your first request. Please note that the following redactions have been made to the document:

(a) Narrative Description: While the Computer Aided Dispatching (CAD) records are generally accepted to be government records subject to disclosure, the Borough's reporting software permits the investigating officers to insert notes relevant to their investigation of a complaint. Those notes, which are not required by law to be created, are criminal investigatory records. N.J.S.A. 47:1A-1.1. Therefore the narrative description has been redacted from this document.

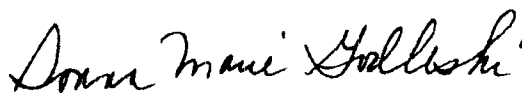
(b) The suspect's Driver's license number has been redacted pursuant to N.J.S.A. 47:1A-5(a) (requiring redaction of social security numbers, credit card numbers, unlisted telephone numbers, and driver license numbers).

(c) Identifying information regarding the alleged victim has been redacted to protect the victim's reasonable expectation of privacy. N.J.S.A. 47:1A-1. The need for privacy is increased as the alleged victim is a juvenile.

2. The police investigatory report associated with the CAD Incident Report # 14194153 is being withheld as it is a criminal investigatory record not subject to release under OPRA. N.J.S.A. 47:1A-1.1.

You have a right to challenge the decision to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Very truly yours,



Donna Marie Godleski, RMC  
Bound Brook Borough Clerk



SOMERSET COUNTY COMM  
SOMERVILLE, NJ

## CAD Incident Report #14194153

Incident Information			
CAD #		Incident Date	Call Taker
14194153		10/29/2014 07:55:25	b25201
Incident Type		Description	Priority
801 SUSP INCIDENT			2
Ems Level	Alarm Level	Modified By	Modified Date
	1	b25201	10/29/2014 14:09:12
Event Information			
Municipality		Business Name	
4 BOUND BROOK BOR		BOUND BROOK HIGH SCHOOL	
Fire Box		RA	
401		401	
Correct Location			
BOUND BROOK HIGH SCHOOL / 111 W UNION AVE			
Street #	Street Name	Apartment #	Cross Street
111	W UNION AVE		
Near	Landmarks	Additional	
WINSOR ST TO LIVINGSTON ST			
Reporting Person			
RP Name		RP Phone	How Received
GALLAGHER, DAN		732-356-2500	RADIO
RP Address		Closed By	Date Closed
		b25201	10/29/2014 08:22:06

### Incidents

Agency Name	Incident Number
BBP-PD	14015054

### Incident Types

Dispatch Class	Incident Type
AMBULANCE	
FIRE/RESCUE	
POLICE	SUSP INCIDENT

**Note(s)**

Note Type	Entered By	User ID
CALL-TKR	10/29/2014 14:09:12	b25201
Narrative Description		
[REDACTED]		

**Person(s)**

Persons 1 SUSPECT				
Mni #	Last Name	First Name	Middle Name	
[REDACTED]	CHARNUSKA	KIMBERLY	L	
Street #	Street	City	State	
339	CODRINGTON PL.	BOUND BROOK	NJ	
DOB	Phone	Zip Code	Lic #	Lic State
03/03/1990		08805	[REDACTED]	NJ
Lic Status	Lic Exp	Lic Cls	Lic Rest	SSN

Persons 2 VICTIM				
Mni #	Last Name	First Name	Middle Name	
[REDACTED]	[REDACTED]	[REDACTED]		
Street #	Street	City	State	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
DOB	Phone	Zip Code	Lic #	Lic State
[REDACTED]		[REDACTED]		
Lic Status	Lic Exp	Lic Cls	Lic Rest	SSN

Persons 3 REPORTING PERSON				
Mni #	Last Name	First Name	Middle Name	
[REDACTED]	GALLAGHER	DAN		
Street #	Street	City	State	
111	WEST UNION AVENUE	BOUND BROOK	NJ	
DOB	Phone	Zip Code	Lic #	Lic State
	732-356-2500	08805		
Lic Status	Lic Exp	Lic Cls	Lic Rest	SSN

## Officers and Units

CAD Units			
Agency Name	Unit ID	Personnel Id	Officer Name
BBP-PD	BB24	24	RIVENBARK, K
BBP-PD	BB27	27	MAZUERA, J

## Unit Statuses

CAD Units					
Unit ID	Status	Date/Time	Avail?	Location	Disp ID
BB24	DISP	07:56:13	N		b25201
BB27	DISP	07:56:14	N		b25201
BB27	ONLOC	07:56:23	N		b25201
BB24	ONLOC	07:56:25	N		b25201
BB27	CLEAR	08:22:04	Y		b25201
BB24	CLEAR	08:22:06	Y		b25201

## Dispositions

Dispositions				
Type	Disposition	Incident Report?	Accident Report?	Due By
POLICE	(CLR) CLEAR INCIDENT			RIVENBARK, K

6

Richard Gutman - 001081996  
Richard Gutman, P.C.  
9 Prescott Avenue  
Montclair, NJ 07042-5029  
973-744-6038 (voice & fax)  
richardmgutman@gmail.com  
Attorney for Plaintiff John Paff

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JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION, CIVIL PART
Plaintiff,	:	SOMERSET COUNTY
	:	DOCKET NO. SOM-L-72-15
v.	:	
	:	
BOROUGH OF BOUND BROOK	:	Civil Action
Defendant.	:	
	:	<b>CERTIFICATION OF JOHN PAFF</b>

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Plaintiff John Paff, of full age, certifies as follows:

1. I am a lifelong resident of New Jersey and currently reside at 1605 Amwell Road, Somerset (Franklin Township), Somerset County, New Jersey.

2. I have served as the Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project since 2005. I have also served on the Board of Directors of the New Jersey Foundation for Open Government, Inc. (NJFOG) since 2008 and currently serve as its treasurer.

3. I am considered an authority on the Open Public Records Act (OPRA) and the Open Public Meetings Act (OPMA). On October 24, 2014, I was awarded the "Heroes of the Fifty States" award at the National Freedom of Information Coalition's (NFOIC) Freedom of Information Summit in St. Petersburg, Florida.

4. My avocation is holding New Jersey government officials accountable. I began this pursuit in 1992 when I investigated deceased Somerset County Prosecutor Nicholas L. Bissell's use of asset forfeiture laws to seize property and money from sometimes innocent parties. See, e.g. "Bissell bows to group on forfeiture's audit," Star-Ledger, Joe Tyrrell, June 3,

1992 and "Forfeiture flap triggers harsh words," Times of Trenton, Adam Miller, November 8, 1993.

5. After the enactment of the Open Public Record Act (OPRA) in 2002, I became active in pushing the new law's boundaries and testing its contours. I have been the a plaintiff in eight published court opinions: *Paff and Asbury Park Press v. County of Monmouth*, 406 N.J. Super. 1 (App. Div. 2009, *aff'd* 201 N.J. 5 (2010)); *Paff v. New Jersey Dept. of Labor, Bd. of Review*, 379 N.J. Super. 34 (App. Div. 2005); *Paff v. Byrnes*, 385 N.J. Super. 574 (App. Div. 2006); *Libertarian Party of Cent. New Jersey and Paff v. Murphy*, 384 N.J. Super. 136 App. Div. 2006); *Paff v. New Jersey Dept. of Labor*, 392 N.J. Super. 334 (App. Div. 2007); *Paff v. City of East Orange*, 407 N.J. Super. 221 (App. Div. 2009); *Paff v. Division of Law*, 412 N.J. Super. 140 (App. Div. 2010); *Paff v. New Jersey State Firemen's Ass'n*, 431 N.J. Super. 278 (App. Div. 2013) and *Paff v. Director, Office of Attorney Ethics*, 399 N.J. Super. 632, (Law Div. 2007). I have also been a plaintiff in several other unpublished trial and appellate court decisions.

6. Since 2009, I have maintained a blog entitled "NJ Open Government Notes" ([njopengovt.blogspot.com](http://njopengovt.blogspot.com)) where I report on OPRA and Open Public Meetings Act (OPMA) court cases and other matters involving New Jersey government transparency. As of January 2015, I have posted more than 450 articles on this blog.

7. Since 2008, I have maintained a blog entitled "NJ Civil Settlements" ([njcivilsettlements.blogspot.com](http://njcivilsettlements.blogspot.com)) where I report on civil settlements entered into between citizen plaintiffs and New Jersey government agencies and officials. As of January 2015, I have posted more than 295 articles on this blog.

8. In addition to "NJ Open Government Notes" and "NJ Civil Settlements," I also publish "Random note on NJ government" ([njrandomgovt.blogspot.com](http://njrandomgovt.blogspot.com)), "NJ Police Internal Affairs Complaints" ([njpoliceia.blogspot.com](http://njpoliceia.blogspot.com)) "What's happening in Englewood Cliffs Borough"

(englewoodcliffs.blogspot.com) and the "Fairfield Township Informant" (fairfieldinformant.blogspot.com).

9. During my 20+ years of advocating for greater transparency in government and accountability for government officials, I have developed relationships with dozens of journalists throughout New Jersey. I am recognized as a worthy news source by these journalists and the stories I post on my various blogs are often picked up by the mainstream media.

10. In 2014 alone, my blog posts and other avenues of public advocacy caused approximately fifty news articles to be published. Among them are "Camden ordered to turn over police overtime records," South Jersey Times, Jason Laday, January 3, 2014; "Medford settles suit for \$83,000," Burlington County Times, Peg Quann, February 26, 2014; "Cliffside Park Chief's Payout Larger Than Acknowledged," The Record, Linh Tat, March 6, 2014; "Hamilton school district ordered to pay court fees for man in OPRA case," The Times of Trenton, Mike Davis, June 7, 2014; "Medford tight-lipped on investigation," Burlington County Times, Alexis Sachdev, August 13, 2014; "N.J. Facing more suits for release of documents," Herald News, Stephanie Akin, August 13, 2014; "Activist: Don't let Perth Amboy BOE pay hush money," Home News Tribune, Sergio Bichao, September 8, 2014; "Judge: Police Dashboard Videos Are Public Records," Star Ledger, Christopher Baxter, October 14, 2014 and "Names of Cops who are subject To Internal Affairs Complaints are Public Record, Judge Rules," Star Ledger, Christopher Baxter, October 17, 2014.

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.

January 26, 2015

\_\_\_\_\_  
John Paff

Richard Gutman - 001081996  
Richard Gutman, P.C.  
9 Prescott Avenue  
Montclair, NJ 07042-5029  
973-744-6038 (voice & fax)  
richardmgutman@gmail.com  
Attorney for Plaintiff John Paff

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JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION, CIVIL PART
Plaintiff,	:	SOMERSET COUNTY
	:	DOCKET NO. SOM-L-72-15
v.	:	
	:	
BOROUGH OF BOUND BROOK	:	Civil Action
Defendant.	:	<b>CERTIFICATION OF</b>
	:	<b>RICHARD M. GUTMAN</b>

---

I, Richard M. Gutman, of full age, certifies as follows:

1. I am attorney for John Paff.
2. I mailed the attached letter to Ms. Charnuska on January 29, 2015, with the stated enclosures.
3. The attached letter is a true copy and has not been redacted, changed, modified, adjusted or otherwise altered in any manner by my agents or me.

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.

January 29, 2015

\_\_\_\_\_  
Richard M. Gutman