

SEELEY LAW OFFICE, LLC
411 Fayette Street
Bridgeton, NJ 08302
(856) 451-8050

Libertarians for Transparent Government, a
NJ Nonprofit Corporation,

Plaintiff

Commercial Township, Hannah E.
Nicholas, in her capacity as Township
Clerk, et. al

Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CUMBERLAND COUNTY

Docket No.: CUM-L-402-16

**BRIEF IN SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFF'S ORDER TO
SHOW CAUSE**

This office represents defendant, Commercial Township, County of Cumberland, State of New Jersey. Please accept this brief in support of Defendant's Opposition to Plaintiff's Order to Show Cause in Seeking Relief from the "Open Public Records Act".

Preliminary Statement

Defendant is a township located in the western part of Cumberland County, more specifically known as the Township of Commercial. The Township of Commercial has its own policies and procedures for dealing with a hostile or discriminatory work environment and provides for an internal grievance procedure in dealing with same. (See attached policies and procedures. Exhibit A) As part of the Commercial Township's policies and procedures each township employee is taught that if they are presented with a situation, wherein they feel a violation of the policies and procedures has been committed, they are to immediately fill out an internal grievance form and are then given a further explanation as to same. (See attached grievance form. Exhibit B) This OPRA request demand and the facts surrounding this lawsuit all involve employees of Commercial Township, who believe that they were being subjected to a hostile work environment or are witnesses, who gave interviews regarding same. Each of these employees has been trained on how to deal with a hostile work environment and were directed to

fill out an internal grievance complaint form. Therefore, since this entire matter is based on the internal complaints of Commercial Township employees it is imperative to view that all documents have been created as a response to the investigation and the facts, which were developed and obtained as a result of the internal investigation. This investigation was ordered to be completed by the Township Committee as a result of the directions for the investigations of harassment complaints pursuant to Commercial Township policies and procedures.

Plaintiff's April 12, 2016 OPRA Request

When the investigation in response to the four grievances was completed, an executive session meeting was held wherein the grievances and interviews were discussed at length. The grievances, which were made against the mayor and how the grievances would be handled in such a small working environment, so as to avoid public exposure, potential litigation and various other issues, which could arise from such subject matter was the only topic of the special meeting. As there are only seven employees that work within the building of the Township of Commercial and only five additional employees that work with the road department the committee decided that each employee should be interviewed so as to make sure there was no other complaints or issues, which any of the other employees felt had been violated. Each of these violations alleged complaints, which directed by the policies and procedures of Commercial Township provides that the grievants complete an internal harassment grievance complaint. As a result of the interviews and meetings, substantial documentation were produced and generated, which were all in response to the grievances and potential litigation of a hostile work environment. Based on the nature of the relationship between the employees and the committee it was determined by the employees, the Commercial Township Committee and the Mayor that it would be most beneficial to all involved that a "memorandum of understanding" be drafted, which could allow for the employees to continue to work in a comfortable work environment and not be subjected to any potential future acts of harassment and all parties could avoid public scrutiny. Every party involved in this "memorandum of understanding" intentionally entered into this memorandum to prevent a potential future conflict and any

potential future litigation. This memorandum was also intentionally drafted to address the internal grievance complaints, resulting in an investigation and to avoid all of the alleged violations from being subject to public scrutiny.

However, based on plaintiff's suspicion, regarding Mayor Moore's past and his sudden resignation, this OPRA request was filed and on April 12, 2016, plaintiff submitted a request pursuant to OPRA and the common law right to access seeking "any agreement, release or other writing that set forth the terms and conditions regarding Mayor Judson Moore's recent resignation from the township committee."

Legal Argument

The plaintiff has cited Paff v. Township of Chatham, 2014 West Law 7894490 (2014), which from the outset should be noted is not controlling case law for this court to be bound. More importantly, in fact, plaintiff themselves have argued Id. at 4 "that there is no published case on point." This fact alone and the unique characteristics of the Township of Commercial call for a different view from that, which the plaintiff argues, is supported by Asbury Park Press v. Monmouth County, 406 NJ Super 1 (App. Div. 2009), which Defendant argues should be the controlling case law.

Each of the grievances in this situation were as a result of a hostile work environment complaint. The NJ Supreme Court has found that "gender based" or "sexual harassment" complaints are protected pursuant to statute. In this case, each employee made their complaints on internal grievance "harassment complaint forms" and all of them made their grievances "with the expectation of privacy". Not one of the employees wished to seek any financial gain and/or outside enforcement but instead relied upon the policies and procedures, which have been a major part of the training in this small municipality. (See attached Commercial Township's harassment in the workplace and suggestion for the investigation process. Exhibit C) (See attached certifications of what we will refer to as Grievant #1, Grievant #2, Grievant #3 and Grievant #4. Exhibit D for the court review only) Defendant asserts that the case at hand is a much different factual scenario than the cases cited by plaintiff and defendant relies upon the appellate division case of Asbury Park Press v. Monmouth County 406 NJ Super 1 (App. Div.

2009) and the supporting statutory sections, which have been cited as exemptions by defendant in the Vaughn Index. (See attached Vaughn Index. Exhibit E.)

While this may seem like a simple OPRA request, the clerk immediately understood the extent and scope of the OPRA request of “any writing, which could be related to the actual grievances and other writings, which lead to the “memorandum of understanding” being drafted.” More specifically, this meant all of the written notices, documents, meeting minutes and any other documentation produced in these efforts, of maintaining privacy, which were completed as a follow up to the four grievances, which had been filed with the specific intention of avoiding the public scrutiny of formal litigation. (See plaintiff’s April 12, 2016 OPRA request. Exhibit F) The Defendant is well aware of the plaintiff’s past litigation, with regards to requesting “settlement agreements” and similar type of factual scenarios, which have lead to other lawsuits and was cognizant that this very process could lead to such a suit. Defendant viewed the various cases including Asbury Park v. County of Monmouth, 406 NJ Super.(App. Div. 2009) and was aware during the internal review and investigation that this controlling case law could protect the grievants even though Defendant was aware that certain documents may be required to be provided pursuant to an OPRA request through a court’s In Camera review.

The defendant took this OPRA request very seriously and in fact, as pointed out by plaintiff, put together a 35 item cross referenced Vaughn Index to better identify, which records were created in the process of interviewing these grievances and the precise statutory reasons that the defendant relied upon for excluding each document that was not produced was cited.

It is further argued that the defendant did not simply send a blanket denial citing the statutes, which were included in the Vaughn Index but methodically reviewed the relevant documentation, which had been requested of Defendant then provided specific responses and/or reasons for not supplying each document. (See Vaughn Index)

The defendant relies on the literal reading of the statutory provisions, which have been cited in the Vaughn Index and also upon Asbury Park Press v. County of Monmouth, 406 NJ Super 1 (App. Div. 2009). The court states that in regards to N.J.S.A. 47:1a-1.1 that “[t]he only exclusion that is relevant here is the one concerning sexual harassment.” That provision states in full that the meaning of “government record” shall not include: 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 grievances filed by or against an individual**. Defendant points to its own policies and procedures regarding a hostile work environment and asserts that those grievances should receive the same protection as a sexual harassment complaint. Discrimination of gender is just one of the categories under the NJ LAD and Commercial Township's anti-harassment material, which should be afforded this constitutional protection. Defendant asserts that other violations of its own policies should likewise be given this privacy protection as protected classes. Defendant argues that the documents in question are not a "settlement agreement" as a result of a public lawsuit. Instead of filing a Superior Court complaint, which defendant concedes would be public, each grievant was simply asserting their rights pursuant to the policies and procedures of Commercial Township and never even indicated a desire to further the issue and make a formal public complaint. The grievants did this, partially to avoid the public scrutiny to which it now potentially faces with the release of the this information and which each grievant has described in their certifications. (See Exhibit D for the court's review only) The individual grievants fear that by releasing this information this will identify who the complaining persons were and forever leave that mark on each specific alleged victim in a very small community.

Plaintiff argues that even heavily redacted responses could be acceptable. Defendant anticipated that this would be the request, however, believes that no matter what version was to be sent (redacted or not) that the court and not defendant would eventually have to determine what language would indeed be subject to redaction. As it has been mentioned before and as is the case at hand the grievants work in a very small environment and each has explained in their certification what their fear is of releasing information, which will implicate them as having been the grievants. These grievants fear that they could be seen as having lead to the resignation of Mayor Moore, retaliation from the public or future committeemen.

The word "grievance" has a known meaning in the context of employer-employee relationships. See eg. N.J.S.A. 34: 13A-5.3; Saginario v. Attorney General, 87 NJ 480, 435 A. 2d 1134 (1981); Red Bank Reg'l Educ. Ass'n v. Red Bank Reg'; High School Bd. Of Educ. 78 NJ 122, 393 A. d 267(1978). A complaint filed in the Superior Court is not the same as a

“grievance” within the context of employment relationships. Defendant concedes that the court in Asbury Park agrees with the court in Verni v. Lanzaaro, 404 NJ Super. 16, 960 a. 2d 405 (App. Div. 2008), which held that the public has a right to disclosure of a confidential settlement agreement entered under seal in a civil lawsuit... and found that it would be an odd departure ... to uphold the secrecy of a settlement in a civil lawsuit involving a government agency. But the court in Asbury also explained “that the legislative purpose was more likely for the protection of the privacy of all parties involved in an internal sexual harassment complaint, not just the privacy of the victims.” Defendant asserts there is no recognizable difference under the NJ LAD between “sexual harassment” which is gender based and that of a different protected class identified under the NJLAD.

The defendant’s legal argument respects the strong reaches of OPRA but also respects its employees and the defendant relies on the literal reading of the statutes cited in the Vaughn Index and also Asbury Park Press v. County of Monmouth 406 NJ Super 1 (App. Div 2009).

Also defendant relies upon the New Jersey Government Records Counsel (GRC) Feinchel V. Ocean City Board of Education, GRC complaint # 2002-82 (2003), where the court found that “personnel information that identify a specific individual government employee is exempt [from disclosure under OPRA] and therefore confidential.” Id. at 4-5. Citing Paff v. Township of Chatham 2014 WL 7894490 (2014) Id. at 6.

The defendant intended to treat the grievants as such and was purposeful at the request and respect of each party involved to provide for privacy. Each grievant simply wanted their identity to remain unknown and each expressly voiced that they did not want to hurt Mayor Moore, however, could not continue to work in the hostile work environment, which was determined by each grievant would be unavoidable if they had to continue to work with Mayor Moore. Each grievant simply wanted to avoid a future work environment, which they expressed, if it was allowed to continue would likely lead to litigation. Therefore, the various grievants and more importantly the parties that were interviewed had an expectation of privacy pursuant to N.J.S.A 47:1a-1, 13B, 23 and 24.

Statutory Exceptions

NJ Statutes and Executive Order No. 26 (McGreevey 2002)

Where, as here, there is a reasonable expectation of privacy in the information being disclosed, the court “must decide whether the intrusion on the right of privacy is justified, balancing the governmental interest in disclosure against the private interest in confidentiality.” Doe v. Porritz, 142 NJ at 78 (1995).

The plaintiff in its brief cited the unrecorded Superior Court case of Paff v. Township of Chatham, 2014 WL 7894490 (2014). Plaintiff points to the fact that the court distinguished that “plaintiff also asserts that a record could not be both a ‘personnel record’ and an ‘internal affairs record’. In this case, the grievances, are not an ‘internal affairs’ record but an investigative report and reflects investigatory work product protected by the exceptions provide by N.J.S.A. 47:1A-1.1 (8) (13), N.J.S.A. 47:1A-10 (24), N.J.S.A. 47:1A-1 (25) and Executive Order No. 26 (McGreevey 2002). Plaintiff’s response at page 11. Defendant asserts that in this argument the plaintiff implies if the information requested is reflective of investigatory work product that then that information would be protected. The defendant argues that all of the information, which was gathered and put together in a final “memorandum of understanding,” was just that, being investigatory work product, ending in a resolution, which prevented any future litigation. Defendant also believes it is important that when viewing the Paff case that the plaintiff asserts “that the argument by Giannone and Gibney should be rejected because they are not supported by specific, certified statements. “Paff at 5.” Rather, they supply the court with generalized statements of harm that are not connected to any specific evidence.” Paff at 5. Plaintiff goes on to explain that “plaintiff also argues the township believes that 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.” Paff at 5. Defendant argues that again there is a stark difference with regards to the case at hand. In this matter there was no indication that litigation was forthcoming by any of the grievants and they actually made sure that the complaints would remain as internal grievances and the “memorandum of understanding” was a result of same. Certainly the certification and witness

statements given by the other employees were investigatory work product, which should be protected and unlike in Paff each grievant gave “specific evidence” of harm. (See attached certifications provided to the court only)

The defendant likens the within case to what the court took notice in the case cited by plaintiff Paff v. Township of Chatham 2014 WL 7894490 (2014). The court in that case also cited Asbury Park Press v. County of Monmouth 406 NJ Super 1 (App Div. 2009) decision. Defendant argues more specifically that in Asbury the court found “although OPRA generally requires broad disclosure of government records, there are some exceptions that temper OPRA’s scope.” One such exemption is N.J.S.A section 47:1A-1.1, which concerns sexual harassment and maintains the confidentiality of information generated by 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. Defendant relies upon the fact that this entire agreement of understanding was as a result of multiple grievances filed by employees against the mayor, which violate the Commercial Township model procedures for internal complaints alleging discrimination, harassment or hostile work environment and therefore should be one of those exemptions that temper the OPRA scope. N.J.S.A. 47: 1A-1.1. The defendant believes that if further information is released that the court should conduct an In Camera Review in order to determine whether these grievances and concerns expressed in each grievants certification should be a situation where as the court explains “some exemptions temper OPRA’s scope”. Paff at 8.

Counsel Fees

In this case, the defendant has been placed in a very difficult situation, which leads to it having to weigh the lesser of two evils. If the township supplied all the records that were requested it certainly could have been faced with potential liability based on the confidentiality agreement contained in the “memorandum of understanding.” This agreement required defendant to handle the grievances internally and not break the confidentiality, which was expressly set forth in the memorandum of understanding. On the other hand the defendant was

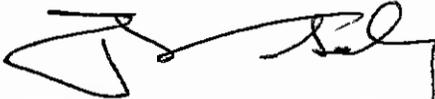
certainly aware from previous requests that the plaintiff was well aware of the career of Mayor Moore and most likely would not be satisfied after the OPRA request was made and not fully released. Therefore, defendant believes that even with a heavily redacted production of the protected documents the court would still be asked to weigh whether or not the defendant made the appropriate choice on each single word and whether it should be redacted. Defendant asserts that the facts of this case call for the protection of the statutes cited in the Vaughn Index, which were legislatively enacted for such circumstances.

Conclusion

Therefore, based on the breakdown and the cross referencing in the Vaughn Index and the exceptions, which have been asserted in same. It is argued that these documents should be protected under the asserted exceptions, which apply to all protected classes (not just sexual harassment cases) and the ruling in Asbury Park Press also creates as an exception in order to protect the anonymity of the employees who make such complaints. This case simply is one where the protection meant to be provided under the Legislature, NJ LAD and Commercial Township's own policies and procedures, to avoid a hostile work environment for the grievants, outweighs the public's right to know the details and identities of the grievants. These employees are alleged victims and not only have an expectation of privacy but each has intentionally attempted to assert their rights to avoid public scrutiny and possibly future retaliation or public ridicule.

SEELEY LAW OFFICE, LLC

Attorney for Defendant



THOMAS E. SEELEY

Dated:

Exhibit A

COMMERCIAL TOWNSHIP

Township Hall
1768 Main Street
Port Norris, NJ 08349
Phone: (856) 785-3100
Fax: (856) 785-9420

HARASSMENT IN THE WORKPLACE

POLICY:

The purpose of this policy is to maintain a work environment where all employees are free of all forms of harassment, sexual or otherwise. The Township of Commercial intends to establish procedures for reporting, investigating and resolving complaints of harassment for all employees. It is the policy of the Township and all Township Departments that employees have the right to work in an environment free of all forms of harassment. The Township does not condone, and will not tolerate harassment of its employees in any form or in any fashion that relates to work activities. Therefore, the Township shall take direct immediate action to prevent such behavior and implement a reporting system to resolve and remedy all reported instances of harassment, sexual or otherwise.

PROHIBITED ACTIVITY:

- A. No employee shall either explicitly or implicitly ridicule, mock, tease or belittle any other employee while working for the Township.
- B. Employees shall not make offensive or derogatory comments based on race, color, sex, religion, sexual orientation, or ethnicity either directly or indirectly to another person. Such harassment is a prohibited form of discrimination under state and federal employment law and is also considered misconduct subject to disciplinary action by the Township. Such harassment may subject an employee to civil and criminal liability and may result in the loss of employment.
- C. No employee shall make unwanted sexual advances toward another employee. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:
 - 1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment, or

2. Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee, or
3. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment.

D. Sexual harassment includes but is not limited to the following conduct:

1. Unwanted physical contact of a sexual nature such as touching, patting, grabbing, pinching, or intentionally brushing against another employee.
2. Making unwanted sexual advances, propositions, or comments such as sexually oriented gestures, noises, remarks, jokes or comments.
3. The display of sexual material, pictures, posters, books or magazines.

E. Each employee shall have the ability to report acts of harassment within or as it relates to their job. (The Procedures for internal complaints may be obtained from the office of the Township of Commercial Administrator/Deputy Township Clerk).

1. In the event that an employee believes that he/she has encountered an act of harassment they shall tell the individual that their actions are unwelcome and offensive. The employee shall document all instances of harassment to provide the most complete basis to investigate any such claim. The employee shall fill out a Township of Commercial Harassment Report Form which may be obtained from the office of the Township of Commercial Administrator/Deputy Township Clerk.
2. In the event that harassment continues, that employee shall report the act of harassment to their supervisor. The supervisor shall investigate the report, verify the validity of the report and take appropriate measures to rectify the matter and prevent future acts of harassment from occurring. The supervisor shall use the recommendations and suggested procedures which have been

provided to all Township supervisors to aid them in the process of the investigation of a harassment claim.

3. If the complaint of harassment relates to a supervisor, the employee shall report the incident to the Administrator/Deputy Township Clerk of the Township of Commercial and the Administrator/Deputy Township Clerk will conduct the investigation.
4. The supervisor or other person to whom a complaint is given shall meet with the employee making the complaint, document the incidents complained of, interview any and all witnesses to the alleged harassment and shall provide the accused with an opportunity to address the complaints against them.
5. A report relating to the alleged harassment shall be made and delivered to the Administrator/Deputy Township Clerk. It shall include the harassing activity, the parties involved, witnesses to the incident and the proposed resolution.
6. The Township of Commercial Administrator/Deputy Township Clerk shall decide the matter and any appropriate action to be taken. If the person responsible for the harassment or the complainant is not satisfied with the proposed resolution, he/she shall have the right to have the matter addressed before Township Committee. If the complainant disagrees with the determination of the Township of Commercial Township Committee, he or she may submit a written appeal, within twenty (20) days of the receipt of the letter of determination from the Township of Commercial Township Committee, to the Department of Personnel, Division of the EEO/AA, P.O. Box 315, Trenton, New Jersey 08265 or to the Merit System Board, PO Box 312, Trenton, NJ 08625. The appeal should contain a concise explanation of the disagreement. Regulations governing the appeal process are set forth at N.J.A.C. 4A:7-3.3.

F. Every employee is responsible for assisting in the prevention of harassment through the following acts:

1. Refraining from participation in, or encouragement of actions that could be perceived as harassment.

2. Reporting acts of harassment to a supervisor.
3. Encouraging any employee, who confides that he/she is being harassed, to report said acts to a supervisor.

G. Every supervisor shall be responsible for preventing acts of harassment by:

1. Monitoring the work environment for signs of harassment.
2. Counseling employees about prohibited behavior and advising employees of procedures to follow in the event they believe harassment is occurring.
3. Stopping any observed acts that may be considered harassment and intervening when appropriate.
4. Limiting work contact between employees pending the investigation of a harassment complaint.

H. No employee may be punished or discriminated against for making an allegation of harassment.

I. This policy does not preclude any employee from filing a complaint or grievance with the New Jersey Division on Civil Rights and the United States Equal Opportunity Commission in accordance with N.J.A.C. 4A:7-3(b).

You are now asked to certify that you have read and understand the Harassment Policy of the Township of Commercial by signing this statement below. Before you sign, be sure any questions that you may have are answered. A copy of this signed document will be forwarded to you and the original will remain on file in the Administrator/Deputy Township Clerk's Office.

Employee's Signature: _____

Department: _____

Date: _____

COMMERCIAL TOWNSHIP

Township Hall
1768 Main Street
Port Norris, NJ 08349
Phone: (856) 785-3100
Fax: (856) 785-9420

PROCEDURES FOR INTERNAL COMPLAINTS ALLEGING DISCRIMINATION, HARASSMENT OR HOSTILE ENVIRONMENTS IN THE WORKPLACE

Each Township of Commercial department is responsible for implementing this general procedure, for the handling of Township of Commercial employees who raise a harassment claim.

1. All employees have the right and are encouraged to immediately report suspected violations of the Township of Commercial Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace (N.J.A.C. 4A:7-3.1).
2. Employees can report incidents of discrimination to any supervisory employee in the Township of Commercial. Incidents involving a supervisory level employee should be reported directly to the Administrator/Deputy Township Clerk. Employees may also report such incidents to the Township of Commercial Administrator/Deputy Township Clerk.
3. Employees should make every effort to report complaints promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued unlawful conduct.
4. Supervisory employees should immediately report all alleged violations of the Township of Commercial Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace, whether reported by an employee or observed directly, to the Township of Commercial Administrator/Deputy Township Clerk.
5. All complainants shall fill out a Township of Commercial Harassment Report Form.
6. If reporting a complaint to any of the persons set forth above presents a conflict of interest, the complaint may be filed directly with the Department of Personnel, Division of EEO/AA, P.O. Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the

complaint is made is involved in the intake, investigative or decision-making process.

7. During the initial intake of a complaint, the supervisor, the Township of Commercial Administrator/Deputy Township Clerk or authorized designee will obtain information regarding the workplace discrimination, harassment or hostile environment complaint, and determine if intermediate protective measures are necessary to prevent continued violations of the Township of Commercial's Policy Prohibiting Discrimination, Harassment, and Hostile Environments in the Workplace.
8. At the Township of Commercial Administrator/Deputy Township Clerk's direction, when necessary, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.
9. An investigatory report will be prepared by the supervisor or the designee of the Township of Commercial Administrator/Deputy Township Clerk when the investigation is completed. The report will include: (a) a summary of the complaint; (b) summary of the facts developed through the investigation and (c) an analysis of the allegations and the facts. The investigatory report will be submitted to the Township of Commercial Administrator/Deputy Township Clerk who will issue a letter of determination.
10. The Township of Commercial Administrator/Deputy Township Clerk will review the investigatory report issued by the investigating supervisor or authorized designee, and make a determination as to whether the allegation of a violation of the Township of Commercial's Policy Prohibiting Discrimination, Harassment, and Hostile Environments in the Workplace has been substantiated. If a violation has occurred, the Township of Commercial Administrator/Deputy Township Clerk will determine the appropriate corrective measures necessary to immediately remedy the violation.
11. The Township of Commercial Administrator/Deputy Township Clerk will issue a letter of determination to all parties, containing the results of the investigation and setting forth the complainant's right of appeal to the Township of Commercial Township Committee. The Township of Commercial Township Committee will issue a final letter of determination to all parties containing the result of the investigation and setting forth the complainant's right of appeal to the Department of Personnel, Division of the EEO/AA, P.O. Box 315, Trenton, New Jersey 08265 or to the Merit System Board, PO Box 312, Trenton, NJ 08625. Regulations governing the appeal process are set forth at N.J.A.C. 4A:7-3.3.

12. If the complainant disagrees with the determination of the Township of Commercial Township Committee, he or she may submit a written appeal, within twenty (20) days of the receipt of the letter of determination from the Township of Commercial Township Committee, to the Department of Personnel, Division of the EEO/AA, P.O. Box 315, Trenton, New Jersey 08265 or to the Merit System Board, PO Box 312, Trenton, NJ 08625. The appeal should contain a concise explanation of the disagreement. Regulations governing the appeal process are set forth at N.J.A.C. 4A:7-3.3.
13. To the extent practical and appropriate under the circumstances, confidentiality, will be maintained throughout all phases of the intake, investigation and remediation process. Any breach of confidentiality by any party involved in this procedure may be considered an act of obstruction, and may subject that employee to disciplinary action.
14. Any employee can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames for filing complaints with external agencies can be obtained by contacting the specific agency. The deadlines run from the last date of unlawful harassment or discrimination, not from the date that the internal workplace discrimination/harassment complaint to the employer is resolved.

You are now asked to certify that you have read and understand the Harassment Policy and Procedures of the Township of Commercial by signing this statement below. Before you sign, be sure any questions that you may have are answered. A copy of this signed document will be forwarded to you and the original will remain on file in the Administrator/Deputy Township Clerk's Office.

Supervisor's Signature: _____

Department: _____

Date: _____

Employee's Signature: _____

Department: _____

Date: _____

Employees may file complaints with the following agencies

**Division on Civil Rights
N. J. Department of Law & Public Safety
180 days for violation of State law**

Trenton Regional Office
140 East Front Street 6th Floor -
P.O. Box 089
Trenton, New Jersey 08625-0089
(609) 292-4605

Atlantic City Satellite Office
26 Pennsylvania Avenue
Atlantic City, NJ 08401
(609) 441-3100

Camden Regional Office
One Port Center
2 Riverside Drive, Suite 402
Camden, NJ 08103
(856) 614-2550

Newark Regional Office
31 Clinton Street
P.O. Box 46001
Newark, NJ 07102
(973) 648-2700

Paterson Regional Office
100 Hamilton Plaza
Paterson, NJ 07505
(973) 977-4500

**United States Equal Employment
Opportunity Commission (EEOC)
300 days**

Philadelphia District Office
The Bourse Building, Suite 400
21 S. Fifth Street
Philadelphia, PA 19106-2515
(215) 451-5800

Newark District Office
1 Newark Center
21st Floor
Newark, NJ 07102-5233
(973) 645-6385

Exhibit B

COMMERCIAL TOWNSHIP

Township Hall
1768 Main Street
Port Norris, NJ 08349
Phone: (856) 785-3100
Fax: (856) 785-9420

HARASSMENT REPORT FORM

Name of Employee Making the Allegation: _____

Name of Department: _____

Name of Immediate Supervisor: _____

Name of Person(s) Against Whom the Allegation is Made:

Give a clear and concise statement of the facts constituting each alleged charge and the dates, times and places when such act(s) allegedly occurred: (Use extra paper if necessary).

Name(s) of Witness(es) _____

(Signature of Person Filing Report)

(Date Report Filed)

Exhibit C

**TOWNSHIP OF COMMERCIAL
SUGGESTIONS FOR THE INVESTIGATION PROCESS AND
QUESTIONS TO ASK PARTIES AND WITNESSES WHEN
INTERVIEWING AND INVESTIGATING A HARASSMENT CLAIM**

When detailed fact-finding is necessary, the investigator should interview the complainant, the alleged harasser, and third parties who could reasonably be expected to have relevant information. Information relating to the personal lives of the parties outside the workplace would be relevant only in unusual circumstances. When interviewing the parties and witnesses, the investigator should refrain from offering his or her opinion.

Following are examples of questions that may be appropriate to ask the parties and potential witnesses. Any actual investigation must be tailored to the particular facts.

I. QUESTIONS TO ASK COMPLAINANT

- Who, what, when, where, and how: *Who* committed the alleged harassment? *What* exactly occurred or was said? *When* did it occur and is it still ongoing? *Where* did it occur? *How often* did it occur? *How* did it affect you?
- How did you react? What response did you make when the incident(s) occurred or afterwards?
- How did the harassment affect you? Has your job been affected in any way?
- Are there any persons who have relevant information? Was anyone present when the alleged harassment occurred? Did you tell anyone about it? Did anyone see you immediately after the episode of alleged harassment?
- Did the person who harassed you harass anyone else? Do you know whether anyone complained about the harassment by that person?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?

- How would you like to see the situation resolved?
- Do you know of any other relevant information?

Questions to Ask the Alleged Harasser:

- What is your response to the allegations?
- If the harasser claims that the allegations are false, ask why the complainant might lie.
- Are there any persons who have relevant information?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- Do you know of any other relevant information?

Questions to Ask Third Parties:

- What did you see or hear? When did this occur? Describe the alleged harasser's behavior toward the complainant and toward others in the workplace.
- What did the complainant tell you? When did s/he tell you this?
- Do you know of any other relevant information?
- Are there other persons who have relevant information?

II. CREDIBILITY DETERMINATIONS

If there are conflicting versions of relevant events, the employer will have to weigh each party's credibility. Credibility assessments can be critical in determining whether the alleged harassment in fact occurred. Factors to consider include:

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:** Is there witness testimony (such as testimony by eyewitnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?
- **Past record:** Did the alleged harasser have a history of similar behavior in the past?

None of the above factors are determinative as to credibility. For example, the fact that there are no eyewitnesses to the alleged harassment by no means necessarily defeats the complainant's credibility, since harassment often occurs behind closed doors. Furthermore, the fact that the alleged harasser engaged in similar behavior in the past does not necessarily mean that he or she did so again.

III. REACHING A DETERMINATION

Once all of the evidence is in, interviews are finalized, and credibility issues are resolved, the investigating official should make a determination as to whether harassment occurred. That determination could be made by the investigator, or by a management official who reviews the investigator's report. The parties should be informed of the determination.

In some circumstances, it may be difficult to reach a determination because of direct contradictions between the parties and a lack of documentary or eyewitness corroboration. In such cases, a credibility assessment may form the basis for a determination, based on factors such as those set forth above.

If no determination can be made because the evidence is inconclusive, the employer should still undertake further preventive measures, such as training and monitoring.

IV. ASSURANCE OF IMMEDIATE AND APPROPRIATE CORRECTIVE ACTION

An employer should make clear that it will undertake immediate and appropriate corrective action, including discipline, whenever it determines that harassment has occurred in violation of the employer's policy. The investigating official should inform both parties about these measures.¹

Remedial measures should be designed to stop the harassment, correct its effects on the employee, and ensure that the harassment does not recur. These remedial measures need not be those that the employee requests or prefers, as long as they are effective.

In determining disciplinary measures, management should keep in mind that the employer could be found liable if the harassment does not stop. At the same time, management may have concerns that overly punitive measures may subject the employer to claims such as wrongful discharge, and may simply be inappropriate.

To balance the competing concerns, disciplinary measures should be proportional to the seriousness of the offense.² If the harassment was minor, such as a small number of "off-color" remarks by an individual with no prior history of similar misconduct, then counseling and an oral warning might be all that is necessary. On the other hand, if the harassment was severe or persistent, then suspension or discharge may be appropriate.³

¹ Management may be reluctant to release information about specific disciplinary measures that it undertakes against the harasser, due to concerns about potential defamation claims by the harasser. However, many courts have recognized that limited disclosures of such information are privileged. For cases addressing defenses to defamation claims arising out of alleged harassment, see Duffy v. Leading Edge Products, 44 F.3d 308,311 (5th Cir. 1995) (qualified privilege applied to statements accusing plaintiff of harassment); Garziano v. E.I. DuPont de Nemours & Co., 818 F.2d 380 (5th Cir. 1987) (qualified privilege protects employer's statements in bulletin to employees concerning dismissal of alleged harasser); Stockley v. AT&T, 687 F. Supp. 764 (F. Supp. 764 (E.D.N.Y. 1988) (statements made in course of investigation into sexual harassment charges protected by qualified privilege).

² Mockler v Multnomah County, 140 F.3d 808,813 (9th Cir. 1998).

³ In some cases, accused harassers who were subjected to discipline and subsequently exonerated have claimed that the disciplinary action was discriminatory. No discrimination will be found if the employer had a good faith belief that such action was warranted and there is no evidence that it undertook less punitive measures against similarly situated employees outside his or her protected class who were accused of harassment. In such circumstances, the Commission will not find pretext based solely on an after-the-fact conclusion that the disciplinary action was inappropriate. See Waggoner v. City of Garland Tex., 987 F.2d 1160, 1165 (5th Cir. 1993) (where accused harasser claims that disciplinary action was discriminatory, "[t]he real issue is whether the employer reasonably believed the employee's allegation [of harassment] and acted on it in good faith, or to the contrary, the employer did not

Remedial measures should not adversely affect the complainant. Thus, for example, if it is necessary to separate the parties, then the harasser should be transferred (unless the complainant prefers otherwise).⁴ Remedial responses that penalize the complainant could constitute unlawful retaliation and are not effective in correcting the harassment.⁵

Remedial measures also should correct the effects of the harassment. Such measures should be designed to put the employee in the position s/he would have been in had the misconduct not occurred.

Examples of Measures to Stop the Harassment and Ensure that it Does Not Recur:

- oral⁶ or written warning or reprimand;
- transfer or reassignment;
- demotion;
- reduction of wages:

- suspension;
- discharge;

- training or counseling of harasser to ensure that s/he understands why his or her conduct violated the employer's anti-harassment policy; and
- monitoring of harasser to ensure that harassment stops.

Examples of Measures to Correct the Effects of the Harassment:

actually believe the co-employee's allegation but instead used it as a pretext for an otherwise discriminatory dismissal”).

⁴ See *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1464 (9th Cir. 1994) (employer remedial action for sexual harassment by supervisor inadequate where it twice changed plaintiff's shift to get her away from supervisor rather than change his shift or work area), *cert. denied*, 513 U.S. 1082 (1995).

⁵ See *Guess v. Bethlehem Steel Corp.*, 913 F.2d 463,465 (7th Cir. 1990) (“a remedial measure that makes the victim of sexual harassment worse off is ineffective *per se*”).

⁶ An oral warning or reprimand would be appropriate only if the misconduct was isolated and minor. If an employer relies on oral warnings or reprimands to correct harassment, it will have difficulty proving that it exercised reasonable care to prevent and correct such misconduct.

- restoration of leave taken because of the harassment
- expungement of negative evaluation(s) in employee's personnel file that arose from the harassment
- reinstatement;
- apology by the harasser;
- monitoring treatment of employee to ensure that s/he is not subjected to retaliation by the harasser or others in the work place because of the complaint; and
- correction of any other harm caused by the harassment (e.g., compensation for losses).

V. CONCLUSION

The above suggestions are to be used as a guide and reference for the investigator during the interview and investigation process of a harassment claim. These guidelines were developed based on recent Supreme Court rulings and suggestions of the New Jersey Department of Personnel, Division of EEO/AA. Of course, any actual investigation conducted, must be tailored to the particular facts of each case.

Exhibit D

For the Court Review Only

Exhibit E

Vaughn Index

Description of Documents pursuant to the Vaughn Decision

Internal Grievance Harassment Report from employee #1	see attached	1	3 pages
Internal Grievance Harassment Report from employee #2	see attached	2	4 pages
Internal Grievance Harassment Report from employee #3	see attached	3	4 pages
Internal Grievance Harassment Report from employee #4	see attached	4	5 pages
Letter from solicitor to committee to schedule a special meeting to discuss Internal grievances		5	3 pages
Minutes of Special Meeting pertaining to internal grievances		6	22 pages
Letter from solicitor to mayor to advise as to the outcome of meeting re: internal grievances		7	2 pages
Letter from attorney to advise he represents mayor		8	1 page
Letter from solicitor to alleged harasser re: his letter		9	4 pages
Handwritten/printed notes of interview of employee grievant #1		10	9 pages
Handwritten/printed notes of interview of employee grievant #2		11	6 pages
Handwritten/printed notes of interview of employee witness #1		12	4 pages
Handwritten/printed notes of interview of employee grievant # 3		13	9 pages
Handwritten/printed notes of interview of employee grievant #4		14	5 pages
Handwritten/printed notes of interview of employee witness #2		15	6 pages
Handwritten/printed notes of interview of employee witness #3		16	2 pages
Handwritten/printed notes of interview of employee witness #4		17	2 pages
Handwritten/printed notes of interview of employee witness #5		18	8 pages
Handwritten/printed notes of interview of employee witness #6		19	6 pages
Handwritten/printed notes of interview of employee witness #7		20	3 pages

Handwritten/printed notes of interview of employee witness #8	21	3 pages
Handwritten/printed notes of interview alleged harasser	22	2 pages
Fax from clerk with letter to send to alleged harasser to advise of special closed meeting	23	2 pages
Summary of Potential Legal Issues pursuant to grievances and interviews sent to the committee	24	1 page
Email from Mayor re: resignation	25	1 page
Email from attorney for Mayor re: resignation	26	2 pages
Minutes of the Agenda Meeting of March 14, 2016	27	7 pages
Email to Mayor's attorney with Policy and Procedures	28	12 pages
Letter from democratic party re: Commercial Township Committee Vacancy	29	2 pages
Letter from Thomas E. Seeley, Esquire to democratic party re: Vacancy	30	3 pages
Newspaper article re: Commercial Twp. mayor resigning	31	2 pages
Memorandum of Understanding Between Mayor and Commercial Township including grievant employees distributed	32	5 pages
Email from Mayor's attorney Re: Corrections to Memorandum	33	1 page
Letter from solicitor to Mayor's attorney re: corrections to Memorandum	34	6 pages
Filing the Vacancy of Mayor Memorandum sent to committee	35	2 pages
Email from Mayor's attorney advising that Mayor will sign Memorandum	36	2 pages
Signed and Sealed Memorandum of Understanding	37	5 pages

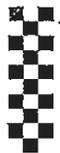
Vaugh Index
OPRA Exemptions and description of Individual Items

- 1) This was a grievance form (see form attached) filled out by an employee which was filed against an individual and therefore, pursuant to N.J.S.A. 47: 1A-1, the Legislative findings and the case law this public employee has a reasonable privacy interest under 13 (b), 23, 24. Exhibit A.
- 2) This was a grievance form (see form attached) filled out by an employee which was filed against an individual and therefore, pursuant to N.J.S.A. 47: 1A-1, the Legislative findings and the case law this public employee has a reasonable privacy interest under 13 (b), 23, 24.
- 3) This was a grievance form (see form attached) filled out by an employee which was filed against an individual and therefore, pursuant to N.J.S.A. 47: 1A-1, the Legislative findings and the case law this public employee has a reasonable privacy interest under 13 (b), 23, 24.
- 4) This was a grievance form (see form attached) filled out by an employee which was filed against an individual and therefore, pursuant to N.J.S.A. 47: 1A-1, the Legislative findings and the case law this public employee has a reasonable privacy interest under 13 (b), 23, 24.
- 5) See letter attached. Exhibit B.
- 6) Typed minutes of special meeting pertaining to the internal grievance following procedures and policies. This meeting was held to address the grievances of public employees which were filed against an individual and therefore, pursuant to N.J.S.A. 47: 1A-1, the Legislative findings and the case law this public employee has a reasonable privacy interest under 13 (b), 23, 24.
- 7) See letter attached. Exhibit C.
- 8) This is a letter of representation and from the Mayor's attorney and contains language protected under 8 and 13c.
- 9) This is a response letter from the solicitor and contains language protected under 8 and 13c.
- 10) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)

- 11) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 12) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 13) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 14) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 15) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 16) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 17) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 18) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 19) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 20) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 21) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 22) These are the interview notes and typed summation as a follow up to a grievance protected under 13(b), 23 & 24. (N.J.S.A. 47:1A -1)
- 23) See letter attached. Exhibit D.
- 24) This is a summary of the legal issues provided to the committee and contains the specific information provided in each grievance and from the interview statements. This is protected by N.J.S.A. 47:1A-1, the Legislative findings and the case law this public employee has a reasonable privacy interest under 13 (b), 23, 24.
- 25) See attached email. Exhibit E.
- 26) See attached email. Exhibit F.

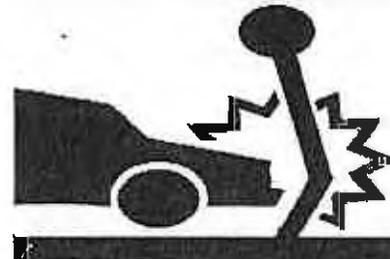
- 27) See attached minutes of the March 14, 2016 Agenda Workshop Meeting. Exhibit G.
- 28) See attached policies and procedures and email to mayor's attorney. Exhibit H.
- 29) See attached letter from Democratic Chairman. Exhibit I.
- 30) See attached solicitor's letter in response to Democratic Chairman. Exhibit J.
- 31) See attached newspaper article for Judson Moore's resignation. Exhibit K.
- 32) Memorandum of Understanding Between Mayor and Commercial Township including grievant employees signed on condition of protection and exempt pursuant to N.J.S.A. 47: 1A-1, section 13a, 13b, 13c, N.J.S.A. 47:1A-3.
- 33) Email from Mayor's attorney re: corrections to Memorandum, of Understand between Mayor and Commercial Township including the grievant employees. Exempt pursuant to N.J.S.A. 47: 1A-1, section 13a, 13b, 13c, N.J.S.A. 47:1A-3.
- 34) Letter from solicitor to Mayor's attorney re: corrections to Memorandum, of Understand between Mayor and Commercial Township including the grievant employees exempt pursuant to N.J.S.A. 47: 1A-1, section 13a, 13b, 13c, N.J.S.A. 47:1A-3.
- 35) Filling the open vacancy position memorandum sent to committee see attached. Exhibit L.
- 36) See attached email from mayor's attorney. Exhibit M.
- 37) Signed and sealed Memorandum of Understanding between Mayor and Commercial Township and employees final Executed, correct version. Exempt pursuant to N.J.S.A. 47: 1A-1, section 13a, 13b, 13c, N.J.S.A. 47:1A-3.

Exhibit F



OPEN PUBLIC RECORDS ACT (OPRA) Records Request

**BEING A LIBERTARIAN
IS LIKE BEING THE
ONLY SOBER PERSON IN THE CAR**



**AND NO ONE WILL
LET YOU DRIVE!**

Date: April 12, 2016

Requestor: Libertarians for Transparent Government, a NJ Nonprofit Corporation

Agency: Township of Commercial

Transmitted: Via Fax to 856-785-9420

Instructions: Please accept this as our request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records via e-mail to Transparency@pobox.com. If you have any questions on this request please call 732-873-1251.

Records requested:

Any agreement, release or other writing that set forth the terms and conditions regarding Mayor Judson Moore's recent resignation from the Township Committee.

Dear Mr. Paff;

The attached email was sent to Mr. Thomas Seeley, Solicitor for Commercial Township on March 12, 2016. The Committee accepted Mr. Moores resignation at their Regular Township Meeting held on March 17th, 2016

Hannah E. Nichols
Township Clerk

Recived Request: April 12, 2016
Responded by fax: April 12, 2016 at 3:22 p.m.