

SUPERIOR COURT OF NEW JERSEY
HUDSON VICINAGE

CHAMBERS OF
JOSEPH A. TURULA
JUDGE



WILLIAM J. BRENNAN COURTHOUSE
583 Newark Avenue
Jersey City, New Jersey 07306

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS**

February 11, 2016

Walter M. Luers, Esq.
23 West Main Street
Suite C202
Clinton, NJ 08809

John McKinney, Esq.
Office of the Corporation Counsel
City Hall
280 Grove Street
Jersey City, NJ 07302

FILED

FEB 11 2016

JOSEPH A. TURULA
J.S.C.

Re: Correa v. City of Jersey City, et al
Docket No.: HUD-L-3903-15

Dear Mr. Luers and Mr. McKinney:

The following is the decision on Plaintiff's order to show cause, argued on December 18, 2015.

SUMMARY OF ACTION

This is the matter of Correa v. City of Jersey City, which plaintiff, Edward F. Correa, through his attorney, Walter M. Luers, Esq. filed a Verified Complaint on September 21, 2015 in which an Order to Show Cause signed by the Hon. Barry P. Sarkisian on September 28, 2015 assigning a return date of this matter before the Hon. Joseph A. Turula. The plaintiff seeks an Order compelling the defendants to provide

plaintiffs with electronic copies of reports or a data base for the time period of 2011 to April 6, 2015 of the E-Ticket data requested by plaintiff on April 6, 2015 and a spreadsheet formatted in Microsoft Excel or comma-separated value ("csv") format without charging any special service charge that contains the following information from the Jersey City E-Ticket System: charge date, charge time, officer ID, statute violation description, offense, street name, defendant first name, defendant middle name, defendant last name, defendant address city, defendant address state code, defendant address zip code, defendant address 1 and 2, corporate name, corporate address city, corporate address state code, corporate address zip code, corporate address 1 and 2, ticket number and license plate number.

On April 6, 2015, plaintiff submitted a written OPRA request seeking the above information. The plaintiff did not receive those documents within 7 days and engaged in several follow ups with Jersey City. Eventually, the defendants indicated they did not have a report to produce to the plaintiff that contained the information sought and such information would require approximately 8 hours of preparation time at a rate of \$128.00, for a total charge of \$1,024.00.

Plaintiff objects to such service charge. Further, it was indicated that plaintiff or his representative met with a representative of defendant, Gold Type Business Machines, Inc. ("GTBM"), who is named as an interested party as they are the company that has the information under contract with the City of Jersey City and in that discussion, that

producing the reports would be possible. Plaintiff also indicates in his moving papers that his attorney has successfully obtained the exact same information from Dover and Rockaway Township located in Morris County. Those municipalities information that was provided to plaintiff's counsel was attached to his Verified Complaint.

ALLEGATION OF THE MOVANT

Plaintiff, in his Verified Complaint and brief asserts a number of arguments; the action should proceed in a summary manner, the special service charge must be voided and the defendants ordered to produce the data without any special service charge; plaintiff is entitled to a common law right of access and there should be an award of reasonable attorney's fees.

The issue of the matter proceeding in a summary fashion is not in dispute and the matter is proceeding in a summary manner according to the OPRA statute, N.J.S.A. 47:1A-6.

ALLEGATIONS OF THE DEFENDANT NON-MOVING PARTIES

Jersey City asserts in opposition to plaintiff's requests the following: defendant is forbidden by law from providing plaintiff with the requested data, defendant, Jersey City cannot unreasonably deny access to records that the plaintiff is not legally entitled to access, plaintiff has no common law right to access these records and any application for attorney's fees should be denied.

Defendant, Gold Type Business Machines, Inc. (“GTBM”) was named as a defendant, although it is neither a public agency nor a public official. Plaintiff asserted that they are named as an interested party as any order that would compel documentation would have to be obtained from GTBM. GTBM asserts that its involvement in the litigation is predicated entirely upon plaintiff’s objection to paying any “special service charge fee” and that since the information that has been sought by the plaintiff has been provided, the matter is moot and therefore the Complaint should be dismissed and the requested relief sought in the Order to Show Cause denied.

LEGAL ANALYSIS:

New Jersey provides access to public records in three distinct ways through the citizen’s common law right of access, OPRA, and the discovery procedures applicable to civil disputes. Bergen County Improvement Authority v. North Jersey Media Group, Inc., 370 N.J. Super. 504, 515 (App. Div. 2004), cert. denied, 182 N.J. 143 (2004). Records that are not available under one approach may be available may be available through another. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 543 (App. Div. 2005).

Unlike the limits and restrictions that a court may impose on the scope of discovery under the court rules, OPRA embodies the public policy of New Jersey that:

Government records shall be readily accessible for inspection, copying, or examination by the citizens of the state, with certain exceptions, for the protection of the public interest, and any limitations on the right of access

accorded by OPRA shall be construed in favor of the public's right of access...

N.J.S.A. 47:1A-1.

Further, the Legislature found and declared it to be public policy of the State of New Jersey that:

Government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded by P.L. 1963, c. 73 (C) 47:1A-1, et seq. as amended and supplemented shall be construed in favor of the public's right of access...;

Ibid.

The Court finds Jersey City's reliance on N.J.S.A. 53:1-20.6 and the rules adopted thereof in N.J.A.C. 13:59, et seq. to be unpersuasive. As argued in its submissions, defendant, Jersey City, indicates that the information sought (the court assumes it is the name and address of the defendants as all of the relevant information has been provided to the plaintiff), is not permitted to be provided to plaintiff under the statute and administrative code that restrict the dissemination of information contained in the New Jersey Criminal Justice Information System. ("NJCJIS"). The NJCJIS is a computer system that tracks information with those people who are criminally charged and convicted in the State of New Jersey. Further, the statute (N.J.S.A. 53:1-20-6) and the administrative code (N.J.A.C. 13:59, et seq.) ban the dissemination of criminal matters involving defendants or accused defendants. The request by plaintiff does not request

criminal background information as motor vehicle offenses are not criminal. Therefore, the argument put forth by defendant, Jersey City that providing the information violates statute and administrative code is not persuasive and is inaccurate. Further, in the emails sent by Jersey City and attached in plaintiff's exhibits, mainly, exhibit 11, does not mention Jersey City's subsequent position that the Statute and regulations do not permit the dissemination of information. Exhibit 11, merely states that there is a charge for the information.

JCs' second argument that it cannot be found to have unreasonably denied information when plaintiff was not entitled to the information, likewise is unpersuasive as there is no basis for the information not being provided.

JC argues in point 3 of its' submissions that the common law right of access does not pertain to the request of plaintiff. Again, JC cites to the administrative code and the statutory provisions which were previously mentioned and as the Court finds them not applicable, the court likewise finds that there is a common law right of access to the records sought.

With regard to the argument set forth by plaintiff, the Court is convinced that the documents must be provided. Further, the Court accepts defendant's arguments and under OPRA, access to electronic materials shall be provided free of charge but the public agency may charge for the actual cost of any needed supplies such as computer discs. N.J.S.A. 47:1A-5(a). The court is persuaded that OPRA limits the charging of

special service charges to instances of extraordinary expenditures of time and effort to accommodate the request. The requested information, apparently by the submissions, has been provided to plaintiff, but for the names of the persons who had received the motor vehicle charges and their addresses. It is unconceivable that obtaining that information would constitute an extraordinary expenditure of time.

As stated earlier, the court accepts plaintiff's position that the common law right of access allows for the information being sought. Higga-Rella, Inc. provides the common law right of access and has three elements: (1) the records must be common law public documents. The Court finds that these documents are public documents. (2) The person who seeks access must establish an interest in the subject matter or material (citing South Jersey Publishing Company N.J. Expressway Authority, 124 N.J. 478, 487 (1991)). Here, plaintiff is a citizen seeking the information about the electronic traffic system and the court is convinced that that qualifies that person as someone who has an interest in the subject matter of the material. (3) The citizen's right to access must be balanced against the state's interest in preventing disclosure. Higga, 141 N.J. at 46. The Court is again convinced that there is no interest in the State in preventing disclosure of this information.

Plaintiff seeks the awarding of attorney's fees under N.J.S.A. 47:1A-6 and citing Mason v. Hoboken, 196 N.J. 51 at 79 (2008) and the Court is convinced that the Statute

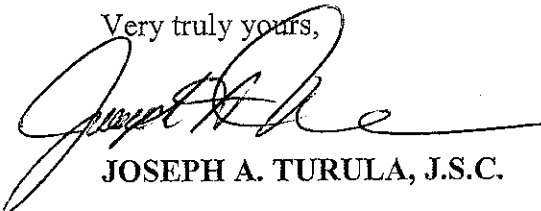
and Supreme Court case are directly on point and therefore the awarding of attorney's fees is deemed appropriate.

CONCLUSION

For the forgoing reasons, the relief sought in the Plaintiff's order to show cause is granted in its entirety.

An Order consistent with this opinion is attached hereto.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph A. Turula", written over a horizontal line.

JOSEPH A. TURULA, J.S.C.

JAT/ab
Enc: