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June 2, 2016

VIA OVERNIGHT DELIVERY

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0970

Re: *Paff v. Galloway Township, et al.*
Appellate Division Docket No.: A-0125-14-T4
Supreme Court Docket No. 077692

Dear Mr. Neary:

This letter correspondence (original and three copies) is submitted on behalf of *amici curiae* and respondents, New Jersey State League of Municipalities ("NJSLOM") and New Jersey Institute of Local Government Attorneys ("NJILGA") in opposition to the Petition for Certification filed by Petitioner in the captioned matter. Enclosed please find four copies of the appellate brief and appendix filed by NJSLOM and NJILGA with the Appellate Division in this matter together with a Certificate of Service. Please be advised that these Respondents rely on these papers as well as those filed below on behalf of respondents Galloway Township and Thalia C. Kay (collectively "Galloway"), but add the following comments on the Petition for Certification.

1. **The Card Catalogue Analogy Utilized By The Trial Court Was Correctly Rejected By The Appellate Division.**

The Appellate Division, in its comprehensive and well-reasoned opinion, appropriately rejected the trial court's use of the "card catalogue" analogy. The Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1, et seq., "does not require public agencies to create records" (Sussex Commons Assocs., LLC v. Rutgers, 210 N.J. 531, 544 (2012)), nor does it require a records custodian "to conduct research among its records...and correlate data from various government records in the custodian's possession." Bent v. Twp. Of Stafford Police Dep't., 381 N.J. Super. 30, 38 (App. Div. 2005) (citing N.J.S.A. 47:1A-6). In libraries, card catalogues are

documents that exist separately from the other materials in the library. They may be searched and copied. However, here the card catalogue (or email log, as stated by Petitioner) does not exist and must be "created" by the municipal clerk by manipulation of the computer. It does not matter whether it can be created by a few key strokes or many because it is still the "creation" of a document. Indeed, as the Appellate Division held, the inquiry does not end with the creation of the document. Rather, as detailed in its opinion, the underlying documents must be reviewed to ascertain whether any portion of the contents of the emails contain confidential information or data subject to any of the exemptions permitted under OPRA (a16-a17). It is more than self-evident that examination of all the emails included in the time frame of the request would be required, given the need, *inter alia*, to protect confidential sources in the case of police investigations and, in any case, where a citizen's reasonable expectations of privacy are involved. N.J.S.A. 47:1A-1. See, e.g., Doe v. Poritz, 142 N.J. 1, 82 (1995); Burnett v. County of Bergen, 198 N.J. 408, 422-23 (2009). Indeed, the Appellate Division specifically considered the Certification of the Police Chief, part of the record herein, as evidence of the effort required to deal with the confidentiality of sensitive information (a9). Thus, compliance with the Petitioner's request is not merely, in this case, the execution of a few keystrokes, but also the substantial effort to complete the review necessary for the records custodians to complete their work.

2. Reference to Federal And Other State Laws Is Irrelevant To Determination Of This Case.

The issue in this case is the meaning of the existing language and commands of OPRA as enacted by the Legislature, not the way Petitioner thinks it should be written. OPRA does not require the "creation" of documents or records. Sussex Commons, supra. Decisions from other jurisdictions based on other statutes, while perhaps relevant to a legislative hearing, provide no precedent here and are entitled to no consideration.

3. The Deference Given To the Decisions Of The Government Records Council Is Appropriate And In Accord With The Prior Precedent.

The Government Records Council ("GRC"), as an administrative agency, is charged under OPRA, *inter alia*, with adjudicating complaints concerning denial of access by the public to a government record, with issuing advisory opinions as to whether a particular record is governmental and accessible to the public, with preparing guidelines for use by records custodians, with operating an informational website and a toll-free helpline to enable any person, including records custodians, to call for information regarding OPRA. N.J.S.A. 47:1A-7. It thus has developed extensive experience with all matters relating to OPRA and its implementation. While OPRA also states that "a decision of the council shall not have value as a precedent for any case initiated in Superior Court pursuant to Section 7 of [OPRA] (C.47:1A-6)", nonetheless the agency's practices and procedures may well receive deference by a reviewing court. Ciesla v. N.J. Dept. of Health, 429 N.J. Super. 127 (App. Div. 2012). While not binding, the GRC's

practical and regular application and interpretation of OPRA provides a clearer understanding and guidance which the reviewing court is free to accept or reject. That is precisely what the Appellate Division did here.

Accordingly, for the reasons set forth above and inasmuch as the decision of the Appellate Division is thorough, complete and well-reasoned, there is no merit to the Petition herein, which, respectfully, should be denied.

Respectfully submitted,

Carl R. Woodward, III
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