

**ORDER PREPARED BY THE COURT:**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, OCEAN COUNTY  
CIVIL ACTION  
ORDER**

John Paff,

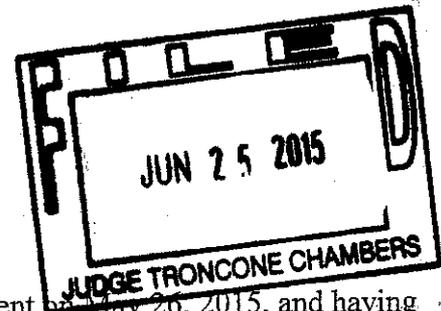
Plaintiff,

vs.

Joseph D. Coronato, in his Official  
Capacity as Prosecutor of Ocean County

Defendants.

DOCKET NO. OCN-L-252-15



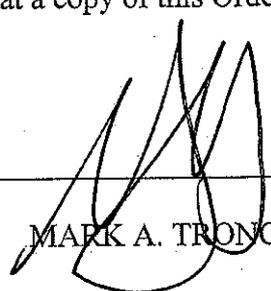
THIS MATTER, having come before the Court for oral argument on May 26, 2015, and having considered submissions by counsel and any and all responses thereto the Court having found that the following order should be entered for the reasons more particularly set forth in the annexed written opinion;

**IT IS**, on this 25<sup>th</sup> day of June, 2015, **ORDERED** as follows:

It is **ORDERED** that Defendant's Motion to Dismiss Plaintiff's Verified Complaint for failure to state a claim is denied; and

It is **FURTHER ORDERED** that Plaintiff's Summary Action under OPRA pursuant to N.J.S.A. 47:1A-1 and the common law right of access is denied; and

It is **FURTHER ORDERED** that a copy of this Order shall be served on all parties within 7 days.

  
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MARK A. TRONCONE, J.S.C.

**NOT TO BE PUBLISHED WITHOUT  
THE APPROVAL OF THE COMMITTEE ON OPINIONS**

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JOHN PAFF,

Plaintiff,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
OCEAN COUNTY  
DOCKET NO. OCN-L-252-15

v.

JOSEPH D. CORONATO, IN HIS OFFICIAL  
CAPACITY AS PROSECUTOR OF OCEAN  
COUNTY,

Defendant.

**OPINION**

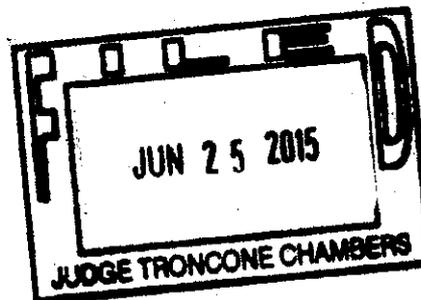
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Decided: June 25, 2015

Counsel: Walter M. Luers, Esquire, attorney for the Plaintiff, John Paff

Assistant Prosecutor Nicholas Monaco, Esquire, appearing on  
behalf of defendant, Joseph D. Coronato

Opinion by: Mark A. Troncone, J. S. C.



## SUMMARY

This is an action alleging violations of New Jersey's Open Public Records Act, N.J.S.A. 47:1A-1 et. seq. ("OPRA") and the common law right of access. Plaintiff John Paff initiated the litigation by the filing of an order to show cause and Verified Complaint. Paff asserts that the defendant, Joseph Coronato, in his capacity as the Prosecutor of Ocean County (hereinafter "OCP"), violated the provision of OPRA and Plaintiff's common law right of access by failing to produce certain records maintained by the Prosecutor's Office relating to the investigation of an alleged act of sexual misconduct by nonparty A.B., a local school official, against minor C.D.<sup>1</sup>, a student at A.B.'s school. Specifically, Plaintiff seeks a copy of an Investigation Report, dated June 2, 2014, prepared by the Ocean County Prosecutor's Special Victims Unit and a videotaped interview of A.B. by a detective employed by the Ocean County Prosecutor's Office. In response, Defendant OCP filed a motion to dismiss in lieu of an answer pursuant to R. 4:6-2.

On May 26, 2015, this court heard oral argument on this matter. Following oral argument the court, at the request of the parties, conducted an *in camera* review of the requested materials to determine whether the materials should be related and, if not, whether the name should be redacted to protect the identity of the minor C.D. and the privacy interests of A.B.

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<sup>1</sup> Fictitious names (initials) used to protect the minor child.

For the reasons expressed herein, the court finds that Defendant OCP did not violate OPRA or Plaintiff's common law right of access.

### **DEFENDANT'S MOTION TO DISMISS**

Plaintiff brings this summary action under OPRA pursuant to N.J.S.A. 47:1A-1 et. seq. and the common law right of access. Count one of the verified complaint seeks a declaration that defendants violated OPRA when they denied Plaintiff's requests for records. Count two pleads a common law right of access claim to the same records. In response to Plaintiff's requests, Defendant OCP moves to dismiss Plaintiff's verified complaint under R. 4:6-2(e) for failure to state a claim in its entirety. For reasons set forth below, the court denies the OCP's motion and will reach the merits of Plaintiff's claim.

In evaluating R. 4:6-2(e) motions to dismiss, the court considers only the legal sufficiency of the facts in the complaint. Rieder v. N.J. Dept. of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (citing P. & J. Auto Body v. Miller, 72 N.J. Super. 207, 211 (App. Div. 1962)). For this purpose, the court deems as true all facts alleged in the complaint and all reasonable inferences therefrom. Smith v. Newark, 136 N.J. Super. 107, 112 (App. Div. 1975). The court should search the complaint in depth and with liberality to determine if a cause of action exists. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). The court should only dismiss the complaint if the factual allegations are "palpably insufficient to support a claim upon

which relief can be granted.” Rieder, supra, 221 N.J. Super. at 552. A complaint fails as palpably insufficient where it relies on conclusory or vague allegations. Glass v. Suburban Restoration Co., 317 N.J. Super. 574, 582 (App. Div. 1998).

Here, Plaintiff challenges the denial of his request for certain materials maintained by the defendant. Defendant argues that the provisions of N.J.S.A. 2A:82-46 apply due to the nature of Plaintiff’s request made under N.J.S.A. 47:1A-3. Defendant states that Plaintiff’s requested relief cannot be granted because Plaintiff has not made application with the Court for the requested document in accordance with N.J.S.A. 2A:82-46, which requires a good causing hearing. Therefore, OCP argues, the Complaint does not state a claim upon which relief can be granted.

Plaintiff states that the standards governing the initiation of OPRA actions shall proceed in a summary or expedited manner under N.J.S.A. 47:1A-6. Any such action under OPRA must be initiated by Order to Show Cause, supported by a verified complaint. Courier News v. Hunterdon County Prosecutor’s Office, 358 N.J. Super. 373, 378 (App. Div. 2003) (citing R. 4:67-2(a)). Plaintiff also states that the investigation would not be jeopardized because through online media reports and in response to Mr. Paff’s OPRA requests, the public now knows that the subject A.B. was interviewed in connection with an “incident.” Plaintiff states that defendant’s reliance on N.J.S.A. 2A:82-46 is misplaced because that statute only applies to

public records “which state the name, address and identity of a victim[.]” Plaintiff’s position is the report can be redacted so that only information regarding the “type of crime, time, location and type of weapon, if any” is revealed. The Court agrees that Plaintiff has stated a valid cause of action if it is possible to redact the sensitive material from the requested documents. N.J.S.A. 2A:82-46 applies to records which reveal the name, address and identity of a victim. In this case, Defendant asks for a redacted version of the requested materials which would not reveal the name, address and identity of the victim. Granting all favorable inferences to the defendant, this Court agrees that Plaintiff has stated a valid cause of action because prior to the *in camera* review it might have been possible to have redacted the sensitive material.

### **OPEN PUBLIC RECORDS ACT**

The Court now reaches the merits of Plaintiff’s request under OPRA. Plaintiff argues the June 2, 2014 Investigation Report and the videotaped interview of A.B. should be disclosed to the extent required by OPRA, N.J.S.A. 47:1A-3(B). The purpose of OPRA is “to maximize public knowledge about public affairs in order to ensure an informed citizenry.” Mason v. City of Hoboken, 196 N.J. 51, 6, 951 A.2d 1017 (2008) (quoting Asbury Park Press v. Ocean County Prosecutor’s Office, 374 N.J. Super. 312, 329, 86 A.2d 446 (Law Div. 2004)). OPRA requires that all government records be disclosed upon request except those exempted by statute, legislative resolution, administrative regulation, executive order, rules of court,

judicial decisions or federal law. N.J.S.A. 47:1A-1, -9. The New Jersey Legislature declared in the statute that the public policy of the State is that: “government records shall be readily accessible for inspection, copying, or examination by citizens of this State, with certain exceptions, for the protection of the public interest, and any limitation on the right of access accorded by [OPRA] shall be construed in favor of the public’s right of access;...”

OPRA defines “government record” broadly to include all documents and similar materials, and all information and data ... that have been made or received by government in its official business. Asbury Park Press, *supra*, 406 N.J. Super. at 7. OPRA places the burden of proof on the government to show that a requested record may be withheld under an exemption or exclusion from the disclosure requirement. N.J.S.A. 47:1A-6. Although “government record” is defined broadly, the public’s right of access is not absolute. Mason v. City of Hoboken, 196 N.J. 51, 65, 951 A.2d 1017 (2008).

Here, the position of Plaintiff is that the requested document and videotape should be disclosed. Specifically, Plaintiff contends under OPRA, the following information “shall be available to the public within 24 hours or as soon as practicable” after a criminal investigation has commenced: (1) “where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;...” Plaintiff argues that Defendants should be

required to disclose the report to the extent it reveals “information as to the type of crime, time, location and type of weapon, if any[.]”

In response, Defendant argues that the privacy exception to OPRA applies. OPRA, under N.J.S.A. 47:1A-9 provides, in relevant part, the following sections, which authorize a custodian of records to deny release of certain records:

The provisions of this act, P.L.2001, c. 404 (C. 47:1A-5 et al.), shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L.1663, c. 73 (C. 47:1A-1 et seq.); any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute; or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order. The provisions of this act, P.L.2001, c. 404 (C.47:1A-5, et al.), shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

N.J.S.A. 47:1a-9. Defendant’s position is that one such statute which extends a grant of confidentiality as referenced above is “Disclosure of identity of victims of certain crimes under age 18 prohibited,” N.J.S.A. 2A:82-46. Defendant asserts the provisions of N.J.S.A. 2A:82-46 apply due to the nature of Plaintiff’s request made under N.J.S.A. 47:1A-3. Under this statute, in prosecutions for any action alleging an abused or neglected child, any report, statement, photograph, court document, indictment, complaint or nay other public record which states the name, address and

identity of a victim shall be confidential and unavailable to the public. N.J.S.A. 2A:82-46(a)-(b). The statute further provides that any person who purposefully discloses such information or otherwise makes it available shall be guilty of a disorderly persons offense. Id. at (b). In addition, subsection (c) of the statute requires the information to remain unavailable to the public unless the court, after a hearing, determines that good cause exists for disclosure. Id. at (c).

While acknowledging the respective arguments of the parties set forth above, the court finds that dispositive issue relative to the OPRA analysis is the exemption that applies to criminal investigatory records. OPRA defines these materials 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. These materials include records involving all manner of crimes, resolved and unresolved, and include information that is part and parcel of an investigation, confirmed and unconfirmed. See, Janeczko v. N.J. Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-90 (June 2004). This exemption applies even after the criminal investigation is completed. Id.

In a recently reported case, North Jersey Media Group, Inc. v. Township of Lyndhurst, et al., (2015) N.J. Super. LEXIS 96, Docket No. A-2523-14T1, decided June 11, 2015, the Appellate Division provided a detailed analysis of the criminal

investigatory record exception to OPRA. In that county and state law enforcement agencies pertaining to a fatal police shooting of a criminal suspect following a high speed chase.

According to the decision in North Jersey Media Group, the Appellate Division ruled that in determining whether the requested materials relating to a criminal investigation must be disclosed under OPRA, a reviewing court must first determine whether the material sought fits the statutory definition of a “criminal investigatory record.” N.J.S.A. 47:1A-1.1 defines this term as a document “held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding [,] which is not required by law to be made, maintained or kept on file.” According to the Appellate Division, this definition raises two issues for analysis: first, what “pertains to” an investigation and second, what satisfies the “required by law” standard. See, North Jersey Media Group, at pages 21, 22. If the court finds that the requested material comes within that definition than no further analysis is required.<sup>2</sup>

Here, the requested materials fit squarely within the statutory definition of a “criminal investigatory record.” First, the documents clearly “**pertain to**” an investigation. The videotaped interview of A.B. by an OCP detective is

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<sup>2</sup> The Appellate Division decision in North Jersey Media Group continues its analysis for those cases where the requested material does not fit the statutory definition. However, for purposes of the matter here, no further analysis is necessary.

unquestionably part of the investigation of an alleged criminal act. The videotape captures the detective's questioning of A.B., i.e., performing an investigation. Likewise, the summary of the investigation represented by the June 2, 2014 Investigation Report is part of, and pertains to, that investigation.<sup>3</sup> Second, neither the videotape nor the report was required by law to be made, maintained or kept by the defendant. Those cases that turn on the issue of the "required by law" exception to the exception deal with records such as 9-1-1 calls and motor vehicle accident reports which are required by specific laws or regulations to be produced and/or maintained by law enforcement agencies. No such law or regulation is operative here.

Because the requested materials pertain to an investigation and are not required by law to be made, maintained or kept on file and pertain to a criminal investigation, the requested materials properly fall under the criminal investigatory records exemption to OPRA and must remain confidential. Thus, plaintiff's cause of action under OPRA fails.

### **COMMON LAW RIGHT OF ACCESS**

Plaintiff correctly states that the public's right of access to records may be broader under the common law right of access than under OPRA. Plaintiff argues

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<sup>3</sup> At page 45 of its opinion in North Jersey Media Group, the Appellate Division specifically identifies an investigation report as an example of an exempt record.

that there is nothing in OPRA which limits the common law right of access to a government record. Defendant responds by arguing that Plaintiff has failed to establish a sufficient interest in the matter to overcome the child and child's family's right to privacy.

The common law right of access can reach a wider array of documents than OPRA. Higg-A-Rella, Inc. v. County of Essex, 141 N.J. 35, 46, 660 A.2d 1163 (1995). Unlike a citizen's absolute statutory right of access, "a Plaintiff's common-law right of access must be balanced against the State's interest in preventing disclosure." Id. There is a two-step inquiry under the common law right of access. The first step is for a litigant to establish an interest in the public record. Id. Once the first step has been satisfied, a Plaintiff's interest in disclosure of the relevant documents must outweigh the State's interest in non-disclosure in order to gain access. Education Law Center v. New Jersey Department of Education, 198 N.J. 274, 302-303 (2009). In making this determination, courts are to consider the following factors:

- (1) The extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;
- (2) The effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed;
- (3) The extent to which agency self-evaluation, program involvement, or other decision making will be chilled by disclosure;

- (4) The degree to which the information sought includes factual data as opposed to evaluative reports of policymakers;
- (5) Whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and
- (6) Whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

Loigman, supra, 102 N.J. at 113, 505 A.2d 958.

Plaintiff Paff argues for the first factor that there is no evidence disclosure would discourage citizens from providing information to the police. If anything, disclosure would encourage citizens to provide information about possible crimes relating to children. The Court disagrees with this assessment. It is hard to fathom anyone accused of a crime against a child, especially an allegation as odious as sexual misconduct, would be more likely to provide information, especially videotaped interviews, if they were likely to be released.

Plaintiff argues the second, third and fourth factors do not apply. As for the fifth factor, Plaintiff argues this weighs in favor of disclosure because there is no evidence that the reported misconduct has been remediated. The Court disagrees this factor weighs in favor of disclosure. The underlying incident has been reviewed by both the Ocean County Prosecutor's Office and Atlantic County Prosecutor's Office and no charges have been brought.

Finally, the Plaintiff argues the sixth factor weighs in its favor because the request is limited to "information as to the type of crime, time, location and type of

weapon, if any.” The OCP has stated that this cannot be revealed without compromising the privacy of the child and the child’s family.

The Court also considers the privacy interests of the individual who was the subject of the investigation. This is a privacy interest which has been recognized by New Jersey courts. In Asbury Park Press, the Court considered the reasonable expectation of the victim’s survivors about the release of an unpleasant 911 phone call recording. Asbury Park Press, *supra*, 406 N.J. Super. at 7. Just as with the Asbury Park Press case, the OCP has an important interest in protecting the reasonable expectation of privacy of the accused. Similarly, in Szczech v. Carluccio, 284 N.J. Super. 470, 475 (Law Div. 1995), the Court relied on the analysis in Loigman v. Kimmelman, 102 N.J. 98, 2014 (1986) to deny access to records where the interest in confidentiality was strong. In Szczech, the Court stated: “When the governmental need in confidentiality is ... slight or nonexistent, citizen status will ordinarily warrant disclosure ... However, when the interest in confidentiality is great, the right of access must be qualified. In those circumstances, more than citizen status and good faith are necessary to require production of documents.” Szczech, 284 N.J. Super. at 475. The Szczech Court also considered in the balancing test the need to protect the integrity of the PTI process: “[t]his conclusion is essential to preserve the principal enunciated in Loigman that examination of investigatory material should be premised upon the government’s need to conduct its affairs with skill, with

sensitivity to the privacy interests involved, and in an atmosphere of confidentiality that encourages the utmost candor.” Id. at 478 (citing Loigman, supra, 102 N.J. at 107, 505 A.2d 958).

In these cases, reviewing courts must be convinced of a clear showing of advance of the public interest to warrant disclosure. Loigman, 102 N.J. at 108. Having reviewed the requested materials *in camera*, the Court agrees that the privacy interests of the alleged victim and the individual who was the subject of the investigation outweigh the Plaintiff’s interest in the information. The sensitivity of the underlying information requires a high degree of need for confidentiality in such materials. This Court is mindful of the negative effect that disclosure may have upon the public good. The public benefits when individuals voluntarily comply with investigations into potential crimes. The release of sensitive information compromising the reasonable expectation of privacy of the accused is something the court is wary may cause a chilling effect for compliance with future investigations.

In sum, having reviewed the requested materials *in camera*, the highly sensitive nature of the materials requested and the reasonable expectation of privacy of the child, the child’s family, and the accused in this case outweigh the Plaintiff’s and public’s need for the information. Therefore, Plaintiff’s cause of action under the common law right of access must also fail.

## **CONCLUSION**

For the reasons set forth above, the court hereby denies the relief sought by Plaintiff in his Verified Complaint is hereby dismissed with prejudice.