

SUPERIOR COURT OF NEW JERSEY

TRAVIS L. FRANCIS
ASSIGNMENT JUDGE



MIDDLESEX COUNTY COURT HOUSE
P.O. BOX 964
NEW BRUNSWICK, NEW JERSEY 08903-0964

August 28, 2015

CJ Griffin, Esq.
Pashman Stein, PC
Court Plaza South
21 Main Street, Suite 100
Hackensack, New Jersey 07601

Edward Ameri, Esq.
Levin Cyphers, *Attorneys at Law*
700 Hooper Avenue
Toms River, New Jersey 08753

FILED

AUG 28 2015

TRAVIS L. FRANCIS
ASSIGNMENT JUDGE
MIDDLESEX VICINAGE

Re: Collene Wronko v. New Jersey Society for the Prevention of Cruelty to Animals
Docket No. MID-L-11721-14

Dear Counsel:

Set forth below please find the Court's decision in the above referenced case.

Plaintiff is a member of the "Reform Helmetta Regional Animal Shelter Group," that works to expose animal abuse in the Helmetta Regional Animal Shelter. As a result of the group's activities, the New Jersey Society for the Prevention of Cruelty to Animals (hereinafter "NJSPCA") have been interposed as receivers of the shelter. In 1868, the Legislature empowered the NJSPCA to investigate animal cruelty in the State of New Jersey. The NJSPCA asserts, by certification, that they receive funding through private donations and fines which the 1868 Legislation authorized. The Operating Budget of the NJSPCA is \$323,000.00 and based upon donations, the NJSPCA receives \$110,000.00 per year. The funds collected from municipal fines is \$77,000.00 per year.

The parties appeared before the Court pursuant to Plaintiff's Open Public Records Act (OPRA) request for:

1. All email correspondence between Rick Yocum and Michael Cielez from August 1, 2014 to present date regarding the subject matter Helmetta Regional Animal Shelter.
2. All email correspondence between Rick Yocum and Richard Cielez from August 1, 2014 to present date regarding the subject matter Helmetta Regional Animal Shelter.
3. All email correspondence between Rick Yocum and Nancy Martin from August 1,



2014 to present date regarding the subject matter Helmetta Regional Animal Shelter.

4. All email correspondence between Rick Yocum and Buddy Amato from August 1, 2014 to present date regarding the subject matter Helmetta Regional Animal Shelter.
5. The 2013 year end payroll record for all NJSPCA employees.
6. Any report or summary statistics of the number of complaints received on a quarterly basis for the year 2014 (to present date).
7. A list of all current NJSPCA employees.
8. A copy of all complaints/citations/summons written for animal cruelty, NJSA 4:22-17, from August 1, 2014 to present date.

The Defendant's initial position was 1) the NJSPCA is not within the definition of a public agency charged with OPRA compliance; 2) the NJSPCA is without public funding and was never intended by the New Jersey Legislature to come within the OPRA umbrella and 3) without public funding, it is impossible for the NJSPCA to comply with OPRA requests, as there is no administrative or operational infrastructure.

The parties subsequently stipulated on the record that Defendant *is* subject to OPRA and that Defendant would formulate an OPRA compliance policy. They agreed on all aspects of the compliance policy with the exception of a fee for producing the documents. Defendants seek to charge an hourly labor fee for the substantial amount of information requested by the Plaintiff. The arguments before the Court focused exclusively on the labor fee. During oral arguments, Defendants conceded they were a public agency subject to OPRA compliance. Defendants focused on "how" their agency would respond to requests and represented to the Court that the relief with regard to the labor fee they were seeking was limited, in that some OPRA requests "may be so simplistic...such as I want this particular report on this particular day, or something along those lines, that I just can't imagine that my client would charge... so I'm not looking at this thing for this ruling to have a long precedential type of situation because we need to look at these on a case by case basis." Defendant stated that the Plaintiff's request "would take some time" and that they would seek labor fees. Defendants seek to charge and Plaintiff objects to an hourly labor rate for compiling and producing requested documents. Defendants drafted an "OPRA Compliance Policy" that proposes charging for every OPRA request made to the NJSPCA. The issue before the Court is whether the OPRA statute as written, countenances a labor fee for every request submitted to a public agency under OPRA.

Under OPRA, N.J.S.A. 47:1A-5,

The actual cost of duplicating the record shall be the cost of materials and supplies used to make a copy of the record, *but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section.* If a public agency can demonstrate that its actual costs for

duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record.

Special service charges subsection c.

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is *such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies*; provided, however, that in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance. The requestor shall have the opportunity to review and object to the charge prior to it being incurred.

Based on the language in subsection (c) of the OPRA statute, the subject OPRA requests as submitted, and the current make-up of the NJSPCA, this Court finds that OPRA requests submitted to the NJSPCA in the instant matter may not include a special service charge. Going forward all requests including whether to allow the NJSPCA to assess a special service charge is to be determined on a case by case basis.

Plaintiffs assert that the matter was not ripe for review pending "the tendering" of an invoice reflecting the amount charged. This Court finds that this matter is ripe for review. The Court must decide whether a governmental body is allowed to assess a service fee to accompany the release of the requested documents. The parties were unable to agree to a Consent Order because they could not reach an agreement over how the labor would be funded. It seems illogical for the Court to declare that the labor fee associated with servicing an OPRA request is not ripe for review when Plaintiff sought and is still seeking for Defendant to establish a process by which they create a form, retain a records custodian, and timely respond to requests. Plaintiff's position would require the Defendant to wait for a new request, expend the resources servicing the request, send an invoice to Plaintiff and then have a Plaintiff contest such fees. This is not necessary. As Plaintiff's requested relief included a request that the Court order Defendant to establish a process, the manner of assessing a labor fee is inextricably part of that process. The matter is ripe for review as the question presented is whether N.J.S.A. 47:1A-5 countenances the NJSPCA assessing a labor fee in the instant matter.

The Court finds that the NJSPCA may not assess a service charge for the documents requested under OPRA. OPRA is premised on a "history of commitment to public participation in government" and its "tradition favoring the public's right to be informed about governmental

actions." South Jersey Pub. Co. Inc. v. N.J. Expressway Auth., 124 N.J. 478, 486-87 (1991). The statute's "purpose is 'to maximize public knowledge about public affairs and to minimize the evils inherent in a secluded process.'" Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (quoting Lakewood Residents Assoc., Inc. v. Twp. of Lakewood, 294 N.J. Super. 207, 225 (Law Div. 1994)).

While any labor fee may curb requests and access to records, the right to information from a public agency is not boundless. The statute countenances a special service fee when a request "involves an extraordinary expenditure of time and effort." N.J.S.A. 47:1A-5(c). Plaintiff cites Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (Ch. Div. 2002) for the factors a court should consider in determining whether a request "involves an extraordinary expenditure of time and effort to accommodate". Id. at 199.

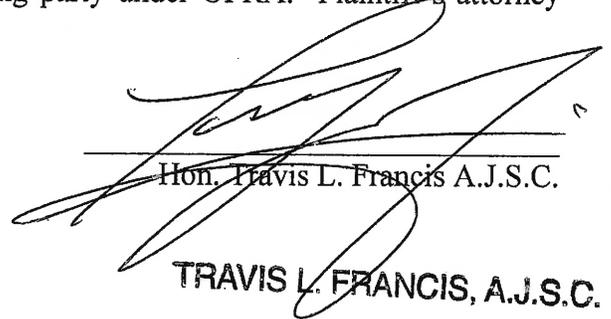
Those factors include, but are not necessarily limited to: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place.

Id.

This list is not exhaustive and based on the unique character of the NJSPCA any assessment of whether the burden placed on the governmental unit amounts to an "extraordinary" expenditure must take into consideration the units funding, structure, and organizational capacity. According to their Treasurer's certification the NJSPCA, is a non-profit organization with no full-time employees and a volunteer staff. As such, they chose not to hire a records custodian. Defendants' Board of Trustees do not get paid, their president receives \$6,000 a year, and the majority of revenue is from private donations. These are all factors the Court considered in making its decision.

The requests from Plaintiff in the instant matter simply are not too burdensome or amount to an "extraordinary" expense of time. The first four requests are email searches. Request number #5 and #7 deal with Defendant's staff, of which there appears to be few people. Request #6 asks for a year of quarterly reports. Depending on the compilation of #8, that may take some time. Plaintiff has submitted similar requests to the Court that the Defendant has provided without seeking any fees. There is nothing to distinguish those OPRA requests from the instant requests or the amount of time that the response to the instant matter would take. In the Certification of CJ Griffin, Esq. submitted to this Court, counsel attaches 14 specific OPRA requests that were serviced by the Defendant. For our purposes, Exhibit 3, Section 3 of Plaintiff's certification is the exact demand requested by the Plaintiff in requests 1 through 4 of the instant application. The Records Custodian responded stating "Section 3 was partially fulfilled as we supplied

emails from Captain Yocum where the term "OPRA" occurred. President Yocum and Vice President Steve Shatkin were contacted to conduct a search for the emails of the Board relative to the word OPRA. Colonel Frank Rizzo has responded and his response will be forwarded by COB today." As such, Defendants can produce this information without assessing a labor fee. With regards to the request for "all current NJSPCA employees," there are 5 key employees in Defendant's 2011 Tax Forms and 14 key employees in Defendant 's 2012 tax forms. The production of these names cannot be considered labor intensive. Concerning Plaintiff's request for the NJSPCA's 2013 year-end payroll (Request number 5), that information is submitted to the IRS in Defendants tax returns. Furthermore, the NJSPCA prides itself on its great servicing of animal complaints. If Defendants have a "report or summary statistics of the number of complaints received on a quarterly basis for the year 2014 (to present date)" that information should be produced.¹ The same with a copy of all complaints/citations/summons written for animal cruelty, N.J.S.A. § 4:22-17 from August 1, 2014 to present date. In sum, the requests are not of the nature where this Court can state that they are beyond the scope of an ordinary demand, despite the fact that the Court took into consideration that the NJSCPA as currently situated has little overhead and has to make specific arrangements to service the requests. Accordingly, this Court **GRANTS** Plaintiff the documents sought in the order to show cause along with attorney's fees and costs as the prevailing party under OPRA. Plaintiff's attorney shall submit an Order consistent with this decision.



Hon. Travis L. Francis A.J.S.C.
TRAVIS L. FRANCIS, A.J.S.C.

¹ In Defendant's 2012 tax returns they claim, "In the year 2012 the organization responded to over 5,3000 complaints and inquiries related to animal cruelty. The resolution of these complaints and inquiries resulted in fines and restitution collected of \$101,973" Griffin Cert, Exhibit B.