

This tentative disposition of the motion(s) before Judge Ronald E. Bookbinder in Burlington County, New Jersey is based on the papers submitted in the case below. The tentative disposition may not reflect the Judge's final decision, as discussed on the record at oral argument. Pursuant to New Jersey Court Rules, Judge Bookbinder may expand his findings of fact and conclusions of law. No further paper submissions will be permitted.

**AFTER REVIEWING THE TENTATIVE, PLEASE COMMUNICATE WITH YOUR
ADVERSARY AND NOTIFY THE COURT WHETHER YOU WISH TO PROCEED
WITH ORAL ARGUMENT.**

Paff v. Burlington County, et al.
Docket No. BUR L-36-15
August 31, 2016

MOTION FOR RECONSIDERATION

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BOOKBINDER, A.J.S.C.

I. PRELIMINARY STATEMENT

This action concerns Plaintiff John Paff's [*hereinafter* "Plaintiff"] requests for public records from Defendants Burlington County and Eric Arpert, Deputy Custodian of Public Records [*hereinafter* "Defendants"] pursuant to the New Jersey Public Records Act, *N.J.S.A.* 47:1A-1 *et seq.* ("OPRA") and the common law right of access to public records. The State Police Benevolent Association [*hereinafter* "PBA"] was granted leave to appear as *amicus curiae* in October 2015. In October 2014, Plaintiff requested a log or list of complaints filed against Burlington County Corrections Officers from January 2012 to October 2014. Defendants

denied Plaintiff access to the requested records, citing various OPRA exemptions. Plaintiff filed suit in January 2015, seeking access to the complaint log, which Plaintiff argues is a government record and must be made available for public inspection. Defendants maintain that the requested records are not accessible under OPRA because they contain confidential information.

The Court issued a written, tentative decision on or about April 29, 2016 (“Tentative Disposition”), granting summary judgment in Plaintiff’s favor. The Court held as follows:

Plaintiff is entitled to the requested records under OPRA because a list or log of complaints filed against corrections officers is a government record that does not fall within any OPRA exemption. *N.J.S.A. 47:1A-1.1*. The records requested are not connected to “grievances” as envisioned by *N.J.S.A. 47:1A-1.1*. See *Asbury Park Press v. Cnty. of Monmouth*, 406 *N.J. Super.* 1, 8–9 (App. Div. 2009), *aff’d* 201 *N.J.* 5 (2010). Nor does the requested record fall within OPRA’s personnel records exemption because the records are not connected to any individual officer. *N.J.S.A. 47:1A-10*. However the names of the officers must be redacted before the log is provided to Plaintiff in order to ensure the safety of the officers and secure operation of the correctional facility. *N.J.A.C. 10A:31-6.10(a)(2), (5)*. Because the Court has determined that Defendants unjustifiably withheld the requested records in their entirety, Plaintiff has at least partially prevailed in this litigation, and is entitled to a reasonable attorney’s fee. *N.J.S.A. 47:1A-6; Asbury Park, supra*, 406 *N.J. Super.* at 11–12.

[Tentative Disposition at 1].

Following oral argument on June 29, 2016, the Court reaffirmed its written decision and advised the parties that an order would be entered finalizing the Court’s written decision and oral decision as set forth on the record. On August 5, 2016, a final order was entered. Defendants and the PBA filed the instant motions for reconsideration of the Court’s April 29, 2016 written decision and August 5, 2016 final order.

For the reasons set forth below, the Court **DENIES** Defendants’ and the PBA’s motions for reconsideration. Generally, reconsideration is limited to: (1) incorrect or irrational decisions; (2) failure to consider or appreciate probative and competent evidence; and (3) the presentation of new, probative, competent evidence not available at the original hearing. *Cummings v. Bahr*,

295 *N.J. Super.* 374, 384 (App. Div. 1996). Defendants argue the Court misconstrued the nature of Plaintiff's OPRA request in order to reach its conclusion that the requested records were accessible under OPRA. However, Plaintiff's records request specifically contemplated the release of the record in a redacted form in lieu of suppressing the record in its entirety. Defendants have not shown the Court's prior decision was incorrect or irrational or that the Court failed to consider existing or new evidence. Defendant's motion for reconsideration is therefore denied. *Ibid.*

The PBA argues the Court did not extend appropriate deference to several decisions of the GRC addressing the OPRA exemption at issue, and argues the Court's decision was therefore palpably incorrect. The Court finds those GRC decisions distinguishable, and concludes it is still bound by the Appellate Division's more limited interpretation of the provision in *Asbury Park Press v. Cnty. of Monmouth*, 406 *N.J. Super.* 1, 8–9 (App. Div. 2009), *aff'd* 201 *N.J.* 5 (2010). Furthermore, as the requested record involves complaints filed against members of law enforcement, there are significant public policy concerns at issue which weigh against the complete suppression of the requested record. *See, e.g., In re Disciplinary Procedures of Phillips*, 117 *N.J.* 567, 576–77 (1990). The PBA has not shown the Court's decision was palpably incorrect and its motion for reconsideration is therefore denied. *Cummings, supra*, 295 *N.J. Super.* at 384.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On or about October 11, 2014, Plaintiff submitted the following OPRA request to Defendants:

Background.

I am interested in researching the frequency and nature of complaints brought, either internally or by an inmate or member of the public, against corrections

officers who work at the Burlington County Correctional and Detention Facilities. I believe that the type of complaints I am interested in might be referred to as "Internal Affairs" matters. I understand that the records I request may first appear to be exempt from disclosure. However, I did receive such records from a different county and blogged about it here.

Records Requested.

1. If the jail maintains a log of such complaints (I would imagine the log, if it exists, would contain fields such as "complainant name" "officer name" "date of complaint" etc.), I would like a copy of such log showing all such complaints filed between January 1, 2012 and present date. If you consider denying access to this record, please first a) confirm to me in writing of whether or not a responsive record exists and b) consider providing it me in redacted form rather than suppressing it in its entirety.
2. Only if no document exists in response to #1 above, please provide me with the initial writing upon which each "Internal Affairs" complaint filed between January 1, 2014 and current date is based. I am referring to records such as a letter from an inmate or citizen complaining about a correctional officer's conduct or a initial charge levied internally against a corrections officer for violating a rule or policy. If you consider denying access to this record, please first a) confirm to me in writing of whether or not a responsive record exists and b) consider providing it me in redacted form rather than suppressing it in its entirety.

On or about November 24, 2014, Defendant responded to Paff's request:

Please be advised that the Burlington County Detention Facility maintains an index that states the date, type of complaint and the name of the officer involved pertaining to incidents at the facility. However, please be advised that these records are not to be released under OPRA pursuant to the following:

1. Pursuant to *N.J.S.A. 47:1A-1.1*, ". . . information generated by or on behalf of public employers or public employees in connection . . . with any grievance filed by or against an individual" is confidential and exempt. An index setting forth the date of a complaint, the nature of the complaint, and the name of the officer involved clearly constitutes information in connection with a "grievance" that falls within this statutory exemption.
2. Pursuant to *N.J.S.A. 47:1A-10* and Executive Order Number 21, personnel records are exempt except for the specific items subject to disclosure as set forth therein. Records pertaining to complaints and grievances as you have requested are not subject to disclosure pursuant to this statute.

3. Pursuant to *N.J.S.A.* 47:1A-1.1 the release of officer's names in connection with alleged complaints being filed as a result of conduct within a correctional facility would also be exempt as jeopardizing building security and security measures and techniques; and
4. Pursuant to *N.J.S.A.* 10A:31-6.10 (a) (2) Internal Affairs records are designated confidential if "the redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility" (see also preceding paragraph).

In addition, based on the form and substance of the Detention Facility's records as described above, redaction would not be appropriate.

On or about January 5, 2015, Plaintiff filed a verified complaint with an order to show cause and brief in support of his requested relief. Plaintiff alleges violations of OPRA and the common law right of access to public records.

On or about July 8, 2015, Defendants responded to Plaintiff's order to show cause by filing a brief in opposition, along with certifications from Warden Mildred Scholtz and Kendall J. Collins, Solicitor.

On or about July 24, 2015, Plaintiff filed a letter brief in response to Defendants' opposition.

On or about September 17, 2015, the PBA filed a motion for leave to appear as *amicus curiae* and a supporting memorandum of law.

On or about October 9, 2015, the Court granted PBA's motion for leave to appear as *amicus curiae*.

On or about April 29, 2016, the Court issued a written, tentative decision finding that Plaintiff is entitled to the requested records under OPRA, however the records were to be redacted before being provided to Plaintiff. The Court further found that because Defendants unlawfully withheld the requested records in their entirety, Plaintiff was entitled to a reasonable attorney's fee.

On or about June 29, 2016, the Court held oral argument in which Plaintiff, Defendants, and the PBA participated. At the conclusion of oral argument, the Court orally reaffirmed its decision to grant summary judgment in Plaintiff's favor as set forth in its written tentative decision of April 29, 2016.

On or about July 19, 2016, Defendants submitted the instant motion for reconsideration and supporting brief.

On or about August 5, 2016, the Court finalized its written tentative decision and oral decision on the record by entering an order declaring that Defendants must provide the requested records to Plaintiff with redactions.

On or about August 15, 2016, the PBA filed the instant motion for reconsideration and supporting brief.

III. ARGUMENTS

1. Defendants' brief in support of the motion for reconsideration

Defendants argue that the records requested by Plaintiff and the information contained therein is exempt from disclosure. *N.J.S.A. 47:1A-10*. Defendants argue that the Trial Court's factual finding that the document sought by Plaintiff was not a "personnel record" mischaracterizes Plaintiff's OPRA request. Defendants argue that Plaintiff's request sought information in connection with individual correction officers and that such request falls within OPRA's exception for personnel records. *N.J.S.A. 47:1A-10*. Defendants argue that the personnel records "of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access..." *N.J.S.A. 47:1A-10*.

Defendants argue that the “personnel records” exception is not limited only to the items included in an employee’s personnel file. *McGee v. Twp. Of East Amwell*, 416 N.J. Super. 602, n4 (App. Div. 2010). Defendants further argue that requests for documents or information similar to the documents and information contained within personnel files deserve the same protection from disclosure as that within the file itself. *North Jersey Media Group, Inc. v. Bergen County Prosecutor’s Office*, 405 N.J. Super. 386, 389 (App. Div. 2009); *McGee, supra*, 416 N.J. Super. at 416.

Defendants argue that although Plaintiff’s reply brief referenced that other public entities redacted the names of individual officers in other matters, and similar redaction was discussed with the parties by the Court as a potential resolution of this matter, Plaintiff’s actual OPRA request sought information regarding complaints made against individual correction officers, bringing it within OPRA’s exception for personnel records. *N.J.S.A. 47:1A-10*. Defendants argue that the Court erred by finding that the personnel records exemption was inapplicable because Plaintiff “simply seeks a log or list of the number of complaints filed.” Defendants argue that Plaintiff’s OPRA request was for information related to individual officers. Defendants argue that Plaintiff seeks a record that identifies specific complaints made against individual correctional officers at the Burlington County Correctional Facility and that this places the record request within OPRA’s exemption for personnel records. *N.J.S.A. 47:1A-10*; *see also McGee, supra*, 416 N.J. Super. at 416.

2. *The PBA’s brief in support of its motion for reconsideration*

The PBA argues the Court should grant its motion for reconsideration because the basis for the Court’s prior decision is palpably incorrect and based upon incorrect reasoning. The PBA argues in its Tentative Disposition, the Court did not extend appropriate deference to the final decisions of the Government Records Council (“GCR”).

The PBA argues R. 4:49-2 governs motions for reconsiderations and the standards are well-settled. The PBA argues motions for reconsideration should be granted if the prior decision is based upon a palpably incorrect or irrational basis. *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990). The PBA argues the rule of consideration is “applicable only when the court’s decision is based on plainly incorrect reasoning or when the court failed to consider evidence or there is a good reason for it to reconsider new information.” *Phillipsburg v. Block 1508, Lot 12*, 380 N.J. Super. 159, 175 (App. Div. 2005); *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996).

The PBA argues the Court rejected the PBA’s argument based upon the decisions issued by the GRC. The PBA argues the Court concluded the GRC decisions were not binding on the Court and that they interpreted a different OPRA provision.

The PBA argues the Court’s decision is palpably incorrect and based on erroneous reasoning because the Court is required to give deference to the GRC as final agency decisions. *Serrano v. South Brunswick Twp.*, 358 N.J. Super. 352, 362 (App. Div. 2003). The PBA argues each GRC decision was issued after the Appellate Division’s decision in *Asbury Park Press v. county of Monmouth*, 406 N.J. Super. 1 (App. Div. 2009), *aff’d* 201 N.J. 5 (2010). The PBA argues each decision interprets the term “grievance” in OPRA much more broadly than a “grievance” in the employer-employee context. The PBA argues the term “grievance” should instead include complaints and disputes against individual employees. The PBA argues it was thus plainly incorrect for the Court not to extend the GRC deference.

The PBA argues the GRC is the agency vested with authority to make determinations over whether documents are exempt from disclosure. The PBA argues it has interpreted the term “grievance” more broadly than simply grievances in the labor context. The PBA argues the GRC

has held that a request for the disciplinary history of Trenton police officers was exempt as a personnel record pursuant to *N.J.S.A. 47:1A-10*. *Jermain Vaughn v. City of Trenton*, Complaint No. 2009-177 (6/29/10); *Derrick Bernard Parreott v. Asbury Park Police Department*, GRC Complaint No. 2011-78 (May 29, 2012).

The PBA argues the term “grievance” was also interpreted broadly in *Jose R. Gonzalez v. County of Hudson*, GRC Complaint No. 2011-212 (August 28, 2012). The PBA argues in that case, the complainant sought an investigate report generated by the County’s outside law firm in connection with a complaint filed against the sheriff and members of his administration. The PBA argues the records custodian denied access to the record and the GRC upheld this denial, determining that the requested document was encompassed by the term “grievance” and therefore exempt from disclosure. The PBA argues the Court should extend substantial deference to the GRC’s decisions. *Paterson PBA Local 1 v. City of Paterson*, 433 *N.J. Super.* 416, 429 (App. Div. 2013).

The PBA argues even if the Court concludes it is not entitled to defer to the GRC’s decisions, it should look to those decisions as sources for the Legislature’s intent in using the term “grievance” more broadly than a “grievance” in the employer-employee relationship. *Brick Township PBA Local 230, et al. v. Brick Township*, -- *N.J. Super.* --, 2016 WL 3389321 (App. Div. 2016) (approved for publication); *Paterson PBA Local I, supra*, 433 *N.J. Super.* at 429.

The PBA argues there is no basis for the Court’s distinction between “grievance” as set forth in *N.J.S.A. 47:1A-10* and *N.J.S.A. 47:1A-1.1* because the term “grievance” in both statutes have the same meaning.

IV. STANDARD OF REVIEW

Motions for reconsideration are governed by *Rule* 4:49-2, which provides:

Except as otherwise provided by R. 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or order sought to be reconsidered and a copy of the court's corresponding written opinion, if any.

Motions for reconsideration are decided at the Court's discretion. *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996). The motion must include "a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred. . . ." R. 4:49-2. Generally, reconsideration is limited to: (1) incorrect or irrational decisions; (2) failure to consider or appreciate probative and competent evidence; and (3) the presentation of new, probative, competent evidence not available at the original hearing. *Ibid.* (quoting *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990). Lastly, "the Court must be sensitive and scrupulous in its analysis of the issues in a motion for reconsideration." *Ibid.*

V. ANALYSIS

For the reasons set forth below, the Court **DENIES** Defendants' and the PBA's motions for reconsideration. Generally, reconsideration is limited to: (1) incorrect or irrational decisions; (2) failure to consider or appreciate probative and competent evidence; and (3) the presentation of new, probative, competent evidence not available at the original hearing. *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996). Defendants argue the Court misconstrued the nature of Plaintiff's OPRA request in order to reach its conclusion that the requested records were accessible under OPRA. However, Plaintiff's records request specifically contemplated the release of the record in a redacted form in lieu of suppressing the record in its entirety.

Defendants have not shown the Court's prior decision was incorrect or irrational or that the Court failed to consider existing or new evidence. Defendant's motion for reconsideration is therefore denied. *Ibid.*

The PBA argues the Court did not extend appropriate deference to several decisions of the GRC addressing the OPRA exemption at issue, and argues the Court's decision was therefore palpably incorrect. The Court finds those GRC decisions distinguishable, and concludes it is still bound by the Appellate Division's more limited interpretation of the provision in *Asbury Park Press v. Cnty. of Monmouth*, 406 N.J. Super. 1, 8–9 (App. Div. 2009), *aff'd* 201 N.J. 5 (2010). Furthermore, as the requested record involves complaints filed against members of law enforcement, there are significant public policy concerns at issue which weigh against the complete suppression of the requested record. *See, e.g., In re Disciplinary Procedures of Phillips*, 117 N.J. 567, 576–77 (1990). The PBA has not shown the Court's decision was palpably incorrect and its motion for reconsideration is therefore denied. *Cummings, supra*, 295 N.J. Super. at 384.

1. The Court did not misconstrue Plaintiff's OPRA request in reaching its conclusion

The Court did not mischaracterize Plaintiff's OPRA request in concluding that the requested record was not a "personnel record" because Plaintiff's request specifically contemplated the release of the record in a redacted form in lieu of suppressing the record in its entirety. At the outset, it is worth recalling that OPRA reflects New Jersey's long and proud tradition of "openness and hostility to secrecy in government." *Educ. Law Ctr. v. N.J. Dep't of Educ.*, 198 N.J. 274, 28 (2009) (quoting *North Jersey Newspapers v. Passaic County Bd. of Chosen Freeholders*, 127 N.J. 9, 16 (1992)). The core purpose of the Act is "to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils

inherent in a secluded process.” *Burnett v. Cnty. of Bergen*, 198 N.J. 408, 435 (2009) (citing *Mason v. City of Hoboken*, 196 N.J. 51, 64 (2008)). Any limitations on the right of access under OPRA must be construed in favor of the public’s right of access. *N.J.S.A.* 47:1A-1. Generally, when interpreting an OPRA exemption, courts must maintain a sharp focus on the purpose of OPRA and resist attempts to limit its scope, absent a clear showing that one of its exemptions applies. *Tractenberg v. Township of West Orange*, 416 N.J. Super. 354, 378–79 (App. Div. 2010).

Here, Defendants argue the Court mischaracterized Plaintiff’s OPRA request to conclude that Plaintiff was not seeking information in connection with individual corrections officers. Defendants argue Plaintiff was in fact seeking personal, individual information that might fall within an officer’s personnel file since Plaintiff requested the names of the officers. Defendants argue the request for the names of the officers brings the requested log or list of complaints within OPRA’s “personnel records” exemption. *McGee v. Twp. of East Amwell*, 416 N.J. Super. 602, n4 (App. Div. 2010); *North Jersey Media Group, Inc. v. Bergen County Prosecutor’s Office*, 405 N.J. Super. 386, 389 (App. Div. 2009).

Defendants’ argument does not warrant the grant of the instant motion for reconsideration. Assuming, for the sake of argument, that releasing the names of the officers would bring the requested list of complaints within OPRA’s personnel records exemption, the Court ordered that the names of the officers be redacted from the list before the record was provided to Plaintiff. Plaintiff’s request specifically contemplated the release of the requested record in this form:

I am interested in researching the frequency and nature of complaints brought, either internally or by an inmate or member of the public, against corrections officers who work at the Burlington County Correctional and Detention Facilities. I believe that the type of complaints I am interested in might be referred to as

“Internal Affairs” matters. I understand that the records I request may first appear to be exempt from disclosure. However, I did receive such records from a different county and blogged about it here.

Records Requested.

1. If the jail maintains a log of such complaints (I would imagine the log, if it exists, would contain fields such as “complainant name” “officer name” “date of complaint” etc.), I would like a copy of such log showing all such complaints filed between January 1, 2012 and present date. If you consider denying access to this record, please first a) confirm to me in writing of whether or not a responsive record exists **and b) consider providing it me in redacted form rather than suppressing it in its entirety.**

Accordingly, whether a log of complaints that lists the names of officers ultimately falls within an officer’s personnel record is not relevant because the Court’s ruling did not order such a record released to Plaintiff. Given that OPRA reflects New Jersey’s hostility towards secrecy in government, and that the purpose of OPRA is to “maximize public knowledge about public affairs in order to ensure an informed citizenry,” the release of the redacted complaint log is appropriate in lieu of suppressing the record in its entirety. *See Burnett, supra*, 198 *N.J.* at 435 (stating that “when legitimate privacy concerns exist that require a balancing of interests and consideration of the need for access, it is appropriate to ask whether unredacted disclosure will further the core purposes of OPRA”). *See also Payton v. N.J. Tpk. Auth.*, 148 *N.J.* 524, 557 (1997) (construing exemptions to the Open Public Meetings Act and stating “[i]n the vast majority of cases in which full disclosure would have an adverse impact on the purpose of the particular exception, **other methods of maintaining confidentiality can be achieved, such as redacting the specific information that would undermine the exception**”) (emphasis supplied).

Defendants have not shown the Court’s decision was incorrect or irrational or that the Court failed to consider existing or new evidence. Defendants have therefore not met their

burden for a grant of reconsideration and the motion is hereby denied. *Cummings, supra*, 295 *N.J. Super.* at 384.

2. *The basis for the Court's decision was not palpably incorrect nor based on erroneous reasoning*

The basis for the Court's decision was not palpably incorrect nor based on erroneous reasoning because the GRC decisions cited by the PBA are distinguishable from the instant matter, and the Court is ultimately guided by the Appellate Division's more limited interpretation of the term "grievance" as set forth in *Asbury Park Press v. Cnty. of Monmouth*, 406 *N.J. Super.* 1, 8–9 (App. Div. 2009), *aff'd* 201 *N.J.* 5 (2010). OPRA allows for a records requestor to challenge a denial of access in the Superior Court or before the Government Records Council ("GRC"). *N.J.S.A.* 47:1A-6. While not binding, the Superior Court is to give weight to the GRC's interpretation of OPRA. *McGee v. Twp. of E. Amwell*, 416 *N.J. Super.* 602, 616 (App. Div. 2010). Courts do not, however, "simply rubber stamp the agency's decision." *Paff v. N.J. Dept. of Labor*, 392 *N.J. Super.* 334, 340 (App. Div. 2007).

The PBA argues the Court's prior decision was palpably incorrect and based on erroneous reasoning because the Court did not extend appropriate deference to the GRC's interpretation of the OPRA exemption at issue. The PBA further argues the Court should look to the GRC's as a source of Legislative intent.

The PBA argues the Court did not sufficiently consider the GRC's interpretation of the term "grievance" as used in *N.J.S.A.* 47:1A-10¹ in its original Tentative Disposition. The PBA presents three decisions in which it contends the GRC interpreted the term "grievance" more broadly than the Appellate Division in *Asbury Park Press v. Cnty. of Monmouth*, 406 *N.J. Super.*

¹ Notwithstanding the provisions of P.L. 1963, c. 73 (C. 47:1A-1 et seq.) or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, *N.J.S.A.* 47:1A-10.

1, 8–9 (App. Div. 2009), *aff'd* 201 N.J. 5 (2010). The GRC decisions are *Jermain Vaughn v. City of Trenton*, Complaint No. 2009-177 (6/29/10); *Derrick Bernard Parreott v. Asbury Park Police Department*, GRC Complaint No. 2011-78 (May 29, 2012); and *Jose R. Gonzalez v. County of Hudson*, GRC Complaint No. 2011-212 (August 28, 2012). Although this Court is required to give weight to the GRC’s interpretation of the term “grievance” in the above decisions, the Court finds those decisions distinguishable.

In *Jermaine Vaughn*, the Complainant sought the disciplinary history of an individual Trenton Police Department Detective. The GRC held that record as exempt from disclosure under *N.J.S.A.* 47:1A-10. Here, Plaintiff does not seek the complete disciplinary history of any individual Burlington County Corrections Officer. Instead, Plaintiff seeks a log or list of complaints filed against all officers. Such a request differs sharply from the disciplinary history of one specific officer, particularly when the names of the officers are redacted from the list.

In *Derrick Bernard*, the Complainant sought access to “citizen complaints filed against a specific list of fourteen (14) police officers.” The GRC held that the requested records were exempt from public access under OPRA’s personnel records exemption. *N.J.S.A.* 47:1A-10. Here, Plaintiff does not seek the actual disciplinary complaints filed against any specific, named officer, but a log or list of complaints filed against all officers. As held by this Court, the log will not contain the names of the officers involved, and will only state the nature of the complaint, without any additional information.

Finally, in *Jose Gonzalez*, the Complainant sought an investigate report generated in connection with a complaint filed by the Complainant against the Sheriff and members of his administration. As in the other GRC decisions, the GRC denied access under *N.J.S.A.* 47:1A-10 to a report generated about a specific, identifiable individual whereas Plaintiff here seeks a log or

list of complaints filed against all officers. Because the Court has ordered the names of the officers redacted, there is no connection to any officer's personnel file.

Ultimately, while these GRC decisions may stand for the proposition that the term "grievance" can be interpreted more broadly than this Court did in its original decision, this Court is still guided by the Appellate Division's discussion of the term "grievance" in *Asbury Park Press v. Cnty. of Monmouth*, 406 N.J. Super. 1, 8–9 (App. Div. 2009), *aff'd* 201 N.J. 5 (2010). As set forth in the Court's original Tentative Disposition:

The Court rejects this argument because the word "grievance" does not encompass the sorts of complaints against correctional officers at issue in this case. While authority on the meaning of "grievance" in the above provision is limited, the Appellate Division has provided some guidance:

The word "grievance" has a known meaning in the context of employer-employee relationships, especially when it is placed next to the words "collective negotiations." *See, e.g., N.J.S.A. 34:13A-5.3; Saginario v. Attorney General*, 87 N.J. 480, 435 A.2d 1134 (1981); *Red Bank Reg'l Educ. Ass'n v. Red Bank Reg'l High Sch. Bd. of Educ.*, 78 N.J. 122, 393 A.2d 267 (1978). A complaint filed in the Superior Court is not the same as a "grievance" within the context of employment relationships.

[*Asbury Park Press v. County of Monmouth*, 406 N.J. Super. 1, 8–9 (App. Div. 2009), *aff'd* 201 N.J. 5 (2010)].

The Appellate Division in *Asbury* made it clear that the term "grievance" as used in this provision of OPRA is to be given its "known meaning" in the context of employer-employee relationships, particularly because the term was used with reference to "collective negotiations" and "statements of strategy or negotiating position." *Ibid.* The Defendants' and State PBA's overboard reading of the term "grievance" in *N.J.S.A. 47:1A-1.1* to include performance complaints filed against correctional officers by members of the public and inmates must therefore be rejected by this Court.

[Tentative Disposition at 20–21].

Given the factual differences in the PBA's referenced GRC decisions and the instant matter, the Court sees no reason to depart from the Appellate Division's guidance and its prior interpretation of the term "grievance" as used in both *N.J.S.A. 47:1A-1.1* and *47:1A-10*.

The Court also finds that there are important public policy interests that weigh against the PBA's argument for the complete suppression of the requested record. New Jersey courts have long recognized that police officers are held to a high standard of conduct. *In re Disciplinary Proceedings of Phillips*, 117 N.J. 567, 576 (1990) (citing *In re Emmons*, 63 N.J. Super. 136, 142 (App. Div. 1960)). As members of law enforcement, the Burlington County Corrections Officers are held to an "implicit standard of good behavior which devolves upon one who stands in the public eye as the upholder of that which is morally and legally correct." See *Asbury Park v. Department of Civil Serv.*, 17 N.J. 419, 429 (1955); *In re Tuch*, 159 N.J. Super. 219, 224 (App. Div. 1978). Police officers are obligated to act in a responsible manner because:

[a] police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public, particularly in a small community. . . .

[*In re Phillips, supra*, 117 N.J. at 576-77 (quoting *Township of Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *certif. denied*, 47 N.J. 80 (1966)].

Here, Plaintiff seeks a log or list of complaints filed against Burlington County Corrections Officers by inmates or members of the public. He is interested in investigating law enforcement misconduct. The record awarded to Plaintiff by this Court will not include the name of any individual officer or otherwise be connected to any officer's disciplinary history or personnel file. Given that members of law enforcement are special public employees who represent law and order, and who are "constantly called upon to exercise tact, restraint, and good judgment," *In re Phillips, supra*, 117 N.J. at 576, there are strong public policy concerns that weigh in favor of the release of the requested record.

Recognizing the privacy interests and potential safety concerns of the officers named on the list, this Court held that Plaintiff was entitled to the requested log of complaints, but with the names of the officers redacted. This result will allow Plaintiff and the public to accomplish Plaintiff's original goal of researching the frequency and nature of complaints brought against Burlington County Corrections Officers. The PBA's position that the public is not entitled to this general information about Burlington County law enforcement conflicts with the public policy considerations discussed above, as well as the purpose of OPRA, which is "to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." *Burnett, supra*, 198 *N.J.* at 435.

Given that any limitation on the right of access under OPRA must be construed in favor of the public's right of access, *N.J.S.A.* 47:1A-1, and that an OPRA exemption must "clearly" apply in order to be validly invoked, *Tractenberg, supra*, 416 *N.J. Super.* at 378-79, the Court concludes the PBA has not shown the Court's prior decision was incorrect or irrational. The PBA has not met its burden for a grant of reconsideration and the motion is hereby denied. *Cummings, supra*, 295 *N.J. Super.* at 384.

VI. TENTATIVE DISPOSITION

For the reason set forth above, the Court **DENIES** Defendants' and the PBA's motions for reconsideration. Defendants argue the Court misconstrued the nature of Plaintiff's OPRA request in order to reach its conclusion that the requested records were accessible under OPRA, however Plaintiff's records request specifically contemplated the release of the records in a redacted form in lieu of suppressing the records entirely. The PBA argues the Court did not extend appropriate deference to several decisions of the GRC addressing the OPRA exemption at issue, however the Court finds those GRC decisions distinguishable, and is still guided by the

Appellate Division's more limited interpretation of the provision in *Asbury Park Press v. Cnty. of Monmouth*, 406 N.J. Super. 1, 8–9 (App. Div. 2009), *aff'd* 201 N.J. 5 (2010). Furthermore, there are significant public policy concerns at issue which weigh against the complete suppression of the requested record. *See, e.g., In re Disciplinary Procedures of Phillips*, 117 N.J. 567, 576–77 (1990). Neither Defendants nor the PBA has met its burden for the grant of a motion for reconsideration and both motions are therefore denied. *Cummings, supra*, 295 N.J. Super. at 384.

AFTER REVIEWING THE TENTATIVE, PLEASE COMMUNICATE WITH YOUR ADVERSARY AND NOTIFY THE COURT WHETHER YOU WOULD LIKE TO PROCEED WITH ORAL ARGUMENT.