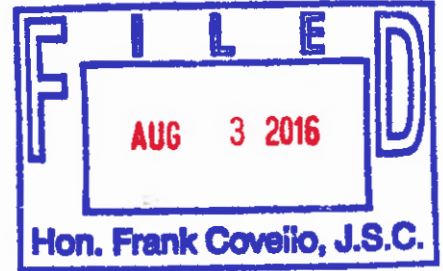


PASHMAN STEIN
A Professional Corporation
Court Plaza South
21 Main Street, Suite 200
Hackensack, NJ 07601
(201) 488-8200
CJ GRIFFIN, ESQ (#031422009)



Attorneys for Plaintiff,
Libertarians for Transparent Government,
a NJ Nonprofit Corporation

LIBERTARIANS FOR
TRANSPARENT GOVERNMENT, A
NJ NONPROFIT CORPORATION,

Plaintiff,

v.

BOROUGH OF CALDWELL and LISA
O'NEILL in her capacity as Records
Custodian for the Borough of Caldwell,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.: 5197-16

Civil Action

ORDER TO SHOW CAUSE

THIS MATTER being brought before the court by Pashman Stein Walder Hayden, a Professional Corporation, attorneys for Plaintiff Libertarians for Transparent Government, A NJ Nonprofit Corporation, CJ Griffin, Esq. appearing, seeking relief by way of summary action pursuant to R. 4:67-1(a), based upon the facts set forth in the Verified Complaint filed herewith; and the court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding pursuant to the Open Public Records Act, *N.J.S.A. 47:1A-6*, and for good cause shown:

IT IS on this 3rd day of August, 2016, **ORDERED** that Defendants the Borough of Caldwell and Lisa O'Neill, in her capacity as Records Custodian for the Borough of Caldwell, shall appear and show cause on the 14th day of September, 2016

before the Superior Court at the Essex County Courthouse in Newark, New Jersey at 4:00
~~a.m.~~/p.m., or as soon thereafter as counsel can be heard, why judgment should not be entered:

1. Declaring said actions of Defendants to be in violation of OPRA, N.J.S.A. 47:1A-1 et seq. by failing to respond to all of Plaintiff's OPRA Request and failing to produce records responsive to Plaintiff's OPRA Request.

2. Ordering Defendants to release the requested records pursuant to OPRA.

3. In the alternative, directing Defendants to provide all records responsive to Plaintiff's request to the Court *in camera* and then require Defendants to delete or excise from the records the portion(s), if any, that are exempt from public access and promptly permit access to the remainder of the record;

4. In the alternative, granting access to the records pursuant to the common law.

5. Awarding counsel fees and costs pursuant to *N.J.S.A. 47:1A-6*; and

6. For such other relief as the Court may deem just and equitable.

AND IT IS FURTHER ORDERED that:

1. A copy of this Order to Show Cause, Verified Complaint and all supporting affidavits or certifications submitted in support of this application be served upon Defendants personally or by Certified Mail, Return Receipt Requested, within 5 days of the date this order was received by Plaintiff, in accordance with *R. 4:4-3* and *R. 4:4-4*, this being original process.

2. The Plaintiff must file with the court its proof of service of the pleadings on the Defendants no later than three (3) days before the return date.

3. Defendants shall file and serve a written answer and opposition papers to this Order to Show Cause and the relief requested in the Verified Complaint and proof of service of the same by August 31, 2016. The opposition papers must be filed with the Clerk of the

Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge Frank Covello. The papers must be served upon Plaintiff this same date.

4. The Plaintiff must file and serve any written reply to the Defendants' opposition to the Order to Show Cause by September 7, 2016. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge Frank Covello. The papers must be served upon Defendant this same date.

5. If the Defendants do not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date.

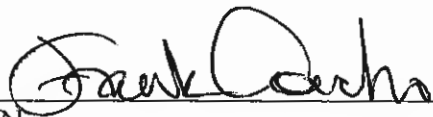
7. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer and opposition papers and proof of service before the return date of the order to show cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at <http://www.judiciary.state.nj.us/prose/10153deptyclerklawref.pdf>. Include a \$175 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer and

opposition papers to the plaintiff's attorney whose name and address appear above, or to the Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer and opposition papers (with the fee) or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at <http://www.judiciary.state.nj.us/prose/10153deptyclerklawref.pdf>.

9. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than 3 days before the return date.


HON.

Hon. Frank Covello, J.S.C.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation
Court Plaza South
21 Main Street, Suite 200
Hackensack, New Jersey 07601
(201) 488-8200
CJ GRIFFIN, ESQ. (#031422009)

Attorneys for Plaintiff,
Libertarians for Transparent Government,
a NJ Nonprofit Corporation

LIBERTARIANS FOR
TRANSPARENT GOVERNMENT, A
NJ NONPROFIT CORPORATION,

Plaintiff,

v.

BOROUGH OF CALDWELL and LISA
O'NEILL in her capacity as Records
Custodian for the Borough of Caldwell,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.:

Civil Action

VERIFIED COMPLAINT

Plaintiff, Libertarians for Transparent Government, a NJ Nonprofit Corporation, through its undersigned counsel, Pashman Stein Walder Hayden, A Professional Corporation, complains against the Defendants as follows:

1. This is an action alleging violation of the New Jersey Open Public Records Act, N.J.S.A. 47: 1A-1 to -13, (“OPRA”), and the common law right of access to public records.
2. Plaintiff brings this action because Defendants have unlawfully denied Plaintiff access to government record(s) which were the subject of an OPRA request.

PARTIES

3. Plaintiff Libertarians for Transparent Government, a NJ Nonprofit Corporation (“Libertarians for Transparent Government” or “Plaintiff”), is a non-profit New Jersey

corporation with a mailing address at 73 Servis Road, Skillman, New Jersey 08558.

4. Defendant Borough of Caldwell (“Caldwell”) is a public agency formed under the laws of New Jersey, with its primary place of business at 1 Provost Square, Caldwell, NJ 07006.

5. Defendant Lisa O’Neill (“O’Neill”) is the Deputy Borough Clerk and Records Custodian for Defendant Caldwell. O’Neill maintains an office at 1 Provost Square, Caldwell, NJ 07006

VENUE

6. Venue is properly laid in Essex County because Defendant Caldwell is located in Essex County and because the cause of action arose in Essex County.

FACTUAL ALLEGATIONS

Background

7. Plaintiff is a non-profit organization devoted to transparency in New Jersey government. One particular focus is the expenditure of public funds and the settlement of lawsuits that were filed against public agencies.

8. On June 25, 2016, Plaintiff submitted a request pursuant to OPRA and the common law seeking government records relating to a lawsuit filed against Caldwell captioned Craig DeVito v. Borough of Caldwell, Federal Case No. 2:13-cv-06786. Pursuant to the federal judiciary’s computer system, that case is reported as having been settled on June 21, 2016.

9. Plaintiff’s OPRA request sought the following specific records:

1. The most recently amended civil complaint filed by the Plaintiff or, if there are no amendments, please send the original civil complaint. Please do not send us summonses, case information statements, etc.
2. The agreement(s) that sets forth the terms and amount of the settlement, i.e. the “settlement agreement(s)” related to this case.

3. If the Borough of Caldwell provides us with all of the unredacted settlement agreement(s), as requested in #2 above, by no later than seven business days after receiving this request, then you may ignore this paragraph of this request. Otherwise, after reading the “Statement” below, please send us all informal agreements, draft agreements, correspondence, e-mails, etc. related to this case that disclose the settlement amount and/or any other settlement terms. We do not want internal communications between the Borough of Caldwell and/or its insurer and/or its attorneys. Rather, we want the informal agreements, draft agreements, correspondence, e-mails, etc. exchanged between 1) the Borough of Caldwell and/or its agents/attorneys/insurers and b) the Plaintiff and/or his or her agents/attorneys/insurers.

[Attached hereto as **Exhibit A** is a true and accurate copy of Plaintiff’s June 25, 2016 OPRA request.]

10. The “Statement” attached to the OPRA request provided background regarding the reason for Plaintiff’s OPRA Request. Specifically, Plaintiff indicated that it communicates with a blog (<http://njcivilsettlements.blogspot.com>) which posts most of the settlement agreements and which reports them to the media. In Plaintiff’s experience, many agencies delay access to settlement information by taking an extraordinary amount of time to formalize the settlement agreement, thereby making the settlement less “news worthy.” [Exhibit A.]

11. Accordingly, Plaintiff also provided the following guidance to Caldwell regarding its response to Item #3 of its OPRA Request:

Several records custodians, in responding to #3, have failed or refused to identify which settlement documents are responsive to our request and often fail to even confirm or deny that such responsive records exist. For example, they may respond “Draft settlement agreements or settlement communications are exempt from disclosure because they are attorney-client privileged.” But, such a response does not let us know whether any responsive records exist. So, when responding to #3 of our request, recognize that you are required by OPRA to:

First, find out from the Borough of Caldwell's agents, attorneys and insurers whether any responsive records exist. It is, of course, very likely that responsive records would not be located at your agency's headquarters but held by the attorney(s) who defended the civil suit and/or agency's insurer(s). Then, in response to #3 of your request, set forth in detail your efforts to gain the cooperation with your agency's attorneys, insurers and agents and inform us of the extent of their cooperation. Without being informed whether these attorneys and insurers searched their records, we are unable to conclude that the Borough of Caldwell's search was adequate.

Second, you are required by OPRA to identify the records within the scope of #3 above even if you claim that they are exempt from disclosure. If no records are within the scope of #3, you are required to plainly state in your response that no such records exist.

Third, for each record that is suppressed in its entirety or partially (i.e. redacted), you are required by OPRA to explain your justification for the suppression or redaction with enough detail and precision to allow us to judge for ourselves whether your decision to suppress or redact was correct.

[Exhibit A.]

12. On July 7, 2016, O'Neill responded to Plaintiff's OPRA request by simply forwarding him an email from James Renner, Director of Claims for the Public Entity Joint Insurance Fund. The email produced the complaint which was responsive to Item #1 of Plaintiff's OPRA request, but for Items #2 and #3 Renner simply wrote:

A tentative settlement has been reached but the settlement is not yet approved or effectuated so there is no settlement documents to produce at this time. We expect that these documents will be available within the next 60 days.

[Attached hereto as **Exhibit B** is a true and accurate copy of Defendants' July 7, 2016 response.]

13. Thus, Caldwell wholly ignored Item #3 of Plaintiff's request, as well as the detailed instructions it provided them to assist them in providing a response. Caldwell did not

indicate whether there are any informal agreements or correspondence that was responsive to his request.

14. To date, Caldwell has not released any records responsive to Item #3 of Plaintiff's OPRA Request. Plaintiff, however, is aware that responsive correspondence exists. In a June 22, 2016 letter, Caldwell's attorney in the Devito matter sent a letter to the judge advising that the matter had settled. In the letter, Caldwell's attorney referenced a letter to plaintiff Devito's attorney which "confirm[s] the terms of our settlement." [Attached hereto as **Exhibit C** is a true and accurate copy of a June 22, 2016 Letter from Weiner Lesniak to Judge Waldor in Craig DeVito v. Borough of Caldwell, Federal Case No. 2:13-cv-06786.]

15. Accordingly, Caldwell violated OPRA by failing to release this correspondence to Plaintiff, as well as any other records which disclose the settlement amount and/or terms of the agreement.

FIRST COUNT
(Violation of OPRA)

16. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

17. Pursuant to N.J.S.A. 47:1A-1, all government records must be "readily accessible" to the citizens of the State unless specifically exempted by law.

18. Plaintiff submitted a valid OPRA requests that requested "government records" as that term is defined by N.J.S.A. 47:1A-1.1 because those records were "made, maintained, or kept on file," or "received in the course of ... [Caldwell's] official business."

19. Defendants failed to respond to Item #3 of Plaintiff's OPRA Request and/or failed to identify responsive records that it was withholding and the specific basis for each denial.

20. Accordingly, Defendants have violated OPRA by:

- a) Failing to make the records requested by Plaintiff “readily accessible for inspection, copying, or examination,” in violation of N.J.S.A. 47:1A-1;
- b) Failing to disclose nonexempt government records or nonexempt portions of government records, in violation of N.J.S.A. 47:1A-5(g);
- c) Failing to provide a lawful basis for denying access to government records in violation of N.J.S.A. 47:1A-5(g);
- d) Failing to base a denial of access upon a basis “authorized by law” in violation of N.J.S.A. 47:1A-6; and
- e) Failing to identify the specific government records responsive to the requests and the specific basis for withholding each of those records, in violation of N.J.S.A. 47:1A-5(g); and

WHEREFORE, Plaintiff demands judgment against Defendants:

- (a) Declaring said actions of Defendants to be in violation of OPRA, N.J.S.A. § 47:1A-1 et seq., by failing to grant access to the requested government record;
- (b) Directing Defendants to identify all records responsive to Plaintiff’s OPRA Request;
- (c) Directing Defendants to release the requested records to Plaintiff forthwith;
- (d) Awarding counsel fees and costs pursuant to N.J.S.A. § 47:1A-6; and
- (e) For such other relief as the Court may deem just and equitable.

SECOND COUNT

(Common Law Right of Access)

21. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

22. The public enjoys a vested common law right of access to public records generated or maintained by public entities.

23. Defendants generate and/or maintain the requested public records.

24. The public has a significant interest in learning details of settlements that public agencies enter into with plaintiffs in a timely manner.

25. Plaintiff, and by extension the public's, interest in disclosure of the requested information outweighs Defendants' need for secrecy.

WHEREFORE, Plaintiff demands judgment against Defendants:

1. Declaring said actions of Defendants to be unlawful and invalid;
2. Directing Defendants to release the requested record to Plaintiff forthwith;
3. Awarding counsel fees and costs; and
4. Granting such other relief as the Court may deem just and equitable.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Libertarians for Transparent Government, a NJ
Nonprofit Corporation

Dated: July 27, 2016

By: 
CJ GRIFFIN, ESQ.

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff hereby certifies that the matter in controversy is not the subject of any other action pending in any Court and is likewise not the subject of any pending arbitration proceeding. Plaintiff further certifies that it has no knowledge of any contemplated action or arbitration proceeding regarding the subject matter of this action and that Plaintiff is not aware of any other parties who should be joined in this action.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Libertarians for Transparent Government, a
NJ Nonprofit Corporation

Dated: July 27, 2016

By: 
CJ GRIFFIN, ESQ.

VERIFICATION


John Paff, of full age, deposes and says:

1. I am the Executive Director of Libertarians for Transparent Government, the Plaintiff in this matter.

2. I have read the Verified Complaint. The allegations of the Verified Complaint contained in Paragraphs 3 and 7-15 are true. The said Verified Complaint is based on personal knowledge and is made in truth and good faith and without collusion, for the causes set forth herein. As to any facts alleged to be upon information and belief, I believe those facts to be true.

3. All documents attached to the Verified Complaint and Brief are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents unless so stated.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



JOHN PAFF

Dated: July 27, 2016

CERTIFICATION OF FAX/ELECTRONIC SIGNATURE

CJ Griffin, Esq., of full age, certifies and says as follows:

1. I am an attorney at law with the law firm of Pashman Stein Walder Hayden,

P.C. I make this certification of the genuineness of the electronic signature of John Paff.

2. I hereby certify that Mr. Paff acknowledge to me the genuineness of his signature on the foregoing Verification.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Libertarians for Transparent Government, a NJ
Nonprofit Corporation

Dated: July 27, 2016

By: _____


CJ GRIFFIN, ESQ.

EXHIBIT A

OPRA Request

to Borough of Caldwell

Submitted via Fax to 973-403-1355 on Saturday, June 25, 2016

Requestor: **Libertarians for Transparent Government, a NJ
Nonprofit Corporation.**

Please accept this as our request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records via e-mail to NJTransparency@yahoo.com. If you have any questions please call 732-873-1251.

Records Requested:

For the case of Craig DeVito v. Borough of Caldwell, Federal Case No. 2:13-cv-06786, which the court's computer system shows as having settled on June 21, 2016, we would like the following records:

1. The most recently amended civil complaint filed by the Plaintiff or, if there are no amendments, please send the original civil complaint. Please do not send us summonses, case information statements, etc.
2. The agreement(s) that sets forth the terms and amount of settlement, i.e. the "settlement agreement(s)" related to this case.
3. If the Borough of Caldwell provides us with all of the unredacted settlement agreement(s), as requested in #2 above, by no later than seven business days after receiving this request, then you may ignore this paragraph of this request. Otherwise, after reading the "Statement" below, please send us all informal agreements, draft agreements, correspondence, e-mails etc. related to this case that disclose the settlement amount and/or any other settlement terms. We do not want internal communications between the Borough of Caldwell and/or its insurer and/or its attorneys. Rather, we want the informal agreements, draft agreements, correspondence, e-mails etc. exchanged between a) the Borough of Caldwell and/or its agents/attorneys/insurers and b) the Plaintiff and/or his or her agents/attorneys/insurers.

Statement Regarding #3 of the above request.

We often encounter situations where, in response to a records request for an agreement memorializing a recent settlement of a lawsuit against a government agency, we are told that the settlement agreement is "not yet available" even though a meeting of the minds has been reached among the parties and the matter has been marked "settled" in the court's records. The typical justification for the denial is that the settlement agreement has not yet been formalized or that it has not received the signatures of all parties.

The practice of a blog that we communicate with (<http://njcivilsettlements.blogspot.com/>) is to report on settlements of lawsuits against local government officials and employees and then direct newspaper journalists to those reports. In some case, the newspapers, having

**BEING A LIBERTARIAN
IS LIKE BEING THE
ONLY SOBER PERSON IN THE CAR**



**AND NO ONE WILL
LET YOU DRIVE!**

been alerted to a settlement by way of the blog, will publish their own articles on the settlements. We desire this because the newspapers are able to reach wider audiences than the blog. The problem is that the news value of settlements, and thus the blog's chance of having articles about a given settlement published in the regular news media, decreases as time elapses.

We don't think that our (and the public's) right to know the amount and terms of lawsuit settlement should depend on how high of a priority the lawsuit parties' attorneys and insurers place on getting the settlement agreement reduced to writing and signed by all parties. Accordingly, we are making this request to gain disclosure of any other documents, such as letters and e-mails between the parties and/or their lawyers or insurers, that disclose the agreed upon settlement terms. It seems to us that after a meeting of minds between the lawsuit parties has been reached, there ought to be some sort of documentation, even if it is only an e-mail from your agency's lawyer to plaintiff's lawyer saying "OK, this is to confirm our discussion last Friday where we agreed that our government agency will pay your client \$175,000 in return for a full release with a standard confidentiality agreement." It is this sort of correspondence that we seek.

Important notes regarding your response to # 3 of this request.

Several records custodians, in responding to #3, have failed or refused to identify which settlement documents are responsive to our request and often fail to even confirm or deny that such responsive records exist. For example, they may respond "Draft settlement agreements or settlement communications are exempt from disclosure because they are attorney-client privileged." But, such a response does not let us know whether any responsive records exist. So, when responding to #3 of our request, recognize that you are required by OPRA to:

First, find out from the Borough of Caldwell's agents, attorneys and insurers whether any responsive records exist. It is, of course, very likely that responsive records would not be located at your agency's headquarters but held by the attorney(s) who defended the civil suit and/or agency's insurer(s)¹. Then, in your response to #3 of our request, set forth in detail your efforts to gain the cooperation with your agency's attorneys, insurers and agents and inform us of the extent of their cooperation. Without being informed whether these attorneys and insurers searched their records, we are unable to conclude that the Borough of Caldwell's search was adequate.

Second, you are required by OPRA to identify the records within the scope of #3 above even if you claim that they are exempt from disclosure. If no records are within the scope of #3, you are required to plainly state in your response that no such records exist.

Third, for each record that is suppressed in its entirety or partially (i.e. redacted), you are required by OPRA to explain your justification for the suppression or redaction with enough detail and precision to allow us to judge for ourselves whether your decision to suppress or redact was correct.

¹ The Borough of Caldwell is under a duty to seek out and retrieve responsive records from its attorneys, insurers or other agents when responding to an OPRA request. Burnett v. Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010).

EXHIBIT B

From: **Lisa O'Neill** <loneill@caldwell-nj.com>
Date: Thu, Jul 7, 2016 at 2:14 PM
Subject: Opra Request
To: "NJTransparency@yahoo.com" <NJTransparency@yahoo.com>

Please find attached your OPRA Request.

From: James Renner [mailto:jrenner@nipgroup.com]
Sent: Wednesday, July 06, 2016 4:38 PM
To: Lisa O'Neill
Subject: Opra Request

Lisa, attached is a copy of the summons & complaint filed in this case. A tentative settlement has been reached but the settlement is not yet approved or effectuated so there are no settlement documents to produce at this time. We expect that these documents will be available within the next 60 days.

Let me know if you need anything else.

Jim

JAMES RENNER
Director of Claims

Garden State Municipal Joint Insurance Fund / Public Entity Joint Insurance Fund / Civic Pro
TEL: (732) 362-5713 | Ext. 7424 | FAX: (732) 997-4797
EMAIL: jrenner@nipgroup.com



903 Route 9 North, Suite 501 | Woodbridge, NJ 07095-1003
www.NIPgroup.com

From: Christopher Vogt
Sent: Wednesday, July 06, 2016 4:15 PM
To: James Renner
Subject: FW: Opra Request

Jim,

Please see attached OPRA request.

The claim number is 001176104.

Thank you.

EXHIBIT C

WEINER LESNIAK LLP

ATTORNEYS AT LAW

www.weinerlesniak.com

ALAN J. BARATZ
Member of the Firm

ajbaratz@weinerlesniak.com

June 22, 2016

VIA: E-filing

The Honorable Cathy L. Waldor, U.S.M.J.
U.S. District Court Courtroom 4040
M.L. King Jr. Federal Bldg. &
and Courthouse
50 Walnut Street
Newark, New Jersey 07102


Re: DEVITO v. SCARBROUGH, BOROUGH OF CALDWELL, et al.
Docket No. 2:13-cv-06786-SRC-CLW
Claim No. X65487
Our File No. 87765

Dear Judge Waldor:

Confirming our brief telephone conversation on June 21, 2016, I was pleased to report that following our many discussions subsequent to the Settlement Conference that Your Honor held June 6, 2016, Mr. Brandmayr and I were able to amicably resolve all claims of the three (3) remaining plaintiffs in the above referenced matter. Attached hereto is a copy of my letter sent this day to Mr. Brandmayr confirming the terms of our settlement, and I do acknowledge receipt of District Judge Chesler's Order of Dismissal dated June 21, 2016.

I thank Your Honor for the Court's attention to this matter over its prolonged course, and for the valuable insight that was imparted to all counsel and our clients at the recent Settlement Conference. The Court's willingness to offer the parties a thorough evaluation of all claims based on Your Honor's extensive experience was probably the most significant factor prompting the amicable resolution of these claims.

Respectfully yours,
WEINER LESNIAK LLP

By: 

Alan J. Baratz
A Member of the Firm

AJB:tb

cc: Ronald J. Brandmayr, Jr., Esq.
Stephen Daveggia, NIP Group (via e-mail)
Jeremy Solomon, Esq., Lit. Coord. (via e-mail) | 102401v1 87765 ltr to judge weldor ajb 6-22-16

July 27, 2016

Via Overnight MailHon. Frank Covello, J.S.C.
Essex County Hall of Records
465 Dr. Martin Luther King, Jr. Blvd.
Newark, New Jersey 07102***Re: Libertarians for Transparent Government v. Borough of Caldwell***
Our File No. 1646-009

Dear Judge Covello:

This firm represents Plaintiff, Libertarians for Transparent Government in the above-captioned matter. Please accept this letter brief, in lieu of a more formal brief, in support of Plaintiff's application for an Order to Show Cause seeking relief from Defendants' denial of the Open Public Records Act ("OPRA") request identified in the Verified Complaint and discussed in detail below.

PRELIMINARY STATEMENT

Plaintiff is a non-profit organization which advances openness and transparency in government, particularly in matters involving the expenditure of public funds. It often requests settlement agreements from public agencies, then passes the agreements along to a blog and media agencies. It has discovered, however, that many public agencies delay finalizing a settlement agreement for a long period of time so that the public cannot access it, which makes the settlement less "newsworthy" and more likely to go unnoticed. Accordingly, Plaintiff has begun not only requesting finalized settlement agreements, but also other records (such as correspondence) which contain the amount and terms of the settlement, even if a formal agreement has not yet been drafted or executed.

In this case, Plaintiff filed a request with the Borough of Caldwell, seeking a copy of a complaint in the matter DiVito v. Borough of Caldwell, as well as a copy of the settlement agreement. The request stated that if a settlement agreement was not finalized, Plaintiff specifically sought other records (such as correspondence) which detail the terms and amount of the settlement. Plaintiff's OPRA request contained a lengthy explanation of what he was seeking and how the Borough should respond. Despite this, Caldwell responded by producing the complaint, but then simply denied the remainder of the OPRA request by stating a settlement agreement was not yet "effectuated." In doing so, Caldwell failed to respond to Plaintiff's request for other records (such as correspondence) that detail the terms and amount of the settlement.

Based on records available in PACER, Plaintiff is aware that *at least one record* exists that is responsive to his request: a letter from Caldwell's attorney to the plaintiff's attorney in DeVito, which "confirm[s] the terms of [the] settlement." This Court should compel Caldwell to produce that record, as well as any others that are responsive to Plaintiff's OPRA Request.

STATEMENT OF FACTS

On June 25, 2016, Plaintiff submitted a request pursuant to OPRA and the common law seeking government records relating to a lawsuit filed against Caldwell, which is captioned Craig DeVito v. Borough of Caldwell, Federal Case No. 2:13-cv-06786. Pursuant to the federal judiciary's computer system, that case is reported as having been settled on June 21, 2016. Plaintiff's OPRA request sought the following specific records:

1. The most recently amended civil complaint filed by the Plaintiff or, if there are no amendments, please send the original civil complaint. Please do not send us summonses, case information statements, etc.

2. The agreement(s) that sets forth the terms and amount of the settlement, i.e. the “settlement agreement(s)” related to this case.
3. If the Borough of Caldwell provides us with all of the unredacted settlement agreement(s), as requested in #2 above, by no later than seven business days after receiving this request, then you may ignore this paragraph of this request. Otherwise, after reading the “Statement” below, please send us all informal agreements, draft agreements, correspondence, e-mails, etc. related to this case that disclose the settlement amount and/or any other settlement terms. We do not want internal communications between the Borough of Caldwell and/or its insurer and/or its attorneys. Rather, we want the informal agreements, draft agreements, correspondence, e-mails, etc. exchanged between 1) the Borough of Caldwell and/or its agents/attorneys/insurers and b) the Plaintiff and/or his or her agents/attorneys/insurers.

[Exhibit A to the Verified Complaint.]

The “Statement” attached to the OPRA request provided background regarding the reason for Plaintiff’s OPRA Request. Specifically, Plaintiff indicated that it communicates with a blog (<http://njcivilsettlements.blogspot.com>) which posts most of the settlement agreements and which reports them to the media. In Plaintiff’s experience, many agencies delay access to settlement information by taking an extraordinary amount of time to formalize the settlement agreement, thereby making the settlement less “news worthy.” [Exhibit A.] Accordingly, via the “Statement,” Plaintiff also provided the following guidance to Caldwell regarding its response to Item #3 of its OPRA Request:

Several records custodians, in responding to #3, have failed or refused to identify which settlement documents are responsive to our request and often fail to even confirm or deny that such responsive records exist. For example, they may respond “Draft settlement agreements or settlement communications are exempt

from disclosure because they are attorney-client privileged.” But, such a response does not let us know whether any responsive records exist. So, when responding to #3 of our request, recognize that you are required by OPRA to:

First, find out from the Borough of Caldwell’s agents, attorneys and insurers whether any responsive records exist. It is, of course, very likely that responsive records would not be located at your agency’s headquarters but held by the attorney(s) who defended the civil suit and/or agency’s insurer(s). Then, in response to #3 of your request, set forth in detail your efforts to gain the cooperation with your agency’s attorneys, insurers and agents and inform us of the extent of their cooperation. Without being informed whether these attorneys and insurers searched their records, we are unable to conclude that the Borough of Caldwell’s search was adequate.

Second, you are required by OPRA to identify the records within the scope of #3 above even if you claim that they are exempt from disclosure. If no records are within the scope of #3, you are required to plainly state in your response that no such records exist.

Third, for each record that is suppressed in its entirety or partially (i.e. redacted), you are required by OPRA to explain your justification for the suppression or redaction with enough detail and precision to allow us to judge for ourselves whether your decision to suppress or redact was correct.

[Exhibit A (emphasis added).]

On July 7, 2016, Caldwell’s Records Custodian Lisa O’Neill responded to Plaintiff’s OPRA request by simply forwarding him an email from James Renner, Director of Claims for the Public Entity Joint Insurance Fund. The email produced the complaint which was responsive to Item #1 of Plaintiff’s OPRA request, but for Items #2 and #3 Renner simply wrote:

A tentative settlement has been reached but the settlement is not yet approved or effectuated so there is no settlement documents to produce at this time. We expect that these documents will be available within the next 60 days.

[Exhibit B to the Verified Complaint.]

Thus, Caldwell wholly ignored Item #3 of Plaintiff's request, as well as the detailed instructions it provided them to assist them in providing a response. Caldwell did not indicate whether there are any informal agreements or correspondence that was responsive to his request.

Plaintiff is aware that correspondence responsive to Item #3 of its OPRA Request exists. In a June 22, 2016 letter, Caldwell's attorney in the Devito matter sent a letter to the judge advising that the matter had settled. In the letter, Caldwell's attorney referenced a letter to plaintiff Devito's attorney which "confirm[s] the terms of our settlement." [Exhibit C to the Verified Complaint.] This record was withheld, however. Based on Caldwell's deficient response, Plaintiff cannot determine whether other responsive records exist and are being withheld or whether no other records exist.

LEGAL ARGUMENT

I. DEFENDANTS HAVE VIOLATED OPRA BY DENYING PLAINTIFF'S REQUEST FOR RECORDS RELATED TO MOORE'S RESIGNATION

OPRA reflects New Jersey's "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)). A citizen's right to access public records has been deemed "unfettered" absent a statutory exemption. Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 382-83 (App. Div. 2003). Accordingly, pursuant to OPRA,

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 [OPRA] shall be construed in favor of the public's right of access. . . .

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

OPRA thus begins with a *presumption of access* and it is solely the *public agency's burden* to prove that denial of access is authorized by law. N.J.S.A. 47:1A-6.

A. The Records Plaintiff requested are “Government Records” Which Are Subject to OPRA

Under OPRA, the first question to be addressed is whether the requested records are, in fact, government records. OPRA broadly defines the term to include:

[A]ny paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

[N.J.S.A. 47:1A-1.1.]

This definition of “government records” applies to the records subject to Plaintiff's OPRA request. All of the records were clearly “made, maintained or kept on file in the course of [Caldwell's] official business.” N.J.S.A. 47:1A-1.1. Moreover, the settlement of lawsuits involving public agencies has long been found to constitute government records that are accessible under OPRA. See Asbury Park Press v. Cty. of Monmouth, 201 N.J. 5, 7 (2010).

B. Defendant's Violated OPRA by Failing to Respond to Item #3 of Plaintiff's OPRA Request and Unlawfully Denying Access to Government Records

OPRA requires a public agency to respond to an OPRA request within seven business days, N.J.S.A. 47:1A-5(i), and “[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g). Here, Caldwell lawfully responded to Item #1 of Plaintiff’s OPRA Request by producing the complaint filed in Craig DeVito v. Borough of Caldwell, Federal Case No. 2:13-cv-06786. As to the remainder of Plaintiff’s OPRA Request, Caldwell merely informed Plaintiff that the settlement agreement had not yet been “approved of effectuated” and therefore there was no settlement agreement to produce. Item #3 of Plaintiff’s OPRA request, however, clearly sought more than a formal settlement agreement. Rather, it specifically sought records (letters, e-mails, etc.) which “disclose the settlement amount and/or any other settlement terms.” [Exhibit A.] In a detailed fashion, Plaintiff then explained exactly what a lawful response to its request would look like, including clear instructions that Caldwell should either a) produce responsive records; b) list responsive records that are being withheld and the exemption that applies; or c) state that no responsive records exist. [Exhibit A.] Instead, Caldwell wholly ignored Item #3 of the request and in doing so, they violated Section 5(i) and (g) of OPRA.

Plaintiff is aware that at *least one record* exists that is responsive to Item #3 of its OPRA request. Plaintiff accessed the federal court’s computer system (PACER) and gained access to a June 22, 2016 letter, which Caldwell’s attorney in the Devito matter sent to the judge advising that the matter had settled. In the letter, Caldwell’s attorney referenced a separate letter he sent to DeVito’s attorney which “confirm[s] the terms of our settlement.” [Exhibit C to the Verified

Complaint.] This record is responsive to Plaintiff's OPRA Request and was not produced, nor did Caldwell identify that it exists and provide the "specific basis" for withholding it. N.J.S.A. 47:1A-5(g). Accordingly, Caldwell's response violated OPRA.

Based on Caldwell's deficient and unlawful response, Plaintiff cannot determine whether other responsive records exist and are being withheld or whether no other records exist. This Court should compel Caldwell to a) produce the letter from its attorney to Devito's attorney memorializing the settlement terms and amount; and b) identify whether other records responsive to Item #3 of Plaintiff's OPRA Request exist and compel them to either produce such responsive records or state a lawful basis for withholding them.

II. PLAINTIFF IS A PREVAILING PARTY ENTITLED TO ATTORNEYS' FEES

Plaintiff is statutorily entitled to reasonable attorneys' fees and costs. Pursuant to OPRA,

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may . . . institute a proceeding to challenge the custodian's decision by filing an action in Superior Court The public agency shall have the burden of proving that the denial of access is authorized by law. **If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.**

[N.J.S.A. § 47:1A-6 (emphasis added)].

New Jersey law has long recognized the "catalyst theory" in regards to an award of attorneys' fees. Mason v. City of Hoboken, 196 N.J. 51, 73 (2008). A plaintiff is entitled to attorney's fees if she can demonstrate "1) a factual causal nexus between plaintiff's litigation and the relief ultimately achieved; and 2) that the relief ultimately secured by plaintiffs had a basis in law." Id. at 76. See also Smith v. Hudson Cnty. Register, 422 N.J. Super. 387, 394 (App. Div. 2011)("A

plaintiff may qualify as a prevailing party, and thereby be entitled to a fee award, by taking legal action that provides a ‘catalyst’ to induce a defendant’s compliance with the law.”).

Here, Plaintiff is a prevailing party because its litigation will be the catalyst for a lawful response to its OPRA Request. Caldwell will either produce responsive records, indicate that no records exist, or indicate that responsive records exist and provide the “specific basis” for withholding them, in accordance with N.J.S.A. 47:1A-5(g).

III. PLAINTIFF IS ENTITLED TO THE RECORDS UNDER THE COMMON LAW

At the common law, a citizen has an enforceable right to require custodians of public records to make records available for reasonable inspection and examination. Irval Realty v. Bd. of Pub. Util. Comm’rs, 61 N.J. 366, 372 (1972). Even where a plaintiff is denied access under OPRA, the documents may be available through the right to access under the common law. MAG Entertainment LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 543 (App. Div. 2005). The common law right to access a public record is determined by balancing the requestor’s need for the record against the government’s need for secrecy. Shuttleworth v. City of Camden, 258 N.J. Super. 573, 583 (App. Div. 1992). A requestor need not establish a personal interest as a public interest is sufficient. Id.

Here, Plaintiff has a very strong interest in the records sought so that it, and the public in general, can learn in a timely manner the terms of the settlement in the DiVito lawsuit. In Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), the Appellate Division explained that the public’s interest in settlements is “significant” because they “may provide valuable information regarding the conduct of governmental officials and the condition of government property.” Id. at 517. Plaintiff is interested in timely knowing the terms and

amount of the settlement, so that it may report such information to the public and the media. On the other hand, Caldwell has no valid reason for keeping the records sought by Plaintiff confidential. For these reasons, Plaintiff is entitled to the records under the common law.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks this Court to enforce its statutory rights under OPRA by 1) declaring that Defendants are in violation of OPRA by failing to identify records responsive to Item #3 of Plaintiff's OPRA Request and produce them or state the "specific basis" for denying access to them; 2) ordering Defendants to release records responsive to Item #3 of Plaintiff's OPRA Request and/or provide the specific basis for withholding any records; and 3) awarding Plaintiff its reasonable attorney's fees and costs of suit. Alternative, Plaintiff seeks access to the responsive records pursuant to the common law right of access.

Respectfully Submitted,



CJ GRIFFIN

WEINER | LESNIAK LLP

ATTORNEYS AT LAW

www.weinerlesniak.com

ALAN J. BARATZ
Member of the Firm

ajbaratz@weinerlesniak.com

August 29, 2016

VIA: NJLS

The Honorable Frank Covello, J.S.C.
Historic Courthouse Chambers 302
470 Dr. Martin Luther King Jr. Blvd.
50 W. Market Street
Newark, New Jersey 07102

Re: Libertarians for Transparent Government v. Borough of Caldwell et al.
Docket No: ESX-L-5197-16
Claim No: 2017084293
Our File No: 88356

Dear Judge Covello:

Our firm represents defendants, Borough of Caldwell and Deputy Clerk Lisa O'Neill in connection with the above referenced matter, which is the subject of an Order to Show Cause dated August 3, 2016, which set a return date of September 14, 2016, and permits defendants to serve a written response in opposition to the relief requested in the Verified Complaint by August 31, 2016. I respectfully request that the Court accept this correspondence in lieu of a more formal document offered on behalf of defendants in opposition to the relief requested in plaintiff's Verified Complaint, which currently involves only a claim for attorneys fees pursuant to N.J.S.A. 47:1A-6 as plaintiff has acknowledged that all other documents responsive to its OPRA request have been provided.

Attached hereto as **Exhibit "A"** is a copy of the August 19, 2016 letter that I received from plaintiff's attorney in which Ms. Griffin acknowledges receipt of letters that I had sent her following approval of the proposed settlement of the underlying action by the

Re: Libertarians for Transparent Government v. Borough of Caldwell et al.

Docket No: ESX-L-5197-16

Claim No: 2017084293

Our File No: 88356

Commissioners of the Garden State Municipal Joint Insurance Fund with my letter of August 16, 2016. In her August 19, 2016 letter plaintiff's attorney acknowledges that my letter of June 22, 2016 to the attorney representing plaintiffs in the underlying action was "fully responsive to Plaintiff's OPRA request." A copy of my June 22, 2016 letter to Ronald J. Brandmayr, Esq., which I had provided to Ms. Griffin with my letter of August 16, 2016, is attached hereto as **Exhibit "B"**.

While defendants agree with Ms. Griffin's statement in her letter of August 19, 2016 that as of the time that I provided to her my June 22, 2016 letter to Mr. Brandmayr to her that letter was fully responsive to plaintiff's OPRA request, defendants maintain that as of the time that the OPRA request was served, that June 22, 2016 correspondence was not responsive to plaintiff's OPRA request because as of that time there was no settlement. The fact that the settlement was contemplated, and was expressly "contingent upon approval of the Commissioners of the Garden State Municipal Joint Insurance Fund at their mid-July 2016 meeting" was referenced expressly by me in my June 22, 2016 letter to Mr. Brandmayr. In a timely fashion the Borough of Caldwell and Deputy Clerk O'Neill informed plaintiff's counsel that there was no settlement, only a "tentative settlement," that was "not yet approved or effectuated." Plaintiff acknowledges in paragraph 12 at page 4 of the Verified Complaint that Deputy Clerk O'Neill responded to plaintiff's OPRA request by forwarding copies of the Summons and Complaint in the underlying lawsuit and also a copy of a July 6, 2016 e-mail that was received by the Borough from James Renner, Director of Claims at the Garden State Municipal Joint Insurance Fund, in which he confirmed that no settlement had yet been approved or effectuated.

Re: Libertarians for Transparent Government v. Borough of Caldwell et al.

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Defendants deny the assertion in paragraph 13 of plaintiff's Verified Complaint that they "wholly ignored Item #3 of Plaintiff's request." The Court is not herein presented with a situation, such as referenced beginning at the bottom of page 1 of the OPRA request attached as Exhibit "A" to plaintiff's Verified Complaint, where there was a settlement agreement that had not as yet been formalized although a "meeting of the minds [had] been reached." Herein, the Commissioners of the Garden State Municipal Joint Insurance Fund were scheduled weeks after the OPRA request was served to review, consider and potentially approve a tentative settlement. In fact, there has never been a Settlement Agreement executed, or even drafted for execution by all parties to the settlement in the matter of DeVito v. Borough of Caldwell. The subject settlement was only reached upon approval by the Commissioners of the Garden State Municipal Joint Insurance Fund on or about July 28, 2016. Once the tentative settlement was approved, Stipulations of Dismissal and a Release executed only by plaintiffs was transmitted to the Garden State Municipal Joint Insurance Fund, and the settlement was then paid. The Court is certainly not herein presented with a situation where the "right to know the amount and terms of lawsuit settlement should depend on how high of a priority the lawsuit party's attorneys and insurers place on getting the settlement agreement reduced to writing and signed by all parties" as referenced in the first beginning paragraph on page 2 of the plaintiff's OPRA request. Rather the Court is presented with a situation where there were discussions regarding settlement, the discussions resulted in a tentative settlement, and but not one that had been reached between the parties, rather one that was always expressly contingent upon approval by the Commissioners of the Garden State Municipal Joint Insurance Fund, not at some undetermined, protracted time

Re: Libertarians for Transparent Government v. Borough of Caldwell et al.

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thereafter, but as referenced in my June 22, 2016 letter to Mr. Brandmayr (Exhibit "B" attached) at its mid-July 2016 meeting.

Our Supreme Court had recognized that the Open Public Records Act "encourages compromise and efforts to work through certain problematic requests." Mason v. City of Hoboken, 190 N.J. 51, 76 (2008) Pursuant to the terms of the statute, the Supreme Court has recognized that under such circumstances the responding agency must simply "start that process" in a timely fashion, and defendants respectfully submit that that is exactly what they did with the assistance and good faith effort of the Director of Claims of the Garden State Municipal Insurance Fund, James Renner. Id. at 76. Neither the Borough of Caldwell nor its Deputy Clerk received my June 22, 2016 letter to Mr. Brandmayr, which plaintiff is now claiming should have been disclosed in response to the OPRA request that was served on the defendants. The Borough of Caldwell and its Deputy Clerk in a timely fashion investigated the status of any settlement in an effort, unquestionably, to provide an appropriate and timely response to plaintiff's OPRA request. There was no design to mislead or delay in responding to plaintiff's records request. Rather, defendants began the process of compliance, as our Supreme Court recognized was its obligation given the special circumstances presented at the time, yet plaintiff's attorney decided thereafter that it was appropriate to file a Verified Complaint before counsel for the Borough was even informed that the Commissioners of the Garden State Municipal Joint Insurance Fund had in fact approved the proposal for resolution of the underlying action such that there had in fact been a settlement to report to plaintiff in response to its OPRA request.

Re: Libertarians for Transparent Government v. Borough of Caldwell et al.

Docket No: ESX-L-5197-16

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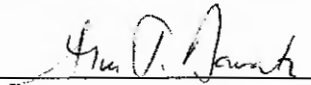
Our File No: 88356

For all of the foregoing reasons, defendants, Borough of Caldwell and Deputy Clerk Lisa O'Neill, maintain that an award of attorney's fees to plaintiff's counsel is neither mandatory under all of the circumstances nor appropriate, and that plaintiff's Verified Complaint should properly be dismissed given plaintiff's recognition of defendants' compliance with its OPRA request.

Thank you.

Respectfully yours,

WEINER LESNIAK LLP

By: 
Alan J. Baratz
A Member of the Firm

AJB:tb

cc: C.J. Griffin, Esq. (via e-mail and regular mail)
Keith Bunin, NIP Group (via e-mail)
James Renner, Director of Claims (via e-mail)
Lisa O'Neill, Deputy Clerk

1128564v1 88356 letter memo to judge covello ajb 8-29-16

EXHIBIT A

CJ GRIFFIN
Counsel
cgriffin@pashmanstein.com
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PashmanStein
WalderHayden
A Professional Corporation

AI
Carr
8/23/16

August 19, 2016

Via Email (ajbaratz@weinerlesniak.com)

Alan J. Baratz
Weiner Lesniak, LLP
629 Parsippany Road
PO Box 0438
Parsippany, NJ 07054

RE: **Libertarians for Transparent Gov't v. Borough of Caldwell**
Docket No. ESX-L-5197-16

Dear Mr. Baratz:

I am in receipt of your August 16, 2016 letter. Thank you for the attached letters, which I have forwarded to my client.

Please note that I stand by my settlement offer regarding attorney's fees. The correspondence to Mr. Devito's attorney was fully responsive to Plaintiff's OPRA request, as it detailed the settlement amount and basic settlement terms. Accordingly, the letter should have been provided to Plaintiff within seven business days of its OPRA request. There was no lawful basis under OPRA for denying access to it. Accordingly, an award of attorney's fees is mandatory under OPRA. See N.J.S.A. 47:1A-6.

Very Truly Yours,



CJ Griffin, Esq.

Court Plaza South
21 Main Street, Suite 200
Hackensack, NJ 07601

Phone: 201.488.8200
Fax: 201.488.5556
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EXHIBIT B

WEINER LESNIAK LLP

ATTORNEYS AT LAW

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ALAN J. BARATZ
Member of the Firm

ajbaratz@weinerlesniak.com

June 22, 2016

Ronald J. Brandmayr, Jr., Esq.
Law Office of Ronald J. Brandmayr, Jr.
4400 Route 9 South, Suite 1000
Freehold, New Jersey 07728

Re: DEVITO v. SCARBROUGH, BOROUGH OF CALDWELL, et al.
Docket No. 2:13-cv-06786-SRC-CLW
Claim No. X65487
Our File No. 87765

Dear Mr. Brandmayr:

I am pleased to confirm our settlement and the voluntary dismissal of all claims in the above referenced matter on June 21, 2016. Plaintiffs, Craig A. DeVito, Provi I. DeVito and Darycn F. DeVito have agreed to settle all claims, including for attorneys fees and costs, with the Borough of Caldwell without admission of liability for the total sum of \$30,000. That settlement is contingent upon approval of the Commissioners of the Garden State Municipal Joint Insurance Fund at their mid July 2016 meeting, and the settlement contemplates all three (3) plaintiffs voluntarily dismissing with prejudice all claims plead against Sergeant Michael Pellegrino and Police Chief James H. Bongiorno, who will be considered as non-settling defendants.

Enclosed herewith is the original and one (1) copy of a proposed General Release together with an original and one (1) copy each of a Stipulation of Dismissal With Prejudice in favor of the Borough of Caldwell and a Stipulation of Voluntary Dismissal With Prejudice in favor of Sergeant Pellegrino and Chief Bongiorno. Kindly return the original of these fully executed documents to me together with a W-9 Tax Form for your law firm, and Child Support Judgment Search Reports for all three (3) plaintiffs, and I will transmit the settlement closing papers to a representative of the Garden State Municipal Joint Insurance Fund in order that the settlement can be promptly paid once it is approved by the Commissioners next month.

Ronald J. Brandmayr, Jr., Esq.

Page 2

Re: DEVITO v. SCARBROUGH, BOROUGH OF CALDWELL, et al.

Docket No. 2:13-cv-06786-SRC-CLW

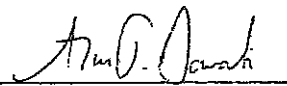
Claim No. X65487

Our File No. 87765

Thank you.

Very truly yours,

WEINER LESNIAK LLP

By: 

Alan J. Baratz

A Member of the Firm

AJB:tb

cc: Stephen Daveggia, NIP Group (via e-mail)

Jeremy Solomon, Lit. Coord. (via e-mail)

1102412v1 87765 ltr to brandmayr re settlement ajb 6-22-16