

## STATEMENT OF REASONS

This matter arises out of a request made under the Open Public Records Act (“OPRA”). Plaintiff John Paff filed a complaint on December 12, 2014 against defendants Warren County and Sheriff David P. Gallant. An order to show cause filed by plaintiff was granted on March 16, 2015, and a hearing was held on April 22, 2015.

## FACTS

### What Was Requested

On or about October 11, 2014 plaintiff filed an OPRA request with the defendants. Plaintiff prefaced his request by indicating his interest in researching the frequency and nature of complaints brought against corrections officers who work at the Warren County Jail. The following documents were requested:

- (1) If the jail maintains a log of such complaints... I would like a copy of such log showing all such complaints filed between January 1, 2012 and the present date.
- (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, 2012 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[n] initial charge levied internally against a corrections officer for violating a rule or policy.

### What Was Provided

On or about October 28, 2014, the Sheriff issued a response which identified the following three (3) records as responsive to the request: (1) Warren County Sheriff’s Office/Corrections Division Internal Affairs Case Index 2012 – Pages 2; (2) Warren County Sheriff’s Office/Corrections Division Internal Affairs Case Index 2013 – Pages 1; and (3) Warren County Sheriff’s Office/Corrections Division Internal Affairs Case Index 2014 – Pages 1. The Internal Affairs Complaint Case Indexes (“Logs”) were provided to plaintiff with redactions.

Specifically, plaintiff was advised that the following information had been redacted from each of the logs: (1) the first and last name of the complainant; (2) the first and last name of the principal; and (3) the specific discipline imposed on each correctional officer against whom an internal affairs complaint was sustained.

Defendants provided a detailed statement of reasons for the redactions. The first basis for the redactions was a multitude of statutory exemptions, including those contained in N.J.S.A.

47:1A-1.1 and N.J.S.A. 47:1A-10. Second, the Sheriff stated that his Department adopted the Attorney General Internal Affairs Guidelines which provide for the confidentiality of internal investigations and specifically exempt any such records from public disclosure.

### Analysis

OPRA provides that government records must be made readily accessible for inspection, copying, or examination by records requestors, with certain exemptions. N.J.S.A. 47:1A-1 et seq. Among those exemptions, OPRA exempts disclosure of “information generated by or on behalf of public employers or public employees in connection with... any grievance filed by or against an individual.” N.J.S.A. 47:1A-1.1. A second exemption prohibits the public disclosure of personnel “records” in the possession of a public entity “relating to any grievance filed by or against an individual.” N.J.S.A. 47:1A-10. This restriction on public disclosure is made “[n]otwithstanding the provisions of [OPRA] or any other law to the contrary.” *Id.* (Emphasis added).

Through a plain reading of the two relevant exemptions, it is clear that the log of complaints brought against Warren County Corrections Officers is exempted from disclosure under OPRA. The logs are patently “information generated by a public employer or public employee in connection with... grievance[s] filed by or against an individual.” See N.J.S.A. 47:1A-1.1. Further, the logs are “records relating to any grievance filed by or against an individual.” See N.J.S.A. 47:1A-10. The timeliness and modality of Warren County’s response to Mr. Paff’s OPRA request were not in dispute; therefore, the Court finds that the Warren County Sheriff was under no obligation to provide these records pursuant to OPRA.

In his brief, Mr. Paff argues that he has a common law right of access to these records. According to N.J.S.A. 47:1A-8, “Nothing contained in [OPRA]... shall be construed as limiting the common law right of access to a government record.” While it appears that the Legislature may have intended to supersede the common law right of access with N.J.S.A. 47:1A-10 by including the language “[n]otwithstanding the provisions of [OPRA] or any other law to the contrary,” these two provisions of OPRA stand in conflict. (Emphasis added). Therefore, the Court will engage in a common law right of access analysis.

The common-law right to access public documents depends on the following three requirements: “(1) the records must be common-law public documents; (2) the person seeking access must establish an interest in the subject matter of the material; and (3) the citizen’s right to access must be balanced against the State’s interest in preventing disclosure.” Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (citations and internal quotations omitted).

It is undisputed that the log of complaints brought against Warren County Corrections Officers is a public record as defined by the common law. The first Keddie prong is satisfied.

With regard to the second prong, Mr. Paff must establish either “a wholesome public interest or a legitimate private interest” in the records requested. Drinker Biddle & Reath LLP v. New Jersey Dept. of Law and Public Safety, Div. of Law, 421 N.J. Super. 489, 499 (App. Div.

2011) (citations and internal quotations omitted). Mr. Paff purportedly requested these documents from Warren County for personal research. The second Keddie prong is satisfied because Mr. Paff has demonstrated a legitimate private interest through personal research.

The third prong requires the court to balance “the individual’s right to the information against the public interest in the confidentiality of the file.” Loigman v. Kimmelman, 102, N.J. 98, 104 (1986) (quoting Roviaro v. United States, 353 U.S. 53, 62 (1957)). The court must consider the following factors:

(1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decisionmaking will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

[Drinker, supra, at 500 (citations and internal quotations omitted).]

Factors (1) and (2) weigh heavily in favor of nondisclosure. The disclosure of the complainants’ names may have a chilling effect upon future reporting, and may further lead to retaliation against those complainants. Additionally, the disclosure of the principals’ names may lead to retaliation against them, whether or not the complaints were legitimate. No factors weigh in favor of disclosure. The third Keddie prong must fail because the public interest in the confidentiality of the records at issue far outweighs Mr. Paff’s interest in personal research.

For the foregoing reasons, plaintiff’s Order to Show Cause is **DENIED**.