

FILED

MAR 31 2008

**TRAVIS L. FRANCIS
ASSIGNMENT JUDGE
MIDDLESEX VICINAGE**

Richard Gutman
Richard Gutman, P.C.
55 Warfield Street
Montclair, NJ 07043-1116
973-744-6038 (voice & fax)
rickggg@yahoo.com
Attorney for Plaintiff John Paff

JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION, CIVIL PART
Plaintiff,	:	MIDDLESEX COUNTY
	:	DOCKET NO. <i>L-2106-08</i>
vs.	:	
	:	
TOWNSHIP OF EDISON,	:	Civil Action
	:	ORDER TO SHOW CAUSE
Defendant.	:	SUMMARY ACTION

THIS MATTER being brought before the Court by Richard Gutman, attorney for plaintiff, John Paff, 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 Record Act, N.J.S.A. 47:1A-6, and for good cause shown.

IT IS on this 31st day of March, 2008, ORDERED that the defendant Township of Edison appear and show cause on the 13th day of May, 2008 before the Superior Court at the Middlesex County Civil Courthouse in New Brunswick, New Jersey at 9:00 o'clock ~~in the~~ A.M. noon, or as soon thereafter as counsel can be heard, why judgment should not be entered for:

A. A declaration that the Township of Edison violated OPRA and the common law right of access to public records by refusing to provide John Paff a copy of the 2004, 2005 and 2006 Edison Police Department internal affairs summary reports;

B. An order that the Township of Edison grant John Paff access to the 2004, 2005 and 2006 Edison Police Department internal affairs summary reports in unredacted form;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

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 the defendant personally within 10 days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

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

3. Defendant shall file and serve a written answer to this order to show cause and the relief requested in the verified complaint and proof of service of the same ~~by~~ within 35 days, ~~and~~. The answer 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 Travis Francis.

4. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition *no later than 3 days before the return date.* 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 Travis Francis.

5. If the defendant does 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 the 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. Defendant, 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 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 list of these offices is provided. Include a \$135.00 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer, 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 (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. A list of these offices is provided. 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 list of these numbers is also provided.

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 _____ days before the return date.



~~Nicholas J. Stroumtsos, Jr., A.J.S.C.~~

Nicholas J. Stroumtsos, Jr., Acting A.J.S.C.

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Attorney for Plaintiff John Paff

JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	MIDDLESEX COUNTY
v.	:	DOCKET NO.
	:	
TOWNSHIP OF EDISON,	:	Civil Action
Defendant.	:	

VERIFIED COMPLAINT

Plaintiff John Paff, by way of complaint against the Defendant Township of Edison, states as follows:

1. This is an action under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-6, seeking the disclosure of 2004, 2005 and 2006 Edison Police Department internal affairs summary reports improperly withheld from John Paff by the Township of Edison.

2. Plaintiff John Paff is an individual residing at 1605 Amwell Road, Somerset, Somerset County, New Jersey, 08873.

3. John Paff is Chairperson of the New Jersey Libertarian Party's Open Government Advocacy Project, an organization opposing government secrecy, particularly regarding alleged government misconduct.

4. The Township of Edison is a political subdivision of the State of New Jersey.

5. On February 22, 2008, Plaintiff Paff requested from the Township of Edison a copy of the 2004, 2005 and 2006 Edison Police Department internal affairs summary reports.

6. On February 26, 2008, the Township of Edison denied Paff access to the 2004, 2005 and 2006 Edison Police Department internal affairs summary reports.

7. The Defendant Township of Edison's denial of access to the requested internal affairs summary reports violated OPRA, N.J.S.A. 47:1A-1, -5.

WHEREFORE, Plaintiff Paff demands judgment against Defendant Township of Edison as follows:

A. A declaration that the Township of Edison violated OPRA by refusing to provide Paff a copy of the 2004, 2005 and 2006 Edison Police Department internal affairs summary reports;

B. An order that the Township of Edison grant Paff access to the 2004, 2005 and 2006 Edison Police Department internal affairs summary reports in unredacted form;

C. An award of costs and attorney's fees; and

D. Such other relief as the Court deems equitable and just.

Respectfully submitted,

Richard Gutman

March ____, 2008

Designation of Trial Counsel

Plaintiff designates Richard Gutman as trial counsel in this action.

Certification Pursuant to R. 4:5-1(b)

Plaintiff certifies that the matter in controversy is not the subject of any other action pending in any court or arbitration proceeding and that he is not contemplating any other action or arbitration proceeding regarding the subject matter of this action. Plaintiff is not aware of any other party that should be joined in this action.

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.

Executed on March__, 2008

Richard Gutman



State of New Jersey
TOWNSHIP OF EDISON
GOVERNMENT RECORDS REQUEST FORM



FAX 732-287-0743

Important Notice

The reverse side of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name John Paff
 Company P.O. Box 5424, Somerset, NJ 08875
 Mailing Address Phone: 732-873-1251
Fax: 908-325-0129
Email: Paff@pobox.com
 City _____
 Business Hours Telephone: Area Code _____ Number _____ Extension _____
 Preferred Delivery: Pick Up _____ US Mail On Site Inspect _____
Circle One: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE / HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.
 Signature [Signature] Date 10/26/07

Payment Information

Maximum Authorization Cost \$ 6.7
 Select Payment Method
 Cash _____ Check Money Order _____
 Fees: Pages 1-10 @\$0.75
 Pages 11-20 @\$0.50
 Pages 21 - @\$0.25
 Delivery: Delivery / postage fees additional depending upon delivery type.
 Extras: Extraordinary service fees dependent upon request.

Record Request Information: To expedite the request, be as specific as possible in describing the records being requested. Also, please include the type of access requested (copying or inspection), and if data, the medium requested.

Department _____ Year of Information Requested _____
See attached Supplement
 Block _____ Lot _____ Street Address _____

AGENCY USE ONLY

Est. Document Cost _____
 Est. Delivery Cost _____
 Est. Extras Cost _____
 Total Est. Cost _____
 Deposit Amount _____
 Estimated Balance _____
 Deposit Date _____

AGENCY USE ONLY

Disposition Notes
 Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.
 In Progress - Open _____
 Denied - Closed _____
 Filled - Closed _____
 Partial - Closed _____

AGENCY USE ONLY

Tracking Information **Final Cost**
 Tracking # _____ Total _____
 Rec'd Date _____ Deposit _____
 Ready Date _____ Balance Due _____
 Total Pages _____ Balance Paid _____
 Forwarded to: _____
 Returned to Clerk on: _____ By: _____
 With documents _____ Without documents _____
 Comments _____
 Department Signature _____
 Custodian or Representatives Signature _____ Date _____

Supplement to Records request made by John Paff on 10/26/07

Attached are seven pages of exhibits. Exhibit 1 is an "Internal Affairs Summary Report Form." Exhibits 2 through 8 are redacted records that were furnished by another municipality (West Milford) in response to a records request. Those records are: a) a "Charging Form," b) Appendix to the "Charging Form," c) Preliminary Notice of Disciplinary Action and d) Schedules A and B.

Please provide me with the following records. I make this request in accordance with the Open Public Records Act, the Senator Byron M. Baer Open Public Meetings Act and the common law.

1. I would like the internal affairs reports filed for the years 2004, 2005 and 2006 (similar to Exhibit 1) by the Edison police department.
2. For every disciplinary action shown as being "sustained" on any of the records responsive to #1 above, I would like the "Charging Form," Preliminary Notice of Disciplinary Action" and "Final Notice of Disciplinary Action" or any similar or superseding records, together with their attached schedules, exhibits and supplements.

INTERNAL AFFAIRS SUMMARY REPORT FORM

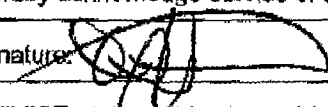
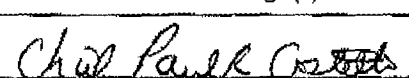
Agency: West Milford Police County: Passaic

Reporting Period: 1/1/06 to 12/31/06

Type of Complaint	Cases Pending From Prior Years	Cases Received This Year	Total Cases	Number of Dispositions					Cases Pending End of Year
				Criminal Charge Sustained	Internal Disciplinary Action	Exonerated	Not Sustained	Unfounded	
Excessive Force		1	1						1
Improper Arrest									
Improper Entry									
Improper Search									
Differential Treatment									
DemEANOR		13	13				3	9	1
Other Rule Violation		10	10		2		4	4	
Other Criminal Violation		4	4				1		3
TOTAL		28	28		2		8	13	2

THE TOWNSHIP OF WEST MILFORD POLICE DEPARTMENT
CHARGING FORM

NOTICE OF CHARGE AND HEARING

TO: Captain David Hardin	PIN# 7	DATE: September 22, 2006
TAKE NOTICE that the following charge(s) is (are) preferred against you:		
On three occasions 6/19/06, 7/5/06 and 7/21/06 you...		
See attached charges and specifications appended hereto		
in violation of: West Milford Police G.O. 76.05 Sick Leave and NJAC 4A:2-2.3(a)4,6 and 7 [Statute, Rule and Regulation, Etc.]		
TAKE NOTICE that the following charge(s) is (are) preferred against you:		
On _____, you		
in violation of: _____ [Statute, Rule and Regulation]		
You must enter a plea of guilty or not guilty, on or before: September 27, 2006		
You may request a hearing and if requested, it shall be held on: October 5, 2006, 10:00 AM		
at: West Milford Municipal Building		
By: Richard Kunze, Twp. Administrator		
I hereby acknowledge service of the within charge(s) this 22 day of Sept.		
* Signature: 		
SERVICE of the within charge(s) were made this 22 day of Sept 2006		
By: 		

Charge Form

APPENDIX "A"

CHARGES AND SPECIFICATIONS

TAKE NOTICE that the following charges are preferred against you:

Specifications:

On three (3) occasions 6/19/06, 7/5/06 and 7/21/06 you engaged in a pattern of abuse of sick time by calling in sick and neither notifying the desk officer that you were leaving your residence nor that you were not at home at the time of the call, and taking such sick time knowing you were not entitled to it. Such conduct being contrary to the good working order and discipline of the police department.

Charges:

The above actions constitute violations of the West Milford Police Department G.O. 76.05 – Sick Leave.

Violations of NJ Administrative Code, NJAC 4A:2-2.3(a)4 – Chronic or Excessive Absenteeism or Lateness, (a)6 – Conduct Unbecoming a Public Employee and (a)7 – Neglect of Duty.

Penalty:

Suspension for five (5) days.

Charge Form

Preliminary Notice of Disciplinary Action

DEPARTMENT OF PERSONNEL - STATE OF NEW JERSEY

INSTRUCTIONS: This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated: (a) suspension or fine of more than five days at one time; (b) suspensions or fines more than three times or for an aggregate of more than fifteen days in one calendar year; (c) disciplinary demotion from a title in which the employee has permanent status or to which the employee has received a regular appointment; (d) removal; (e) resignation not in good standing. A copy of this preliminary notice must be sent to the Department of Personnel. Subsequent to the day of hearing by the appointing authority, the employee and the Department of Personnel must be served with Form DPF-31 B, Final Notice of Disciplinary Action.

FROM:	JURISDICTION (Local Service) West Milford Township	DEPARTMENT Police		
	DIVISION, INSTITUTION OR AGENCY	STATE PAYROLL NUMBER	ADDRESS 1480 Union Valley Road West Milford, New Jersey	DATE Dec. 8, 2006
TO:	NAME OF EMPLOYEE David Hardin		TITLE Captain	SOCIAL SECURITY NUMBER 143-40-1876
	STREET 1480 Union Valley Road		CITY AND STATE West Milford, New Jersey	

1. You are hereby notified that the following charge(s) has been made against you:
(If necessary, use additional sheets and attach.)

CHARGE(S):

* See Attached Schedule A
(6 charges)

SPECIFICATION(S):

* See Attached Schedule B
(6 specifications)

If checked, charges are continued on attached page.

If checked, specifications are continued on attached page 5

You are hereby suspended effective: _____
(Check box and indicate if employee is suspended pending final disposition of the matter)

2. IF YOU DESIRE A DEPARTMENTAL HEARING ON THE ABOVE CHARGE(S), NOTIFY THIS OFFICE WITHIN

7 DAYS OF RECEIPT OF THIS FORM. IF YOU REQUEST A DEPARTMENTAL HEARING IT WILL BE HELD
ON January 2 2007 at (time) 10:00 am at (place of hearing) West Milford Town Hall
1480 Union Valley Rd.
West Milford, NJ 07480

* Must be minimum of five days.

3. The following disciplinary action may be taken against you:

- Suspension for 30 days, beginning to be determined and ending _____
- Removal, effective (date) _____
- Demotion to position of _____ effective (date) _____
- Resignation not in good standing, effective (date) _____
- Fine \$ _____ which is equal to _____ days pay

Other disciplinary action: (explain on attached page)

SIGNATURE Paul C. Smith TITLE Chief of Police
(Appointing Authority or authorized agent)

NOTICE: Your health insurance coverage may be affected by this action; check with your Personnel Office.

Method of Service (Check One)	<input checked="" type="checkbox"/> PERSONAL SERVICE	NAME AND TITLE OF SERVER <u>Paul C. Smith - Chief</u>	DATE SERVED <u>12-8-06</u>
	<input type="checkbox"/> CERTIFIED OR REGISTERED MAIL	Give date of receipt by employee or agent as shown on return receipt postal card and the receipt number:	

DISTRIBUTION: White (Original for Employee), Blue (Employee Copy), Green (Employee representative), Canary (Management), Pink (Management), Goldenrod (Department of Personnel)

**SCHEDULE A
CHARGES**

Charge 1: 4A:2-2.3(a)11 Other Sufficient Cause

Police Department's Modified Duty Policy A-3

4A:2-2.3(a)6 Conduct Unbecoming a Public Employee.

West Milford Police Department Rules and Regulations Article XXIV (m) Conduct Unbecoming an Officer.

Charge 2: 4A:2-2.3(a)2 Insubordination

West Milford Police Department Rules and Regulations Article XXIV (b) Willful Disobedience of Orders

Charge 3: 4A:2-2.3(a)2 Insubordination

West Milford Police Department Rules and Regulations Article XXIV (b) Willful Disobedience of Orders

4A:2-2.3(a)7 Neglect of Duty

Charge 4: 4A:2-2.3(a)2 Insubordination

West Milford Police Department Rules and Regulations Article XXIV (b) Willful Disobedience of Orders

Charge 5: 4A:2-2.3(a)7 Neglect of Duty

West Milford Police Department Rules and Regulations Article XXIV (n) Conduct Subversive to Good Order of the Department

Charge 6: 4A:2-2.3(a)2 Insubordination

West Milford Police Department Rules and Regulations Article XXIV (b) Willful Disobedience of Orders

SCHEDULE B

SPECIFICATIONS

Charge 1 Specifications:

On or about October 27, 2006 Captain David Hardin, while on Modified Duty status, scheduled Physical Therapy appointments during work hours, without approval, impacting the operations of the Police Department, in violation of 4A:2-2.3(a)11 Other Sufficient Cause,

(West Milford Police Department's Modified Duty Policy A-3)

4A:2-2.3(a)6 Conduct Unbecoming a Public Employee

(West Milford Police Department Rules and Regulations Article XXIV (m) Conduct Unbecoming an Officer)

Charge 2 Specifications:

On or about October 27, 2006 Chief of Police Paul Costello rescheduled Captain Hardin's Physical Therapy appointments for times when Captain Hardin was off duty, consistent with the Modified Duty Policy A-3. Captain Hardin changed his appointments back to their original times during work hours, contrary to the order of the Chief of Police, in violation of: 4A:2-2.3(a)2 Insubordination

(West Milford Police Department Rules and Regulations Article XXIV (b) Willful Disobedience of Orders)

Charge 3 Specifications:

On October 31, 2006 Police Chief Paul Costello asked Captain Hardin why he failed to contact him if there was a problem with the change in his Physical Therapy appointments. Captain Hardin replied, "talk to my attorney". Captain Hardin was subsequently ordered to answer the question, and replied that the Chief of Police had no right to change his appointments. When asked why he failed to attend the staff meeting, Captain Hardin did not respond, in violation of:

4A:2-2.3(a)2 Insubordination

(West Milford Police Department Rules and Regulations

Article XXIV (b) Willful Disobedience of Orders)

and 4A:2-2.3(a)7 Neglect of Duty.

Charge 4 Specifications:

On October 31, 2006 Captain Hardin failed to attend a Staff Meeting, for which he had prior written notice, in order to attend Physical Therapy on unapproved Sick Leave, in violation of:

4A:2-2.3(a)2 Insubordination

(West Milford Police Department Rules and Regulations

Article XXIV (b) Willful Disobedience of Orders)

4A:2-2.3(a)7 Neglect of Duty.

Charge 5 Specifications:

Between October 27 and November 22, 2006 Captain Hardin, the Police Operations Commander, engaged in conduct that was potentially detrimental to the day-to-day operations of the Police Department by scheduling medical appointments during work hours, thereby taking unapproved time off, in violation of: 4A:2-2.3(a)7 Neglect of Duty

(West Milford Police Department Rules and Regulations

Article XXIV (n) Conduct subversive to good order of the

Department)

Charge 6 Specifications:

On or about November 6 and 22, 2006 Captain Hardin failed to follow a direct written order by Police Chief Paul Costello to request time off according to Department Procedures. In violation of: 4A:2-2.3(a)2 Insubordination

(West Milford Police Department Rules and Regulations

Article XXIV (b) Willful Disobedience of Orders)

Township of Edison

Middlesex County

REINA A. MURPHY
TOWNSHIP CLERK



MUNICIPAL COMPLEX
100 Municipal Boulevard
Edison, NJ 08817
732-248-7350
Fax: 732-248-3738
E-Mail: clerk@edisonnj.org

February 26, 2008

John Paff
PO Box 5424
Somerset, NJ 08875

Dear Mr. Paff:

We are in receipt of your Public Records request received in our office on February 22, 2008 via email.

The Township Attorney advised that this request is overbroad and open ended in accordance with the Elizabeth Mason vs. City of Hoboken et als case (app Div Docket No. A-0508-06T5).

As in the Mason case, the Open Public Records Act is not intended to be used as a research tool or compile unknown documents. Since you have not specified the documents you are seeking, nor did you specifically identify the documents, your request does not comply with the requirements of an Open Public Records Act request.

Sincerely,

Reina A. Murphy, RMC
Municipal Clerk

RAM/mlk

DiFRANCESCO, BATEMAN, COLEY, YOSPIN, KUNZMAN, DAVIS AND LEHRER, PC
15 Mountain Blvd
Warren, NJ 07059

May 5, 2008

Honorable Travis L. Francis, Assignment Judge
Middlesex County Superior Court
56 Paterson Street, PO Box 964
Chamber 307
New Brunswick, New Jersey 08903-0964

Re: John Paff v. Township of Edison
Docket No.: MID-L-2106-08
Our File No.: ETL75

Dear Judge Francis:

This office is representing the Township of Edison in reference to the above captioned Order to Show Cause filed by plaintiff. The matter is currently scheduled for a hearing before Your Honor on May 13, 2008. Kindly accept the within letter brief in response to plaintiff's application.

On February 22, 2008, the Township of Edison received via email a request from plaintiff for production of records in accordance with the Open Public Records Act. Plaintiff's actual request stated as follows:

Please provide me with the following records. I make this request in accordance with the Open Public Records Act, the Senator Byron M. Baer Open Public Meetings Act and the common law.

1. I would like the internal affairs reports filed for the years 2004, 2005 and 2006 (similar to Exhibit 1) by the Edison police department.
2. For every disciplinary action shown as being "sustained" on any of the records responsive to #1 above, I would like the "Charging Form," "Preliminary Notice of Disciplinary Action" and "Final Notice of Disciplinary Action" or any similar or superseding records, together with their attached schedules, exhibits and supplements.

Plaintiff attached to his request a number of exhibits representative of documents he had received from West Milford in response to a records request. See copy of Request attached hereto as Exhibit A.

The Township of Edison appropriately interpreted plaintiff's request to be an overly broad, open ended request for internal affairs reports and records for the years 2004, 2005 and 2006. Internal affairs reports and records constitute confidential information only to be released in very limited circumstances. The applicable portion of the Internal Affairs Policy and Procedures provides:

Confidentiality

The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information. The contents of the internal investigation case files shall be returned in the internal affairs unit and clearly marked as confidential. The information and records of an internal investigation shall only be released under the following limited circumstances:

- In the event that administrative charges have been brought against an officer, and a hearing will be held, a copy of those internal investigation reports to be used as evidence in the administrative hearing shall be provided to the officer.
- In the event that the subject officer, agency or governing jurisdiction has been named as a defendant in a lawsuit arising out of the specific incident covered by an internal investigation, a copy of the internal investigation reports may be released to the attorney representing the subject officer, agency or jurisdiction.
- Upon the request or at the direction of the county prosecutor or Attorney General.
- Upon a court order.

The law enforcement executive officer may authorize access a particular file or record for good cause. The request and the authorization should be in writing, and the written authorization should specify who is being granted access, to which records access is being granted, and for what time period access is permitted. The authorization should also specify any conditions, such as one in which the files may be reviewed only at the internal affairs office and may not be removed. The law enforcement executive should grant such access sparingly, keeping in mind the purpose of the internal affairs process; and the nature of many of the allegations against officers. See Internal Affairs Policy & Procedures pertaining to confidentiality attached hereto as Exhibit B.

Based on the language of the actual request received from plaintiff, the Township of Edison appropriately denied the submitted request.

Interestingly, plaintiff in his present application abandons all requests for internal affairs reports and records. Plaintiff now merely seeks production of internal affairs summary reports for the years 2004, 2005 and 2006. The Township of Edison has no objection to producing these internal affairs summary reports. The internal affairs summary reports have been provided to plaintiff. See Internal Affairs Summary Reports attached hereto as Exhibit C. However, the summary reports are not what plaintiff requested. Plaintiff clearly requested actual internal affairs reports and records for the years 2004, 2005 and 2006. These are confidential personnel records not subject to disclosure. These records also contain advisory, consultative and deliberative material not subject to disclosure.

The Township of Edison will refrain from speculating as to the motive and manner upon which plaintiff has chosen to proceed in this matter. Suffice it to say, by his own admission, plaintiff is well versed in the requirements of the Open Public Records Act. Plaintiff is very active throughout the State in filing and pursuing these types of claims. Plaintiff is well aware internal affairs reports and records are confidential and subject to disclosure only under very limited circumstances. Plaintiff knew full well he was not entitled to these records, yet he submitted a request for them anyway. At the same time, plaintiff knew full well he was entitled to internal affairs summary reports. Plaintiff could have simply requested the internal affairs summary reports for the years 2004, 2005 and 2006 and the same would have been provided. Plaintiff knew how to submit such a clear and concise request, but chose not to. The request plaintiff submitted was at best misleading and at worst outright disingenuous.

The internal affairs summary reports have now been provided to plaintiff. Plaintiffs cause of action is therefore moot. The Township of Edison hereby requests withdrawal of this claim. If not voluntarily withdrawn, we hereby request the Court Order the award of counsel fees and costs in favor of the Township of Edison.

Respectfully submitted,

/s/ William J. Willard

May 7, 2008

PLAINTIFF JOHN PAFF'S REPLY BRIEF

The Honorable Travis L. Francis, A.J.S.C.
Superior Court of New Jersey
Middlesex County Courthouse
P.O. Box 964
New Brunswick, NJ 08903-0964

Re: John Paff, Plaintiff,

v.

Township of Edison, Defendant.
Docket No. MID-L-2106-08

Dear Judge Francis:

This letter brief is submitted on behalf of Plaintiff John Paff in reply to the May 5, 2008 opposition brief of the Township of Edison ("Township").

On Tuesday, May 6, 2008, the Township finally supplied Plaintiff John Paff with a copy of the three requested Internal Affairs Summary Reports by attaching them to the Township's responding brief. Without citing any legal authority, the Township requests that Paff withdraw his claim as moot and states that "[i]f not voluntarily withdrawn, we hereby request the Court Order (sic) the award of counsel fees and costs in

favor of the Township of Edison.” (Db4.) As to the Township’s request for counsel fees and costs, the Township has failed to comply with the requirements of R. 1:4-8(b). Nor, as explained below, is Plaintiff Paff’s continuation of its claim frivolous.

As to the claim of mootness, while Paff’s success in winning access to the Internal Affairs Summary Reports eliminates any need for an injunction ordering access to those Reports, still remaining is the Complaint’s request for a declaration that the Township violated OPRA and the common law right of access by refusing to provide Paff a copy of the 2004, 2005 and 2006 Edison Police Department Internal Affairs Summary Reports.¹

Unlike the federal Constitution, the New Jersey Constitution does not confine the exercise of the judicial power to actual cases and controversies. Compare, U.S. Const. art. III, § 2, cl. 1, with N.J. Const. art. VI, § 1, ¶ 1. State v. Gartland, 149 N.J. 456, 464 (1997). New Jersey courts decide moot cases if the lawsuit “presents a question that is both important to the public and likely to recur.” Clymer v. Summit Bancorp., 171 N.J. 57, 65-66 (2002) (court decides property issue even though five-year dormancy period had expired); Gartland, 149 N.J. at 463-66 (court decides criminal law issue even though defendant had died).

¹ Paff also intends to file a motion for attorney’s fee and a bill of costs after the Court enters a final order.

In a situation similar to the case at bar, a requestor sought access to government records under the Right-to-Know-Law (OPRA's predecessor). Williams v. Board of Education of Atlantic City Public Schools, 329 N.J. Super. 308 (App. Div. 2000). The Law Division denied access. Prior to the Appellate Division's ruling, the government agency gave the requestor the records. The Appellate Division recognized that the record requestor's claim was now moot, yet nevertheless ruled on the requestor's right to access the records because "[w]e deem the issue before us to be of significant public importance and capable of repetition, thereby warranting our full consideration." Id. at 311. Similarly, the case at bar is of public importance and likely to recur.

The purpose of OPRA "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." Times of Trenton Pub. Corp. v. Lafayette Yard Community Development Corp., 183 N.J. 519, 535 (2005), quoting Asbury Park Press v. Ocean County Prosecutor's Office, 374 N.J. Super. 312, 329, (Law Div. 2004).

As for the importance of the specific reports at issue, the State of New Jersey Police Bureau's "Internal Affairs Policy & Procedures" states, "[t]he effectiveness of a law enforcement agency is dependent upon public approval and acceptance of law

enforcement authority." (Pa11.) For that reason, the Police Bureau requires local police departments to publicize and publicly explain the disciplinary process, (Pa8), and, in particular, to make public the Internal Affairs Summary Reports. (Pa10.)

Moreover, the challenged Township action is likely to recur. This is not a case in which a municipality has acknowledged that it violated OPRA and has promised not to repeat the violation in the future. On the contrary, the Township's brief concludes that "the Township of Edison appropriately denied the submitted request." (Db3.) Because the Township believes that it did not violate OPRA, it is likely to engage in the same conduct in the future.

Having dropped its original grounds for denying access that "you have not specified the documents you are seeking, nor did you specifically identify the documents," (Pa39), the Township now asserts that its denial of access was lawful because (1) Paff requested both public records and non-public records and (2) Paff did not clearly request Internal Affairs Summary Reports.

Since this case presents an issue of public importance likely to recur, the remaining issue is the legality of the Township's action. Contrary to the Township's apparent belief, it is a violation of OPRA to deny access to public records on the grounds that some of the other records requested are not public, thereby making the request "overly broad." (Db2). The

Township's policy is contrary to the OPRA requirement that "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. More particularly, OPRA specifically indicates that the association of public records with non-public, exempt records is no grounds for denying access to the public records.

If the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to [OPRA], the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.

N.J.S.A. 47:1A-5(g)

The Township's policy is contrary to the express intent of OPRA that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State . . ." N.J.S.A. 47:1A-1.

In Sheridan Newspapers, Inc. v. City of Sheridan, 660 P.2d 785 (Wyo.1983) the Wyoming Supreme Court ruled that it was a violation of the Wyoming Public Records Act for a police department to deny the public any access to certain categories of police records ("rolling log" and "case reports") "simply because some exempt material may be contained in those records." Id. at 797.

Also erroneous is the Township's argument that Paff's request was invalid because he did not state that he was seeking Internal Affairs Summary Reports. (Db3.) Paff's record request expressly stated, "[a]ttached are seven pages of exhibits. Exhibit 1 is an 'Internal Affairs Summary Report Form.'" (Pa31.) The request then went on to state, "I would like the internal affairs reports filed for the years 2004, 2005 and 2006 (similar to Exhibit 1) by the Edison police department." (Pa31-32). Thus, Paff not only specifically requested Internal Affairs Summary Reports, he even attached an example of an Internal Affairs Summary Report prepared by the West Milford Police Department.

Respectfully submitted,

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