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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1839-14T1

JOHN PAFF,

Plaintiff-Respondent,

v.

BERGEN COUNTY and
CAPTAIN WILLIAM EDGAR,

Defendants-Appellants.

Argued October 20, 2016 - Decided March 13, 2017

Before Judges Lihotz, Hoffman and Whipple.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No.
L-7739-14.

Christopher E. Martin argued the cause for
appellants (Morrison Mahoney, LLP, attorneys;
Mr. Martin, of counsel and on the briefs; Lina
Papalia Corrison, on the briefs).

Donald M. Doherty, Jr., argued the cause for
respondent.

PER CURIAM

We are asked to determine whether defendants Bergen County
and Captain William Edgar, as the custodian of records for the

Bergen County Sheriff's Office, improperly responded to a request filed under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13. Plaintiff John Paff requested a log of complaints against corrections officers who have worked in the county jail since January 1, 2012. Defendants responded, providing the log, which was redacted to remove personal identifiers, specifically, the names of complainants and the officers against whom the complaint was made. Plaintiff filed this action asserting defendants' response violated OPRA. In a written opinion, the Law Division judge rejected defendants' arguments the redactions were made pursuant to Attorney General guidelines for internal affairs investigations. The trial judge concluded assertions of confidentiality did not fall within a statutory exemption listed under OPRA, and found the documents were improperly redacted. He ordered disclosure and awarded plaintiff attorney fees and costs. Defendants appeal. We reverse.

Plaintiff submitted an OPRA request seeking records regarding internal affairs investigations of corrections officers in the Bergen County Jail. The June 19, 2014 government records request stated:

I am interested in researching the frequency and nature of complaints brought, either internally or by an inmate or member of the public, against corrections officers who work for the Bergen County Jail. I believe that

the type of complaints I am interested in might be referenced to as "Internal Affairs" matters.

The request further explained plaintiff sought "a log of such complaints," filed from "January 1, 2012 to the present," and advised if defendants did not maintain a log of all the complaints, copies of documents for each individual complaint be provided. Plaintiff also acknowledged the request might prompt an objection, and noted if the request were denied, defendants were asked to confirm responsive records do exist. Plaintiff alternatively suggested "a redacted form" could be provided "rather than" suppressing the request entirely.

Defendants released a redacted five-page form entitled "Internal Affairs Summary Report" identifying the number of complaints pending, the source of the complaint and the noted disposition (e.g., internal disciplinary action, exonerated, not sustained, unfounded, administratively closed). The document also identified the type of complaint among categories identified as differential treatment, domestic violence, and other rule violations. Also, defendants provided four pages containing closed cases from 2012 to 2014. These documents identified the date and category of each complaint (e.g., excessive force, assault, harassment, and others), but blacked-out identifying

information regarding the complaining party and the employee alleged to have acted improperly.

Plaintiff filed an order to show cause and complaint initiating this summary action. He noted the records response improperly redacted information without explanation. He requested a judgment against defendants for violating OPRA and plaintiff's common law right to access. Plaintiff also sought an order for the release of unaltered copies of the internal affairs summary and closed matters, along with an award of attorney's fees.

Defendants objected to plaintiff's claims and asserted the redacted information was exempt from disclosure as confidential, in compliance with the Attorney General's Internal Affairs Policies and Procedures (the Guidelines), adopted by the Bergen County Sheriff's Office, along with its internal affairs investigation guidelines. Defendants acknowledged the response to plaintiff's records request mistakenly omitted the explanatory basis for redaction, which was promptly provided.

On the return date, defendants requested to present testimony from Captain Edgar, which the trial judge found unnecessary. Following oral argument, the trial judge issued a written opinion. He found no "statutorily recognized basis for confidentiality," and rejected the Guidelines as protecting the redacted information

from public disclosure. The trial judge concluded defendants impeded public access as required by OPRA, stating

defendants have violated the terms, if not the spirit of OPRA and the common law by refusing to afford plaintiff access to the requested documents. Specifically, defendants have failed to demonstrate the requested documents are exempt from disclosure pursuant to one of OPRA's exemptions or one of the exceptions incorporated in the statute by reference. Defendants have also failed to demonstrate the State's interest in nondisclosure outweighs plaintiff's right of access to the requested materials under the common law.

The November 6, 2014 order required defendants to release unredacted copies of the records and awarded plaintiff \$6,438.69 in attorney's fees and costs of suit. Defendants' appeal ensued.¹

Generally, a "trial court's determinations with respect to the applicability of OPRA are legal conclusions subject to de novo review." K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 349 (App. Div. 2011) (quoting O'Shea v. Township of West Milford, 410 N.J. Super. 371, 379 (App. Div. 2009)), certif. denied, 210 N.J. 108 (2012); see also MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 543 (App. Div. 2005) ("We review de novo the issue of whether access to public records under OPRA and the manner of its effectuation are warranted."). "Our

¹ Defendants filed a motion, which included a request to supplement the record (M-5367-14). An April 16, 2015 order was referred to this panel for consideration. The motion was granted.

review of the determination regarding the common law right of access is de novo as well." N. Jersey Media Grp., Inc. v. Bergen Cty. Prosecutor's Office, 447 N.J. Super. 182, 194 (App. Div. 2016).

"New Jersey citizen's access to government records may be achieved in three distinct ways: through OPRA, . . . ; via a common law right of access; and in discovery procedures in litigation." O'Shea, supra, 410 N.J. Super. at 379. "Records that are not available under one approach may be available through another." Ibid. (quoting MAG Entm't, supra, 375 N.J. Super. at 543).

We start with an analysis of OPRA, which "must begin with the recognition that the Legislature created OPRA intending to make government records 'readily accessible' to the state's citizens 'with certain exceptions[] for the protection of the public interest.'" Gilleran v. Bloomfield, 227 N.J. 159, 170 (2016) (quoting N.J.S.A. 47:1A-1). OPRA "sets forth in detail the manner in which requests for inspection, examination, and copying of government records are to be addressed, at times underscoring the responsiveness and cooperation expected from custodians." Ibid. (citing N.J.S.A. 47:1A-5). Further, the statute mandates "all government records shall be subject to public access unless exempt," N.J.S.A. 47:1A-1, and it places on the government the burden of establishing an exemption. N.J.S.A. 47:1A-6; see Mason

v. City of Hoboken, 196 N.J. 51, 66-67 (2008). OPRA's broad right to access is not absolute; it is limited by "established public-policy exceptions," stated in the statute, which declare "[a] government record shall not include . . . information which is deemed to be confidential." Gilleran, supra, 227 N.J. at 170 (quoting N.J.S.A. 47:1A-1.1). However, the public entity must include specific reasons for withholding documents, Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 162 (App. Div. 2011), and must prove a "denial of access is authorized by law." N.J.S.A. 47:1A-6.

On appeal, defendants concede plaintiff requested government records and acknowledge they bear the burden of proving the requested documents were exempt from disclosure. Defendants argue the trial judge erred in his analysis for several reasons.

First, defendants insist access was not denied. A timely response to plaintiff's request was issued and documents were released, which capture "the frequency and nature of complaints brought" against corrections officers for the years listed. This was precisely what defendant sought.

Second, redaction was limited to confidential information, i.e., the names of the complainant and the persons subject to pending investigations, because release of this information is prohibited by the Guidelines.

Third, defendants characterize their omission of an explanation for the redaction as "a ministerial error," which did not thwart plaintiff's investigation because he himself understood the need for redaction of identities in his request and assented to defendants "providing it [to] me in redacted form."

In his response, plaintiff maintains the correctness of the trial judge's analysis and highlights he was a prevailing party entitled to attorney's fees because defendants "responded to [his OPRA request] with a pile of documents that were redacted without explanation at all."

The statute's definition section lists those documents that are not government records subject to OPRA's disclosure requirements. N.J.S.A. 47:1A-1.1 provides "[a] government record shall not include the following information which is deemed to be confidential[,]" followed by thirty-one categories of documents. The trial judge correctly noted there is no specific reference to the Guidelines as a delineated source of confidential records. However, this literal review overlooks the depth of the recognized exceptions.

N.J.S.A. 47:1A-1 explicitly recognizes that records may be exempt from public access based upon authorities other than the exemptions enumerated within OPRA:

[A]ll government records shall be subject to public access unless

exempt from such access by: [OPRA]
as amended and supplemented; any
other statute; resolution of either
or both houses of the Legislature;
regulation promulgated under the
authority of any statute or
Executive Order of the Governor
. . . .

Moreover, N.J.S.A. 47:1A-9 codifies the
Legislature's unambiguous intent that OPRA not
abrogate or erode existing exemptions to
public access:

a. The provisions of [OPRA] shall
not abrogate any exemption of a
public record or government record
from public access heretofore made
pursuant to [the Right-to-Know Law,
N.J.S.A. 47:1A-1 to -4]; any other
statute; resolution of either or
both Houses of the Legislature;
regulation promulgated under the
authority of any statute or
Executive Order of the Governor
. . . .

[N. Jersey Media Grp., supra, 447 N.J. Super.
at 202.]

"Therefore, the plain language of the statute as well as judicial
precedent make it clear that an exemption is statutorily recognized
by OPRA if it is established by any of the authorities enumerated
in N.J.S.A. 47:1A-1 or -9." Ibid. (emphasis added).

We recognize the Guidelines along with Attorney General
directives and policies are not adopted in the same way other
executive agencies adopt their guiding administrative rules
promulgated under the Administrative Procedure Act, N.J.S.A.

52:14B-1 to -15. O'Shea, supra, 410 N.J. Super. at 378. Nevertheless, the Attorney General "is charged with adopting guidelines, directives and policies that bind local police departments in the day-to-day administration of the law enforcement process." Id. at 382. These "guidelines, directives or policies cannot be ignored," and "are binding and enforceable on local law enforcement agencies" Id. at 378.

Internal affairs investigations by law enforcement agencies fall under the supervision of the Attorney General, who is New Jersey's chief law enforcement officer. N.J.S.A. 52:17B-98. The Guidelines relied on by defendants in this case were adopted pursuant to the authority granted to the Attorney General set forth in N.J.S.A. 40A:14-181,² which states:

Every law enforcement agency . . . shall adopt and implement guidelines which shall be consistent with the guidelines governing the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety, and shall be consistent with any tenure or civil service laws, and shall not supersede any existing contractual agreements.

² The quoted portion reflects N.J.S.A. 40A:14-181 as was in effect when this matter arose. The phrase omitted in the quotation was effective on September 1, 2015, by P.L. 2015, c. 52, which expands "law enforcement agency" by adding "including a police department of an institution of higher education established pursuant to P.L. 1970, c. 211 ([N.J.S.A.] 18A:6-4.2 et seq.)."

This "statute requires every law enforcement agency to adopt and implement guidelines consistent with the Attorney General's internal affairs policies and procedures." McElwee v. Borough of Fieldsboro, 400 N.J. Super. 388, 395 (App. Div. 2008).

"The Attorney General's Internal affairs policies and procedures were first published in 1991." See State of New Jersey Division of Criminal Justice, Internal Affairs Policy & Procedures, 3 (July 2014), http://www.state.nj.us/lps/dcj/aqguide/internalaffairs2000v1_2.pdf. Updates to the policy were promulgated in 1992, 2000, 2011, and 2014. Ibid. Referencing N.J.S.A. 40A:14-181, the Guidelines discuss the importance of the internal affairs function in law enforcement agencies to investigate complaints and "protect the constitutional rights and civil liberties of the state's citizens." Ibid. Further, "strict adherence" to the policies and procedures by "subordinate law enforcement agencies" is demanded. Id. at 3-4.

Although the Attorney General does not oversee the State's corrections system, the Guidelines are mandated for all "county and municipal law enforcement agencies, including . . . county sheriff's offices" Id. at 5. Moreover, in various contexts, the Legislature has defined "law enforcement agency" to include county correctional facilities. N.J.S.A. 2A:154-4 ("All corrections officers of the State of New Jersey . . . shall by

virtue of such appointment or employment and in addition to any other power or authority be empowered to act as officers for the detection, apprehension, arrest and conviction of offenders against the law."); N.J.S.A. 52:17B-77.6 ("'[C]ounty or municipal law enforcement agency' means and includes, but is not limited to, a county or municipal police department or force, a county corrections department and a county sheriff's office."); N.J.S.A. 52:17B-212 ("'[L]aw enforcement agency' means a department, division, bureau, commission, board, or other authority of the State or of any political subdivision thereof which employs law enforcement officers.").

Similar to the Attorney General Use of Force guidelines examined in O'Shea, we conclude the Guidelines were created pursuant to a statutory mandate and law enforcement agencies must adhere to them. "There can be no question that they have the force of law in respect of the duties of law enforcement agencies to conform to the requirements" when conducting internal affairs investigations as well as the agency's accountability for doing so. O'Shea, supra, 410 N.J. Super. at 384.

Before the trial judge, defendants argued the Guidelines require internal affairs investigation documents and reports remain confidential. Examination of the Guidelines reveals they contain specific provisions directly on point, stating, "The

nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information and shall only be released under . . . limited circumstances." Ibid. (alterations in original).

Requirement 8 addresses the treatment of internal affairs records. The records are accessible only to internal affairs personnel and the law enforcement agency executive, keeping the number of individuals with access "to a minimum." Guidelines, supra, at 40. Obviously, this restriction is designed to preserve the integrity and secrecy of any investigation. This requirement also expressly addresses confidentiality, stating, "The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information." Id. at 42. Moreover,

[t]he information and records of an internal affairs investigation content and shall only be released under the following limited circumstances:

- If administrative charges have been brought against an officer and a hearing will be held, a copy of all discoverable materials shall be provided to the officer and the hearing officer before the hearing.
- If 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 affairs investigation, a copy of the internal affairs investigation reports, may be released to the subject officer, agency or jurisdiction.

- Upon the request or at the direction of the county prosecutor or Attorney General.
- Upon a court order.

[Id. at 42.]

"In addition, the law enforcement [agency] executive officer may authorize access to a particular file or record for good cause."

Ibid. Such access may be granted "sparingly, given the purpose of the internal affairs process and the nature of many of the allegations against officers." Ibid.

Requirement 9 addresses the summary reports, which are prepared and submitted to the county prosecutor. Id. at 43. This is the exact report sought by plaintiff's OPRA request.

Requirement 10 expressly provides the mechanism for release of these reports to the public. Id. at 44. The report released to the public is statistical in nature and "the names of the complainants and subject officers shall not be published." Ibid. (emphasis added).

It is not disputed, the Bergen County Sherriff issued a general order incorporating the Guidelines as mandated by N.J.S.A. 40A:14-181, and adopted specific policies "consistent with" the Guidelines to govern internal affairs investigations, which protect the public from misconduct and abuse by law enforcement. See McElwee, supra, 400 N.J. Super. at 395. The Sheriff operates and is responsible for corrections personnel employed by the Bergen County Jail. In accordance with the Guidelines, the Sheriff followed the confidentiality provisions by redacting the complainant and the target of an internal affairs investigation. Further, in responding to plaintiff's OPRA request, defendants followed the Guidelines' directive explicitly, releasing exactly what information was permitted to be released to the public.

We reject plaintiff's assertion, which was mistakenly accepted by the trial judge, to confine review of excluded documents to N.J.S.A. 47:1A-1.1, without also considering the exceptions provided by N.J.S.A. 47:1A-9(a). Reading these statutory provisions together, see Gilleran, supra, 227 N.J. at 172 (stating when construing OPRA, courts do not "view the statutory words in isolation but 'in context with related provisions so as to give sense to the legislation as a whole.'" (quoting Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012))), we conclude defendants met their "burden of proving

that the denial of access is authorized by law." N. Jersey Media Grp., supra, 447 N.J. Super. at 195 (quoting N.J.S.A. 47:1A-6). The published Guidelines unequivocally require internal affairs investigation reports, such as those sought by plaintiff's OPRA request, to remain confidential as to the complainant and the officer against whom the complaint was directed. Thus, public access was not denied; rather, it was limited as recognized by N.J.S.A. 47:1A-9(a).

Unlike the trial judge, we are convinced the basis of the Attorney General's confidentiality requirement stated in the Guidelines is tethered to safety and security. Maintenance of strict discipline is important in military-like settings such prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971). In this regard, there are many reasons for maintaining confidentiality of the complainant and officer involved an internal affairs investigation. We identify a few. Disclosure of the complainant and subject officer could: thwart the very purpose of an internal affairs investigation designed to ferret out improper compliance with established policies and procedures by law enforcement agencies; impede further investigation of discovered criminal conduct subject to prosecution; undermine the disciplinary process of the law enforcement agency necessary for

its work; unduly taint officers when the basis for an alleged complaint were not established; reveal the name and location of inmates, which may subject the inmate to harm; target informants, see Caldwell v. N.J. Dep't of Corr., 250 N.J. Super. 592, 615 (App. Div.) (recognizing "the aim of safeguarding the staff and inmate informants" requires the identity of witnesses in a disciplinary hearing should be kept confidential), certif. denied, 127 N.J. 555 (1991); discourage complaints because the complainant will not obtain anonymity, see Biunno, Weissbard & Zegas, Current N.J. Rules of Evidence, cmt. 2 on N.J.R.E. 516 (2014) ("[C]oncern for the risk to the informer of disclosure of his identity as well as the chilling effect disclosure may have on sources of valuable information are relevant factors in a prison setting." (citing Wakefield v. Pinchak, 289 N.J. Super. 566, 571 (App. Div. 1996))); and encourage unwarranted complaints to seek notoriety or target an officer for reasons other than wrongdoing.

Although not determinative, we also note our conclusion aligns with N.J.A.C. 10A:34-1.6(a)(2), a regulation applicable to municipal detention facilities, which makes internal affairs and investigation unit records and reports confidential but allows release in redacted form to "protect the safety of any person or the safe and secure operation of the detention facility. . . ." Also, we note decisions issued by the General Records Council

reach a similar conclusion. See, e.g., Wares v. Township of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015); Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012); Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010).

Contrary to any inference drawn from the trial judge's comments, interpreted to mean the public records were withheld or plaintiff's access was wrongfully denied, we conclude plaintiff in fact received exactly what he is entitled to obtain.

Next, we consider whether plaintiff has a common law right to access. OPRA does not limit "the common law right of access to a government record." N.J.S.A. 47:1A-8. Common law allows "one seeking access to such records must 'establish that the balance of its interest in disclosure against the public interest in maintaining confidentiality weighs in favor of disclosure.'" Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (quoting Home News v. N.J. Dep't of Health, 144 N.J. 446, 454 (1996)).

Three requirements must be met to establish a common law right of access: "(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, supra, 148 N.J. at 50 (citations omitted). We focus on the third provision.

To balance the right of access against the State's interest in preventing disclosure, the court must consider multiple 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 decision-making will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policy-makers; (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.

[Daily Journal v. Police Dept. of Vineland, 351 N.J. Super. 110, 123 (App. Div.) (quoting Loigman v. Kimmelman, 102 N.J. 98, 113 (1986)), certif. denied, 174 N.J. 364 (2002).]

The record is sparse, providing few facts on these issues. However, as is set forth in the above OPRA analysis, we identify how disclosure would disrupt procedures designed to maintain safety and security in the facility and how disclosure of the complainant, who provided the information relying on its

confidential status, would cause the complainant to suffer adversely. We recognize these factors are also recited by the Attorney General in the Guidelines. Guidelines, supra, at 42.

"[W]hen reasons for maintaining a high degree of confidentiality in the public records are present, even when the citizen asserts a public interest in the information, more than citizen's status and good faith are necessary to call for production of documents." Loigman, supra, 102 N.J. at 105-06. See also State v. Morais, 359 N.J. Super. 123, 132 (App. Div.) (discussing the "blue wall" as recognizing law enforcement officers' reluctance to incriminate fellow officers regarding misconduct), certif. denied, 177 N.J. 572 (2003).

We conclude defendants have carried their burden. The balance tips in favor of preserving confidentiality.

Finally, we consider whether the absence of an explanation for the redactions triggered an OPRA violation. OPRA provides:

If 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. . . . If the custodian of a government record asserts that part of a particular record is exempt from public access . . . 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.]

See Gannett N.J. Partners, LP v. County of Middlesex, 379 N.J. Super. 205, 215 (App. Div. 2005) ("[OPRA] generally places the burden upon the custodian of a public record to state the 'specific basis' for the denial of access") (quoting N.J.S.A. 47:1A-5(g)). "Courts will simply no longer accept conclusory and generalized allegations of exemptions" Newark Morning Ledger, supra, 423 N.J. Super. at 162 (citations omitted).

Defendants admit their lapse in omitting the basis of the redactions of confidential information. They argue the omission is harmless because plaintiff recognized redactions were necessary by agreeing to accept the records in redacted form, the nature of the excised information was clear on its face, and all permitted information was transmitted.

Although plaintiff's OPRA request mentions acceptance of records in redacted form, we cannot accept this statement relieved defendants of the affirmative obligation set forth in N.J.S.A. 47:1A-5(g). Accepting our responsibility to "maintain a sharp focus on the purpose of OPRA and resist attempts to limit its scope," Newark Morning Ledger, supra, 423 N.J. Super. at 162-63 (citations omitted), we conclude, although defendants proved disclosure of the redacted information was exempt, the OPRA

response failed to disclose the basis for redaction. In addition, we agree the list of closed cases obviously omits names of affected parties, but the nature of redactions to the Internal Affairs Summary Report Form is not so obvious. Further, defendants' reliance on the Guidelines should have also related the expressed reasoning for maintaining confidentiality, which may not be as obvious to non-law enforcement members of the public.

In light of these omissions, we consider whether plaintiff is entitled to a fee award. The fee provision in OPRA allows "[a] person who is denied access to a government record by the custodian of the records" to institute a proceeding. N.J.S.A. 47:1A-6. Further:

The right to institute any proceeding under this section shall be solely that of the requestor. . . . If it is determined that access has been improperly denied, the court . . . shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[Ibid.]

Plaintiff's suit was prompted because he sought the redacted information – the names of the complainant and the officer against whom the complaint was made. We reverse that portion of the November 6, 2014 order mandating release of unredacted documents, and conclude defendants redacted only permitted confidential

information noting plaintiff does not suggest any other information was withheld. Thus, plaintiff was not denied access to government records; defendants released all records the public was entitle to review.

The Court has directed:

requestors are entitled to attorney's fees under OPRA, . . . when they 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."

[Mason v. City of Hoboken, 196 N.J. 51, 76 (2008) (quoting Singer v. State, 95 N.J. 487, 494, cert. denied, 469 U.S. 832, 105 S. Ct. 121, 83 L. Ed. 2d 64 (1984)).]

In a determination of whether to award attorney's fees, the trial court should consider "the public importance of the matter, the degree of success achieved, the . . . risk . . . of non-payment, and any other factors" supporting the request. New Jerseyans for a Death Penalty Moratorium v. N.J. Dep't of Corr., 185 N.J. 137, 158 (2005).

In Mason, the Court observed an OPRA request should not become a battle over attorney's fees. Mason, supra, 196 N.J. at 79. Here, defendants timely released redacted documents, starting the "process with some form of response." Defendants failed to fulfill the obligations to articulate reasons for the claimed exemption.

We locate no authority, and plaintiff offers none, imposing attorney's fees for this type of omission. Fees are awarded when the records response is ignored, trammeling OPRA's objective of a transparent government. Defendants' response was appropriate and there was no unjustifiable denial of access. Therefore, plaintiff cannot meet Mason's two-pronged test and is not entitled to an award of attorney's fees.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION