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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3729-21**

DOUGLAS F. CIOLEK, ESQ.,

Plaintiff-Appellant,

v.

TOWNSHIP OF ROXBURY,

Defendant-Respondent.

Argued May 10, 2023 – Decided July 26, 2023

Before Judges Accurso, Firko, and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-0668-22.

Douglas F. Ciolek, appellant, argued the cause pro se.

James T. Bryce argued the cause for respondent (Murphy McKeon PC, attorneys; James T. Bryce, on the brief).

PER CURIAM

Plaintiff Douglas F. Ciolek, a partner at the law firm of Rosenberg Jacobs Heller & Fleming, PC (the law firm), appeals from a Law Division order denying

his Open Public Records Act (OPRA) request under N.J.S.A. 47:1A-1 to -13, seeking police notes relating to Natalia Brewington and Thomas Grego and a location in Landing known as Rumor's Gentlemen's Club (Rumor's). Brewington and Grego are plaintiffs in two pending Law Division actions¹ filed against Rumor's. Ciolek sought the information, pertaining to a field inquiry or investigatory stop, in connection with his defense of multiple defendants in the two actions. Defendant Township of Roxbury (the Township) responded by providing a police report but refused to produce two related criminal investigatory reports. The trial court found the two criminal investigatory reports were exempt from OPRA's disclosure requirements under N.J.S.A. 47:1A-1.1. We remand for the trial court to conduct an in camera review and consider its decision anew.

I.

On April 1, 2022, Ciolek submitted an OPRA request to the Township seeking "All police reports [plus] notes relating to: (1) Natalia Brewington, date of birth . . ., from 1-1-15 to present; (2) Thomas Grego, date of birth . . .,² from

¹ The two matters are Brewington v. Rumor's, L-1818-20, and Grego v. Rumor's, L-0117-21. The complaints are not contained in the record.

² We redacted the dates of birth because they are confidential personal identifiers.

2-3-19 to 2-28-19; and (3) 130 Landing Road, Landing, N.J. (Rumor's address) from 4-11-19 to 4-21-19 and 2-3-19 to 2-4-19."

On April 11, 2022, Kathy Florio, the Township's custodian, responded to Ciolek's request. The Township provided Ciolek an operations report concerning Brewington and advised Ciolek it possessed a February 3, 2019 investigatory report that was not eligible for release as a criminal investigatory record regarding Grego and 130 Landing Road. The operations report details an interaction a patrolman had with Brewington in Rumor's parking lot at 130 Landing Road while she was being dropped off and waiting for the bartender to open up. The patrolman was concerned about the vehicle being in the parking lot when the business was closed. After asking Brewington and the driver, Anthony M. Mariano, for their identification, the patrolman ran background checks on them, "which yielded negative findings" as to both of them.

On April 19, 2022, the law firm filed a verified complaint and an order to show cause (OTSC) naming the law firm as plaintiff, alleging the Township's denial of the firm's request for the investigation reports violated N.J.S.A. 47:1A-3(a) because the denial did not indicate the reports related to an investigation in progress. The law firm also alleged the Township's denial "did not indicate that turning over the investigative report would be inimical to the public interest" or

whether the withheld documents existed before an investigation, or if the investigative reports related to a criminal investigation, under N.J.S.A. 47:1A-3(a). The law firm alleged that even if the Township's investigative reports related to a criminal investigation, the Township was "still obligated" to turn over at least part of the investigative reports pursuant to N.J.S.A. 47:1A-3(b). The law firm sought production of all investigative reports and counsel fees in its prayer for relief.

The Township filed an answer and a brief in opposition to the law firm's OTSC. The Township argued access to the records was not denied pursuant to N.J.S.A. 47:1A-3(a) based on an investigation in progress but because the records constitute criminal investigatory records, which are not "government records" subject to OPRA access under N.J.S.A. 47:1A-1.1. In addition, the Township challenged the law firm's standing to file the verified complaint and OTSC under OPRA because Ciolek signed the OPRA request form.

On July 11, 2022, the trial court conducted oral argument on the OTSC and verified complaint. The trial court ordered Ciolek to file an amended verified complaint naming himself as plaintiff instead of his law firm to avoid potential standing issues. Ciolek was the named OPRA requester, not his law firm, but the law firm was designated as plaintiff in the verified complaint, and

the trial court did not want to decide the matter on the basis of standing alone. The trial court reserved decision on the relief sought in the verified complaint and OTSC. The next day, Ciolek filed an amended verified complaint substituting himself personally in place of his law firm as plaintiff.

On August 1, 2022, the trial court entered an order granting judgment in favor of the Township accompanied by a statement of reasons. In reviewing OPRA's statutory scheme, the trial court noted "'government records' under OPRA are broadly defined and accessible" and "records must be covered by a specific exclusion to prevent disclosure." In the trial court's analysis, Ciolek sought "only reports and notes," thereby implicating N.J.S.A. 47:1A-1.1, which exempts "criminal investigatory records" from OPRA disclosure because such records are "deemed to be confidential."

The trial court also rejected Ciolek's claim that pursuant to N.J.S.A. 47:1A-3(b), the Township was required to disclose at least "certain investigatory information," because the underlying conduct is no longer under investigation. The trial court emphasized the investigatory reports and notes "may include disclosable information," but Ciolek "did not seek that information, only records." The trial court added that "OPRA does not countenance open-ended searches of an agency's files," concluding Ciolek's request was "overly broad"

in seeking otherwise accessible information in the reports, relying on our opinion in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005).

On appeal, Ciolek argues the trial court erred in refusing to order disclosure of non-exempt portions of the Township's two criminal investigation reports. The Township contends the trial court correctly concluded that the reports are not subject to public access under OPRA. In the alternative, the Township asserts the trial court's decision to dismiss the amended verified complaint should be affirmed because Ciolek's law firm lacked standing under OPRA to file the original verified complaint, and Ciolek untimely amended the verified complaint to name himself as plaintiff beyond the forty-five-day time limit applicable to actions in lieu of prerogative writs.

II.

"The trial [court's] determination that plaintiff's OPRA request was properly denied and the legal conclusion regarding the appropriate exemption are both legal issues subject to de novo review." N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Off., 447 N.J. Super. 182, 194 (App. Div. 2016) (citations omitted).

"Any analysis of OPRA 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. Twp. of Bloomfield, 227 N.J. 159, 170 (2016) (alteration in original) (quoting N.J.S.A. 47:1A-1); see also Mason v. City of Hoboken, 196 N.J. 51, 65 (2008). New Jersey champions a "long and proud 'tradition[] of openness and hostility to secrecy in government.'" Simmons v. Mercado, 247 N.J. 24, 37 (2021) (quoting Educ. L. Ctr. v. N.J. Dep't of Educ., 198 N.J. 274, 283 (2009)).

However, OPRA requests are not without measured limitations. OPRA does not "'authorize a party to make a blanket request for every document' a public agency has on file Rather, a party requesting access to a public record under OPRA must specifically describe the document sought." Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005) (quoting Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 213 (App. Div. 2005)).

"Although OPRA favors broad public access to government records, it is 'not intended [to be] a research tool [that] litigants may use to force government officials to identify and siphon useful information.'" Simmons, 247 N.J. at 38

(quoting In re N.J. Firemen's Ass'n Obligation, 230 N.J. 258, 276 (2017) (alterations in original)). "[T]he custodian may deny . . . [a request after] attempt[ing] to reach a reasonable solution . . . that accommodates the interests of the requestor and the agency." Bent, 381 N.J. Super. at 37 (quoting N.J.S.A. 47:1A-5(g)). A valid OPRA request requires "a search, not research." Burnett v. Cnty. of Gloucester, 415 N.J. Super. at 506, 516 (App. Div. 2010).

Ciolek argues that the trial court erred in concluding the entirety of the documents he requested were exempt as criminal investigatory records under N.J.S.A. 47:1A-1.1, because that falls short of the requisite analysis.³ Ciolek claims the criminal investigatory records exemption found in N.J.S.A. 47:1A-1.1 "is qualified" by N.J.S.A. 47:1A-3(b)'s disclosure requirements pertaining to ongoing criminal investigations.

OPRA exempts from public disclosure "criminal investigatory records." N.J.S.A. 47:1A-1.1. "Criminal investigatory records" are defined as records

³ Although not essential to our resolution of the appeal, we note our disagreement with the Township's argument that the law firm lacked standing to file the verified complaint. We addressed this very issue in Underwood Properties, LLC v. Hackensack, 470 N.J. Super. 202, 213 (App. Div. 2022), where we rejected the defendant's argument that the plaintiffs' counsel lacked standing to file an OPRA complaint. We held counsel had "the power to act under implied authority," id. at 210, because "[c]ounsel sought the records to further the underlying litigation involving the same parties and counsel," id. at 213.

"not required by law to be made, maintained, or kept on file that is held by a law enforcement agency[,] which pertains to any criminal investigation or related civil enforcement proceeding." N.J.S.A. 47:1A-1.1.

In contrast to criminal investigatory records, OPRA allows access to "[r]ecords of investigations in progress." N.J.S.A. 47:1A-3. Under N.J.S.A. 47:1A-3(a),

where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in [OPRA] . . . as amended and supplemented may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest.

N.J.S.A. 47:1A-3(b) also allows that notwithstanding OPRA, certain "information concerning a criminal investigation shall be available to the public within [twenty-four] hours or as soon as practicable, of a request for such information," with differences in what must be disclosed depending on whether an arrest was yet made or not. For instance, "where a crime has been reported but no arrest yet made," OPRA mandates disclosing "information as to the type of crime, time, location and type of weapon, if any," whereas "if an arrest has been made," the agency must disclose "information as to the defendant's name, age, residence, occupation, marital status and similar background information

and, the identity of the complaining party unless the release of such information is contrary to existing law or court rule." Ibid.

Because we are unable to review the contents of the two criminal investigatory reports, we remand to the trial court for an in camera review to ascertain whether the documents include information that is exempted under OPRA. Absent this review, the trial court cannot perform its function of assessing the Township's exemption claim, nor can we perform our de novo review of the court's legal conclusion that an exemption applies. See In re N.J. Firemen's Ass'n Obligation, 230 N.J. at 273-74 (stating that "determinations about the applicability of OPRA and its exemptions are legal conclusions . . . subject to de novo review").

We have stated, "the court is obliged when a claim of confidentiality or privilege is made by the public custodian of the record, to inspect the challenged document in camera to determine the viability of the claim." MAG Ent., LLC, 375 N.J. Super. at 551 (citing Hartz Mountain Indus., Inc. v. N.J. Sports & Exposition Auth., 369 N.J. Super. 175, 183 (App. Div. 2004)). The purpose of an in camera inspection is to allow both parties the opportunity to address principles related to the claim of confidentiality and privilege; in camera review also allows the government custodian to argue specifically "why the document

should be deemed privileged or confidential or otherwise exempt from the access obligation." Ibid. We therefore remand for the trial court to undertake the necessary in camera inspection to enable the trial court to exercise its role in assuring that documents and information are not improperly withheld under OPRA. We leave the scope and breadth of the in camera inspection to the discretion of the trial court.

Remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION