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LIBERTARIANS FOR TRANSPARENT
GOVERNMENT, A NJ NONPROFIT
CORPORATION

Plaintiff,

v.

TOWNSHIP OF EASTAMPTON and KIM-
MARIE WHITE in her official capacity as
records custodian for Township of Eastampton,

Defendants.

NEW JERSEY SUPERIOR COURT
LAW DIVISION, CIVIL PART
BURLINGTON COUNTY

DOCKET NO.: BUR-L-1158-18

CIVIL ACTION

**DEFENDANTS, TOWNSHIP OF
EASTAMPTON AND KIM MARIE
WHITE, BRIEF IN OPPOSITION TO
THE PLAINTIFF'S ORDER TO SHOW
CAUSE**

PRELIMINARY STATEMENT

This matter is based upon an Open Public Records Act (“OPRA”) request which was submitted by Libertarians for Transparent Government (“Plaintiff”) to the Township of Eastampton (“Defendant” or “Township”). In their OPRA request, Plaintiff sought several documents and categories of records related to a Township employee and the Township was responsive to Plaintiff’s request. However, Plaintiff alleges that the Township wrongfully denied the OPRA request with respect to one document only. Specifically, Plaintiff brings this action because Plaintiff alleges that the Township failed to produce a “payroll record.” Instead of a “payroll record” the Township produced an Employee Maintenance Report (the “Report”) which provided all of the information sought by Plaintiff other than an explicit statement that the employee in question was still being paid by the Township. The Report does, however, indicate when the employee in question was hired, what the employee’s salary is, and provides no

indication that the employee was terminated or has separated from employment. In short, the Report does not indicate that the employee in question is not being paid by the Township.

Unable to determine from the Report if the employee in question was still being paid by the Township and unable to confirm “anonymous tip” and “anonymous sources,” Plaintiff chose to file suit rather than call the Township and ask for clarification. Per Plaintiff, the decision to resort directly to a lawsuit was for “the taxpayers of Eastampton” who “clearly have an interest in knowing such information.” Unfortunately, the taxpayers are now burdened with the Township’s costs of defending this suit, and potentially with Plaintiff’s costs as this is a fee shifting matter, all due to confusion which could have been clarified in a simple phone-call.

As will be argued below, the Township does not possess a “payroll record” for the employee in question, or for any employees. As such, Plaintiff’s Complaint should be dismissed as the Township cannot be compelled to produce a document which does not exist and is therefore obviously not in the Township’s possession.

LEGAL ARGUMENT

It appears both Plaintiff and Defendant agree as to the requirements of OPRA however, Plaintiff’s case must be dismissed as the Township cannot be compelled to produce a document which does not exist.

The parties are in full agreement as to the rationale and requirements of OPRA and that the public agency bears the burden of proving any denial of access is lawful. There is also no argument from the Township that the information sought by Plaintiff is not subject to OPRA or that the requested information is exempted from OPRA in any way. Where the Township disagrees with Plaintiff’s position is in Plaintiff’s arguments that “Eastampton has violated OPRA by denying access to [the employee’s] payroll records” and that “the Court should compel

access to [the employee's] payroll record." The "payroll record" sought by Plaintiff simply does not exist and the Court cannot compel the Township to produce a document that does not exist.

Per OPRA, "all government records shall be subject to public access." N.J.S.A. 47:1A-1. A "government record" is then defined as "any 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..." (Emphasis added). N.J.S.A. 47:1A-1.1. Per the very language of OPRA, the range of documents that must be produced include only those documents that have been "made, maintained, or kept on file" or that have "been received in the course" of the public agency's official business.

When a requested record does not exist, a record custodian would simply deny the request for that document. However, once a request for records is denied, "the public agency shall have the burden of proving that the denial of access is authorized by law." N.J.S.A. 47:1A-6. This same statute also gives a person who is denied access to a government record two avenues of appeal, which are instituting a proceeding 1) in New Jersey's Superior Court or 2) before the Government Records Council ("GRC").

When a requested record is nonexistent, an appeal to the GRC is dismissed with nothing more than a certification from the records custodian that the requested record is nonexistent. Pusterhofer v. NJ Dep't of Educ. (GRC Complaint No. 2005-49). (Pusterhofer Final Decision is

attached as **Exhibit A**). In Pusterhofer, when determining whether access was unlawfully denied pursuant to OPRA, the GRC held “the Custodian has certified that the requested record does not exist. Therefore, the requested record can not be released and there was no unlawful denial of access.” Pusterhofer remains the holding GRC decision with respect to nonexistent records and is cited for that reason as shown in Merritt v. NJ Department of Corrections where the GRC found “[t]he Council, therefore, finds that the Custodian has borne his burden of proof that he lawfully denied access to the requested record, described in the Complainant’s February 9, 2015 OPRA request, because he certified and the record reflects that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep’t of Educ. (GRC Complaint No. 2005-49).” Merritt v. NJ Department of Corrections (GRC Complaint No. 2015-146) (Merritt Final Decision is attached as **Exhibit B**).

While the disposition of a nonexistent record is clear-cut at the GRC level, it does not appear that this issue has been raised as often in New Jersey’s courts. New Jersey’s Supreme Court briefly addressed this issue in Sussex Commons Associates, LLC v. Rutgers. While only appearing as dictum not central to the holding in this case, the Supreme Court did state “...OPRA does not require public agencies to create records.” Sussex Commons Associates, LLC v. Rutgers, 210 N.J. 531, 544 (2012). In making this statement, the Supreme Court cited MAG Entertainment, LLC v. Division of Alcoholic Beverage Control where the Appellate Division reasoned “OPRA simply operates to make identifiable government records readily accessible for inspection, copying, or examination” and “under OPRA, agencies are required to disclose only identifiable governmental records. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546, 549 (App. Div. 2005).

In 2016, the Appellate Division faced the issue of nonexistent records head on in Paff v. Galloway Township, 444 N.J.Super. 495 (App. Div. 2016). This case involved a request for a log of emails, which was a document that did not exist, but which could be easily and quickly produced. In Paff the Appellate Division stated “[w]e hold that OPRA does not require the creation of a new government record that does not exist at the time of a request, even if the information sought to be included in the new government record is stored or maintained electronically in other government records.” Id. at 504.

Of course, the holding in Paff was overturned by the Supreme Court which ultimately found that the requested email logs had to be produced by the public agency. Paff v. Galloway Township, 229 N.J. 340 (2017). However, important to note is that the Supreme Court did not disturb the Appellate Division’s holding with respect to creation of nonexistent records, but instead the Supreme Court found that “electronically stored information extracted from an email **is not the creation of a new record or new information**; it is a government record.” (Emphasis added). Id. at 353. So, in a case where the Appellate Division was clear in that a public agency was not required to create a nonexistent document, the Supreme Court overturned the Appellate Division only because it found that the requested records did, in fact, exist and thus had to be produced. The Supreme Court’s negative treatment of the Appellate Division’s ruling did not in any way disturb the finding that OPRA does not require the creation of a nonexistent document.

ANALYSIS

Eastampton Township complied with Plaintiff’s OPRA request in all ways other than providing the requested payroll record. The simple fact is that the Township does not possess a responsive payroll record. (See **Exhibit C** – Certification of Records Custodian). Per Exhibit C, the Records Custodian conducted an exhaustive search for a responsive payroll record but no

responsive record was discovered. The lack of a responsive payroll record was no surprise, as Defendant's Record Custodian has personal knowledge of the available records for Township Employees. Per Exhibit C, the Township previously used Edmunds & Associates, Inc. for payroll service but began using Casa Payroll Services approximately three (3) years ago. Since the Township began using Casa Payroll Services, the scope of available employee records for a request such as this has been limited to an Employee Maintenance Report, which is what the Township provided to Plaintiff. This Employee Maintenance Report is the same document that would be provided if the payroll record of any Township employee was requested.

As the requested "payroll record" does not exist, the Township could have simply denied that portion of Plaintiff's OPRA request, but instead, in an effort to provide Plaintiff with the information sought, the Township provided an Employee Maintenance Report. Plaintiff concedes that the Employee Maintenance Report does provide the employee's name, title, position and length of service, but argues that the Employee Maintenance Report does not allow Plaintiff to determine what the employee "has actually been paid, whether she took a leave of absence, the dates of her leave of absence, the type of absence, and the amount of salary paid during her leave of absence." The Employee Maintenance Report clearly indicates the employee's salary and pay rate. And the Employee Maintenance Report does not contain any indication of a leave of absence and the amount of pay during a leave of absence because the employee did not take a leave of absence. While the Employee Maintenance Report may not match up with the "anonymous tips" and other information Plaintiff received from "anonymous sources," the Employee Maintenance Report provided Plaintiff with the information sought even in the absence of a responsive "payroll record." Again, a simple phone-call to the Township

could have served to confirm whether the Township possessed an actual “payroll record” and whether the rumors espoused by “anonymous sources” were in fact true.

Although not relevant to this matter, Plaintiff cites the Unemployment Compensation Law and the Temporary Disability Benefits Law to explain the requirements that must be met for Township payroll records. Upon review of those laws, it is not clear if the Township’s Employee Maintenance Report would meet the requirements of a “payroll record,” but that is not what this Court is asked to decide. At issue in this matter is whether the Court should compel the Township to release the requested “payroll record.” The requested “payroll record” does not exist and cannot be released. Any arguments as to the sufficiency of the Township’s records pursuant to the Unemployment Compensation Law and the Temporary Disability Benefits Law are not at issue here.

Obviously, Defendant agrees with Plaintiff in that OPRA is fee shifting and that Plaintiff is entitled to reasonable attorney’s fees if Plaintiff is a prevailing party. However, Plaintiff argues that the “Court should order Eastampton to grant access to the payroll record, which would therefore render Plaintiff statutorily entitled to an award of attorney’s fees and costs of suit.” Again, there is no existing “payroll record” that the Township can be ordered to grant access to. As such, Plaintiff cannot be seen as a prevailing party and is not entitled to an award of attorney’s fees and costs of suit.

CONCLUSION

Putting aside requirements of other sources of law, the Township does not possess a “payroll record” which was responsive to Plaintiff’s request. Instead, the Township produced an Employee Maintenance Report which contained all of the information sought by Plaintiff. It is unclear why Plaintiff did not contact the Township to determine if additional information was

available or to attempt to confirm the “anonymous tips” that Plaintiff is attempting to confirm/prove through this OPRA request and litigation and instead resorted directly to litigation which is costly to all parties. At any rate, the record in question does not exist and as such, Plaintiff’s Complaint should be dismissed with prejudice and Plaintiff should not be deemed a prevailing party for the purposes of an award of attorney’s fees and costs.

GRACE, MARMERO & ASSOCIATES, LLP
Attorneys for Defendants

Dated: 9/6/2018

By: /s/ Albert K. Marmero
Albert K. Marmero, Esq.

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LIBERTARIANS FOR TRANSPARENT
GOVERNMENT, A NJ NONPROFIT
CORPORATION

Plaintiff,

v.

TOWNSHIP OF EASTAMPTON and KIM-
MARIE WHITE in her official capacity as
records custodian for Township of Eastampton,

Defendants.

NEW JERSEY SUPERIOR COURT
LAW DIVISION, CIVIL PART
BURLINGTON COUNTY

DOCKET NO.: BUR-L-1158-18

CIVIL ACTION

**ATTORNEY CERTIFICATION IN
SUPPORT OF OPPOSITION TO THE
PLAINTIFF'S ORDER TO SHOW
CAUSE**

I, Albert K. Marmero, of full age, hereby certify the following statements:

1. I am the attorney for the Defendants in the above captioned matter, and am fully familiar with the facts and circumstances of the above captioned litigation.
2. The factual statements contained in Plaintiff's Answer and Brief in Opposition to the Plaintiff's Order to Show Cause in the above-captioned matter are true and accurate based upon my personal knowledge.
3. 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.

GRACE, MARMERO & ASSOCIATES, LLP
Attorneys for Defendants

Dated: 9/6/2018

By: /s/ Albert K. Marmero
Albert K. Marmero, Esq.

EXHIBIT A



**State of New Jersey
GOVERNMENT RECORDS COUNCIL**

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PO BOX 819
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511
Fax: 609-633-6337

E-mail: grc@dca.state.nj.us
Web Address:
www.nj.gov/grc

2005-49

- [Final Decision](#)
- [Findings and Recommendations of the Executive Director](#)

Final Decision

John Pusterhofer
Complainant
v.
NJ Department of Education
Custodian of Record

Complaint No. 2005-49

At the July 14, 2005 public meeting, the Government Records Council ("Council") considered the July 8, 2005 Executive Director's Findings and Recommendations and all related documents submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations with the amendment that the Custodian be placed on the "Matrix." Therefore, the Council dismissed the case on the basis that:

1. The Custodian certified that the records responsive to the request do not exist; therefore there was no unlawful denial of access.
2. The Custodian's violation of N.J.S.A. 47:1A-5(i) does not rise to a level of a knowing and willful violation of OPRA under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006.

Final Decision Rendered by the
Government Records Council
On The 14th Day of July, 2005

Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.
DeAnna Minus-Vincent, Secretary
Government Records Council

Decision Distribution Date: July 27, 2005

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Findings and Recommendations of the Executive Director

John Pusterhofer
Complainant
v.
NJ Department of Education
Custodian of Records

GRC Complaint No. 2005-49

Records Requested:(as stated by the Complainant)

A copy of the actual long distance telephone bill that would provide evidence that a call was placed in August or September from the 609 area code to the 732 area code. The actual date and the phone number that originated the supposed call as well as the time of the call and the phone number that the supposed call was placed to are required.

Request Made: February 14, 2005

Response Made: March 3, 2005

Custodian: Dr. Michael Rush

GRC Complaint filed: March 15, 2005

Background

9/5/2018

2005-49

February 14, 2005

Written Open Public Records Act (OPRA) Request - Complainant seeks a copy of phone records that would prove a phone call was made to him by an official from the Department of Education .

March 2, 2005

Custodian responded to the request stating that, " Your latest inquiry was an OPRA request to obtain a copy of a long distance telephone bill to determine if a call was made to you on September 28, 2004...there was a mix up as to when the scheduled meeting was to take place... Therefore, there is no record of any telephone calls made to you..."

March 15, 2005

Denial of Access Complaint filed by the Complainant stating that the Custodian was non-responsive to his request and that the response was delinquent.

March 30, 2005

Statement of Information submitted by the Custodian that certified that the requested records do not exist. The certification specifically states, "No such telephone bill exists for August and/or September 2004 that displays a telephone call to Mr. Pusterhofer at the Shrewsbury Board of Education (732-936-9277)."

June 10, 2005

Letter from GRC staff, to the Records Custodian, that requested a certified explanation for the delay in response to the records request.

June 13, 2005

Custodian's certification explaining that there was a delay in response due to out of office traveling. The Custodian stated that on February 15, 2005 he was out visiting several districts and was not in the office. On the February 16, 2005, he departed for an out of state conference and did not return until February 23, 2005.

Analysis**Whether access was unlawfully denied pursuant to OPRA?**

OPRA provides that:

"all government records shall be readily accessible for inspection, copying, or examination by the citizens of this state, with certain exceptions..." N.J.S.A. 47:1A-1.

OPRA defines a "government record" as:

"...any 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..." N.J.S.A. 47:1A-1.1

The Custodian has certified that the requested record does not exist. Therefore, the requested record can not be released and there was no unlawful denial of access.

WHETHER there was a knowing and willful violation of OPRA under the totality of the circumstances?

OPRA provides that:

"Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived.

In the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request, unless the requestor has elected not to provide a name, address or telephone number, or other means of contacting the requestor. N.J.S.A. 47:1A-5(i)

The Custodian did not respond in a timely manner. The Custodian did certify that the response was delayed due to extensive business travel. Pursuant to N.J.S.A. 47:1A-5(i), the Custodian should have responded to the complaint, as soon as possible, but not later than seven business days. While the Custodian did violate N.J.S.A. 47:1A-5(i), the violation does not rise to a level of knowing and willful violation of OPRA under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council dismiss this case on the basis that:

1. The Custodian has certified that the records responsive to the request do not exist, therefore there was no unlawful denial of access.
2. The Custodian's violation of N.J.S.A. 47:1A-5(i) does not rise to a level of a knowing and willful violation of OPRA under the totality of the circumstances.

Prepared By: Kimberly Gardner, Case Manager

Approved By:
Paul F. Dice
Executive Director
Government Records Council

July 8, 2005

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EXHIBIT B



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO BOX 819
 TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

January 26, 2016 Government Records Council Meeting

Charles Merritt
 Complainant

Complaint No. 2015-146

v.

NJ Department of Corrections
 Custodian of Record

At the January 26, 2016 public meeting, the Government Records Council ("Council") considered the January 19, 2016 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian has borne his burden of proof that he lawfully denied access to the requested record, described in the Complainant's February 9, 2015 OPRA request, because he certified and the record reflects that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ. (GRC Complaint No. 2005-49).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
 Government Records Council
 On The 26th Day of January, 2016

Robin Berg Tabakin, Esq., Chair
 Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
 Government Records Council

Decision Distribution Date: January 29, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 26, 2016 Council Meeting**

**Charles Merritt¹
Complainant**

GRC Complaint No. 2015-146

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: “A record of: On 4/20/88, pursuant to docket #4983, serial number 5144, an escape was adjudicated, this escape as a juvenile was cited as though it occurred in custody of a county or state facility. The adjudication was 4/19/1989. I would like the contents of this escape as to the charges, complaints, and dispositions.”

Custodian of Record: John Falvey
Request Received by Custodian: February 23, 2015
Response Made by Custodian: February 25, 2015
GRC Complaint Received: May 26, 2015

Background³

Request and Response:

On February 9, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 25, 2015, the Custodian responded in writing to deny the request, contending that the requested records were court records that are not made, maintained, or kept on file by the NJ Department of Corrections (“DOC”).

Denial of Access Complaint:

On May 20, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s denial of access was unlawful but made no other legal arguments.

Statement of Information:

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

On June 4, 2015, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that he received the Complainant’s OPRA request on February 23, 2015. The Custodian averred that the request was for “the contents of an escape charge that was adjudicated in 1989.” The Custodian certified that his search included a review of the Complainant’s classification folder, where such records would be located. However, the search yielded no responsive records. The Custodian certified that he responded in writing on February 25, 2015, informing the Complainant that no records were located and advising him to check with the appropriate court. The Custodian argued that the denial was proper pursuant to the GRC holding in Pusterhofer v. NJ Dep’t of Educ. (GRC Complaint No. 2005-49), stating there is no unlawful denial of access when there are no records responsive to a request.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The Council has previously found that, in light of a custodian’s certification that no records responsive to the request exist, no unlawful denial of access occurred. *See Pusterhofer* GRC Complaint No. 2005-49 (July 2005). In the instant matter, the Custodian certified that, while the appropriate court may be in possession of the requested records, said records do not exist in the possession of the DOC. Additionally, the Complainant offered no information to refute the Custodian’s certification.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the requested record, described in the Complainant’s February 9, 2015 OPRA request, because he certified and the record reflects that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the requested record, described in the Complainant’s February 9, 2015 OPRA request, because he certified and the record reflects that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep’t of Educ. (GRC Complaint No. 2005-49).

Prepared By: Husna Kazmir
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

January 19, 2016

EXHIBIT C

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Defendants.

NEW JERSEY SUPERIOR COURT
LAW DIVISION, CIVIL PART
BURLINGTON COUNTY

DOCKET NO.: BUR-L-1158-18

CIVIL ACTION

**DEFENDANT, KIM MARIE WHITE,
CERTIFICATION IN SUPPORT OF
OPPOSITION TO THE PLAINTIFF'S
ORDER TO SHOW CAUSE**

I, Kim-Marie White, of full age, hereby certify the following statements:

1. I am the Records Custodian for the Township of Eastampton, and make this certification in support of the Defendants opposition to the Plaintiff's Order to Show Cause and Verified Complaint. I am fully familiar with the facts and circumstances herein.
2. On or about April 19, 2018 I received an Open Public Records Act ("OPRA") request from the Libertarians for Transparent Government. See Plaintiff's Verified Complaint Exhibit A.
3. Item number 1 of Plaintiff's OPRA request requested "For police officer Diana Welthy, we'd like her: name, title, position, salary, payroll record, length of service, date of separation and the reason therefor."
4. In response to Plaintiff's OPRA request I submitted to Plaintiff an Employee Maintenance Report, see Plaintiff's Verified Complaint Exhibit C.

5. After an exhaustive search for the requested payroll record I verified that no responsive document exists.
6. In addition to my search, I had representatives of the Eastampton Township Police Department conduct a search for the requested payroll record and no responsive record was discovered.
7. I verify that I did not destroy the requested payroll record.
8. Independent of any search I conducted, I have personal knowledge that the requested payroll record does not exist because I am aware that as of approximately three (3) years ago Eastampton Township went from using Edmunds & Associates, Inc. for payroll services to now using Casa Payroll Services.
9. When using Casa Payroll Services, the Employee Maintenance Report which I provided to Plaintiff is the only such "payroll record" I have access to.
10. The Employee Maintenance Report I provided to Plaintiff is the only "payroll record" I would have available for any Eastampton Township employee.
11. I, Kim-Marie White, hereby certify that the foregoing statements made by me are true and accurate. I understand that if any statement is found to be willfully false that I am subject to punishment.

Dated:

9/5/18



Kim-Marie White, Records Custodian
Township of Eastampton

