

Since the scanned version of the original document is very large file, I have created this document, which is substantially identical to the original. It has been modified from the original in that the signature line has been "conformed" and the Court's stamp was changed as well

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F I L E D

September 10, 2007

Monmouth County Vicinage
Civil Division

JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	MONMOUTH COUNTY
vs.	:	DOCKET NO. L-4358-07
	:	
MONMOUTH COUNTY and	:	
JAMES GRAY, in his capacity as the	:	
Monmouth County Custodian of	:	
Records	:	Civil Action
Defendants.	:	
	:	COMPLAINT
	:	

Plaintiff JOHN PAFF, by way of Complaint against Defendants MONMOUTH COUNTY (hereafter, "Defendant County") and JAMES GRAY, the MONMOUTH COUNTY Records Custodian (hereafter, "Defendant Custodian") states as follows:

GENERAL ALLEGATIONS

1. Plaintiff JOHN PAFF is an individual who resides in Franklin Township, Somerset County, New Jersey. He receives mail at P.O. Box 5424. Somerset, New Jersey.
2. Defendant County is a public agency as that term is defined by the Open Public Records Act, N.J.S.A. 47:1A-1.1.
3. Upon information and belief., Defendant County's address is 71 Monument Park, Freehold, New Jersey.

4. Defendant Custodian is the "Custodian of a government record " as that term is defined by The Open Public Records Act, N.J.S.A. 47:1A-1.1.

5. Upon information and belief, Defendant Custodian's business address is 71 Monument Park, Freehold, New Jersey.

6. According to an article published in the Asbury Park Press on July 13, 2007. Defendant County settled a 2005 lawsuit, which had been filed by Carol C. Melnick, alleging that county officials ignored her complaints of discrimination and sexual harassment by her superiors.

7. On July 19, 2007, Plaintiff John Paff submitted a request to Defendant Custodian pursuant to the Open Public Records Act and the common law Right of Access.

8. Plaintiff Paff requested (1) the settlement agreement related to the Melnick matter, (2) any records showing that the referred-to settlement agreement was filed with a court or other tribunal, and (3) any records showing that a confidentiality order regarding the Melnick litigation was issued by a court or other tribunal.

9. Plaintiff Paff submitted his request pursuant to the Open Public Records Act and the Common Law Right of Access.

10. Plaintiff Paff submitted his request to Defendant Custodian on the Defendant County's official OPRA request form.

11. On July 30, 2007, Plaintiff Paff received a letter from an attorney who represents Defendant County, notifying Plaintiff Paff that Defendant County would not provide the requested records, claiming the settlement agreement is not a public record subject to disclosure under OPRA or the common law.

12. Settlement agreements are public records pursuant to OPRA and the common law, N.J.S.A. 47:1A-1.1; South Plainfield Republican Organization v. Buttligieri, 2007 WL

1891301 (App. Div. July 3, 2007) (per curiam) (noting Trial Court ordered disclosure of confidential settlement agreement); see also State ex. Rel. Findlay Publ'g Co. v. Hancock County Board of Com'rs, 684 N.E.2d 1222, 1225 (Ohio 1997); Tribune-Review Publ'g Co. v. Westmoreland County Housing Auth., 833 A.2d 112 (Pa. 2003).

13. The settlement agreement is also a "public record" pursuant to the common law because it is necessary for the discharge of the Defendant County's duty, prepared by the County or the County's agents, and authorized by law.

14. Plaintiff Paff is an advocate of open government in the State of New Jersey who has a legitimate interest in the terms of the settlement between the County and the person who sued it.

15. Plaintiff Paff's interest in the settlement agreement outweighs the State's interest in preventing disclosure.

WHEREFORE, Plaintiff demands judgment:

A. Declaring that the settlement agreement in the Melnick v. Monmouth County Board of Chosen Freeholders, et al is a public record subject to production under OPRA.

B. Declaring that Defendant County violated the Open Public Records Act by refusing to provide Plaintiff with the settlement agreement in a timely manner.

C. Declaring that Defendant Custodian violated Plaintiffs common law right to access public records.

D. Compelling Defendant Custodian, in accordance with the common law right to access public records and the Open Public Records Act, specifically N.J.S.A. 47:1A-5(b), to provide Plaintiff copies of the settlement agreement in the Melnick matter.

E. Imposing fines, pursuant to N.J.S.A 47:1A-11, on any "public official, officer, employee or custodian who knowingly or willfully violates P.L.1963, c 73 (C.47:1A-1 et seq.),

as amended and supplemented and is found to have unreasonably denied access under the totality of the circumstances."

F. Awarding Plaintiff his costs of suit and a reasonable attorney fee pursuant to N.J.S.A, 47:1A-6.

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

Certification Of No Other Actions

Pursuant to R.4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Dated: September 5, 2007

THE LAW OFFICE OF
WALTER M. LUERS, LLC

/s/ Susan Hallander

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