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Co-Counsel for Plaintiff
DEBORAH JACOBS

DEBORAH JACOBS,
Plaintiff,
v.

VAL D. IMBRIACO, in his official capacity as Clerk for the City of Linden, New Jersey, CARMELA RICCI, in her official capacity as Custodian of Records for West New York, New Jersey, HEIDI R. ABS, in her official capacity as Municipal Clerk of the Township of Middletown, New Jersey, KATHERINE PUSTERLA, in her official capacity as Custodian of Records for the Township of Wayne, New Jersey and JOYCE LANIER, in her official capacity of Custodian of Records for the City of Newark, New Jersey.
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
UNION COUNTY
Docket Number:

Civil Action

**COMPLAINT IN LIEU OF
PREROGATIVE WRIT
AND JURY DEMAND**

Plaintiff Deborah Jacobs, an individual residing in the City of Newark, New Jersey, by way of complaint against the Defendants Val D. Imbriaco, Clerk for the City of Linden, New Jersey, Carmela Ricci, Custodian of Records for West New York, New Jersey, Heidi R. Abs, Municipal Clerk of the Township of Middletown, New Jersey, Katherine Pusterla, Custodian of

Records for the Township of Wayne, New Jersey, and Joyce Lanier, Custodian of Records for the City of Newark as to whom claims are hereby brought against them solely in their respective professional capacities, hereby states as follows:

GENERAL ALLEGATIONS

1. At all times hereinafter mentioned, Plaintiff was and still is resident of the State of New Jersey.

2. At all times hereinafter mentioned, Val D. Imbriaco was and still is the Clerk for the City of Linden, New Jersey.

3. At all times hereinafter mentioned, Carmela Ricci was and still is the Custodian of Records for the Town of West New York, New Jersey.

4. At all times hereinafter mentioned, Heidi R. Abs was and still is the Municipal Clerk of the Township of Middletown, New Jersey.

5. At all times hereinafter mentioned, Katherine Pusterla was and still is the Custodian of Records for the Township of Wayne, New Jersey.

6. At all times herein mentioned, Joyce Lanier was and still is the Custodian of Records for the City of Newark, New Jersey.

7. On or about March 21, 2006, Plaintiff submitted to Defendant Imbriaco a written request for the production of documents relating to the identification and classification of “potential threat elements” (“PTE Records”) pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 to -13, (“OPRA”). An amendment to that request was also submitted on March 28, 2006 (collectively, “Linden Request”). A copy of the initial request and the amendment are annexed hereto as Exhibit A and incorporated herein as if fully set forth.

8. On March 24, 2006 and March 28, 2006, the Linden Request was denied. Copies of these denials are annexed hereto as Exhibit B and incorporated herein as if fully set forth.

9. On or about March 21, 2006, Plaintiff submitted to Defendant Ricci a written request for the production of PTE Records pursuant to OPRA. An amendment to that request was also submitted on March 27, 2006 (collectively, "West New York Request"). A copy of the initial request and the amendment are annexed hereto as Exhibit C and incorporated herein as if fully set forth.

10. On or about March 22, 2006 and April 10, 2006, the West New York Request was denied. Copies of these denials are annexed hereto as Exhibit D and incorporated herein as if fully set forth.

11. On or about March 21, 2006, Plaintiff submitted to Defendant Abs a written request for the production of PTE Records pursuant to OPRA. An amendment to that request was also submitted on March 30, 2006 (collectively, "Middletown Request"). A copy of the initial request and the amendment are annexed hereto as Exhibit E and incorporated herein as if fully set forth.

12. On March 30, 2006, the Middletown Request was denied. A copy of this denial is annexed hereto as Exhibit F and incorporated herein as if fully set forth.

13. On or about March 21, 2006, Plaintiff submitted to Defendant Pusterla a written request for the production of PTE Records pursuant to OPRA ("Wayne Request"). A copy of this request is annexed hereto as Exhibit G and incorporated herein as if fully set forth.

14. On or about March 30, 2006, the Wayne Request was partially denied. A copy of this partial denial is annexed hereto as Exhibit H and incorporated herein as if fully set forth.

15. On or about March 21, 2006, Plaintiff submitted to Defendant Lanier a written request for the production of PTE Records pursuant to OPRA (“Newark Request”). A copy of this request is annexed hereto as Exhibit I and incorporated herein as if fully set forth.

16. On or about April 10, 2006, the Newark Request was denied. A copy of this denial is annexed hereto as Exhibit J and is incorporated herein as if fully set forth.

17. To date, the Plaintiff has neither received nor has been given permission to inspect and/or copy the requested and denied PTE Records.

FIRST CAUSE OF ACTION
(Open Public Records Act)

1. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth herein.

2. The records sought by Plaintiff have been made, maintained or kept on file by the Defendants in the course of their official business and are “government records” within the meaning of OPRA, N.J.S.A. 47:1A-1.1.

3. The Plaintiff is therefore entitled to inspect or copy the government records as requested pursuant to the provisions of OPRA, N.J.S.A. 47:1A-5.

WHEREFORE, the Plaintiff demands judgment as follows:

A. Compelling Defendants to make available for inspection and copying such government records requested by Plaintiff as are in the possession of Defendants;

B. Such other, further and different relief as the Court may deem just, equitable and proper under the circumstances.

SECOND CAUSE OF ACTION
(Violation of OPRA)

1. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth herein.

2. The Defendants refusal to grant the Plaintiff access to the requested PTE Records also constitutes an unreasonable denial under the totality of the circumstances.

3. By denying the Plaintiff access to the requested PTE Records, the Defendants knowingly and willfully violated OPRA.

4. The Plaintiff is entitled to a judgment against each Defendant finding each unreasonably denied the Plaintiff access to the requested PTE Records and knowingly and willfully violated and continues to violate OPRA.

WHEREFORE, the Plaintiff demands judgment against each Defendant as follows:

- A. Civil penalty of \$1,000.00 per violation; and
- B. Such other, further and different relief as the Court may deem just, equitable and proper under the circumstances.

THIRD CAUSE OF ACTION
(Attorney's Fees)

1. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth herein.

2. The Defendants improperly denied the Plaintiff's request for PTE Records in violation of OPRA.

3. The Plaintiff is therefore entitled to reasonable attorney's fees pursuant to OPRA, N.J.S.A. 47:1A-6.

WHEREFORE, the Plaintiff demands judgment against the Defendants, jointly and severally, as follows:

- A. Attorney's fees, interest and costs of suit; and
- B. Such other, further and different relief as the Court may deem just, equitable and proper under the circumstances.

FOURTH CAUSE OF ACTION

(Violation of Common-Law Right of Access)

- 1. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth herein.
- 2. The public enjoy common law right of access to public records generated or maintained by the state of New Jersey. See, e.g., Keddie v. Rutgers, the State University, 148 N.J. 36 (1997); South Jersey Publ. Co. v. New Jersey Expressway Authority, 124 N.J. 478 (1991).
- 3. In this case, there exists a strong public and private interest in favor of disclosure of the records requested here, and there is no legally sufficient countervailing interest in confidentiality of these records that would overcome that public policy.
- 4. Plaintiff is therefore entitled to access to the information requested under the common law.

WHEREFORE, the Plaintiff demands judgment against the Defendants, jointly and severally, as follows:

- A. Compelling Defendants to make available for inspection and copying such government records requested by Plaintiff as are in the possession of Defendants;
- B. Attorney's fees, interest and costs of suit; and

C. Such other, further and different relief as the Court may deem just, equitable and proper under the circumstances.

FIFTH CAUSE OF ACTION

(Equitable Relief Providing for In Camera Review and Production of a Privilege Log)

1. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if more fully set forth herein.

2. The New Jersey Supreme Court has determined that upon a claim of confidentiality or privilege by a governmental agency, it is incumbent upon the Court hearing the matter to conduct an in camera review of the material that is withheld. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534, 551 (App. Div. 2005).

3. Without waiving the request for relief set forth in the foregoing Counts, the Plaintiff asserts that in the alternative, the Court should conduct an in camera review of the items being withheld to determine if the stated rationale for withholding them is proper, given the nature of the items being withheld.

4. Plaintiff also requests that, prior to such inspection, the Court require the Defendants to provide to the Plaintiff and the Court a detailed privilege log respecting the items being withheld. This should include (a) the nature of the item produced or disclosed; (b) the date of each item; (c) the author and recipient(s) of such item; (d) the subject matter of the item; and (e) the reason it is being withheld.

WHEREFORE, the Plaintiff demands interim relief against the Defendants, jointly and severally, as follows:

A. Directing that the Defendants provide the Plaintiff and the Court with a detailed privilege log respecting any items that are being withheld by any of the Defendants. This shall

include (a) the nature of the item produced or disclosed; (b) the date of each item; (c) the author and recipient(s) of such item; (d) the subject matter of the item; and (e) the reason it is being withheld.

B. Directing that the Defendants submit any and all of the withheld items to the Court for an in camera review to determine if the stated rationale for withholding them is proper, given the nature of the items being withheld.

C. Attorney's fees, interest and costs of suit; and

D. Such other, further and different relief as the Court may deem just, equitable and proper under the circumstances.

Respectfully submitted,

NISSENBAUM & ASSOCIATES, LLC
Co-Counsel for Plaintiff
DEBORAH JACOBS

BY: _____
GARY D. NISSENBAUM, ESQ.

American Civil Liberties Union of
New Jersey Foundation
Co-Counsel for Plaintiff
DEBORAH JACOBS

BY: _____
EDWARD BAROCAS, ESQ.

Dated: May 3, 2006

CERTIFICATION PURSUANT TO R. 4:5-1

I certify pursuant to R.4:5-1, that to the best of my knowledge, information and belief, there are no other parties that should be brought into the present action. There are no other court proceedings relating to this matter, with the possible exception that the Plaintiff has filed a motion to reinstate Jacobs v. Harvey, et al., Superior Court of New Jersey, Mercer County: Law Division (Docket No. MER-L-3119-04) which relates, in part to the policy of the Attorney General of New Jersey that PTE Records not be disclosed in response to OPRA requests.

Respectfully submitted,

NISSENBAUM & ASSOCIATES, LLC
Co-Counsel for Plaintiff
DEBORAH JACOBS

BY: _____
GARY D. NISSENBAUM, ESQ.

American Civil Liberties Union of
New Jersey Foundation
Co-Counsel for Plaintiff
DEBORAH JACOBS

BY: _____
EDWARD BAROCAS, ESQ.

Dated: May 3, 2006

DESIGNATION OF TRIAL COUNSEL PURSUANT TO R. 4:5-1(c)

The Plaintiff hereby designates GARY D. NISSENBAUM, ESQ. as trial counsel with regard to this matter.

Respectfully submitted,

NISSENBAUM & ASSOCIATES, LLC
Co-Counsel for Plaintiff
DEBORAH JACOBS

BY: _____
GARY D. NISSENBAUM, ESQ.

American Civil Liberties Union of
New Jersey Foundation
Co-Counsel for Plaintiff
DEBORAH JACOBS

BY: _____
EDWARD BAROCAS, ESQ.

Dated: May 3, 2006

CERTIFICATION PURSUANT TO R. 4:69-4

The review of administrative action in this case does not involve that of agency proceedings at which a stenographic record or sound recording was made.

Respectfully submitted,

NISSENBAUM & ASSOCIATES, LLC
Co-Counsel for Plaintiff
DEBORAH JACOBS

BY: _____
GARY D. NISSENBAUM, ESQ.

American Civil Liberties Union of
New Jersey Foundation
Co-Counsel for Plaintiff
DEBORAH JACOBS

BY: _____
EDWARD BAROCAS, ESQ.

Dated: May 3, 2006

JURY DEMAND

Trial by jury is hereby demanded as to all issues so triable.

Respectfully submitted,

NISSENBAUM & ASSOCIATES, LLC
Co-Counsel for Plaintiff
DEBORAH JACOBS

BY: _____
GARY D. NISSENBAUM, ESQ.

American Civil Liberties Union of
New Jersey Foundation
Co-Counsel for Plaintiff
DEBORAH JACOBS

BY: _____
EDWARD BAROCAS, ESQ.

Dated: May 3, 2006