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*Co-Counsel for Plaintiff*  
DEBORAH JACOBS

DEBORAH JACOBS,  
Plaintiff,

v.

ZULIMA V. FARBER, in her official capacity  
as Attorney General of the State of New  
Jersey, and Bruce Solomon, in his official  
capacity as Custodian of Records of the Office  
of the Attorney General,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MERCER COUNTY  
Docket Number: MER-L-3119-04

Civil Action

**AMENDED COMPLAINT AND JURY  
DEMAND**

Plaintiff Deborah Jacobs, with a business address at c/o American Civil Liberties  
Union, PO Box 32159, Newark, New Jersey 07102, for her complaint against the  
Defendants, alleges as follows:

1. Plaintiff Deborah Jacobs is a resident of Newark, New Jersey.
2. Defendant Zulima V. Farber is the Attorney General of the State of New  
Jersey. She is sued in her official capacity only.

3. Defendant Bruce Solomon is the Custodian of Records of the Office of Attorney General. He is sued in his official capacity only.

### **GENERAL ALLEGATIONS**

#### **Background**

4. On or about April 8, 2004, Plaintiff submitted to various local law enforcement agencies in the State of New Jersey (“Agencies”) written requests pursuant to the Open Public Records Act (“OPRA”) for the production of documents relating to the identification and classification of “potential threat elements” by law enforcement authorities (“PTE Records”). A copy of one such request is attached hereto as Exhibit A and incorporated herein as if fully set forth.

5. On or about April 14, 2004, the Township of Edison, New Jersey sent correspondence to the Plaintiff denying her request for PTE Records citing that the information requested was “exempted from OPRA as per an Attorney General’s ruling,” (“Edison Letter”). A copy of this correspondence is annexed hereto as Exhibit B and incorporated herein as if fully set forth.

6. On or about April 16, 2004, the Township of Wayne sent correspondence informing the Plaintiff that the “Attorney General will be issuing a directive regarding requests for information regarding potential threat elements dealing with the Office of Counter-Terrorism,” (“Wayne Letter”). The Plaintiff was further directed to send all further correspondence regarding the matter to the Office of the Attorney General. A copy of this correspondence is attached hereto as Exhibit C and incorporated herein as if fully set forth.

7. On or about April 21, 2004, the Town of West New York stated in its correspondence to the Plaintiff that her request for PTE Records was “denied as per advice that was received from the State of New Jersey-Division of Criminal Justice,” (“West New York Letter”). A copy of this correspondence is attached hereto as Exhibit D and incorporated herein as if fully set forth.

8. Based upon the Agencies’ responses which indicated the Defendants were causing them to deny the Plaintiff access to the PTE Records on the basis that the Attorney General of New Jersey had provided such instructions to them, the Plaintiff submitted her request directly to the within Defendants on or about October 4, 2004. Specifically, Plaintiff requested, among other items, “any other memorandum, letter, email or other correspondence related to the identification or disclosure of PTEs” and “[a] copy of all directives issued by the NJ State Government regarding requests for information regarding PTEs, including the directive referred to in the attached letter dated April 16, 2004 from Mr. John J. McKniff, Assistant Township Attorney in Wayne.” A copy of that request is attached hereto as Exhibit E and incorporated herein as if fully set forth.

9. On or about October 18, 2004, Defendant Solomon electronically issued a written form denying the Plaintiff access to all of the PTE Records she requested. A copy of the written denial of access is attached hereto as Exhibit F and incorporated herein as if fully set forth.

**The Initial Complaint In Lieu of Prerogative Writ**

10. On or about December 2, 2004, pursuant to N.J.S.A. 47:1A-6, the Plaintiff filed with the Superior Court of New Jersey of Mercer County a complaint in lieu of

prerogative writ challenging the Defendants' denial of her request for PTE Records. A copy of the original complaint in lieu of prerogative writ, without exhibits, is attached hereto as Exhibit G and incorporated herein as if fully set forth.

11. In correspondence dated September 14, 2005, the Defendants made a material misrepresentation to this Court by stating that the "Attorney General's Office has no records responsive to the [Plaintiff's] OPRA request," and that "no written directive" exists with regard to Plaintiff's request ("Feinberg Letter"). A copy of this correspondence is attached hereto as Exhibit H.

12. In correspondence dated October 20, 2005, the Defendants made the material misrepresentation to the Plaintiff upon which she reasonably relied to her detriment that the Office of the Attorney General of New Jersey "has no records responsive to the OPRA request upon which the above complaint is based" and "did not direct or control the responses made by local law enforcement agencies to OPRA requests for [PTE records], which requests had been made at an earlier date by [P]laintiff," ("Harvey Letter"). The correspondence embodying this material representation is attached hereto as Exhibit I and incorporated herein as if fully set forth.

13. The Harvey Letter further stated that the parties agreed to enter into the stipulation of dismissal based on the reasons set forth therein.

14. On or about October 26, 2005, the Plaintiff relied on the Defendants' material misrepresentation embodied in the Feinberg Letter and Harvey Letter by entering into a stipulation of dismissal which dismissed the above-captioned matter. The stipulation of dismissal is attached hereto as Exhibit J and incorporated herein as if fully set forth.

### **Renewed Request for PTE Records**

15. Plaintiff further relied on Defendants' material misrepresentation that they neither directed nor controlled the responses of the Agencies to the Plaintiff's initial request for PTE Records by renewing her request for such the PTE Records with several Agencies. A copy of one such request is attached hereto as Exhibit K and incorporated herein as if fully set forth.

16. In response Plaintiff received correspondence denying her request for PTE Records from the Town Attorney for the West New York, George B. Campen, Esq., dated March 22, 2006, ("Campen Letter"). That letter enclosed and forwarded to her a memorandum to all County Prosecutors' OPRA Coordinators from Deputy Attorney General E. Robbie Miller, Esq., ("Miller Memo"), dated April 20, 2004. Copies of the Campen Letter and Miller Memo are attached hereto as Exhibits L and M, respectively and incorporated herein as if fully set forth.

17. The Miller Memo, addressed to all County Prosecutors' OPRA Coordinators, further detailed all the PTE Records requested by the Plaintiff and set forth a three-pronged reasoning which formed a basis to deny the Plaintiff's request.

18. The Miller Memo is the basis that Plaintiff has asserted that the Attorney General of the State of New Jersey committed a fraud in connection with the misrepresentations made to her that resulted in her dismissing the instant action.

19. On or about April 10, 2006, Plaintiff received correspondence from the City of Newark denying her request for PTE Records ("Newark Letter"). A copy of the Newark Letter is attached hereto as Exhibit N.

20. The Newark Letter cites an “Office of the Attorney General’s directive entitled ‘Attorney General Guideline on Collection, Handling, Storage and Dissemination of Intelligence in New Jersey’ signed into effect on March 9, 2004” as the basis for exempting the requested PTE Records from public disclosure.

21. On or about April 27, 2006, Plaintiff’s attorney, Edward Barocas, Esq., telephonically contacted the Defendant’s attorney, Assistant Attorney General Lewis Scheindlin, Esq., to inform him of our receipt of the Miller Memo.

22. Mr. Scheindlin informed Mr. Barocas that he was aware of the Miller Memo when he drafted and sent the Harvey Letter to the Plaintiff on October 20, 2005.

23. Furthermore, the Mr. Scheindlin stated to Mr. Barocas that his client, the former Attorney General Peter Harvey, did not consider the Miller Memo a “Directive” and so did not consider the statements contained in it a misrepresentation.

**FIRST COUNT**  
**(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. Plaintiff Jacobs 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, the failure of and refusal by Defendants to supply them violated and continues to violate

OPRA.

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

**SECOND COUNT**  
**(Violation of the 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 Defendants unreasonably denied the Plaintiff access under the totality of the circumstances.

3. The Plaintiff is entitled to a judgment against the Defendants finding they knowingly and willfully violated and continues to violate OPRA.

**WHEREFORE**, the Plaintiff demands judgment as follows:

A. Civil penalty of \$1,000.00; and

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

**THIRD COUNT**  
**(Attorney's Fees under the Open Public Records Act  
and the Frivolous Lawsuit Statute)**

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.

4. The Plaintiff is also entitled to such attorney's fees reimbursement pursuant to the Frivolous Lawsuit Statute, N.J.S.A. 2A:15-59.1. She is entitled to be reimbursed for her fees and costs occasioned by the defense raised by the Defendants that they did not give instructions to the municipalities to resist her requests for information relating to PTEs and that the Attorney General of New Jersey "has no records responsive to the OPRA request upon which the above complaint is based." The fact that this defense was fraudulent is ample evidence that it was raised in bad faith, and thus, the dictates of that statute have been violated. N.J.S.A. 2A:15-59.1(b) (1).

**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 COUNT**  
**(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 countervailing interest in confidentiality of these records.

4. Plaintiff is therefore entitled to access to the information requested.

**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 COUNT**  
**(Breach of Contract)**

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 foregoing constitutes a breach of contract by Defendants in regard to their agreement related to the previous dismissal of the instant case.

3. As a direct and proximate result of the Defendants' actions, the Plaintiff has been damaged.

**WHEREFORE**, the Plaintiff, hereby demands Judgment against the Defendants, jointly and severally, as follows:

- A. Compensatory Damages;
- B. Consequential Damages;
- C. Interest and cost of suit; and,
- D. Such other, further and different relief as the Court may deem just, equitable and proper under the circumstances.

**SIXTH COUNT**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

1. Plaintiff repeats, reiterates and realleges each and every allegation with the same force and effect as if set forth more fully at length herein.

2. The foregoing constitutes a breach of the implied covenant of good faith and fair dealing by the Defendants.

3. As a proximate result of the Defendants' actions, the Plaintiff has been damaged.

**WHEREFORE**, the Plaintiff, hereby demands Judgment against the Defendants, jointly and severally, as follows:

- A. Compensatory Damages;
- B. Consequential Damages;
- C. Interest and cost of suit; and,
- D. Such other, further and different relief as the Court may deem just, equitable and proper under the circumstances.

**SEVENTH COUNT**  
**(Legal Fraud)**

1. Plaintiff repeats, reiterates and realleges each and every allegation with the same force and effect as if set forth more fully at length herein.

2. Defendants represented to the Plaintiff that they did not direct or control the Agencies' responses to the Plaintiff's request for PTE Records and that the Attorney General of New Jersey "has no records responsive to the OPRA request upon which the above complaint is based."

3. Defendants' statement was made with the purpose of inducing Plaintiff to enter into the stipulation of dismissal and dismiss any and all claims she had against them.

4. Defendants knew, or should have known, their representation to Plaintiff that they did not direct or control the Agencies' responses denying her request for PTE

Records and that the Attorney General of New Jersey “has no records responsive to the OPRA request upon which the above complaint is based” was false when made.

5. The representation that they did not direct or control the Agencies’ responses denying her request for PTE Records and that the Attorney General of New Jersey “has no records responsive to the OPRA request upon which the above complaint is based” was material to Plaintiff’s willingness to enter into the stipulation of dismissal and dismiss her claims against the Defendants thereafter.

6. The representation was made intentionally, wantonly, willfully, recklessly.

7. Plaintiff suffered damages proximately caused by its reasonable reliance on Defendants’ representation.

**WHEREFORE**, Plaintiff hereby demands judgment of Defendants, jointly and severally, as follows:

- A. Compensatory Damages;
- B. Consequential Damages;
- C. Punitive Damages;
- D. Interest and cost of suit; and
- E. Such other, further and different relief as the Court may deem just, equitable and proper under the circumstances.

**EIGHTH COUNT**  
**(Equitable Fraud)**

1. Plaintiff repeats, reiterates and realleges each and every allegation with the same force and effect as if set forth more fully at length herein.

2. In the alternative, the foregoing misrepresentations were made negligently.

**WHEREFORE**, Plaintiff hereby demands judgment of 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. 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 impleaded into the present action. Further, there are no other court proceedings relating to this matter, with the possible exception that the Plaintiff has filed an action entitled, Jacobs v. Imbriaco, et al Superior Court of New Jersey, Union County: Law Division which relates, in part to the failure on the part of five municipalities to provide information relating to PTEs, based in whole or in part upon the instructions of the Office of the Attorney General.

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 actions 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