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**AMERICAN CIVIL LIBERTIES UNION
OF NEW JERSEY FOUNDATION**
P.O. Box 32159
89 Market Street
Newark, New Jersey 07102
(973) 854-1717

Attorneys for Plaintiff
*American Civil Liberties Union of
New Jersey*

The **American Civil Liberties Union
of New Jersey**, an advocacy
organization located in Newark,
New Jersey,

Plaintiff,

v.

The **New Jersey Division of State
Police**, a public agency formed
under the laws of the State of New
Jersey, and the **OPRA Custodian of
the New Jersey State Police**

Defendants.

:
:
:
: **SUPERIOR COURT OF NEW JERSEY**
: **LAW DIVISION: Mercer County**
:

: Docket No.:

: Civil Action
:
:

: **VERIFIED COMPLAINT**
:
:

Plaintiff, through its undersigned counsel, by way of a
verified complaint against the Defendants, state as follows:

PRELIMINARY STATEMENT

1. The New Jersey Statehouse is the epicenter of New
Jersey's democratic process, home to the legislature and the

offices of the governor and lieutenant governor. Each year, countless New Jersey citizens enter the Statehouse to exercise their constitutional rights to assemble, petition the government, and express themselves, as they participate in the shaping of public policy. This lawsuit seeks information about the rules imposed by the New Jersey State Police ("NJSP") for those individuals entering the Statehouse. Plaintiff sought information from NJSP regarding whether people were able to wear expressive buttons, pins or stickers when entering the Statehouse. NJSP refused to provide this information. The arbitrary denial of access to public records by the NJSP not only violates the Open Public Records Act, but such secrecy by the police implicates core constitutional principles in two ways: first, the denial creates a chilling effect on the voices of individuals who want to openly express themselves; and second, it fails to provide New Jersey citizens with notice of the standards that will be applied to their conduct.

2. This is an action under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA"), and the common law right of access seeking disclosure of Statehouse policies and procedures on the subject of restricting access to citizens wearing buttons, pins or stickers.

PARTIES

3. Plaintiff, the American Civil Liberties Union of New Jersey ("ACLU-NJ") is a non-profit organization that works to defend individual liberties throughout the State of New Jersey. ACLU-NJ's primary place of business is located at 89 Market Street, Newark, New Jersey.

4. Defendant, the New Jersey Division of State Police ("NJSP") is a public agency formed under the laws of the State of New Jersey, with a primary place of business located at Division Headquarters, River Road, P.O. Box 7068, West Trenton, New Jersey 08628. NJSP is a nationally accredited agency that received a highly coveted law enforcement certification from The Commission of Law Enforcement Accreditation ("CALEA").

5. Defendant, NJSP, "ma[kes], maintain[s] or ke[eps] on file" or "receive[s] in the course of . . . its official business" government records, and is thereby subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13 ("OPRA").

6. Defendant, the OPRA Custodian of the New Jersey State Police ("Custodian"), is the party responsible for responding to OPRA requests submitted to the NJSP. The Custodian maintains an office at Division Headquarters, River Road, P.O. Box 7068, West Trenton, New Jersey 08628.

VENUE

7. Venue is properly laid in Mercer County because Defendant is a public agency located in Mercer County and because the cause of action arose in Mercer County. N.J. Court Rule 4:3-2(a).

BACKGROUND & FACTUAL ALLEGATIONS

8. ACLU-NJ received complaints that state police troopers employed by NJSP denied visitors to the Statehouse access to the building until they removed politically expressive pins, buttons, or stickers from their clothing. According to one complaint received, visitors were instructed to detach their buttons or pins, leave them at the security desk, and pick them up only upon exiting the Statehouse.

9. On prior occasions, ACLU-NJ staff observed and spoke with citizens who visited the Statehouse to engage in the political process on specific issues of public concern and who were permitted to wear buttons or stickers as a means to express their political viewpoints.

10. There are no signs at the Statehouse nor information posted on the New Jersey Legislature's or the State Police's website that informs citizens of the requirement to remove politically expressive clothing prior to entering the Statehouse.

11. The NJSP's alleged action and its possible practice or policy of forcing individuals to remove politically expressive pins and buttons raises concerns with the ACLU-NJ because such a practice or policy infringes upon the rights of citizens to engage in political expression that is protected by the United States Constitution and the New Jersey State Constitution.

12. Troubled that the NJSP may be engaging in a practice that curtails constitutionally-protected expression, the ACLU-NJ requested that NJSP disclose its policies about political buttons and other items attached to clothing upon entrance to the Statehouse.

13. Specifically, on June 26, 2012, an attorney for the ACLU-NJ sent a letter to the NJSP Superintendent, Rick Fuentes, requesting that the State Police provide "relevant policies or procedures on the subject of restricting access to people wearing buttons, pins, or stickers" pursuant to the Open Public Records Act. The letters further requested that Superintendent Fuentes issue a clear policy statement regarding free expression and post it for the public. See Exhibit "A" hereto (7/26/2012 Letter).

14. More than a month and a half later, on August 13, 2012, Defendants denied Plaintiff's request, stating that "the documents requested are not considered government records subject to public access pursuant to OPRA, N.J.S.A. 47:1A-1, et.

seq. More specifically, Standing Operating Procedures (S.O.P.'s) and training manuals have been designated confidential; See N.J.A.C. 13:1E-3.2(a)(1)." See Exhibit "B" attached hereto (State of New Jersey Government Records Request Receipt for Request C69409).

15. The Regulation upon which Defendants rely in denying access to the requested documents was enacted pursuant to OPRA in December 2011 and exempts from disclosure what otherwise would be publicly accessible government records. See N.J.A.C. 13:1E-3. One category of documents exempt from public disclosure is all "Standard Operating Procedures and training materials." Id. § 3.2(a)(1).

16. In promulgating the Regulation, the Attorney General attempted to justify exempting from public access Standard Operating Procedures and Training Manuals, 3.2(a)(1), by stating that such records do not concern the general public and furthermore, are necessary for security purposes:

[Standard Operating Procedures] and training materials are management documents affecting internal operations and do not generally impact the public's interactions with agencies in the Department [of Law and Public Safety]. They may also provide insight into law enforcement techniques, legal strategy, and other confidential matters that may put lives at risk.

43 N.J.R. 3188(b).

17. To date, Defendants have not disclosed to Plaintiff any records responsive to Request C69409.

FIRST COUNT

(Violation of OPRA)

18. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

19. Pursuant to N.J.S.A. 47:1A-1, all government records must be "readily accessible" to the public unless specifically exempted by law.

20. The custodian ordinarily must comply with a request for access "as soon as possible, but not later than seven days after receiving the request." Id. § 5(i).

21. If the Custodian does not provide access, the Custodian must indicate a "specific basis" in law for the denial; if only part of a record is exempt from disclosure, the custodian must redact the relevant portion and promptly disclose the remainder of the record. Id. § 5(g).

22. The public agency has the burden of proving that any denial of access is authorized by law. Id. § 6.

23. Here, the statements and actions of the Defendants constitute a denial of Plaintiff's access to the records sought in Request C69409. See id. §§ 5(g).

24. The documents Plaintiff seeks are "public records" within the meaning of OPRA because they were "made, maintained

or kept on file" by Defendant, NJSP, or "received in the course of . . . its official business." See id. § 1.1.

25. Policies concerning free expression on clothing or accessory items are not subject to any recognized exemption to OPRA. See N.J.S.A. 47:1A-1 et. seq.

26. The Custodian's purported application of N.J.A.C. 13:1E-3.2(a)(1) is inappropriate and inapplicable to the information requested by Plaintiff.

27. The records sought in request C69409 are not the type of Standard Operating Procedures and Training Manuals sought to be exempt under N.J.A.C. 13:1E-3.2(a)(1) because policies and procedures concerning politically expressive apparel do not "provide insight into law enforcement techniques, legal strategy, and other confidential matters that may put lives at risk." See supra ¶ 16; see also 43 N.J.R. 3188(b).

28. It is also untrue that policies concerning expressive clothing "do not generally impact the public's interactions with agencies in the Department [of Law and Public Safety]" as the Attorney General comments to the Regulation suggest. See id. In fact, quite the opposite is true. Many citizens who visit the Statehouse do so to exercise their constitutional rights as citizens of the United States and New Jersey to observe legislative activity and to express their views on topics that are of public concern. Policies regarding the type of clothing,

pins, or stickers that may be worn upon entering the Statehouse directly affect the public since those policies purportedly dictate what the Statehouse visitors may or may not wear. It is illogical and unreasonable to maintain policies governing how the public may dress, and yet at the same time, refuse to disclose those policies to the very persons to whom they apply.

29. The requested documents are publicly accessible under OPRA and not the type of "Standard Operating Procedure or Training Manual" intended to be exempt by the Regulation enacted pursuant to OPRA.

30. Accordingly, Defendant violated OPRA by:

- a. Failing to disclose nonexempt government records or nonexempt portions of government records, in violation of N.J.S.A. 47:1A-5(g);
- b. Failing to provide a lawful basis for denying access to government records, in violation of N.J.S.A. 47:1A-5(g)
- c. Failing to grant access to the requested "government record[s] as soon as possible, but not later than seven business days after receiving the request," in violation of N.J.S.A. 47:1A-5(i); and
- d. Failing to provide an index of all responsive documents deemed by the public agency to be exempt in whole or in part, with an accurate description of the

documents deemed exempt, as required by Paff v. Dep't of Labor, 392 N.J. Super. 334 (App. Div. 2007).

SECOND COUNT

(Common Law Right of Access)

31. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

32. The public enjoys a common law right of access to public records generated or maintained by public entities. See, e.g., Keddie v. Rutgers, 148 N.J. 36 (1997); S. Jersey Publ'ing Co. v. N.J. Exp'way Auth., 124 N.J. 478 (1991).

33. Defendants generate and/or maintain the requested public records that are "necessary to be kept in the discharge of a duty imposed by law" (among other possible qualifying conditions). S. Jersey Publ'ing Co., 124 N.J. at 487.

34. There is a strong public interest in favor of disclosing the requested records, and no overriding, countervailing interest in maintaining their confidentiality.

35. Plaintiff and the public alike have an interest in knowing whether there exist policies or procedures on the subject of restricting access to the Statehouse for citizens wearing buttons, pins, or stickers. Legislative activity is open to the public, providing citizens the opportunity to observe and participate in legislative sessions and committee

meetings. Whether attending these sessions or merely touring the Statehouse, the public has a constitutional right to wear apparel expressing their political views. To the extent that Defendants may have policies that restrict the constitutionally guaranteed right to free expression, Plaintiff and the public are entitled to know what the policies are to determine whether those restrictions comport with the First Amendment to the United States Constitution and Article 1, Paragraph 6, of the New Jersey Constitution.

36. Accordingly, Defendants' failure to disclose the requested documents violated Plaintiff's common law right of access to public records.

WHEREFORE, Plaintiff demands judgment against Defendants:

- (a) Declaring Defendants in violation of OPRA and the common law right of access to public records;
- (b) Enjoining Defendants from denying access to government records on the subject of restricting access to people wearing buttons, pins, and stickers;
- (c) Issuing a clear policy statement and completing a training protocol to ensure that all Statehouse personnel are aware that they may not restrict the freedom of expression in the Statehouse;

- (d) Posting a statement of policy at the Statehouse and Annex security stations that informs citizens of their right to such free expression in the Statehouse;
- (e) Compelling Defendants to immediately provide access to all of the requested records;
- (f) Granting attorney's fees and costs of suit pursuant to N.J.S.A. 47:1A-6; and
- (g) Granting such other relief as this Court may deem just and proper.

PASHMAN STEIN
A Professional Corporation,
Attorneys for Plaintiff

*American Civil Liberties Union
of New Jersey*

By: _____

JANIE BYALIK

Dated: September 21, 2012

NOTICE OF DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is given that Janie Byalik is hereby designated as trial counsel in the within matter.

PASHMAN STEIN
A Professional Corporation,
Attorneys for Plaintiff

**American Civil Liberties Union
of New Jersey**

By: _____

JANIE BYALIK

Dated: September 21, 2012

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, by its attorneys, hereby certifies that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceeding.

PASHMAN STEIN
A Professional Corporation,
Attorneys for Plaintiff

**American Civil Liberties Union of
New Jersey**

By: _____

JANIE BYALIK

Dated: September 21, 2012

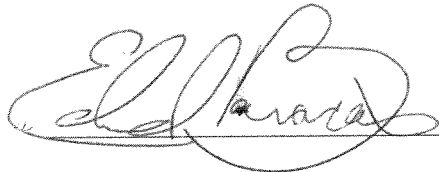
VERIFICATION

Edward L. Barocas, of full age, deposes and says:

1. I am the acting executive director of the American Civil Liberties Union of New Jersey.

2. I have read the foregoing Verified Complaint and know the factual contents of the complaint to be true of my own knowledge or upon a plain reading of any documents referred to therein and appended thereto, except for any matters alleged on information and belief, which I believe to be true for the reasons indicated.

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.



EDWARD BAROCAS

*American Civil Liberties Union of
New Jersey*

Dated: September 21, 2012

CERTIFICATION OF FAXED SIGNATURE

Janie Byalik, Esq., of full age, certifies and says as follows:

1. I am an attorney at law with the law firm of Pashman Stein. I make this certification of the genuineness of the signature of Edward L. Barocas.
2. I hereby certify that Mr. Barocas acknowledged to me the genuineness of his signature on the foregoing Certification.

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.

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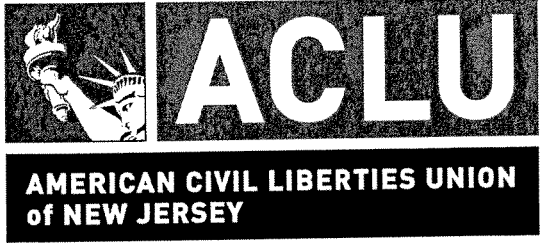
Attorneys for Plaintiff
*American Civil Liberties Union of
New Jersey*

Dated: September 21, 2012

By: 

JANIE BYALIK

EXHIBIT "A"



FOUNDATION

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Frank Corrado
President
Deborah Jacobs
Executive Director
Edward Barocas
Legal Director

June 26 2012

Colonel Rick Fuentes, Superintendent
New Jersey State Police
P.O. Box 7068
West Trenton, NJ 08628

RE: Statehouse Policies Regarding Free Expression on Clothing

Dear Superintendent Fuentes:

The American Civil Liberties Union of New Jersey has received complaints that visitors to the statehouse have been denied access to the building by state police troopers until they removed politically expressive pins, buttons, or stickers from their clothing. In some cases, visitors were required to leave their buttons at security and instructed to collect them upon exiting the statehouse.

We have serious concerns that this practice infringes on the rights of citizens to express themselves that are protected by the United States Constitution as well as the New Jersey State Constitution. In the matters at hand, the buttons and stickers were worn by visitors as a means of protected political expression. The complaints we received came from citizens who visited the statehouse to engage in the political process on specific issues of public concern, and wore buttons or stickers that expressed their viewpoints.

Pursuant to the Open Public Records Act, I request that your office provide me with any relevant policy or procedures on the subject of restricting access to people wearing buttons, pins or stickers.

If it is not the policy of the State Police to limit a citizen's right to express themselves on their clothing, I request that you

- 1) Issue a clear policy statement and complete a training protocol to ensure that all Statehouse personnel are aware that they may not limit such expressions in the Statehouse; and
- 2) Post a statement of policy at the Statehouse and Annex security stations that informs citizens of their right to such free expression in the Statehouse.

Thank you in advance for ensuring that we receive the documents requested within the seven-day period set forth in the Open Public Records Act. If you would like to meet to discuss model free speech policies, I would be more than glad to do so.

Thank you for your attention to this matter and please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne LoCicero".

Jeanne LoCicero *AL*
Deputy Legal Director

EXHIBIT "B"


State of New Jersey
Government Records Request
Receipt

Requestor Information

Jeanna LoCicero
 ACLU of NJ
 P.O. Box 32159
 Newark, NJ 07102

973-642-2086

Request Date: August 13, 2012
 Maximum Authorized Cost:
 US Mail



Request Number: C69409
Request Status: Denied Closed
Ready Date:
Custodian Contact Information
 Division of State Police
 Records Custodian
 PO Box 7068
 SP Headquarters - Bldg 15 - River Road
 West Trenton, NJ 08628
 dsp.records@lps.state.nj.us
 609-538-6087
By

Status of Your Request

Your request for government records (# C69409) from the Division of State Police has been reviewed and has been Denied Closed. Detailed information as to the availability of the documents you requested appear below and on following pages as necessary.

The cost and any balance due for this request is shown to the right. Any balance due must be paid in full prior to the release / mailing of the documents.

If you have any questions related to the disposition of this request please contact the Custodian of Records for the Division of State Police. The contact information is in the column to the right. Please reference your request number in any contact or correspondence.

Cost Information

Total Cost:	\$0.00
Deposit:	\$0.00
Total Amount Paid:	\$0.00
Balance Due:	\$0.00

Document Detail

Div	Doc #	Doc Name	Redaction Req	Pages	Legal Size	Electronic Media	Other Cost
SP	0001	"policy and procedures"	N		N	N	

Denial: 05.Exception by State Regulation (specify) --- N.J.A.C. 13:1E-3.2(a)(1)

August 13, 2012 03:55 PM

State of New Jersey
Government Records Request
Receipt

Page: 2 of 2

Ms. LoCicero,

(Monday, August 13, 2012)

This office is in receipt of your OPRA request which is paraphrased below.

Please be advised that the documents requested are not considered government records subject to public access pursuant to OPRA, N.J.S.A. 47:1A-1, et. seq. More specifically, Standing Operating Procedures (S.O.P.'s) and training materials have been designated confidential; See N.J.A.C. 13:1E-3.2(a)(1). Therefore, I must, unfortunately, deny your request. I regret I could not assist you further.

Respectfully,

Det. I E Vargas #6764
OPRA Custodian
New Jersey State Police

Your request for government records (# C69409) is as follows:

Hand-written OPRA Request # C69409 – stated in effect:

“Regarding Statehouse policies on Free Expression on Clothing, I request that your office provide me with any relevant policy and procedures on the subject of restricting access to people wearing buttons, pins or stickers.”