

JOHN PAFF,

Plaintiff-Respondent,

v.

OCEAN COUNTY PROSECUTOR'S
OFFICE,

Defendant-Appellants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4226-14T3

CIVIL ACTION

On Appeal from an Order of The
Superior Court of New Jersey, Law
Division, Ocean County
DOCKET NO. OCN-L-1645-14

SAT BELOW:

HON. Vincent Grasso, A.J.S.C.

BRIEF OF AMICUS CURIAE
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PRELIMINARY STATEMENT

This appeal involves the public's right to access video from a police dashboard camera that documented police misconduct. Release of similar footage has supported a robust national conversation surrounding police practices. The American Civil Liberties Union of New Jersey (ACLU-NJ) urges this court to affirm the trial court's decision to release the video because the public's interest in viewing the video dwarfs the Ocean County Prosecutor's interest in withholding it.

The New Jersey Supreme Court has declared that the fundamental policy underlying the Open Public Records Act ("OPRA") is that "knowledge is power in a democracy," and as such, government cannot be held accountable to the public "without access to information maintained by public agencies." Fair Share Hous. Ctr., Inc. v. N.J. State League of Municipalities, 207 N.J. 489, 502 (2011). Public access to information regarding police conduct is particularly critical due to the unique authority which police hold.

The release of the police video footage effectuates the purpose of the Open Public Records Act and serves the public interest under the common law. Access to police video footage is a vital tool in ensuring accountability. It offers a reliable first-hand perspective into the inner workings of law

enforcement and into the factual scenarios surround contested police-civilian contacts. Moreover, video can illuminate systemic patterns, disparities between policy and practices, individual instances of misconduct, and positive police-civilian encounters. Such knowledge is essential in ensuring best practices because it encourages tailored reform measures and restores the public's confidence in law enforcement at a time marked by police-community tensions.

To shield the release of video to the public, the government bears the burden of establishing that the recording is exempt from OPRA and that it would be inimical to the public interest if it were disclosed. The Ocean County Prosecutor's Office did not meet its burden and the decision below should be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

For purposes of this brief, Amicus American Civil Liberties Union of New Jersey adopts the Statement of Facts and Procedural History set forth by Plaintiff Paff.

LEGAL ARGUMENT

I. NEW JERSEY HAS A STRONG PUBLIC POLICY IN FAVOR OF OPEN GOVERNMENT, FOSTERING BOTH STATUTORY AND COMMON LAW RIGHTS OF ACCESS TO PUBLIC RECORDS.

The trial court's decision should be affirmed because it appropriately applied the legal standards of the Open Public Records Act when it ruled in favor of public access to the

dashboard camera video. New Jersey's public policy, reflected in OPRA, directs records custodians and reviewing bodies to construe the law broadly, in favor of public access to information.

"New Jersey can boast of a long and proud tradition[] of openness and [of] hostility to secrecy in government." Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274, 283 (2009), quoting N. Jersey Newspapers v. Passaic Cty. Bd. of Chosen Freeholders, 127 N.J. 9, 16 (1992) (internal quotation marks omitted); see also Ferry v. Williams, 41 N.J.L. 332, 334 (Sup. Ct. 1879) ("every person is entitled to the inspection of [public documents], provided he shows the requisite interest therein"); Taxpayers Ass'n v. City of Cape May, 2 N.J. Super. 27, 31 (App. Div. 1949) ("the right of interested citizens and taxpayers to inspect public records should be broadly recognized"). As the New Jersey Supreme Court has declared, it is "axiomatic in any democratically constituted society that the public business is indeed the public's business. The people have a right to know." Tarus v. Borough of Pine Hill, 189 N.J. 497, 507 (2007).

New Jersey has furthered the ideals of openness and transparency in government by fostering both a statutory and a common law right of access to public records. See Educ. Law Ctr., supra, 198 N.J. at 302. Indeed, "our well-established

common law protection of a citizen's right to access . . . [was] complemented by the Legislature's enactment of OPRA, which was intended to enhance the citizenry's statutory rights to government maintained records." Id. at 283.

The goal of the OPRA "is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." Mason v. City of Hoboken, 196 N.J. 51, 64 (2008), quoting Asbury Park Press v. Ocean County Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004). "Those who enacted OPRA understood that knowledge is power in a democracy, and that without access to information contained in records maintained by public agencies citizens cannot monitor the operation of our government or hold public officials accountable for their actions." Fair Share Housing Ctr., 207 N.J. 489, 501 (2011). An underlying premise of OPRA is that society as a whole suffers when "governmental bodies are permitted to operate in secrecy." Ibid. (quotations omitted).

Accordingly, OPRA expressly states that government records shall be "readily accessible" to the public unless exempt, N.J.S.A. 47:1A-1, and that the "agency shall have the burden of proving that the denial of access is authorized by law." N.J.S.A. 47:1A-6. Moreover, OPRA specifically mandates that

"any limitations on the right of access . . . shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1.

In the present case, Defendant claims confidentiality under several OPRA exemptions, as well as under the common law balancing test. However, Defendant's brief presents this Court with an improper analysis of OPRA exemptions and the common law right of access. When the appropriate legal standards are applied, it is clear that the trial court's decision should be affirmed because the Defendant, who had several opportunities to do so, failed to meet its burden of establishing that its asserted exemptions to OPRA justified the denial of access to the video. Likewise, if this Court decides to conduct an analysis of Plaintiff's common law claims, the existing record is sufficient to demonstrate that the records be disclosed pursuant to the common law balancing test.

II. PLAINTIFF HAS PROVIDED THIS COURT WITH THE APPROPRIATE LEGAL STANDARDS TO ANALYZE THE APPLICATION OF OPRA TO THE REQUEST FOR ACCESS TO THE DASHBOARD CAMERA VIDEO.

Amicus generally adopts the well-reasoned arguments of Plaintiff. Most notably, the law is clear that pursuant to OPRA, a government agency bears the burden of proving that a denial of access is authorized under the law. N.J.S.A. 47:1A-6; (Pb10-11¹, 13-15, 18-19.) Under OPRA, a record is a "criminal

¹ Pb refers to Plaintiff's brief dated August 24, 2015.

investigatory record," and therefore exempt, if the record is "not required by law to be made, maintained, or kept on file," and it "pertains to any criminal investigation or related civil enforcement proceeding." N.J.S.A. 47:1A-1.1. Thus, the use of a record during a criminal investigation alone does not automatically qualify it for this exemption. As Plaintiff's brief explains, previously-created records which were not part of an investigation do not become exempt from OPRA merely because they are later used in an investigation. (Pb26-31).

Amicus, which advocates both for privacy rights and government transparency, also concurs that the video at issue does not contain information that should be shielded to protect privacy interests. Absent unusual circumstances which truly shock the conscience, there is no expectation of privacy in video footage capturing events that occur in public. (Pb35). Cf., Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 330-31 (Law Div. 2004).²

² In Asbury Park Press, the trial court did find such unusual circumstances and ruled against the release of a tape and transcript of a 9-1-1 call made by one of the victims of a double homicide based on a privacy interest. In that case, the victims' son was charged with the murders and the tape contained the caller's dying words. In denying access to the records, the court considered whether the release of the tape would contribute insight into the functioning of government and described listening to the tape as a "a chilling, wrenching, lingering experience even for one not related to the victim."

This is especially true in the present case because the OCPO has already disclosed the victim's name and released records containing its own description of the events captured in the footage. (Db43) ("[a]ll of the pertinent information regarding this offense has already been released to the general public in the form of a press release and covered in the newspapers and online. That the officer was charged with an aggravated assault and misconduct in office is a fact that has already been disclosed, along with the charges against the women as well as the parties' names. The location of the incident and nature of the allegations against the officer have also been disclosed."). OCPO cannot meet its burden of establishing the need for confidentiality based on privacy interests in video containing events that it has already made public through prior descriptive disclosure.

III. PLAINTIFF IS ENTITLED TO THE RECORDS UNDER THE COMMON LAW RIGHT OF ACCESS BECAUSE PLAINTIFF'S INTEREST IN OBTAINING THE RECORDS CLEARLY OUTWEIGHS ANY INTEREST IN NON-DISCLOSURE.

Amicus agrees with Plaintiff that, if the court reaches the issue of access through the common law, the matter should be remanded for the trial court to perform the appropriate balancing test. However, because Defendant addresses the

substance of this claim, and because it will help frame the issues generally by explaining the public need for disclosure of these types of videos, amicus submits that the dashboard camera video should be released pursuant to the common law.

The common law right of access provides requestors with an enforceable right to require custodians of public records to make the records available for reasonable inspection and examination. Irval Realty v. Bd. of Pub. Util. Comm'rs, 61 N.J. 366, 372 (1972). The right exists wholly apart from any statutory right under the Open Public Records Act, see Educ. Law Ctr., 198 N.J. at 302 ("Despite the enactment of OPRA, the Legislature explicitly provided that the common law right still exists."), and the tests for each method of obtaining records differ. See Bergen County Improvement Auth. v. North Jersey Media Group, Inc., 370 N.J. Super. 504, 510 (App. Div. 2004) ("the public might be able to obtain documents under common law tests that it could not obtain through OPRA."), certif. denied, 182 N.J. 143 (2004).

The common law generally provides access to a "wider array" of public records than does OPRA. Educ. Law Ctr., 198 N.J. at 302. Indeed, common law public records typically include any and all records "created by, or at the behest of, public officers in the exercise of a public function." Keddie v. Rutgers, 148 N.J. 36, 50 (1997).

The New Jersey Supreme Court has identified three main requirements for a common law claim: "(1) the records must be common-law public documents; (2) the person seeking access must establish an interest in the subject matter of the material; and (3) the citizen's right to access must be balanced against the State's interest in preventing disclosure." Ibid. (citations and internal quotation marks omitted).

A requestor may establish an interest in the records sought that is either personal or public. Loigman v. Kimmelman, 102 N.J. 98, 104 (1986). This requirement is archetypically satisfied by citizen interest in a matter of obvious public concern. See Home News v. Dep't of Health, 144 N.J. 446, 454 (1996). However, courts have found that a legitimate motive to generate profit may be as sufficient as a citizen's interest in a matter of public concern. Ibid.

The main limitation on the common law right of the requestor is that his or her interest in a record must be balanced against the public interest in nondisclosure. See Loigman, 102 N.J. at 104.³

³ When assessing interests in non-disclosure, New Jersey courts generally consider the following factors:

- (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;
- (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that

This balancing process "is flexible and adaptable to different circumstances and sensitive to the fact that the requirements of confidentiality are greater in some situations than in others." McClain v. College Hosp., 99 N.J. 346, 362 (1985). The balancing of interests further suggests that "[i]f the reasons for maintaining confidentiality do not apply at all in a given situation, or apply only to an insignificant degree, the party seeking disclosure should not be required to demonstrate a compelling need." Ibid.

As an initial matter, Plaintiff sought video footage created by a police dashboard camera. The record is a common law public record because it was clearly "created by, or at the behest of, public officers in the exercise of a public function." Keddie, 148 N.J. at 50.

their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

[Loigman, supra, 102 N.J. at 113.]

A. Plaintiff has a Strong Individualized Interest in Obtaining the Records.

Plaintiff has a strong interest in the record as a member of the public and an open government advocate serving as "the eyes and ears of the public," Home News, 144 N.J. at 446, and providing the public with news regarding government transparency.⁴ Obtaining the requested video would provide Plaintiff with information necessary to better serve as an open government watchdog. Amicus endorses the argument presented by Plaintiff setting forth such interests. (Pb43-46.)

B. There Is Strong Public Interest in Disclosure of Dashboard Camera Recordings, Especially When They Document Instances of Alleged Police Misconduct.

For more than half a century - from Selma, Alabama, to Los Angeles, California - recordings of police have ushered in significant policy changes, resulting in increased police accountability. Recently, recording police officers - on dashboard cameras and on body worn cameras (BWCs) - has become so critical an accountability mechanism that the President's

⁴ Indeed, Paff, because of his role in obtaining, reporting on and publishing about public records, should be considered a member of the press. Too Much Media, LLC v. Hale, 206 N.J. 209, 237-38 (2011) (stating that an individual blogger engaged in providing non-traditional news can qualify for the news person's privilege if (1) the person has a connection to news media, (2) the person's purpose is to gather or disseminate news; and (3) the materials sought were obtained in the course of professional news gathering activities.)

Taskforce on 21st Century Policing has recommended the use of BWCs. *The Final Report of the President's Taskforce on 21st Century Policing*, May 2015, page 36, available at: [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce%20FinalReport.pdf). Presidential candidates, too, have identified the utility of mechanisms for recording police interactions. See, e.g., *Hillary for America*, available at: <https://www.hillaryclinton.com/the-four-fights/strengthening-americas-families/> ("we will make sure every police department in the country has body cameras to record interactions on patrol"); *Bernie Sanders 2016*, available at: <https://berniesanders.com/issues/racial-justice/> ("federally fund and require body cameras for law enforcement officers to make it easier to hold them accountable"); *Martin O'Malley*, available at: <https://martinomalley.com/policy/criminal-justice/> ("Technology—including but not limited to body cameras—can improve policing and build community trust in law enforcement"); Eric Bradner, "John Kasich 'open' to police body cameras" CNN, August 10, 2015, available at: <http://www.cnn.com/2015/08/09/politics/john-kasich-police-body-cameras/>.

It has become well-accepted that "video footage has the potential to expose officer misconduct and exonerate civilians whose actions have been falsely characterized by the police." Developments In The Law -- Policing: Chapter Four: Considering Police Body Cameras, 128 Harv. L. Rev. 1794, 1799 (2015). While

neither dashboard cameras nor body worn cameras are a cure to all that ails police departments, time and again video footage has served as a powerful tool to increase accountability. Video footage has come to define momentous events and to shape public perceptions. For example, the brutal suppression of protest at Tiananmen Square in 1989 was crystallized by the now-famous video⁵ of a lone man standing in a white shirt in front of a column of tanks. Likewise, video has served to mobilize social movements: few can forget footage of police officers attacking protesters on "Bloody Sunday" in Selma, Alabama in 1965,⁶ which "touched a nerve deeper than anything that had come before" and was "a turning point in the civil rights movement." Demarest v. Athol/Orange Cmty. TV, Inc., 188 F. Supp. 2d 82, 96-97 (D. Mass. 2002) (quoting John Lewis & Michael D'Orso, Walking with the Wind: A Memoir of the Movement, 344 (1998)).

More recently, the public debate about abusive police practices has in many ways been spurred by video footage documenting the deaths of Eric Garner,⁷ Walter Scott,⁸ Tamir Rice,⁹ Sandra Bland¹⁰ and others. But police recordings do not

⁵ <https://www.youtube.com/watch?v=YeFzeNAHEhU>

⁶ <https://www.youtube.com/watch?v=P7vrrYVyN3g>

⁷ <https://www.youtube.com/watch?v=LfXqYwyzQpM>

⁸ <http://www.nytimes.com/video/us/100000003615939/video-shows-fatal-police-shooting.html>

⁹ <https://www.youtube.com/watch?v=x1GaaMYhrw0>

¹⁰ <https://www.youtube.com/watch?v=CaW09Ymr2BA>

just serve the public - they are an accountability tool for police too, debunking false allegations of misconduct. See, e.g., *PoliceOne*, "Video: NJ cop's dash cam refutes man's harassment claims" September 22, 2014, available at: <http://www.policeone.com/investigations/articles/7587619-Video-NJ-cops-dash-cam-refutes-mans-harassment-claims/>. That police videos serve as a win-win accountability tool explains their proliferation around the country and in New Jersey. Stefanie Dazio and Michael Phillis, *The Record*, "Use of cameras for police cars and officers on the rise in N.J." September 28, 2014, available at: <http://www.northjersey.com/news/use-of-cameras-for-police-cars-and-officers-on-the-rise-in-n-j-1.1098028?page=all>.

Video, even more than photographs, written accounts, or unaided memory, has the capacity to record events in living detail. See *Tarus*, 89 *N.J.* at 512 (2007) ("[V]ideo cameras present distinct advantages over other recording devices."). To withhold disclosure of video, because narrative descriptions (presented by law enforcement) of the same incident already exist deprives the public of a uniquely vivid and reliable means of gathering, documenting and conveying information. The United States Supreme Court implicitly recognized the unique documentary capacities of video in *Scott v. Harris*, 550 *U.S.* 372 (2007), in which the Court considered whether the police

violated the Fourth Amendment by attempting to end a high-speed chase by ramming the fleeing motorist from behind. The entire chase was captured on the police cruiser's onboard camera. The Court discussed the videotape at length, relying on it to settle factual disputes and to inform the constitutional analysis. See id. at 378 ("The videotape quite clearly contradicts the version of the story told by respondent and adopted by the Court of Appeals."); id. at 390 (Stevens, J., dissenting) (discussing the videotape at length and concluding that "the tape actually confirms, rather than contradicts, the lower courts' appraisal of the factual questions at issue"); id. at 387 (Breyer, J., concurring) ("[W]atching the video footage of the car chase made a difference to my own view of the case."). Indeed, the Court found the video evidence so instructive that it took the unprecedented step of posting the video to its website. See id. at 378 n.5.¹¹

The public places enormous trust in police officers. But that confidence must continue to be earned. Government entities cannot simply say "trust us" and hope that the community will remain confident that misconduct is being addressed appropriately. Where, as here, there exists video that shows the public what happened, failure to provide that recording

¹¹ http://www.supremecourt.gov/media/06/scott_v_harris.wmv

undermines public confidence in the ability of government to hold police accountable for misbehavior.

C. Defendant has not Established a Specific Interest in Confidentiality.

Defendant contends that application of the common law balancing test weighs in favor of confidentiality, because Plaintiff has not demonstrated a substantial interest in the record, and because underlying incidents captured in the video were later the subject of both a criminal and internal investigation against the officer. As explained above, Plaintiff's - and the public's - interest in disclosure is strong. At the same time, Defendant's purported need for confidentiality is based on vague, overbroad and speculative concerns, which the trial court properly found to be insufficient to preclude disclosure.

Defendant suggests - without proffering any evidence or citing to any authority - that the release of video will chill the public from coming forward with incriminating information against officers and has the potential to create a public outcry that would taint the internal investigation. Additionally, Defendant generally asserts that the ongoing nature of the investigation per se requires confidentiality.

The sweeping contentions put forward by Defendant essentially seek a categorical exemption to the common law right

of access which would shield from public scrutiny any and all records used during either a criminal investigation or internal investigation into a police officer's misconduct - even a record, such as the one here, which, based on the record before this court, was created before any investigation began, and depicts the incident which gave rise to the investigations cited by the Defendant.

This Court has explained, in numerous analogous cases, that general concerns regarding disclosure of information in pending criminal matters are insufficient to withhold documents from the public, especially when those concerns are based on mere speculation. Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 381-383 (App. Div. 2003); Serrano v. South Brunswick Tp., 358 N.J. Super. 352, 365 (App. Div. 2003); Asbury Park Press v. Lakewood Tp. Police Department, 354 N.J. Super. 146, 162-163 (App. Div. 2002).

In Asbury Park Press v. Lakewood Tp. Police Department, this Court analyzed in depth whether the government could withhold a 9-1-1 tape based on the concern that disclosure of the tape would bias potential members of a jury. This Court rejected the government's argument. It noted that there was nothing particular to the criminal case at issue and nothing unique about the record sought that would make that particular situation distinct from other high profile cases. 354 N.J.

Super. at 162. It further noted that while there might be some chance for prejudice, albeit remote, "there is relief available through many devices such as augmenting the jury pool, use of so-called foreign jurors or even a change of venue." Id. Perhaps most importantly, this Court explained: "In any event, mere speculation and unease concerning the release of tapes at this posture of the proceedings should not undermine the public's right to know." Id. at 162-63. As such, this Court noted that the disclosure was not "inimical to the public interest" and reject the government's invocation of the "ongoing investigation" exception to the Right to Know Law (the state's predecessor to OPRA).

Those themes were reiterated by this Court in Courier News, supra, 358 N.J. Super. 373. In that case, this Court again addressed the prosecutor's contention that disclosure of a 9-1-1 tape might preclude the likelihood of an impartial jury. The Court made two important pronouncements relevant to the present case. First, this Court explained that the fact that "media coverage may make it more difficult" to prosecute a criminal case (specifically in Courier News, to select a fair and impartial jury) "is not a basis to deny access to government records under OPRA." 358 N.J. Super. at 381. Second, this Court highlighted the fact that the burden is on the withholding agency to "produce specific reliable evidence sufficient to meet

a statutorily recognized basis for confidentiality," and a concern that is "purely speculative" does not meet that burden. Id. at 381-83. As explained by this Court:

In the course of oral argument, we repeatedly asked the defendant's counsel for specific evidence supporting this assertion [that disclosure of the tape will lead to juror confusion]. None was proffered. Under OPRA, a public agency seeking to restrict the public's right of access to government records must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality. Absent such a showing, a citizen's right of access is unfettered. Moreover, in assessing the sufficiency of the proofs submitted by the public agency in support of its claim for confidentiality, a court must be guided by the overarching public policy in favor of a citizen's right of access. N.J.S.A. 47:1A-1. Here, defendant's fear of potential juror confusion are purely speculative and fail to meet the statutory burden of proof.

[Id. (emphasis added)]

This Court again addressed, in Serrano, supra, 358 N.J. Super. at 367, whether or not disclosure of a particular 9-1-1 tape was "inimical to the public interest" and warranted application of the "ongoing investigation" exemption. Once again, this Court held that general concerns about criminal trials - even including potential inconveniences to or difficulties for the prosecutor - failed to satisfy the "inimical to the public interest" standard. 358 N.J. Super. at 367. The Court noted:

[A] government record does not become cloaked with confidentiality simply because the prosecutor declares it so. Insofar as the public interest is concerned, and given the caller's consent, the public has a

greater interest in the release of this particular [9-1-1] tape than in its suppression. Given the stated public policy in OPRA that records should be readily accessible, a weighty concern indeed should be advanced to counterbalance that interest. The considerations raised in this case, however, such as posited difficulties of impaneling a jury and possible change of venue, are unpersuasive. Even if they occur, they may be inconveniences to the prosecutor, but without more, that does not make the production "inimical to the public interest [.]"

[Id.]

While Serrano and Courier News addressed claims under OPRA rather than common law, and Lakewood Tp. Police Department addressed claims under the common law and the "Right to Know" Law, OPRA's predecessor statute, all three cases exemplify the court's refusal to accept vague speculations or unsupported fears as valid interests in confidentiality. Simply put, our courts require more, including "specific reliable evidence" (see Courier News, 358 N.J. Super. at 382) that the purported anticipated harm is real and is specific to the particular documents or case at issue.

In the present case, Defendant merely posits general concerns that would apply to almost all criminal and internal investigations. Defendant failed to produce the required "specific reliable evidence" to establish that, in this particular case, there is a heightened reason to believe that disclosure would chill individuals in possession of incrimination information from providing it to investigators, or

that public outcry would taint the agency's self-evaluation.
(Da51.)

Indeed, these general claims of confidentiality are not supported by Defendant's own assertions. First, the record at issue was not work-product of an investigation - rather, the video depicts the incident which gave rise to an investigation. (Pb20-30, 32.) Thus, release of this record has no bearing on public participation in investigations. Second, regarding the potential public outcry, Defendant's purported concerns are belied, or at least mitigated, by the fact that Defendant has already disclosed the victim's name and its version of the events. Thus, at this stage, release of the video would only create public outcry if it showed that Defendant's description was faulty or incomplete. Yet, it is in such a circumstance that the public interest in disclosure is most compelling, and any self-inflicted harm that would then accompany disclosure would be far outweighed by Plaintiff's - and the public's - interest in obtaining the document.

In sum, Defendant has not established any public interest in nondisclosure, let alone one that would outweigh Plaintiff's interest.

As such, Plaintiff is entitled to the requested government records under the common law.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial judge's decision and require the release of the dashboard camera video footage. As mentioned above, "New Jersey can boast of a long and proud tradition of openness and hostility to secrecy in government." Educ. Law Ctr., 198 N.J. at 283. The arguments asserted by the Ocean County Prosecutor's Office would threaten that tradition, undermine the public's statutory and common law rights, and make it more difficult for those seeking to monitor the actions being taken on their behalf. Those arguments should be rejected.



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