

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0414-12T2

TINA RENNA,

Plaintiff-Appellant,

v.

COUNTY OF UNION,

Defendant-Respondent.

Argued May 1, 2013 – Decided May 14, 2013

Before Judges Simonelli and Accurso.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-1431-12.

Walter M. Luers argued the cause for appellant.

Moshood Muftau, Assistant County Counsel, argued the cause for respondent (Robert E. Barry, Union County Counsel, attorney; Mr. Muftau, on the brief).

PER CURIAM

Plaintiff Tina Renna filed a complaint alleging that defendant County of Union (County) violated the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law right of access by failing to disclose records pertaining to a police investigation. She appeals from the August 6, 2012 Law

Division order, which dismissed the complaint with prejudice. Because we conclude that the records were not subject to disclosure pursuant to OPRA or the common law right of access, we affirm.

In January 2012, the Union County Police Department began investigating the theft of county parks maintenance equipment from a maintenance service yard. Patrick Scanlon, Jr. (Scanlon), the son of a Union County freeholder, was one of several parks maintenance employees questioned about the theft. Plaintiff submitted a request under OPRA and the common law right of access for "[c]opies of all investigations, including county police, sheriff and prosecutor, into the matter involving former County employee Patrick Scanlon, Jr." In response, the County admitted the requested documents were on file with the County Police, but denied access because they were "criminal investigatory records" exempt from disclosure. The County provided to plaintiff the information required by N.J.S.A. 47:1A-3b.¹

Plaintiff filed a Verified Complaint and Order to Show Cause to compel disclosure of the documents. She argued the

¹ Where a crime has been reported but no arrest has been made, N.J.S.A. 47:1A-3b requires disclosure of information as to the type of crime, time, location and type of weapon, if any.

documents were government records, as defined by N.J.S.A. 47:1A-1.1,² because the Destruction of Public Records Law [DPRL], N.J.S.A. 47:3-15 to -32, and the "Records Retention and Disposition Schedule" created by the New Jersey Division of Archives and Records Management (DARM)³ required the documents to be maintained for seven years from the date of the crime if no arrest was made. N.J. Div. of Archives & Records Mgmt., Records Retention and Disposition Schedule, 7 (2003), <http://www.nj.gov/treasury/revenue/rms/pdf/c540000.pdf>. She

² N.J.S.A. 47:1A-1.1 defines a government record as:

any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

³ "DARM is in the Department of State and serves as staff to the State Records Committee, an administrative agency created by the Legislature under the [DPRL]." N.J. Land Title Ass'n v. State Records Comm., 315 N.J. Super. 17, 19 (App. Div. 1998).

reasoned that N.J.S.A. 47:3-18 granted DARM the authority to "establish specific classifications and categories for various types of . . . 'public records[,]'" N.J.S.A. 47:3-19 empowered DARM to prepare retention schedules for all public records that were common to all local agencies, and N.J.S.A. 47:3-17 requires DARM's approval of the destruction or disposition of any public record or document.

In opposition, the County argued the documents were criminal investigatory records exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, which defines criminal investigatory records as "a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding." Alternatively, the County asserted the documents were exempt from disclosure pursuant to N.J.S.A. 47:1A-3a and b⁴ because the investigation was active and

⁴ N.J.S.A. 47:1A-3a and b provide in pertinent part:

a. Notwithstanding the provisions of [OPRA], where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in [OPRA] may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that

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on-going, no arrests were made or formal charges filed against any County employee including Scanlon, and release of the information would hinder the investigation.⁵ The County

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this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced. Whenever a public agency, during the course of an investigation, obtains from another public agency a government record that was open for public inspection, examination or copying before the investigation commenced, the investigating agency shall provide the other agency with sufficient access to the record to allow the other agency to comply with requests made pursuant to [OPRA].

b. . . . Notwithstanding any other provision of this subsection, where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release, such information may be withheld. This exception shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety. Whenever a law enforcement official determines that it is necessary to withhold information, the official shall issue a brief statement explaining the decision.

⁵ A County police lieutenant involved in the investigation certified that the "matter has not been deemed closed because new information is still forth coming, leads have not been exhausted and a potential suspect has not been charged[,]" and the "[r]elease of the investigatory information will hinder the investigation and there is less likelihood that the remaining

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subsequently filed an amended certified Vaughn index,⁶ which listed the documents contained in the investigatory file, including investigation and operation reports of interviews of potential witnesses and Miranda⁷ forms.

In an August 6, 2012 written opinion and order, Judge Caulfield denied disclosure of the requested documents. The judge ultimately concluded the documents were exempt from disclosure pursuant to N.J.S.A. 47:1A-3a and b because they pertained to an investigation in progress, their release would be inimical to the public interest and would jeopardize the investigation, and the County's right to pursue an active investigation was superior to plaintiff's common law right of access. This appeal followed.

On appeal, plaintiff argues that the documents are not criminal investigatory records, and their release would not be inimical to the public interest. We have considered these

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equipment will be recovered . . . [and] that witnesses or potential suspects will come forward."

⁶ See Loigman v. Kimmelman, 102 N.J. 98, 109-13 (1986) (citing Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973)) (holding that an in camera review of allegedly privileged material is discretionary, and courts may instead require submission of an index describing the documents sought to be withheld).

⁷ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

arguments in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Assuming the requested documents are government records, as defined by N.J.S.A. 47:1A-1.1, we conclude they were exempt from disclosure pursuant to N.J.S.A. 47:1.1.3 a and b. We also conclude the County's interest in preventing disclosure of documents relating to an active criminal investigation far outweighed plaintiff's right to access.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION