

Law Offices of  
**Walter M. Luers, LLC**  
105 Belvidere Ave.  
P.O. Box 527  
Oxford, New Jersey 07863  
Telephone: 908.453.2147  
Facsimile: 908.453.2164  
wluers@luerslaw.com

September 14, 2010

Walter M. Luers, Esq.\*

\*Also admitted in New York

Honorable Judge  
Superior Court of New Jersey – Law Division  
Union County Courthouse  
2 Broad Street  
Elizabeth, New Jersey 07207

**Re: *Renna v. County of Union***

Dear Judge:

We represent Plaintiff Tina Renna in this action initiated via verified complaint and order to show cause summary proceeding against Defendant County of Union. This action was brought because Defendant County of Union has denied Plaintiff access to copies of emails requested by her.

### **STATEMENT OF FACTS**

The facts of this case are relatively straightforward. On August 2, 2010, Plaintiff requested copies of all emails to and from the email address of sdelia@ucnj.org on the following dates: July 28, 2010; July 29, 2010; July 30, 2010; August 1, 2010; and August 2, 2010. (Verified Complaint ¶ 11; September 14, 2010 Certification of Walter M. Luers, Exhibit 1 (hereinafter “Luers Cert.”)). The email address of sdelia@ucnj.org is the email address for Sebastian D’Elia, who is the Director of the Office of Public Information of Union County. (Verified Complaint ¶ 12). Emails sent to and from Mr. D’Elia’s Union County email address are public records. (Verified Complaint ¶¶ 13-14). On August 5, 2010, Defendant County of

Union, acting through Information Assistant Marlena M. Russo, denied access to the requested emails. (Verified Complaint ¶ 15; Luers Cert. Exh. 2).

## **LEGAL ARGUMENT**

### **POINT I**

#### **THIS ACTION SHOULD PROCEED IN A SUMMARY MANNER**

“A person who is denied access to a government record by the custodian of the record, . . . may institute a proceeding to challenge the custodian’s decision by filing an action in Superior Court.” *N.J.S.A. 47:1A-6*. Once instituted, “[a]ny such proceeding shall proceed in a summary or expedited manner.” *Id.* Here, because OPRA authorizes actions under it to proceed in a summary manner, the order to show cause should be granted so this matter may proceed in a summary manner. *R. 4:67-2(a)*.

This action involves one OPRA claim and an identical claim under the common law right of access. Both claims arise under a single written OPRA request and one response. Because Plaintiff’s claims are based on documentary evidence that has been submitted to the Court, the facts underlying this action cannot reasonably be disputed. We do not anticipate that any discovery will be required. Any factual issues that may arise can be resolved by evidence submitted through certifications or affidavits by the parties. Therefore, in light of the foregoing and the Legislature’s directive that OPRA actions proceed in a summary manner, we request that the Court sign the Order to Show Cause so that this action may proceed in a summary manner.

**POINT II**

**ACCESS SHOULD BE GRANTED  
PURSUANT TO THE OPEN PUBLIC RECORDS ACT**

As the Court knows, the Open Public Records Act (“OPRA”) mandates that “government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded [under OPRA] as amended and supplemented, shall be construed in favor of the public’s right of access.” *Libertarian Party of Cent. New Jersey v. Murphy*, 384 N.J. Super. 136, 139 (App. Div. 2006) (citing *N.J.S.A. 47:1A-1*). “The purpose of 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.’” *Times of Trenton Publ’g Corp. v. Lafayette Yard Cmty. Dev. Corp.*, 183 N.J. 519, 535 (2005) (quoting *Asbury Park Press v. Ocean County Prosecutor’s Office*, 374 N.J. Super. 312, 329 (Law Div. 2004)).

Here, the documents sought by Plaintiff are “government records” within the meaning of OPRA. Under OPRA, a “government record”:

means 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. *N.J.S.A. 47:1A-1.1*.

Here, there is no doubt that emails sent and received by an employee of the County of Union

who was using his official email account provided to him by the County of Union constitute “government records” within the meaning of OPRA.

The burden of proof in showing that a denial of access was justified rests solely with the Records Custodian. *N.J.S.A. 47:1A-6; Asbury Park Press v. Monmouth County*, 406 N.J. Super. 1, 7 (App. Div. 2009).

The issue for the Court to decide is whether Plaintiff’s request for emails was sufficiently specific. As discussed above, Plaintiff requested each and every email sent to or from County employee Sebastian D’Elia’s official email address. Plaintiff also identified the time frame for her request, which was five individual 24-hour periods. This request identified the records sought by Plaintiff with reasonable specificity.

In analyzing this case, the Court should be guided by the recent published Appellate Division case of *Burnett v. County of Gloucester*, \_\_ N.J. Super. \_\_, 2010 N.J. Super. LEXIS 79 (App. Div. 2010). In that case, the Plaintiff requested copies of “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to [March 14, 2008].” *Id.* at \*1.<sup>1</sup> The settlement agreements requested by the Plaintiff were not centrally located; rather, they were in the possession of several parties, including the Defendant’s insurance carrier, one of the Defendant’s insurance carriers or outside counsel. *Id.* at \*3. Importantly, the Plaintiff did not specify the specific matters for which he sought settlement agreements; rather, the Plaintiff requested a class of documents. The Appellate Division held that the Plaintiff’s request for all settlement agreements over a two-year period was a request for specific documents and not an open-ended request for research. *Id.* at \*12.

---

<sup>1</sup> A copy of the *Burnett* case utilizing the Lexis pagination, which is the only version of the case that was available to counsel at the time of filing, is attached to this Letter Brief.

This case presents the same issue as *Burnett*. Plaintiff identified the type of documents she seeks: emails. She has identified the sender or receiver: Mr. D'Elia. She has identified a specific date range for the emails: July 28, 2010 to August 2, 2010. Plaintiff's request does not require the Records Custodian to perform any research; in fact, the search Defendant would have to undertake in this case should be relatively simple. All of Mr. D'Elia's emails that he has sent or received can be sorted by date, and the emails that fall within the requested date range should be produced.

### **POINT III**

#### **ACCESS SHOULD BE GRANTED PURSUANT TO THE COMMON LAW**

If the Court were to determine that the records requested by Plaintiff are not public records or are exempt from disclosure under the Open Public Records Act, we request that the requested documents be disclosed pursuant to the common law right of access. "Nothing contained in [OPRA] shall be construed as limiting the common law right of access to a government record, including criminal investigatory records of a law enforcement agency." *N.J.S.A. 47:1A-8*; see also *North Jersey Media Group Inc. v. State, Dep't of Personnel*, 389 N.J. Super. 527, 536 (Law. Div. 2006); *Bergen County Improvement Auth. v. N. Jersey Media Group, Inc.*, 370 N.J. Super. 504, 516 (App. Div. 2004). The right of access under the common law is broader than under OPRA. *North Jersey Media Group*, 389 N.J. Super. at 537.

The records sought here are public records because they are kept by Mr. D'Elia in the course of his official duties. *Higg-A-Rella, Inc. v. County of Essex*, 141 N.J. 35, 46 (1995) (defining a common-law record as one that is made by a public official in the exercise of their public function, either because the record was required or directed by law to be made or kept, or

September 14, 2010

Page 6 of 6

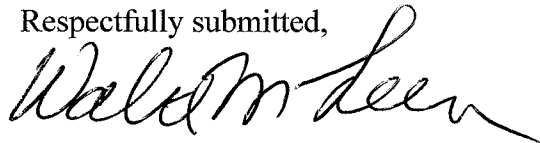
because it was filed in a public office). Ms. Renna has standing to request and receive these documents. "A citizen, and the press on its behalf, does not have to prove any personal interest in order to satisfy the common law standing requirement." *Daily Journal v. Police Dep't of City of Vineland*, 351 N.J. Super. 110, 122 (App. Div. 2002). Here, the County has not claimed that any type of privilege or privacy interest would be implicated by disclosure of the emails. (Luers Cert. Exh. 2). Because the County has not asserted any interest in keeping these records private, they should be provided to Plaintiff.

#### POINT IV

#### AWARD OF REASONABLE ATTORNEYS' FEES

If the Court orders Defendants' to produce the documents at issue, the Court should find that Plaintiff is the prevailing party and, under the common law and OPRA's fee-shifting provision, award Plaintiff a reasonable attorneys' fee and costs. *N.J.S.A. 47:1A-6; Mason v. Hoboken*, 196 N.J. 51, 79 (2008) (concluding that catalyst theory applies to fee awards under both OPRA and the common law right of access).

Respectfully submitted,



Walter M. Luers