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Honorable Camille M. Kenny, J.S.C.
Superior Court – Law Division
Union County Courthouse
2 Broad Street
Elizabeth, New Jersey 07207

Re: *Renna v. Union County, et al.*
Docket No. [not yet assigned]

Dear Judge Kenny:

We filed this OPRA action because Plaintiff was denied access to the Union County Countywide Emergency Operation Plan. Under OPRA, there is no instance supporting Defendants' denial of the Union County Countywide Emergency Operation Plan on the grounds it would create a risk to the safety of persons or property.

Based on the reasoning set forth in their denial of access, we anticipate that Defendants will argue releasing a copy of the Union County Countywide Emergency Operation Plan "would create a risk to the safety of persons or property" and "would jeopardize security of the building of facility of persons therein," and therefore should not be subject to disclosure under OPRA at this time.

STATEMENT OF FACTS

These facts are drawn directly from our Verified Complaint.

On June 15, 2014, Plaintiff submitted a written OPRA request to Defendants of a copy for “in electronic format, [and] if not available in electronic format, please prepare for on-site inspection: The Countywide Emergency Plan” for Union County. (Verified Complaint ¶ 7).

On July 10, 2014, Defendants responded via e-mail to Plaintiff’s OPRA request by stating Defendants had “identified the applicable records and completed an initial review for redactions” and granted itself an extension of time until July 21, 2014 to redact responsive documents. (Verified Complaint ¶ 7).

On July 21, 2014, Defendants reversed itself and declined to produce the emergency operation plan at all, citing (1) paragraph 1 of Executive Order 21 (McGreevey 2002); (2) N.J.S.A. 47:1A-9; and (3) N.J.S.A. 47:1A-1.1. Furthermore, Defendants claimed releasing a copy of the Union County Countywide Emergency Operation Plan “would create a risk to the safety of persons or property” and “would jeopardize security of the building of facility of persons therein,” and therefore should not be subject to disclosure under OPRA at this time. (Verified Complaint ¶ 8).

LEGAL ARGUMENT

POINT I

PLAINTIFF’S ACTION SHOULD PROCEED IN A SUMMARY MANNER

The standards governing the initiation of OPRA actions are familiar ones. “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.* “This statutory language requires a trial court to proceed under the procedures prescribed in Rule 4:67.” *Courier News v. Hunterdon County Prosecutor’s Office*,

358 N.J. Super. 373, 378 (App. Div. 2003). Any such action must be initiated by Order to Show Cause, supported by a verified Complaint. *Id.* (citing *R. 4:67-2(a)*). Here, because OPRA authorizes actions under it to proceed in a summary manner, and Plaintiff's request for an order to show cause is supported by a verified complaint, the relevant documents have been provided via certification, and the relevant facts should not reasonably be disputed, the order to show cause should be granted so this matter may proceed in a summary manner. *R. 4:67-2(a)*.

POINT II

THE RECORDS SOUGHT BY PLAINTIFF SHOULD BE DISCLOSED

Plaintiff seeks records pursuant to OPRA and the common law right of access. 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)).

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). 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, the Union County Emergency Operation Plan as requested by Plaintiff is obviously a public record within the broad definition of a public record under OPRA. Defendants should not reasonably dispute that fact. Moreover, Defendants purported reasoning for denying Plaintiff's OPRA request is not supported by any relevant New Jersey case law, and therefore Defendants' should have complied with Plaintiff's OPRA request.

POINT III

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 OPRA's fee-shifting provision and the common-law right of access, 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,

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