

**To: New Jersey Law Revision Commission**  
**From: Renee Wilson**  
**Re: Open Public Records Act - N.J.S. 47:1A-1.1 et seq. - (*Paff v. Bergen County*, 2017 WL 957735 (App. Div. 2017))**  
**Date: November 5, 2018**

## MEMORANDUM

### Executive Summary

In *Paff v. Bergen County*, the Court considered several issues pertaining to the Open Public Records Act (OPRA). One specific issue was whether the county violated OPRA by denying access to redacted information requested.<sup>1</sup>

### Background

A records requestor filed a complaint against a county and sheriff's office's custodian of records for violating the Open Public Records Act (OPRA) and his common-law right to access.<sup>2</sup> Before doing so, he filed a request under OPRA seeking a log of complaints against correction officers who worked in the Bergen County jail beginning on January 1, 2012.<sup>3</sup> Defendants provided the log, which was redacted to remove personal identifiers, specifically the names of the complainants and the officers against whom the complaints were made.<sup>4</sup>

In response, the Plaintiff filed a complaint and order to show cause alleging that the Defendants had improperly redacted information without an explanation.<sup>5</sup> Defendants claimed that "the redacted information was exempt from disclosure as confidential, in compliance with the Attorney General's Internal Affairs Policies and Procedures (the Guidelines), adopted by the Bergen County Sheriff's Office, along with its internal affairs investigation guidelines."<sup>6</sup> The Trial Court ordered disclosure of the redacted material and awarded Plaintiff attorney fees and costs.<sup>7</sup>

On appeal, the Appellate Division disagreed with the Trial Court's finding and determined that Respondent's access to public records was not denied by the county or sheriff's office custodian and that Respondent did not have a common law right to access personal identifiers in the log of information provided.<sup>8</sup> Specifically, the Court looked to the statute's definition section which states in relevant part, "...[a] government record shall not include the following information

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<sup>1</sup> *Paff v. Bergen County*, 2017 WL 957735 (App. Div. 2017).

<sup>2</sup> *Id* at 1.

<sup>3</sup> *Id* at 1.

<sup>4</sup> *Id* at 1.

<sup>5</sup> *Id* at 2.

<sup>6</sup> *Id* at 2.

<sup>7</sup> *Id* at 2.

<sup>8</sup> *Id* at 1.

which is deemed to be confidential...<sup>9</sup> This section goes on to list thirty-one categories of documents that are not deemed to be government records subject to OPRA's disclosure requirements.<sup>10</sup> While the Appellate Court agreed with the Trial Court, that the statutory section does not make specific reference to the Guidelines, it noted that such a literal review "overlooks the depth of the recognized exceptions."<sup>11</sup>

Additionally, the Court made reference to N.J.S. 47:1A-1.1, which recognizes that "records may be exempt from public access based upon authorities other than the exemptions enumerated within OPRA."<sup>12</sup> Specifically, it states:

[A]ll government records shall be subject to public access unless exempt from such access by: [OPRA] as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor...<sup>13</sup>

The Court said that "the plain language of the statute as well as judicial precedent make it clear that an exemption is statutorily recognized by OPRA if it is established by any of the authorities enumerated in *N.J.S.A. 47:1A-1* or *-9*."<sup>14</sup> The court suggested that since the Guidelines upon which Defendants relied to explain why certain information was redacted had been adopted pursuant to the authority of the Attorney General, they fell under the OPRA exemption of a public record or governmental record from public access.<sup>15</sup> As the Court explained,

[w]e reject plaintiff's assertion, which was mistakenly accepted by the trial judge, to confine review of excluded documents to *N.J.S.A. 47:1A-1.1*, without also considering the exceptions provided by *N.J.S.A. 47:1A-9(a)*. Reading these statutory provisions together, *see Gilleran, supra*, 227 *N.J.* at 172 (stating when construing OPRA, courts do not "view the statutory words in isolation but 'in context with related provisions so as to give sense to the legislation as a whole.' " (quoting *Murray v. Plainfield Rescue Squad*, 210 *N.J.* 581, 592 (2012))), we conclude defendants met their "burden of proving that the denial of access is authorized by law." *N. Jersey Media Grp., supra*, 447 *N.J. Super.* at 195 (quoting *N.J.S.A. 47:1A-6*). The published Guidelines unequivocally require internal affairs investigation reports, such as those sought by plaintiff's OPRA request, to remain confidential as to the complainant and the officer against whom

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<sup>9</sup> N.J.S. 47:1A-1.1

<sup>10</sup> *Paff v. Bergen County*, 2017 WL 957735, \*3.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> N.J.S. 47:1A-1.1

<sup>14</sup> *Paff v. Bergen County*, 2017 WL 957735, \*3.

<sup>15</sup> *Id.*

the complaint was directed. Thus, public access was not denied; rather, it was limited as recognized by *N.J.S.A. 47:1A-9(a)*.<sup>16</sup>

### **Conclusion**

Staff seeks authorization to conduct additional research and outreach regarding the issues identified in *Paff v. Bergen County* to determine if any modification to the statute could be of use in achieving predictable and consistent outcomes in the cases that arise moving forward. To this time, no other cases have addressed this specific issue with regard to OPRA, as it relates to exemption of procedures adopted by the county.

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<sup>16</sup> *Id* at 5.