

CJ GRIFFIN (#031422009)
PASHMAN STEIN WALDER HAYDEN
A Professional Corporation
Court Plaza South
21 Main Street, Suite 200
Hackensack, New Jersey 07601
Ph: (201) 488-8200
F: (201) 488-5556
cgriffin@pashmanstein.com

Attorneys for Plaintiff,
Hillary Goldberg

HILLARY GOLDBERG,

Plaintiff,

v.

TOWNSHIP OF TEANECK and DOUG
RUCCIONE, in his official capacity as Records
Custodian for the Township of Teaneck,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.:

Civil Action

VERIFIED COMPLAINT

Plaintiff, Hillary Goldberg, through her undersigned counsel, Pashman Stein Walder Hayden, A Professional Corporation, complains against Defendant Township of Teaneck and its Records Custodian as follows:

INTRODUCTION

1. This is an action alleging a violation of the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, seeking access to “government records” from the Township of Teaneck (“Teaneck”).

2. Plaintiff filed a very narrow OPRA request for four days of emails sent to or received by the Township Manager from August 2, 2021 to August 5, 2021.

3. Although Teaneck acknowledged that it would be “easy” to locate and retrieve the emails, it nonetheless continued to insist that Plaintiff must further narrow her request by providing

a subject matter or keyword. Further, although it did not conduct any search, it asserted that the Township Manager receives a “crazy amount” of emails each day and thus narrowing was required for that reason.

4. Although Plaintiff disagreed that any narrowing of her request was necessary, in the spirit of cooperation she did so. She narrowed her request to seek a single day of the Township Manager’s emails—August 2, 2021.

5. Despite the fact that Plaintiff reduced the timeframe of her OPRA request by seventy-five percent and sought only a single day of emails, and despite the fact that the emails are very easy to locate and retrieve from the Township Manager’s email account, the Custodian still refused to fulfill Plaintiff’s OPRA request unless she provide a keyword or subject matter.

6. Plaintiff’s OPRA request was sufficiently specific so that Teaneck knows how to locate the responsive emails. All it needs to do is locate them in the Township Manager’s email account, review them to see if an exemption applies, and produce them to Plaintiff. Those tasks would not substantially disrupt agency operations, thus there is no basis for Teaneck to demand that Plaintiff further narrow her request by providing a keyword or subject matter.

7. Plaintiff does not want to provide a keyword or subject matter because doing so would reveal the nature of her reporting and because her request is valid as written. It should thus be fulfilled and Plaintiff files this lawsuit to compel Teaneck to do so.

PARTIES

8. Plaintiff Hillary Goldberg is a resident of Teaneck, New Jersey.

9. Defendant Teaneck is a public agency organized pursuant to the laws of the State of New Jersey and is subject to OPRA. See N.J.S.A. 47:1A-1.1. Teaneck has its principal place of business at 818 Teaneck Road, Teaneck, New Jersey 07666 .

10. Defendant Doug Ruccione (“Custodian”) is the statutory Records Custodian for Teaneck and is named in his professional capacity only. See N.J.S.A. 47:1A-1.1. Upon information and belief, the Custodian also maintains an office at 818 Teaneck Road, Teaneck, New Jersey 07666.

VENUE AND JURISDICTION

11. Venue is properly laid in Bergen County because Defendants are located in Bergen County and because the cause of action arose in Bergen County. R. 4:3-2(a).

12. This Court has subject matter jurisdiction pursuant to N.J.S.A. 47:1A-6 and the common law right of access.

FACTUAL ALLEGATIONS

13. Plaintiff is the owner, Publisher and Editor-in-Chief of the Teaneck Tomorrow LLC. Teaneck Tomorrow is a grassroots group whose mission is to achieve integrity, transparency and responsiveness, with a particular focus to incorporate diversity and social justice in Teaneck governance. The Teaneck Tomorrow Newsletter is an educational and informational publication to encourage and ensure that all residents of Teaneck are informed about the township government. It educates residents about governance matters; keeps the public informed about what occurs at township meetings; and gives a voice to all Teaneck residents about Teaneck news.

14. On August 9, 2021, Plaintiff filed an OPRA request with Teaneck seeking: “All emails to and from the Township Manager from August 2, 2021 [to] August 5, 2021.” See Exhibit A, a true and accurate email chain between Plaintiff and the Custodian.

15. That same date, the Custodian responded and insisted that Plaintiff provide a keyword or subject matter with her request.

16. Plaintiff responded on August 10, 2021 and objected, writing:

This is a very narrow request. I have sought only four days of emails for a single person. OPRA only requires that I sufficiently describe what I am seeking so you know how to locate the responsive records. You can easily locate these records by simply producing all emails sent and received by this single person during this [four]-day time period. Then all you have to do is review those to see if an exemption applies that requires them to be redacted or withheld. Frankly, that requires less work than if I gave you a subject matter and you had to comb through every email to see if it was “responsive” in substance.

I will not be providing a subject matter, so please produce the responsive four days of emails.

[Ibid.]

17. The Custodian responded that same date, again refusing to conduct the search. He wrote:

We have many email OPRA requests and we need to maintain consistency in how we handle them. We try hard to accommodate you, and we are asking that you work with us. We do not have the capacity to be a research team for requesters, especially when bullied into doing what they want us to do.”

[Ibid.]

18. Plaintiff promptly responded, “I am not bullying anyone. But these emails are very easy to locate and produce because my request is already narrow, so please do so.” Ibid.

19. On August 12, 2021, the Custodian again responded. Although he acknowledged that searching for and retrieving the responsive emails would be “easy” to do, he again refused to actually conduct that search. Instead, he wrote:

The emails in essence are always easy to retrieve - it is the reviewing that takes up so much of our time.

Not for nothing; the Manager retrieves/sends a crazy amount of emails daily.

We have so many OPRA's for email requests and we must remain consistent in the standards of how we process them. Please, just choose some subject so we can process this for you.

Should whatever is retrieved not be what you are searching for, you can submit another OPRA.

[Ibid.]

20. The Custodian clearly did not conduct any search to identify exactly how many responsive emails there actually would be for the four-day time period, despite acknowledging that doing so would be “easy.”

21. Nonetheless, in an attempt to cooperate with the Custodian, Plaintiff narrowed her request to a single date of emails, which would presumably produce approximately seventy-five percent fewer emails than her original request. She wrote, “I will take . . . all emails to and from the Township Manager on August 2, 2021.” Ibid.

22. Despite the fact that Plaintiff’s request was now extremely narrow—seeking only a single day of emails—the Custodian *still* refused to conduct the search and produce the responsive records.

23. Instead, on August 13, 2021, he again demanded that Plaintiff give him “some subject matter to search for this request.” Ibid.

24. Plaintiff made it abundantly clear that she was not providing a subject matter because one was unnecessary—the Custodian already conceded that he could easily locate the records and thus her request was not invalid.

25. Moreover, as Plaintiff had indicated to the Custodian, if she did provide a subject matter, fulfilling her OPRA request would take even more work because it would require the Custodian to review the emails both for content, and to ascertain whether an exemption applies. Further, as the Custodian acknowledged, she might also need to file multiple OPRA requests in order to obtain what she wants to further her reporting.

26. A response to Plaintiff's OPRA request was due on August 18, 2021.

27. It is clear that the Custodian has not even conducted a search to support his claim that the Township Manager sends and receives a "crazy amount" of emails each day. It is further implausible that reviewing and producing a single day's worth of a municipal manager's emails would "substantially disrupt agency operations," which is the standard that Teaneck would need to prove in order to demand that Plaintiff further narrow her request or to deny her request.

28. Teaneck has not produced any responsive records as of the date of this filing, nearly three weeks beyond the statutory deadline. This constitutes a deemed denial of Plaintiff's OPRA request, which is also clear from the fact that the Custodian repeatedly refused to fulfill it unless Plaintiff caved to his unlawful demand that she further narrow her request by producing a subject matter or keyword.

29. Plaintiff files this suit for an order compelling Teaneck to conduct the search for responsive emails and to produce all non-exempt emails.

FIRST COUNT
(Violation of OPRA)

30. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

31. Pursuant to N.J.S.A. 47:1A-1, all government records must be "readily accessible" to the citizens of this State unless exempted by law.

32. The records requested by Plaintiff are "government records" as that term is defined by OPRA because they were "made, maintained or kept on file in the course of [Teaneck's] official business." N.J.S.A. 47:1A-1.1.

33. Plaintiff's OPRA request reasonably described with sufficient indemnifying information the records she was seeking.

34. In fact, the Custodian acknowledged that it would be “easy” to retrieve the responsive records.

35. Despite the fact that Plaintiff’s OPRA request sufficiently identified the responsive records and was thus valid, Defendants still refused to fulfill it.

36. OPRA provides that “[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” N.J.S.A. 47:1A-5(g).

37. Here, Plaintiff’s OPRA request would not substantially disrupt agency operations and the Custodian refused to even conduct a search to ascertain how many responsive emails there would be for Plaintiff’s narrowed request of a single day of emails.

38. Because Plaintiff’s OPRA request was valid and fulfilling it would not cause a substantial disruption, the Custodian could not demand that Plaintiff further narrow her OPRA request.

39. There was no lawful basis to refuse to fulfill Plaintiff’s OPRA request.

40. A response to Plaintiff’s OPRA request was due on August 18, 2021 and no records were produced by that date.

41. A public agency’s failure to produce responsive records within seven business days constitutes a deemed denial of that request. N.J.S.A. 47:1A-5(i).

42. Accordingly, Defendants have violated OPRA by:

- a. Failing to make the records requested “readily accessible for inspection, copying, or examination” in violation of N.J.S.A. 47:1A-1;

- b. Failing to grant access to government records within seven business days, in violation of N.J.S.A. 47:1A-5(i); and
- c. Failing to prove that the denial of access is authorized by law, in violation of N.J.S.A. 47:1A-6.

WHEREFORE, Plaintiff demands judgment against Defendants:

- a. Declaring said actions of Defendants to be illegal, invalid, and in violation of OPRA, N.J.S.A. 47:1A-1 *et seq.*, by failing to provide lawful access to the requested records;
- b. Directing Defendants to conduct a search and release the requested records to Plaintiff forthwith;
- c. Directing Defendants to produce the records for an *in camera* review should Plaintiff challenge any redactions to them;
- d. Ordering Defendants to preserve the requested records pending resolution of these proceedings or as otherwise required by law;
- e. Awarding counsel fees and costs pursuant to N.J.S.A. 47:1A-6; and
- f. For such other relief as the Court may deem just and equitable.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation
Attorneys for Plaintiff,
Hillary Goldberg

Dated: September 7, 2021

By: /s/ CJ Griffin
CJ GRIFFIN

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, by its attorney, hereby certifies that it has no knowledge of any contemplated action or arbitration regarding the subject matter of this action and that Plaintiff is not aware of any other parties who should be joined in this action.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation
Attorneys for Plaintiff,
Hillary Goldberg

Dated: September 7, 2021

By: /s/ CJ Griffin

CJ GRIFFIN

VERIFICATION

Hillary Goldberg, of full age, deposes and says:

1. I am the Plaintiff in this matter.
2. I have read the Verified Complaint. The allegations of the Verified Complaint are true. The said Verified Complaint is based on personal knowledge and is made in truth and good faith and without collusion, for the causes set forth herein. As to any facts alleged to be upon information and belief, I believe those facts to be true.
3. All documents attached to the Verified Complaint are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents unless so stated.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Hillary Goldberg

Dated: September 3, 2021