

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation

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CJ GRIFFIN, ESQ. (#031422009)

Attorneys for Plaintiff,

Jennifer Coombs

JENNIFER COOMBS,

Plaintiff,

v.

BOROUGH OF WESTWOOD and KAREN
HUGHES, in her official capacity of records
custodian for the Borough of Westwood ,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: BERGEN COUNTY
: DOCKET NO: BER-L-

: Civil Action

: **VERIFIED COMPLAINT**

Plaintiff, Jennifer Coombs, through her undersigned counsel, Pashman Stein Walder
Hayden, A Professional Corporation, complains against the Defendants as follows:

1. This is an action alleging violation of the New Jersey Open Public Records Act,
N.J.S.A. 47:1A-1 to -13, (“OPRA”).

2. Plaintiff brings this action because Defendants have unlawfully denied Plaintiff
lawful access to government records which were the subject of an OPRA request.

PARTIES

3. Plaintiff Jennifer Combs is a New Jersey resident who lives in Neptune City.

4. Defendant Borough of Westwood (“Westwood”) is a public agency organized pursuant to the laws of the State of New Jersey. Defendant’s principal place of business is located at 101 Washington Avenue, Westwood, NJ 07676.

5. Defendant Karen Hughes (“the Custodian”) is the Borough Clerk and statutory custodian of records for Westwood and is being sued in his professional capacity. Upon information and belief, she maintains an office at 101 Washington Avenue, Westwood, NJ 07676.

6. Westwood “ma[kes], maintain[s] or ke[eps] on file,” or “receive[s] in the course of...its official business” government records, and is thereby subject to OPRA.

VENUE

7. Venue is properly laid in Bergen County because Defendant Westwood is a public entity located in Bergen County and because the cause of action arose in Bergen County. R. 4:3-2(a).

FACTUAL ALLEGATIONS

8. Plaintiff is a concerned citizen of New Jersey who engages in a variety of governmental transparency activities, including filing OPRA requests to monitor government spending. Plaintiff, who is in the process of building a media brand and creating a publication, informally uses the moniker “NJ Ask Media Co.” when making records requests.

9. On December 7, 2017, Plaintiff filed an OPRA request with Westwood seeking employee payroll records for all Borough employees for the year 2017. Plaintiff specifically indicated that she was invoking N.J.S.A. 47:1A-10’s requirement that the employee’s name, position, length of service, and salary be disclosed.

10. Plaintiff's OPRA request was submitted via a new online tool called "OPRA Machine." A true and accurate copy of the OPRA request and all responsive communications is attached hereto as **Exhibit A**.

11. On December 15, 2017, the Custodian responded to Plaintiff's OPRA request by attaching a 5-page payroll record which properly listed each employee's name, position, hire date, salary, and overtime pay. However, the names of some employees were redacted with white-out redactions. Attached hereto as **Exhibit B** is a true and accurate copy of the payroll records as produced on December 15, 2017.

12. The Custodian's response stated:

Attached please find the employee payroll records requested for 2017 as of the date of your request.

Please be advised that while we have provided all the other information for the 47 Summer Recreation employees who are minors, we have withheld their names to maintain their reasonable expectation of privacy, in accordance with N.J.S.A. 47:1A-1 (Legislative Findings), commonly referred to as Exemption #24 in the Handbook for Records Custodians.

[Exhibit A, Page 2.]

13. Plaintiff responded to the Custodian that same day, stating: "I'm objecting because I don't think there is a privacy interest in holding a job no matter your age. Please comply with my OPRA request for payroll records of all the employees of the Borough of Westwood." See Exhibit A, Page 3.

14. After a phone call, on December 20, 2017, the Custodian notified Plaintiff that she was going to have the Borough's attorney review the matter. Ibid.

15. After some time passed, Plaintiff wrote the Custodian on January 5, 2018 to ask if she had any update from the attorney. See Exhibit A, Page 4.

16. The Custodian advised that she had been out of the office with illness, but would follow-up with the Borough Attorney. See Exhibit A, Page 5.

17. On January 9, 2018, the Custodian updated her response and produced a new version of the payroll report, but it still did not disclose the names of employees who were minors. Attached as Exhibit C is a true and accurate copy of the payroll report as produced on January 9, 2018.

18. The Custodian explained the production as follows:

Thank you for your patience as we have reviewed your concern that the names of minors should be included in the payroll records.

Our Borough Attorney has directed that minors may be identified by their initials and the words "a minor", but not by their full names. I have reviewed all birthdays to ensure that everyone over 18 is entered with their full names, and made a number of changes to that effect. The revised document is attached. **There remains 13 minors who are identified as per the Borough Attorney's direction.** As I indicated in my email with the original response, we are withholding the names because these individuals have a reasonable expectation of privacy in accordance with N.J.S.A. 47:1A-1, commonly referred to as Exemption #24 in the Handbook for Records Custodians. We also believe this is in line with other instances where information regarding minors is redacted, such as Police reports.

[Exhibit A, Page 6 (emphasis added).]

19. In total, Westwood withheld the names of 13 employees on the basis that they were minors. Each person was an employee of the summer recreation program and earned approximately \$1,800 to \$2,000.

20. Plaintiff files this lawsuit seeking access to the “name” of these minor employees as there is no lawful basis to deny access to them.

COUNT ONE
(Violation of OPRA)

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

22. A public agency has the burden of proving that any denial of access is authorized by law. N.J.S.A. 47:1A-6.

23. In response to Plaintiff’s OPRA request, Westwood has maintained that it cannot disclose the names of individuals under the age of 18 who worked for the Borough.

24. OPRA, however, expressly requires an agency to disclose an employee’s “*name, title, position, salary, payroll record, length of service*” and other information, “*notwithstanding any other provision of [OPRA] or any other law to the contrary.*” N.J.S.A. 47:1A-10.

25. Westwood violated OPRA by refusing to disclose the names of all of its employees.

26. There is *no* provision of law that permits Westwood to hold the names of employees simply because they are under the age of 18.

27. OPRA’s privacy provision cannot be invoked to deny access to information that is required to be disclosed by Section 10 of OPRA.

28. Any person, no matter their age, who works for a public agency has no “reasonable expectation of privacy” that their name and salary will not be disclosed to the public because the law of this state for more than 40 years is that such information is public information.

29. Westwood's non-disclosure of the names of all of its employees deprives Plaintiff of her statutory right to learn this information and prohibits her from determining who receives public funds, whether any nepotism, and other facts that OPRA was intended to reveal.

30. Therefore, Defendants have violated OPRA by:

- (a) Failing to grant full access to the names of all employees in violation of N.J.S.A. 47:1A-10;
- (b) Failing to make the requested government records "readily accessible for inspection, copying or examination," in violation of N.J.S.A. 47:1A-1;
- (c) Failing to provide a lawful basis for denying access to government records or information in violation of N.J.S.A. 47:1A-5(g);
- (d) Failing to base a denial of access upon a bases "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 in violation of OPRA, N.J.S.A. 47:1A-1 et seq., by failing to grant access to the names of government employees;
- (b) Directing Defendants to release the requested the payroll record in non-redacted form to Plaintiff forthwith;
- (c) Ordering Defendants to preserve the records and information during the pendency of this case and any necessary appeal;
- (d) Awarding counsel fees and litigation costs pursuant to N.J.S.A. 47:1A-6; and

(e) For such other relief as the Court may deem just and equitable.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Jennifer Coombs

Dated: February 19, 2018

By: _____
CJ GRIFFIN, ESQ.

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, by her attorney, hereby certifies that she 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,
Jennifer Coombs

Dated: February 19, 2018

By: _____
CJ GRIFFIN, ESQ.

VERIFICATION

Jennifer Coombs, of full age, deposes and says:

1. I have read the Verified Complaint. The allegations of the Verified Complaint contained in Paragraphs 1-5, and 8-20 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.

2. 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.

JENNIFER COOMBS

Dated: February 19, 2018

CERTIFICATION OF FAX/ELECTRONIC SIGNATURE

CJ Griffin, Esq., of full age, certifies and says as follows:

1. I am an attorney at law with the law firm of Pashman Stein Walder Hayden, P.C. I make this certification of the genuineness of the electronic/faxed signature of Jennifer Coombs.

2. I hereby certify that Ms. Coombs acknowledged to me the genuineness of her electronic/faxed signature on the foregoing Verification page.

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.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Jennifer Coombs

Dated: February 19, 2018

By: _____
CJ GRIFFIN, ESQ.