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October 17, 2018

Walter M. Luers, Esq.*

*Also admitted in New York

Writer's Direct Email: wluers@luerslaw.com

Honorable Lisa P. Thornton, A.J.S.C.
Superior Court of New Jersey
Monmouth County Courthouse
71 Monument Park, 3rd Floor
Freehold, New Jersey 07728

Re: *Coombs, et al. v. County of Monmouth, et al.*
Docket No. MON-L-003195-18

Dear Judge Thornton:

We write to reply to the arguments made by the Defendants in the order in which they are presented in their papers.

A. PLAINTIFFS' LAWSUIT WAS TIMELY FILED UNDER *RULE 1:3-1*

Defendants argue that Plaintiffs did not timely file this lawsuit with respect to their OPRA requests that were denied on July 18 and July 19. These requests are listed at pages 4-5 of Defendants' letter brief and are located at Exhibits A-G to the Luers Certification that we filed with our opening papers.

Our lawsuit was timely filed. Forty-five days after July 18, 2018 was Saturday, September 1, 2018. Forty-five days after July 19, 2018 was Sunday, September 2, 2018. September 3, 2018 was a legal holiday pursuant to the July 5, 2017 Order of the Supreme Court. (Oct. 17, 2018 Certification of Walter M. Luers, Exh. A). Because the 45th day fell on a weekend and Court holiday, the last day to file this action was Tuesday, September 4, 2018,

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which was the day on which this case was filed via eCourts. The rule that allows a party to file a case or paper on the first business day following a weekend or holiday if the paper was due on a weekend or holiday is the next-business-day rule.

Courts have held that unless there is a contrary Legislative directive, if the last day to perform any act is not a business day, then the last day to perform that act is the next business day.

Pursuant to *Rule* 1:3-1, which Courts have called the “next business day rule,” “In computing any period of time fixed by rule or court order . . . [t]he last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday.”

“In the absence of legislative direction, our courts have held that a statutory time period for filing should be computed as provided in *Rule* 1:3-1.” *State v. Johnson*, 376 N.J. Super. 163, 171 (App. Div. 2005). When determining the last day to file indictments, notices of tort claims, civil forfeiture actions and sentencing appeals, Courts have held that the next business day rule applies. *State v. Johnson*, 376 N.J. Super. at 171 (criminal sentencing appeals); *State v. Rhodes*, 11 N.J. 515, 522-25 (1953) (indictments); *Estate of Harrington v. City of Linden*, 338 N.J. Super. 500, 503 (App. Div. 2001) (notices of tort claims); *State v. Jones*, 181 N.J. Super. 549, 553 (Law Div. 1981) (civil forfeiture actions).

Here, the Court should hold that *Rule* 1:3-1 is applicable to OPRA. The statute of limitations for OPRA and common law actions is forty-five days. OPRA has no explicit limitations period. The source for the forty-five day limitations period is the Court rule that governs actions in lieu of prerogative writs, which is *Rule* 4:69-6(a). *Mason v. City of Hoboken*,

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196 N.J. 51, 70 (2008). Because the statute of limitations is set by Court rule, *Rule* 1:3-1 may modify the limitations period. “This rule is applicable only to computation of time periods fixed by rule or court order and is not applicable where statutory provisions relate to a fixed time and the method of computation is included in the statute.” 1 N.J. PRACTICE, COURT RULES ANNOTATED R. 1:3-1 (2014 Supp.) (Author’s Comments).

This rule is justified by the need to have a uniform rule for handling situations when the time to perform an act ends on a holiday or weekend. Without a uniform rule, practitioners would not know when to file their papers (*e.g.*, before the weekend or after). In addition, a finding that Plaintiffs’ papers should have been filed before September 1 is prejudicial to Plaintiffs because that would reduce the limitations period from 45 days to 44 days. Additionally, Defendants’ argument, if accepted, would unduly prejudice the Plaintiffs here because, purely through fortuity, the limitations period for his claims ended on a Saturday and Sunday. Other plaintiffs whose claims happened to expire on a business day would have the benefit of the full 45-day period. For all of these reasons, we request that the Court apply the next business day rule to actions that arise under OPRA and the common law, and hold that Plaintiffs’ verified complaint was timely filed.

B. DEFENDANTS’ DISCUSSION OF PRIVACY IS IRRELEVANT TO THIS CASE

We agree that, in general, records custodians have a responsibility to protect an individual’s reasonable expectation of privacy. We do not agree that records custodians may refuse to respond to an OPRA request solely on the basis of its source. The Defendants have cited no case – and there are none – that permits an agency to refuse to respond to a valid OPRA request. In their discussion of privacy, the Defendants cite to absolutely no cases that would

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permit the Defendants to do what they are attempting to do, which is to refuse to respond to OPRA requests submitted via email. The record in this case shows that in those rare cases when documents or information are inadvertently disclosed, OPRAmachine has acted promptly to remove the information. OPRAmachine has its own notice and take-down policy, Verified Complaint ¶ 36, and the Certification of Allyce Lisi, filed by the Defendants, shows that OPRAmachine has removed documents or information that have been inadvertently produced by Monmouth County. According to the Lisi Certification, OPRAmachine removed records at the request of the Defendants in one day. (Lisi Cert. ¶¶ 8-11). Thus, Defendants' position has no legal support and no factual support in this record.

The same is true of Defendants' discussion of privacy under the New Jersey Constitution and Federal law.

Defendants concerns are speculative. "[T]he reasons for withholding documents must be specific." *Newark Morning Ledger Co. v. New Jersey Sports & Exposition Authority*, 423 N.J. Super. 140, 162 (App. Div. 2011). Courts will "simply no longer accept conclusory and generalized allegations of exemptions . . . but will require a relatively detailed analysis in manageable segments." *Loigman v. Kimmelman*, 102 N.J. 98, 110 (1986) (internal quotation marks and citation omitted); *see also Communications Workers v. America v. McCormac*, 417 N.J. Super. 412, 442 (App. Div. 2008) (citing and quoting the same language in *Loigman* as well).

When attempting to utilize any exception, "a public agency seeking to restrict the public's right of access to government records must produce **specific reliable** evidence sufficient to meet a statutorily recognized basis for confidentiality." *Courier News v. Hunterdon County*

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Prosecutor's Office, 358 N.J. Super. 373, 382-83 (App. Div. 2003). "Absent such a showing, a citizen's right of access is unfettered." *Id.* at 383.

There is simply no credible evidence that supports Defendants' contentions. To the extent there is any evidence, the evidence supports Plaintiffs. With respect to OPRAMachine, on the one occasion when information was inadvertently disclosed, OPRAMachine took down the information in one day. With respect to the information inadvertently given to John Paff, Monmouth County has taken no measures to follow-up or respond to John Paff's inquiry to Defendants regarding the requested redactions. In fact, after sending one email about the inadvertently produced information, Defendants have not made any further contact with Paff to protect this interest that they claim is strong. With this reply brief, we are filing the Certification of John Paff, in which he certifies that he has not heard anything from the Defendants since they sent him an email on September 19 (one full week after Defendants allegedly discovered the disclosure) and they have never responded to Paff's October 2, 2018 request for clarification. (Oct. 17, 2018 Certification of John Paff, ¶¶ 4-6 & Exh. A). Even the Defendants are not treating these issues with the urgency that they claim is demanded.

Defendants' position is a solution in search of a problem. OPRAMachine has a notice and take-down policy. The one time Monmouth County inadvertently produced some information, OPRAMachine took it down in one day. There is no evidence that OPRA requests submitted through OPRAMachine are any more or less likely than any other type of OPRA requests and responses to involve inadvertent disclosure of information. No Court decision supports Defendants' position, and we are not aware of any. Finally, in light of the fact that

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Defendants' acts are generally covered by qualified immunity, the inadvertent disclosure of confidential information is unlikely to lead to any liability.

For these reasons as well as those set forth in our opening papers, Defendants must be ordered to produce all of the records requested by Plaintiffs.

Respectfully submitted,

/s/ Walter M. Luers

Walter M. Luers

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 Attorneys for Plaintiffs

<p>JENNIFER COOMBS, GAVIN ROZZI and JEFF EPSTEIN,</p> <p>Plaintiffs,</p> <p>v.</p> <p>COUNTY OF MONMOUTH and MARION MASNICK in her official capacity as Clerk of the Board and Records Custodian of the County of Monmouth, OFFICE OF THE MONMOUTH COUNTY PROSECUTOR and the RECORDS CUSTODIAN of the Office of the Monmouth County Prosecutor,</p> <p>Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY</p> <p>DOCKET NO. MON-L-003195-18</p> <p>CIVIL ACTION</p> <p>CERTIFICATION OF JOHN PAFF</p>
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JOHN PAFF, of full age, hereby certifies and says as follows:

1. As the Court probably knows, I am the executive director of Libertarians for Transparent Government, which is a New Jersey non-profit organization that is dedicated to improving transparency in New Jersey.
2. I have no direct interest in the outcome of the above-captioned matter. I do feel it is important that government agencies be required to fulfill their obligations under OPRA when public agencies receive OPRA requests from individuals who utilize OPRAmachine or any similar website.
3. It has been brought to my attention that the Defendants in their opposition papers discussed an interaction that I had with lawyers for Monmouth County regarding their request

that I redact or remove the name of an employee who was identified in attorney invoices that I received from Monmouth County.

4. The letter I received from the County is attached as Exhibit A and was sent via email. Because I was busy with travel and other matters in the latter part of September, I did not read the County's email and letter until October 1 or October 2.

5. On October 2, 2018, I responded to that email. Because the letter referenced one employee, and the attorney invoices I received referenced two employees, I asked the County via email which employee's name I should redact.

6. As of October 17, 2018, I have not received any response or any other communication from the County on this issue.

7. 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.

Executed on October 17, 2018.

A handwritten signature in black ink, appearing to read 'JOHN PAFF', is written above a horizontal line.

JOHN PAFF

Exhibit A

O'DONNELL McCORD, P.C.

ATTORNEYS AT LAW

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F: (732) 681-0053

Jonathan Testa*
JTESTA@OMLAWPC.COM
Attorney Id.: 015152009
* Member NJ and NY Bars

PLEASE REPLY TO WALL OFFICE

BERGEN COUNTY OFFICE
266 HARRISTOWN ROAD
GLEN ROCK, NEW JERSEY 07452

ESSEX COUNTY OFFICE
SEVEN HUTTON AVENUE
WEST ORANGE, NEW JERSEY 07052

MORRIS COUNTY OFFICE
15 MOUNT KEMBLE AVENUE
MORRISTOWN, NEW JERSEY 07960

September 19, 2018

John Paff
Libertarians for Transparent Government
njtransparency@yahoo.com

Re: MONMOUTH COUNTY OPRA REQUEST 324-18

Dear Mr. Paff:

Please be reminded that this firm is Special Counsel for the County of Monmouth. In accordance with our telephone conversation on September 12, 2018, kindly accept this correspondence as formal confirmation of the County's request for the redaction and immediate destruction of documents containing confidential personal information not subject to disclosure under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

More specifically, an employee whom was identified by full name in the invoice and billings of the Honorable Mary Catherine Cuff, P.J.A.D. (ret.), (see pdf. page 15 of the County's OPRA response) was not redacted. Pursuant to the Appellate Divisions recent decision in Wolosky v. Sparta Board of Education, 2017 WL 127793 (App. Div. January 13, 2017), this information could reveal information about the employee's involvement in an investigation into a workplace grievance, which remains confidential at this time.

Redacting and otherwise removing the names of those individuals identified in Judge Cuff's invoice is appropriate, as the requesting party is still able to determine what work was done, how much time was spent on each task, the amount charged, and the number of entries that were entered. Thus, protecting the identity of the employee would have no effect on the public's interest to records subject to the original OPRA request.

Accordingly, we respectfully request your cooperation in protecting the identity of this employee by way of taking measures to redact and remove this information from any records before you disseminate same to third-parties. We further ask for your cooperation in destroying any digital or hard-copy versions of this document that may exist in unredacted form, so as to prevent the incidental re-publication of this information to third parties.

John Paff
September 19, 2018

Following your receipt of this correspondence, I respectfully ask that you contact me via telephone at (973)538-1230 to further discuss any issues you may have.

Very truly yours,

O'DONNELL McCORD, P.C.



JONATHAN TESTA

JT:ce
Enclosure
cc:

08/30/2018 09:20 AM PDT TO:17324316519 FROM:7328624449

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OPEN PUBLIC RECORDS ACT (OPRA) Records Request

Date Thursday 8/30/2018, 12:08 PM

Requestor: Libertarians for Transparent
Government, a NJ
Nonprofit Corporation

Agency: County of Monmouth

Transmitted: Via Fax to 732-431-6519

Instructions: Please accept this as our request under the Open Public
Records Act (OPRA) and the common law right of access.
Please send all responses and responsive records via e-
mail to NJTransparency@yahoo.com. If you have any
questions on this request please call 732-873-1251.

Records requested:

1. Detailed legal services invoices submitted to the County or its insurer by Jonathan Testa or his law firm for services rendered from June 1, 2017 through present date in connection with Testa's representation of the defendants in John Curley v. Monmouth County Board of Chosen Freeholders, et al, Federal Case No. 3:17-cv-12300
2. Detailed invoices submitted to the County or its insurer by Catherine Cuff, or her law firm or employer, for services rendered from January 1, 2018 through present date in connection with an investigation of Freeholder John Curley.

Please be advised that since the requested records are "bills," immediate access should be ordinarily be granted pursuant to N.J.S.A. 47:1A-5(e).

CLERK OF THE BOARD
2018 AUG 30 P 12:23

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<p>JENNIFER COOMBS, GAVIN ROZZI and JEFF EPSTEIN,</p> <p>Plaintiffs,</p> <p>v.</p> <p>COUNTY OF MONMOUTH, <i>et al.</i>,</p> <p>Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY</p> <p>DOCKET NO. MON-L-003195-18</p> <p>CIVIL ACTION</p> <p>CERTIFICATION OF FACSIMILE SIGNATURE</p>
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I, WALTER M. LUERS, of full age, hereby certify:

1. I am an attorney of the State of New Jersey and a member of the law firm of Law Offices of Walter M. Luers, LLC, and counsel for Plaintiffs Jennifer Coombs, Gavin Rozzi, and Jeff Epstein.

2. John Paff was not available to sign his October 17, 2018 certification and has, therefore, provided a facsimile/electronic copy of his signature.

3. Mr. Paff acknowledged to me the genuineness of his signature affixed to his certification. A copy of the certification with original signature affixed will be filed if requested by the Court or a party.

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

Dated: October 17, 2018

/s/ Walter M. Luers
 WALTER M. LUERS

WALTER M. LUERS, ESQ. – 034041999
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 Suite 2
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 Attorneys for Plaintiff

JENNIFER COOMBS, GAVIN ROZZI and JEFF EPSTEIN, Plaintiffs, v. COUNTY OF MONMOUTH, <i>et al.</i> , Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO. MON-L-003195-18 CIVIL ACTION PROOF OF SERVICE
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On October 17, 2018, I served one copy of Plaintiff's Reply Letter Brief, October 17, 2018 Certification of Walter M. Luers, October 17, 2018 Certification of John Paff, and Certification of Facsimile Signature on all Defendants via operation of the eCourts system to:

Sean T. Kean, Esq.
 Catherine Kim, Esq.
 Cleary Giacobbe Alfieri Jacobs, LLC
 955 State Highway 34, Suite 200
 Matawan, New Jersey 07747

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.

Dated: October 17, 2018

/s/ Walter M. Luers

 Walter M. Luers

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<p>JENNIFER COOMBS, GAVIN ROZZI and JEFF EPSTEIN,</p> <p>Plaintiffs,</p> <p>v.</p> <p>COUNTY OF MONMOUTH and MARION MASNICK in her official capacity as Clerk of the Board and Records Custodian of the County of Monmouth, OFFICE OF THE MONMOUTH COUNTY PROSECUTOR and the RECORDS CUSTODIAN of the Office of the Monmouth County Prosecutor,</p> <p>Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY</p> <p>DOCKET NO. MON-L-003195-18</p> <p>CIVIL ACTION</p> <p>CERTIFICATION OF WALTER M. LUERS</p>
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WALTER M. LUERS, of full age, hereby certifies and says as follows:

1. Attached as Exhibit A to this Certification is a true and correct copy of the July 5, 2017 Order of the Supreme Court regarding 2018-2019 legal holidays.

2. 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.

Executed on October 17, 2018.

/s/ Walter M. Luers
 WALTER M. LUERS

Exhibit A

SUPREME COURT OF NEW JERSEY

It is ORDERED that the schedule of legal holidays and court recesses for the trial division of the Superior Court and for the Tax Court for the court year commencing July 1, 2018, and ending June 30, 2019, is as follows:

Sunday, July 1, 2018	First Day of 2018-2019 Court Year
Wednesday, July 4, 2018	Legal Holiday (Emergent Matters Only)
Monday, September 3, 2018	Legal Holiday (Emergent Matters Only)
Monday, October 8, 2018	Legal Holiday (Emergent Matters Only)
Tuesday, November 6, 2018	Legal Holiday (Emergent Matters Only)
Monday, November 12, 2018	Legal Holiday (Emergent Matters Only)
Monday, Tuesday, and Wednesday, November 19, 20, and 21, 2018	Statewide Judicial College (Emergent Matters Only)
Thursday, November 22, 2018	Legal Holiday (Emergent Matters Only)
Tuesday, December 25, 2018	Legal Holiday (Emergent Matters Only)
Wednesday, December 26, 2018 through Monday, December 31, 2018	Court Recess (Emergent Matters Only)
Tuesday, January 1, 2019	Legal Holiday (Emergent Matters Only)
Monday, January 21, 2019	Legal Holiday (Emergent Matters Only)
Monday, February 18, 2019	Legal Holiday (Emergent Matters Only)
Friday, April 19, 2019	Legal Holiday (Emergent Matters Only)
Monday, May 27, 2019	Legal Holiday (Emergent Matters Only)
Monday, July 1, 2019	First Day of 2019-2020 Court Year



Chief Justice

Dated: July 5, 2017