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Attorneys for Plaintiff,  
**Michael McHale**

MICHAEL McHALE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: OCEAN COUNTY
Plaintiff,	:	
	:	DOCKET NO.:
v.	:	
	:	
TOWNSHIP OF LACEY and VERONICA	:	<u>Civil Action</u>
LAUREIGH, in her official capacity as Records	:	
Custodian for the Township of Lacey,	:	<b>VERIFIED COMPLAINT</b>
	:	
Defendants.	:	
	:	
	:	
	:	

Plaintiff, Michael McHale, through his 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, *et seq.*, (“OPRA”) and the common law right of access to public records, seeking records from the Township of Lacey.

**PARTIES**

2. Plaintiff Michael McHale is a New Jersey citizen and taxpayer who resides in Beachwood, New Jersey.

3. Defendant Township of Lacey (“Lacey” or “the Township”) is a municipal entity formed under the laws of the State of New Jersey, with its primary place of business located at 818 Lacey Road, Forked River, NJ 08731.

4. Defendant Veronica Laureigh (Laureigh) is the Municipal Clerk and Custodian of Records for Defendant Township of Lacey. Upon information and belief, the custodian maintains an office at 818 Lacey Road, Forked River, NJ 08731.

5. The Township of Lacey “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 the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

#### **VENUE**

6. Venue is properly laid in Ocean County because Defendant Township of Lacey is located in Ocean County and because the cause of action arose in Ocean County. R. 4:3-2(a).

#### **FACTUAL ALLEGATIONS**

7. Plaintiff, Michael McHale, is a concerned citizen of Ocean County who operates several online news sources, including *Ocean County Corruption Watch* and *Jersey Shore Scanner News*.

8. Plaintiff has been following a situation in the Township of Lacey involving a zoning board application made by a store called Jersey Sportsman, which is located on Route 9 in Lacey and sells ammunition. Bill Malcolm, a retired captain of the Union County Sheriff's Office and owner of Jersey Sportsman, sought a variance from the Lacey Zoning Board of Adjustment so that he could sell firearms at his store. Ultimately, Mr. Malcom's request for a variance was denied because the board failed to obtain a quorum.

9. In response, Mr. Malcom sued the Township of Lacey in November 2016, alleging that his second amendment rights were violated. The lawsuit sought to overturn the board's rejection, give Malcolm the right to sell firearms at his store and have Lacey Township pay Malcolm's legal fees on the basis that his constitutional rights were violated. See “*Lacey Ammo Store Owner Sues For Right To Sell Guns*,” ASBURY PARK PRESS (Nov. 3, 2016). A few months later, the matter settled and Mr. Malcom obtained his variance.

10. On August 3, 2017, Plaintiff filed an OPRA request to learn more about the settlement between Mr. Malcom and the Township. Specifically, his OPRA request sought:

1. Copy of the Zoning Letter of Approval issued by the Township for The Jersey Sportsman (Bill Malcolm).
2. Copies of any correspondence between Malcolm’s attorneys and Lacey Township attorneys regarding his Zoning Board litigation and/or the Zoning Board Letter of Approval.
3. Copies of all email correspondence sent to Community Development Director Chris Reid regarding “Malcolm” sent from June 1<sup>st</sup>, 2016 to June 6<sup>th</sup>, 2017. Please search subject and body.
4. Copies of any checks sent to Bill Malcolm/the Jersey Sportsman from the Township of Lacey from January 1<sup>st</sup>, 2017 to June 6<sup>th</sup>, 2017.
5. Copies of any draft/final agreements between Lacey Township and Bill Malcolm/the Jersey Sportsman regarding his Zoning Board firearms litigation.

[Attached hereto as **Exhibit A** is a true and accurate copy of Mr. McHale’s OPRA request.]

11. On August 4, 2017, Lisa Monbleau, an employee in the Municipal Clerk’s Office, responded to Plaintiff’s OPRA request by simply attaching 14 pages of responsive records to her email. [Attached hereto as **Exhibit B** is a true and accurate copy of Monbleau’s email response

to Plaintiff's OPRA request, as well as the attached records, which have been numbered 1 through 14.].

12. Initially, the response provided no narrative at all to Plaintiff, and thus it did not explain why certain records were redacted. Redactions were made to an April 11, 2017 letter from Mr. Malcolm's attorney (Stuart A. Platt, Esq.) to the Township's Attorneys and no explanation for the redaction was provided. See Page 4 of Exhibit B. Additionally, redactions were made to a May 23, 2017 email from Mr. Malcolm's attorney (Stuart A. Platt, Esq.) and the Township's Attorney (Bill Hering, Esq) and no explanation for the redaction was provided. See Page 6 of Exhibit B.

13. However, on August 7, 2017, Defendant Laureigh wrote to Plaintiff and stated:

Mr. Mchale: Redacted items due to settlement negotiations in accordance with N.J.R.E. 408. As to bill or invoice – we did not pay this settlement, which is noted in the letters supplied to you as the amount. The resolution is the settlement agreement that we were asked to adopt. The Township insurance carrier paid the settlement so you will have to request proof from them as to a copy of the check.

[Attached hereto as **Exhibit C** is a true and accurate copy of Monbleau's email explanation for the redactions].

14. Contrary to Defendant Laureigh's assertion, however, N.J.R.E. 408 is not an exemption under OPRA—it is merely a rule of evidence that excludes settlement offers as evidence in a trial to prove liability of a disputed claim. Thus, Lacey has violated OPRA by unlawfully redacting page 4 and page 6 of Exhibit B.

15. Moreover, no responsive records were produced for portions of Plaintiff's OPRA request, including Item 3 (emails to Chris Reid), Item 4 (copies of checks issued to Mr. Malcolm); and Item 5 (copies of any settlement agreement between Mr. Malcolm and the Township). While Defendant Laureigh explained that a check and Settlement Agreement was

not produced because the matter was paid through the Joint Insurance Fund, this is not a valid response under OPRA. Our courts have made it clear that public agencies must obtain records, such as settlement agreements, from insurance carriers who are acting as agents on their behalf in order to produce them under OPRA.

16. It is also unclear based on the Township's response whether any records responsive to Item 3 exist, which are emails sent to Community Development Director Chris Reid regarding "Malcolm" sent from June 1<sup>st</sup>, 2016 to June 6<sup>th</sup>, 2017.

17. In sum, in response to Plaintiff's OPRA request, the Township of Lacey: unlawfully redacted government records; unlawfully failed to produce copies of checks and a Settlement Agreement; and unlawfully failed to indicate whether a search of Mr. Reid's email was performed and whether responsive records exist.

**FIRST COUNT**  
**(Violation of OPRA)**

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

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

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

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

22. The redactions made to the April 11, 2017 letter and May 23, 2017 email are not permitted by OPRA because N.J.R.E. 408 does not create an exemption under OPRA.

23. Defendants have an obligation to obtain the Settlement Agreement, as well as any copies of checks to Mr. Malcolm, from the JIF or any of its other agents, and to produce them to Plaintiff in response to his OPRA request.

24. Defendants' response to Plaintiff's OPRA request does not permit him to determine whether Mr. Reid's email box was searched and whether responsive records exist.

25. Accordingly, Defendants have violated OPRA by:

- a. Failing to grant or deny access to the requested government records within seven (7) business days as required by OPRA;
- b. Failing to make the records requested "readily accessible for inspection, copying, or examination" in violation of N.J.S.A. 47:1A-1;
- c. Failing to grant access to non-exempt portions of government records, in violation of N.J.S.A. 47:1A-5(g); and
- d. Failing to prove that the denial of access is authorized by law, in violation of N.J.S.A. 47:1A-6;
- e. Failing to state the specific basis for denying access to government records, as required by N.J.S.A. 47:1A-5;
- f. Failing to obtain responsive records from its agents and produce them in response to an OPRA request.

**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 provide lawful access to government records;
- b. Directing Defendants to identify each record they possess that is responsive to Plaintiff's OPRA request;

- c. Directing Defendants to release the requested records to Plaintiff immediately with all unlawful redactions removed;
- d. Directing Defendants to obtain the responsive records from its agents and produce them to Plaintiff;
- d. Alternatively, if the Court believes that any information may be exempt from public access, Plaintiff respectfully asks the Court to review the records *in camera* and then require Defendants to delete or excise from the records the portion(s) which are exempt from public access and promptly permit access to the remainder of the record;
- e. Ordering Defendants to preserve the requested records pending resolution of these proceedings or as otherwise required by law;
- f. Awarding counsel fees and costs pursuant to N.J.S.A. 47:1A-6; and
- g. For such other relief as the Court may deem just and equitable.

**PASHMAN STEIN WALDER HAYDEN**  
A Professional Corporation,  
Attorneys for Plaintiff  
**Michael McHale**

Dated: September 5, 2017

By: \_\_\_\_\_  
**CJ GRIFFIN, ESQ.**

**CERTIFICATION PURSUANT TO R. 4:5-1**

Plaintiff, by his attorney, hereby certifies that the matter in controversy is not the subject of any other action pending in any Court and is likewise not the subject of any pending arbitration proceeding. Plaintiff further certifies that he 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  
**Michael McHale**

Dated: September 9, 2017

By: \_\_\_\_\_  
**CJ GRIFFIN, ESQ.**



### **VERIFICATION**

I, Michael McHale, of full age, deposes and say:

1. I am a citizen of the State of New Jersey, Plaintiff in the foregoing Verified Complaint.

2. The allegations of the Verified Complaint contained in Paragraphs 2-5 and 7-17 are true. The said Verified Complaint is made in truth and good faith and without collusion, for the causes set forth herein.

3. All documents attached to the Verified Complaint and Brief 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.

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MICHAEL McHALE

Dated: September 5, 2017

**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 signature of Michael McHale.

2. I hereby certify that Mr. McHale acknowledged to me the genuineness of his  
signature on the foregoing Certification.

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,  
**Michael McHale**

Dated: September 6, 2017

By: \_\_\_\_\_  
**CJ GRIFFIN, ESQ**