

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation

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CJ GRIFFIN, ESQ. (#031422009)

Attorneys for Plaintiff,

Gavin Rozzi

GAVIN ROZZI,

Plaintiff,

v.

OFFICE OF THE ATTORNEY GENERAL and

BRUCE J. SOLOMON,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: MERCER COUNTY

: DOCKET NO:

: Civil Action

: **VERIFIED COMPLAINT**

Plaintiff, Gavin Rozzi, 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 to -13, (“OPRA”), and the common law right of access to public records.

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

PARTIES

3. Plaintiff Gavin Rozzi is a New Jersey citizen who resides in Forked River, New Jersey.

4. Defendant Office of the Attorney General (“OAG”) is a government agency organized pursuant to the laws of the State of New Jersey. The OAG has a principal mailing address at 25 Market Street, Trenton, New Jersey, 08611.

5. Defendant Bruce Solomon (“Solomon”) is the custodian of records for the OAG and the State Police. Defendant Solomon is being sued in his professional capacity. Solomon maintains an office at 25 West Market Street, Trenton, New Jersey, 08611.

VENUE

6. Venue is properly laid in Mercer County because Defendant OAG is located in Mercer County and because the cause of action arose in Mercer County.

FACTUAL ALLEGATIONS

7. Plaintiff owns and operates Rozzi Media Group, a boutique media and consulting firm based out of southern New Jersey that operates websites such as “Ocean County Politics,” “Jersey Leaks,” and “OPRAmachine.” Each of these websites is geared towards exposing corruption and making public agencies in New Jersey more transparent.

8. On November 24, 2017, Plaintiff filed an OPRA request seeking the following government records from the OAG:

Please provide a copy of email logs . . . including sender, recipient, subject and date for the following addresses from November 1st, 2017 to November 24th, 2017.

Please note I am not requesting the bodies of the emails, simply those fields of digital data.

1. Bruce.solomon@lps.state.nj.us
2. oag.records@lps.state.nj.us

[Attached hereto as Exhibit A is a true and accurate copy of the OAG’s response to the OPRA request, which includes the request itself.]

9. On December 6, 2017, the OAG denied Plaintiff's OPRA request, with the following lengthy explanation:

Bruce J. Solomon is a Deputy Attorney General with the [OAG] in the Department of Law and Public Safety. DAG Solomon serves as the Custodian of Records for OAG and as the Custodian of records for L&PS. In his role as L&PS Records Custodian, DAG Solomon coordinates the Department-wide OPRA function, which includes oversight of L&PS division and agency records custodians. In the normal course of business, DAG Solomon sends and receives e-mail on and from the bruce.solomon and OAG Records email addresses concerning OPRA requests, OPRA legal issues, tactical advice and draft language concerning responses to OPRA requests, discussions of legal issues in active and pending litigation, etc. to Assistant Attorneys General, OAG Executive Staff, DAsG [sic] in the Division of Law who provide OPRA legal advice and counsel to L&PS divisions and Executive Branch client agencies, L&PS OPRA custodians, Executive Branch OPRA custodians, agency heads, chiefs of staff, in addition to responses and queries from requestors, reporters, attorneys and members of the public. DAG Solomon also serves as legal counsel for the State Office of Emergency Management; in that assignment, he receives confidential and security sensitive emails from the New Jersey Regional Operations and Intelligence Center and the Federal Emergency Management Agency, among others.

In June 2017, the Supreme Court issued a decision regarding public records requests of email logs, Paff v. Galloway, 229 N.J. 340 (2017). Paff filed an OPRA request with the Galloway Township records custodian seeking fields of information (sender, recipient, date and subject) from all emails sent by the Township Clerk and the Township Police Chief between June 3 and June 17, 2013. The Court wrote: "in conclusion, the fields of information covering 'sender,' recipient,' 'date,' and 'subject' in the emails sent by the Galloway Township Chief of Police and Clerk over a two week period are government records under OPRA."

However, the Court went on to say: "Our finding that the fields of information in the requested emails are government records does not end the inquiry. The Township and amici have raised legitimate concerns whether the emails are subject to OPRA exceptions, exemptions, or redactions – issues not fully explored or discussed before the trial court. The Township fears that wholesale disclosure of the requested fields of information from the emails may compromise investigations or investigatory techniques, thwart

the internal exchange of confidential information or lead to the release of citizens' email addresses causing an unwarranted invasion of their privacy.”

Unlike Paff's request, this request seeks information contained in emails to and from a Deputy Attorney General which contains attorney work product, attorney-client privileged material, deliberative process privileged and other privileged material; could reveal agency security, tactical, investigative and/or operational techniques, measures or procedures which, if disclosed, would compromise the agency's ability to effectively conduct investigations; which would reveal case or matter specific legal strategy or advice; information pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies; material exempt or excepted under OPRA; and which would thwart the internal exchange of confidential information.

For these reasons, I must deny your request.

[Exhibit A.]

10. To date, the OAG has not released any email logs to Plaintiff, even in redacted form, that are responsive to Plaintiff's OPRA request.

FIRST COUNT
(Violation of OPRA)

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

12. Pursuant to N.J.S.A. 47:1A-1, all government records must be “readily accessible” to the citizen of this State unless specifically exempt by law.

13. The email logs requested by Plaintiff are government records subject to OPRA because they were “made, maintained or kept on file,” or “received in the course of ... [Defendant's] official business.” N.J.S.A. 47:1A-1.1. See also Paff v. Galloway Twp., 229 N.J. 340, 343 (2017).

14. Pursuant to N.J.S.A. 47:1A-5(g), a custodian must excise exempt information from a government record and grant access to the portions of the government record that are not exempt.

15. It is implausible that every email received by the two email accounts identified in Plaintiff's OPRA requests is wholly exempt from access or that every portion of the email logs is exempt from access.

16. Pursuant to N.J.S.A. 47:1A-5(g), the email logs should have been produced, even if heavily redacted.

17. Accordingly, Defendants have violated OPRA by:

- a) Failing to provide a lawful basis for denying access to government records in violation of N.J.S.A. 47:1A-5(g);
- b) Failing to disclose nonexempt portions of government records, in violation of N.J.S.A. 47:1A-5(g);
- c) Failing to base a denial of access upon a basis "authorized by law" in violation of N.J.S.A. 47:1A-6; and
- d) Failing to identify the specific government records responsive to the requests and the specific basis for withholding each of those records, in violation of N.J.S.A. 47:1A-5(g).

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 partial access to the requested records, as required by OPRA;

- (b) Directing Defendants to release the requested records with redactions to Plaintiff forthwith, along with a Vaughn Index which provides the lawful basis for each redaction.
- (c) Should Plaintiff disagree with Defendants' redactions, then Plaintiff respectfully asks the Court to review the record *in camera* review 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 records;
- (d) Awarding counsel fees and 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,
Gavin Rozzi

Dated: December 18, 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,
Gavin Rozzi

Dated: December 18, 2017

By: _____
CJ GRIFFIN, ESQ

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 Gavin Rozzi.
2. I hereby certify that Mr. Rozzi acknowledge 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,
Gavin Rozzi

Dated: December 18, 2017

By: _____
CJ GRIFFIN, ESQ

VERIFICATION

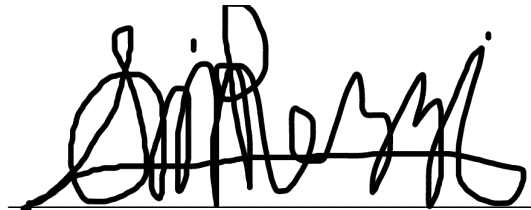
Gavin Rozzi, of full age, deposes and says:

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

2. I have read the Verified Complaint. The allegations of the Verified Complaint contained in Paragraphs 3-10 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.

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.

A handwritten signature in black ink, appearing to read 'Gavin Rozzi', written over a horizontal line.

Gavin Rozzi

Dated: December 18, 2017