

Superior Court of New Jersey
Appellate Division
Docket No.: A-000716-24

**ASSOCIATION FOR
GOVERNMENTAL
RESPONSIBILITY,
ETHICS AND
TRANSPARENCY,**

Plaintiff-Appellant,

v.

**STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY
GENERAL, DEPARTMENT OF
LAW AND PUBLIC SAFETY,
DIVISION OF LAW AND
OCTAVIA BAKER AS
CUSTODIAN OF RECORDS,**

Defendants-Respondents.

Civil Action

**On Appeal from Order Dismissing
the Complaint With Prejudice**

**Docket No. Below: MER-L-1233-
24**

**Sat Below: Honorable Robert T.
Lougy, A.J.S.C.**

**Brief of Plaintiff-Appellant Association for Governmental
Responsibility, Ethics and Transparency**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALEDv

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY.....3

STATEMENT OF FACTS4

LEGAL ARGUMENT 7

Point I

THE COURT BELOW ERRED BY DISMISSING AGREAT’S VERIFIED COMPLAINT WITH PREJUDICE PURSUANT TO N.J.A.C. 13:1E-3.2(a)(3) (Pa46) 7

1. The standard of review is *de novo*7

2. Doctrinal Underpinnings Of The Open Public Records Act Demonstrate The Importance Of Governmental Transparency7

3. OPRA’s Definition Of Government Record Is Expansive 10

4. The Custodian of Records Has The Burden Of Justifying Nonproduction of Requested Records..... 11

5. The Records Requested Are Not Exempt By N.J.A.C. 13:1E-3.2(a)(3) Because The Custodian Of Records Did Not Establish The Webinar And Course Materials Presented By The New Jersey Attorney General’s Advocacy Institute Titled “Ethically And Effectively Representing State Agencies” Would Reveal “Case Or Matter Specific Legal Strategy Or Advice, Attorney Work Product, Attorney-Client Privileged Material, Or Other Privileged Material.” 11

6. OPRA Provides That The Custodian Of Records Must Redact From The Records Requested Any Portion Which The Custodian Asserts Is Exempt And Provide The Remainder Of The Record And AGREAT Asked The Custodian To Redact

From The Training Materials Any “Case Or Matter Specific Legal Strategy Or Advice” Protected By N.J.A.C. 13:1E-3.2(a)(3)15

Point II

The Trial Court Disregarded The Presumption Of Openness And Transparency And The Burdens Placed On The Custodian Of Records Pursuant To The Common Law (Pa46)18

1. The Court below erred in holding that N.J.A.C. 13:1E-3.2(a)(3) created a presumption that release of the webinar and course materials for the course presented by the New Jersey Attorney General’s Advocacy Institute titled Ethically and Effectively Representing State Agencies is not in the public interest.....20
2. A proper balance requires disclosure of the webinar and course materials for the course presented by the New Jersey Attorney General’s Advocacy Institute titled “Ethically and Effectively Representing State Agencies” with “case or matter specific legal strategy or advice” if any, redacted23

CONCLUSION26

TABLE OF AUTHORITIES

| CASES | Page(s) |
|---|---------------|
| <u>Am. Civil Liberties Union of N.J. v. Cnty. Prosecutors Ass’n of N.J.</u> , 257 N.J. 87 (2024)..... | 22, 24 |
| <u>Asbury Park Press v. Ocean Cnty. Prosecutor’s Off.</u> , 374 N.J. Super. 312 (Law Div. 2004) | 8, 9, 10, 14 |
| <u>Bergen Cnty. Improvement Auth. v. N. Jersey Media Grp., Inc.</u> , 370 N.J. Super. 504 (App. Div. 2004)..... | 19, 21 |
| <u>Courier News v. Hunterdon Cnty. Prosecutor’s Office</u> , 358 N.J. Super. 373 (App. Div. 2003) | 11 |
| <u>Educ. Law Ctr. v. Dep’t of Educ.</u> , 198 N.J. 274 (2009) | 9 |
| <u>Gilleran v. Township of Bloomfield</u> , 227 N.J. 159 (2016)..... | 10 |
| <u>Irval Realty Inc. v. Bd. of Public Utility Comm’rs</u> , 61 N.J. 366 (1972) | 9 |
| <u>Loigman v. Kimmelman</u> , 102 N.J. 98 (1986)..... | 19, 23, 24 |
| <u>Mason v. City of Hoboken</u> , 196 N.J. 51 (2008) | 9, 10, 14, 22 |
| <u>Michelson v. Wyatt</u> , 379 N.J. Super. 611 (App. Div. 2005) | 21, 22 |
| <u>N. Jersey Media Group, Inc. v. State, Dep’t of Personnel</u> , 389 N.J. Super. 527 (Law Div. 2006)..... | 18, 19 |
| <u>N. Jersey Media Grp., Inc. v. Township of Lyndhurst</u> , 229 N.J. 541 (2017)..... | 23 |
| <u>N. Jersey Newspapers Co. v. Passaic Cnty. Bd. of Chosen Freeholders</u> , 127 N.J. 9, 16 (1992)..... | 10 |
| <u>Nero v. Hyland</u> , 76 N.J. 213 (1978)..... | 8 |
| <u>Newark Morning Ledger Co. v. New Jersey Sports & Exposition Auth.</u> , 423 N.J. Super. 140 (App. Div. 2011) | 24 |

O’Boyle v. Borough of Longport, 426 N.J. Super. 1 (App. Div. 2012), aff’d, 218 N.J. 168 (2014)24

O’Shea v. Twp. of W. Milford, 410 N.J. Super. 371 (App. Div. 2009)7

Paff v. Galloway Township, 229 N.J. 340 (2017)10

Rivera v. Union Cnty. Prosecutor’s Off., 250 N.J. 124 (2022)22

Simmons v. Mercado, 247 N.J. 24 (2021)9

The Times of Trenton Publ’g Corp. v. The Lafayette Yard Community Dev. Corp., 183 N.J. 519 (2005)9

STATUTES

N.J.S.A. 47:1A-1 *passim*

N.J.S.A. 47:1A-1 to -13 1, 4, 8, 23

N.J.S.A. 47:1A-1.1 10, 12, 16, 21

N.J.S.A. 47:1A-5 3, 16, 17

N.J.S.A. 47:1A-5(g) 3, 16, 17

N.J.S.A. 47:1A-6 7, 10, 11

N.J.S.A. 47:1A-8 18, 22, 23

OTHER AUTHORITIES

1 Alexis de Tocqueville, Democracy in America 302-309 (Henry Reeve trans., Pa. State U. 2002) (1835), gutenberg.org/files/815/815-h/815-h.htm 1

Toby Mendel, The Public’s Right To Know: Principles on Freedom of Information Legislation, ARTICLE 19: GLOBAL CAMPAIGN FOR FREEDOM OF EXPRESSION, June 1999, at 1, *available at* article19.org/pdfs/standards/righttoknow.pdf8

RULES

RPC 4.24

RPC 4.34

REGULATIONS

N.J.A.C. 13:1E-3.2(a)(3)..... *passim*

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED

9-30-24 Order and Opinion Denying Plaintiff’s Order to Show Cause and
Dismissing Plaintiff’s Verified ComplaintPa46

PRELIMINARY STATEMENT

Alexis de Tocqueville recognized in the 1830s that the special training of lawyers as problem solvers and advocates and the role of lawyers as keepers of the rule of law ensured for them “a separate station in society” (in his words, the “American aristocracy” with the duty to protect our democracy). 1 Alexis de Tocqueville, Democracy in America 302-309 (Henry Reeve trans., Pa. State U. 2002) (1835), gutenberg.org/files/815/815-h/815-h.htm. Ethics training for new lawyers is, perhaps, one of the most important aspects of new lawyers’ training. This importance is magnified when the new lawyers are representing State agencies who have power, authority and influence over the citizenry.

The public, therefore, has a right to know how young, government lawyers are being trained in the area of ethics. The New Jersey Attorney General’s Advocacy Institute trains new lawyers in the area of ethics through a one hour webinar titled “Ethically and Effectively Representing State Agencies.”

Plaintiff Association for Governmental Responsibility, Ethics and Transparency (AGREAT) made a government records request pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law right of access (CLRA) to defendant Division of Law for the webinar and course materials. The State of New Jersey Office of the Attorney General, Department of Law and Public Safety, Division of Law and Octavia Baker as Custodian of Records (Division

of Law), denied AGREAT's government records request claiming that N.J.A.C. 13:1E-3.2(a)(3) exempted the training materials from disclosure.

N.J.A.C. 13:1E-3.2(a)(3) is a regulation enacted by the Office of the Attorney General that identifies records that "shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented" which includes "[r]ecords, including standard operating procedures, manuals, and training materials that may reveal: case or matter specific legal strategy or advice, attorney work product, attorney-client privileged material, or other privileged material."

AGREAT asked the Custodian of Records for the Division of Law to redact from the training materials that "reveal: case or matter specific legal strategy or advice, attorney work product, attorney-client privileged material, or other privileged material" and provide the redacted records. The Custodian of Records for the Division of Law refused.

The Court below found that the Division of Law met its burden of showing that the training materials included "specific legal strategy and advice" but N.J.A.C. 13:1E-3.2(a)(3) exempts "case or matter specific legal strategy or advice" (emphasis added). There is no support in the record that the materials reveal "case or matter specific legal strategy or advice" as required by N.J.A.C. 13:1E-3.2(a)(3).

Further, even if the training materials contained "case or matter specific legal

strategy or advice” (emphasis added), the Court below erred by not directing the Division of Law to “delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and . . . promptly permit access to the remainder of the record.” N.J.S.A. 47:1A-5(g).

Further, the Court erred in its analysis of AGREAT’s common law right to the records by concluding that the Division of Law’s interest in maintaining secrecy over the training materials outweighed the public’s interest in disclosure. The public has a right to know how the Division of Law is training new government lawyers to “Ethically and Effectively Representing State Agencies” and the Division of Law’s position that its right to secrecy outweighs the public’s right to know fuels the public’s distrust of government and the negative public opinion about lawyers.

PROCEDURAL HISTORY

Plaintiff Association for Governmental Responsibility, Ethics and Transparency (AGREAT) filed a Verified Complaint against defendants State of New Jersey Office of the Attorney General, Department of Law and Public Safety, Division of Law and Octavia Baker as Custodian of Records (Division of Law) on June 24, 2024. (Pa1-Pa27).

On June 25, 2024, the court entered an Order to Show Cause setting a hearing date of September 11, 2024. (Pa31-Pa35).

On September 30, 2024, the court entered an Order denying the relief sought by AGREAT and Dismissing the Complaint with prejudice. (Pa46-Pa61).

A Notice of Appeal was filed on November 10, 2024. (Pa62-Pa63).

STATEMENT OF FACTS

Plaintiff AGREAT made a government records request pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law right of access (CLRA) to defendant Division of Law for the webinar and course materials for the course presented by the New Jersey Attorney General’s Advocacy Institute titled “Ethically and Effectively Representing State Agencies.” (Pa4, Pa21)

The course was given on April 10, 2024 from 1:00 p.m. – 2:00 to Division of Law Deputy Attorneys General. (Pa5). The course provided “guidance on ethically representing State agencies, including understanding the organization as a client and adhering to the requirements of RPCs 4.2 and 4.3 governing communications with persons represented by counsel and unrepresented parties [and also covered] DOL policies on litigation holds, acceptance of service and handling and responding to requests for representation.” (Pa4, Pa18-Pa19).

The course was “mandatory for Division of Law Deputy Attorneys General hired after October 2023 who have not previously completed the Basic Civil and Administrative Practice (BCAP) series of courses.” (Pa4, Pa18-Pa19, Pa40).

The Board on Continuing Legal Education of the Supreme Court of New Jersey approved the course for 1.2 hours of Alternative Verifiable Learning Format (AVF) total CLE credit. Of these, 1.2 qualify as hours of credit for ethics/professionalism. (Pa4, Pa19).

The Division of Law assigned this request number W217359 (Pa5, Pa21) and responded on May 10, 2024, denying the request as follows:

Mr. Burke:

You submitted a request under OPRA and the Common Law for the webinar materials for the course offered by the Advocacy Institute titled

The DOL Basic and Civil Administrative Practice Series (BCAP) Ethically and Effectively Representing State Agencies.

Be advised that the Advocacy Institute is an internal training unit of the Attorney General's Office. The training it provides is only open to attorneys in the Attorney General's office and to assistant prosecutors.

Trainings and training materials are not open to those who are not government attorneys. See N.J.A.C. 13:1E-3.2a(3), which states that standard operating procedures, manuals, and training materials that may reveal legal strategy, advice, attorney work product or other privileged material are confidential, and not subject to OPRA.

Your request is denied.

Sincerely,
Octavia L. Baker
Records Custodian

[(See Exhibit E to Verified Complaint, Pa23-Pa24).]

In response, AGREAT requested that the Division of Law analyze its request under a common law analysis. (Exhibit F to Verified Complaint, Pa26).

The following day, on May 11, 2024, the following email was sent addressing the basis for the Division of Law's response:

Dear Ms. Baker,

In response to your position that N.J.A.C. 13:1E-3.2a(3) exempts the requested record from disclosure, we disagree. This regulation does not exempt all training materials but only those which would reveal: case or matter specific legal strategy or advice, attorney work product, attorney-client privileged material, or other privileged material.

Webinar materials for the course offered by the Advocacy Institute on webinar materials for the course offered by the Advocacy Institute titled The DOL Basic and Civil Administrative Practice Series (BCAP) Ethically and Effectively Representing State Agencies should not reveal case or matter specific legal strategy or advice, attorney work product, attorney-client privileged material, or other privileged material and if it does, you can redact such information and provide a Vaughn index justifying the redactions.

Certainly, the public interest in understanding how attorneys representing State agencies are being trained to Ethically and Effectively Representing State Agencies outweighs any interest in the State in secrecy.

Accordingly, please reconsider your position or we will file an action to compel disclosure under OPRA, the common law and the New Jersey Constitution.

Let me know if you have any questions or if you would like to discuss.

Thank you.

[(See email correspondence attached to the Verified Complaint as Exhibit F, Pa26-Pa27).]

On May 16, 2024, Octavia Baker, the DIVISION OF LAW's Records Custodian, responded:

Dear Mr. Burke:

We have received your objection. The Division of Law maintains its response.

Sincerely,

Octavia Baker, Records Custodian

[(Pa27).]

AGREAT filed its Verified Complaint on June 24, 2024. (Pa1-Pa27).

LEGAL ARGUMENT

Point I

THE COURT BELOW ERRED BY DISMISSING AGREAT'S VERIFIED COMPLAINT WITH PREJUDICE PURSUANT TO N.J.A.C. 13:1E-3.2(a)(3) (Pa46)

1. The standard of review is *de novo*.

A trial court's determinations with respect to government records requests are legal conclusions subject to *de novo* review." O'Shea v. Twp. of W. Milford, 410 N.J. Super. 371, 378 (App. Div. 2009).

2. Doctrinal Underpinnings Of The Open Public Records Act Demonstrate The Importance Of Governmental Transparency.

New Jersey has long recognized that transparency in government is essential and without it governmental fraud, abuse and corruption are free to thrive in secrecy. OPRA places on the government the burden of establishing an exemption, N.J.S.A. 47:1A-6. "The salutary goal [of OPRA] is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils

inherent in a secluded process.” Asbury Park Press v. Ocean Cnty. Prosecutor’s Off., 374 N.J. Super. 312, 329 (Law Div. 2004).

The Open Public Records Act, N.J.S.A. 47:1A-1 to -13 (OPRA), the Common Law Right of Access to Public Records and the New Jersey Constitution’s protection of this fundamental right is premised upon the recognition that transparency in government is the essence of any democratic system and without it governmental fraud, abuse and corruption are free to thrive in secrecy. Indeed, “[i]nformation is the oxygen of democracy.” Toby Mendel, The Public’s Right To Know: Principles on Freedom of Information Legislation, ARTICLE 19: GLOBAL CAMPAIGN FOR FREEDOM OF EXPRESSION, June 1999, at 1, *available at* article19.org/pdfs/standards/righttoknow.pdf.

Therefore, it is essential to provide the citizenry with freedom of information as it allows one to not only properly scrutinize his or her government’s actions, but to participate in an “informed debate of those actions.” Ibid.

New Jersey has long recognized that the public’s right to access government records is essential in a democracy. An essential element of participatory democracy is the requirement that the people need to know what their government is doing. New Jersey has long recognized principles of governmental transparency are designed to promote “a free flow of information in order to ensure an informed citizenry.” Nero v. Hyland, 76 N.J. 213, 221 (1978). Government under glass was the policy to be

achieved. Accordingly, a citizen need not show any interest in the material that he or she wants to see. Irval Realty Inc. v. Bd. of Public Utility Comm'rs, 61 N.J. 366 (1972).

Recognizing this important principle, the New Jersey Legislature enacted OPRA. OPRA's purpose is "to maximize public knowledge about public affairs in order to ensure an informed citizenry." Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)).

At the outset of the law, the Legislature declared that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access . . . shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1 (emphasis added).

"To effectuate that purpose, OPRA defines 'government records' broadly" The Times of Trenton Publ'g Corp. v. The Lafayette Yard Community Dev. Corp., 183 N.J. 519, 535 (2005).

In Simmons v. Mercado, 247 N.J. 24 (2021), the Supreme Court emphasized the strong commitment in this State to transparency, stating:

Our state boasts "of a long and proud 'tradition[] of openness and hostility to secrecy in government.'" Educ. Law Ctr. v. Dep't of Educ., 198 N.J. 274, 283 (2009) (alteration in original) (quoting N. Jersey Newspapers Co. v. Passaic Cnty. Bd. of Chosen

Freeholders, 127 N.J. 9, 16 (1992)). To further enhance government transparency, OPRA was enacted “to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.” Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (quoting Asbury Park Press v. Ocean Cnty. Prosecutor’s Off., 374 N.J. Super. 312, 329 (Law Div. 2004)). The Legislature passed OPRA in 2001 to replace the then-existing Right to Know Law, L. 1963, c. 73, which “did not keep pace with the vast technological advances that changed the ways citizens and public officials communicate and store information.” Paff v. Galloway Township, 229 N.J. 340, 352 (2017). To effectuate its mission “to make government records ‘readily accessible’ to the state’s citizens,” OPRA “substantively provides that ‘all government records shall be subject to public access unless exempt,’ N.J.S.A. 47:1A-1, and it places on the government the burden of establishing an exemption, N.J.S.A. 47:1A-6.” Gilleran v. Township of Bloomfield, 227 N.J. 159, 170 (2016).

[Id. at 37-38.]

3. OPRA’s Definition Of Government Record Is Expansive.

The Legislature in passing OPRA set forth a broad definition of “government record” which includes:

any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

[N.J.S.A. 47:1A-1.1.]

4. The Custodian of Records Has The Burden Of Justifying Nonproduction of Requested Records.

In OPRA actions, the public agency has the burden of proving the denial is authorized by law. N.J.S.A. 47:1A-6. As such, the agency “must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality. Absent such a showing, a citizen’s right of access is unfettered.” Courier News v. Hunterdon Cnty. Prosecutor’s Office, 358 N.J. Super. 373, 383 (App. Div. 2003). “[A] court must be guided by the overarching public policy in favor of a citizen’s right of access.” Courier News, 358 N.J. Super. at 383. Thus, OPRA imposes an obligation on a Custodian of Public Records to maintain government records so that they are “readily accessible for inspection, copying, or examination by the citizens of this State . . . and any limitations on the right of access . . . shall be construed in favor of the public’s right of access.” N.J.S.A. 47:1A-1. (emphasis added).

5. The Records Requested Are Not Exempt By N.J.A.C. 13:1E-3.2(a)(3) Because The Custodian Of Records Did Not Establish The Webinar And Course Materials Presented By The New Jersey Attorney General’s Advocacy Institute Titled “Ethically And Effectively Representing State Agencies” Would Reveal “Case Or Matter Specific Legal Strategy Or Advice, Attorney Work Product, Attorney-Client Privileged Material, Or Other Privileged Material.”

OPRA mandates that “all government records shall be subject to public access unless exempt[.]” N.J.S.A. 47:1A-1. OPRA defines “government record” broadly to include “information stored or maintained electronically . . . that has been made, maintained or kept on file in the course of [a public officer’s or public agency’s]

official business . . . or that has been received in the course of [a public officer's or public agency's] official business[.]” N.J.S.A. 47:1A-1.1.

The Court below denied AGREAT's OPRA records relying on N.J.A.C. 13:1E-3.2(a)(3), which identifies records that “shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented” includes “[r]ecords, including standard operating procedures, manuals, and training materials that may reveal: case or matter specific legal strategy or advice, attorney work product, attorney-client privileged material, or other privileged material.”

In support of its position that N.J.A.C. 13:1E-3.2(a)(3) exempted the training materials from disclosure, the Division of Law presented the Certification of Michael Walters, Assistant Attorney General and Deputy Director of the Division of Law within the Department of Law and Public Safety at the New Jersey Office of the Attorney General. (Pa43-Pa45). Mr. Walters certified that he “researched, collected, and created PowerPoint slides of relevant case law and Rules of Professional Conduct (RPC), that would provide DOL deputies with an introduction to the RPC and issues related to the RPCs that DOL attorneys face when representing state entities.” (Michael Walters' Certification, paragraph 5, Pa44). Mr. Walters further states that “[t]he case law and highlighted RPCs in the training materials were tailored to the types of issues DAsG are likely to encounter and to provide an

analytical framework to consider questions of legal ethics” and that the training “advises the new deputies on the DOL’s internal policies that were created with the relevant RPC, rules of the court, and case law in mind.” (Michael Walters’ Certification, paragraph 6, Pa45).

Mr. Walters does not state in his Certification is that release of the webinar and course materials “may reveal: case or matter specific legal strategy or advice, attorney work product, attorney-client privileged material, or other privileged material” which are the words used by N.J.A.C. 13:1E-3.2. The words “case or matter specific legal strategy or advice” indicates a concern about revealing information about a specific case or matter and Mr. Walters does not state that the webinar and course materials requested would reveal any such thing. As an exemption, the words “case or matter specific legal strategy or advice” must be strictly construed in favor of disclosure because OPRA provides that “[a]ny limitations on the right of access ... shall be construed in favor of the public’s right of access.” N.J.S.A. 47:1A-1.

In this regard, the Court below held:

The course and materials teach new government attorneys particular legal strategies related to specific issues they are likely to encounter. The training instructs new government attorneys on legal issues the Division of Law expects to be raised in litigation and provides legal guidance. As such, the requested documents reveal **specific legal strategy and advice**. Defendants have met their burden of showing that the requested records are exempt from OPRA disclosure.

[Opinion, Pa57-Pa58 (emphasis added).]

The key phrase the Court below used is “specific legal strategy and advice” but N.J.A.C. 13:1E-3.2(a)(3) exempts “case or matter specific legal strategy or advice.” There is no support in the record that the materials reveal “case or matter specific legal strategy or advice” as required by N.J.A.C. 13:1E-3.2(a)(3).

The record shows through the Certification of Michael Walters that the webinar and training materials are “tailored to the types of issues DAsG are likely to encounter and to provide an analytical framework to consider questions of legal ethics,” according to Mr. Walters, and the training “advises the new deputies on the DOL’s internal policies that were created with the relevant RPC, rules of the court, and case law in mind” Mr. Walters does not say in his Certification that the training materials contain “case or matter specific legal strategy or advice.” N.J.A.C. 13:1E-3.2(a)(3).

Making the public aware of how new government attorneys are trained regarding “questions of legal ethics” would “maximize public knowledge about public affairs in order to ensure an informed citizenry.” Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (quoting Asbury Park Press v. Ocean Cnty. Prosecutor’s Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). This is the primary goal and focus of OPRA.

This Court should prevent the use of this specifically worded exemption

which requires that requested materials reveal “case or matter specific legal strategy or advice” to shield generic training materials that are untethered to any real-world facts or client confidences—especially when those materials involve matters of great public importance – the training new government attorneys and providing them with “an analytical framework to consider questions of legal ethics” including the Division of Law’s “internal policies that were created with the relevant RPC, rules of the court, and case law in mind.” (Michael Walters Certification, paragraph 7, Pa45).

There is nothing in the record to support the conclusion that the training materials contain “case or matter specific legal strategy or advice” as required by N.J.A.C. 13:1E-3.2(a)(3). If the training materials contain “case or matter specific legal strategy or advice” the Mr. Walters would have said so in his Certification.

As follows in the section, even if the webinar and course materials included “case or matter specific legal strategy or advice” exempt under N.J.A.C. 13:1E-3.2(a)(3), which the Division of Law has not established, the Custodian of Records was required to redact such information and provide the remainder in response to AGREAT’s OPRA request and release the redacted training materials.

6. OPRA Provides That The Custodian Of Records Must Redact From The Records Requested Any Portion Which The Custodian Asserts Is Exempt And Provide The Remainder Of The Record And AGREAT Asked The Custodian To Redact From The Training Materials Any “Case Or Matter Specific Legal Strategy Or Advice” Protected By N.J.A.C. 13:1E-3.2(a)(3).

OPRA places the burden on the Custodian of Records to justify a denial of access. A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. If the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof. If the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record. N.J.S.A. 47:1A-5(g). OPRA sets forth standards and procedures to be followed by Custodians of Records when responding to requests for government records. N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-5, respectively.

If the Custodian of Records contends a record contains exempt materials, OPRA requires the custodian to redact that information and provide the remainder of the record. Furthermore, OPRA places the burden on the custodian to justify a denial of access.

A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. If the custodian is unable to comply with a request for access, the custodian shall indicate the *specific basis* therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof. If the custodian of a government

record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.

[N.J.S.A. 47:1A-5 (g) (emphasis added).]

The record does not have any support for the proposition that the webinar and course materials used in the presentation to Deputy Attorneys General titled “Ethically and Effectively Representing State Agencies” contains “case or matter specific legal strategy or advice” exempted by N.J.A.C. 13:1E-3.2(a)(3). If it did, the Custodian of Records was required to redact the case or matter specific legal strategy or advice” and provide the redacted records.

AGREAT specifically requested the Division of Law’s Custodian of Records to redact from the training materials “case or matter specific legal strategy or advice” exempted by N.J.A.C. 13:1E-3.2(a)(3) and to provide the redacted records. (See Pa6, Pa26) (wherein plaintiff stated the training materials “should not reveal case or matter specific legal strategy or advice, attorney work product, attorney-client privileged material, or other privileged material and if it does, you can redact such information and provide a Vaughn index justifying the redactions.”).

The Division of Law’s Custodian of Records did not redact “case or matter specific legal strategy or advice” from the webinar and course materials used in the presentation to Deputy Attorneys General titled “Ethically and Effectively

Representing State Agencies” as it was obligated to do likely because there was none. If there was, the “case or matter specific legal strategy or advice” should have been redacted and the redacted records released.

Instead of requiring redaction of “case or matter specific legal strategy or advice,” the Court erred by dismissed with prejudice AGREAT’s Verified Complaint. (Pa46-Pa47).

The matter should be reversed and remanded pursuant to OPRA for production of the webinar and course materials used in the presentation to Deputy Attorneys General titled “Ethically and Effectively Representing State Agencies” or for production of the webinar and course materials redacted to remove “case or matter specific legal strategy or advice,” if there is any.

Point II

The Trial Court Disregarded The Presumption Of Openness And Transparency And The Burdens Placed On The Custodian Of Records Pursuant To The Common Law (Pa46)

The public’s right of access to records is broader under the common law right of access than under OPRA. “Nothing contained in [OPRA] shall be construed as limiting the common law right of access to a government record, including criminal investigatory records of a law enforcement agency.” N.J.S.A. 47:1A-8; see also N. Jersey Media Group, Inc. v. State, Dep’t of Personnel, 389 N.J. Super. 527, 536 (Law Div. 2006); Bergen County Improvement Auth. v. N. Jersey Media Group, Inc., 370

N.J. Super. 504, 516 (App. Div. 2004). Thus, the right of access to records under the common law is broader than under OPRA. N. Jersey Media Group, 389 N.J. Super. at 537.

To determine whether the records should be disclosed, a Court must balance the interest in disclosure against the interest in secrecy. In weighing whether disclosure outweighs secrecy, New Jersey courts have weighed several factors, including

(1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

[Loigman, 102 N.J. at 113.]

In Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124, 147 (2022), the Supreme Court stated,

The Loigman factors are not a complete list of relevant considerations, as the Court noted in its decision. 102 N.J. at 113. They largely examine only one side of the balancing test -- the need for confidentiality. Ibid.

As to factors to be weighed in favor of transparency when Internal Affairs records are the subject of a common law request, the Supreme Court in Rivera observed that public interest in transparency may be heightened in certain situations depending on a number of considerations. The Rivera matter centered on an internal affairs investigation into misconduct by a former civilian police director. An investigation found that the former director engaged in racist and sexist behavior while in office. A request was made under OPRA and the common law seeking access to the internal affairs report. Access to the report was denied and the requestor filed suit. The Court weighed the factors for disclosure and determined that a matter such as this, involving high-level officials and substantiated allegations of racist and sexist behavior, could undermine the public's trust in police operations. Consequently, the need for disclosure outweighed the need for confidentiality which was supported only by generalized claims.

1. The Court below erred in holding that N.J.A.C. 13:1E-3.2(a)(3) created a presumption that release of the webinar and course materials for the course presented by the New Jersey Attorney General's Advocacy Institute titled Ethically and Effectively Representing State Agencies is not in the public interest.

In evaluating AGREAT's request for webinar and course materials for the course presented by the New Jersey Attorney General's Advocacy Institute titled "Ethically and Effectively Representing State Agencies, the Court below stated that "the requested material contains confidentiality concerns recognized in N.J.A.C.

13:1E-3.2(a)(3), raising the presumption that releasing the records is not in the public interest.” (Opinion, pages 15 and 16, Pa60-Pa61). The Court below relied on Bergen Cnty. Improvement Auth. v. N. Jersey Media Grp., Inc., 370 N.J. Super. 504, 520 (App. Div. 2004) and Michelson v. Wyatt, 379 N.J. Super. 611, 621 (App. Div. 2005) to support this proposition, neither of which provides such support.

In fact, the Court in Bergen Cnty. Improvement Auth. held to the contrary, stating:

We now hold that the common law definition of “public record” is broader than the statutory definition of “government record” contained in N.J.S.A. 47:1A-1.1. Although the public policy expressed in OPRA is entitled to judicial consideration and respect, a court reviewing a citizen’s petition for access under the common law must apply the legal principles articulated in judicial decisions to the facts of the case, in order to determine whether access is legally warranted.

In the absence of clear common law direction on the subject, a court engaged in this process may look to OPRA provisions as expressions of public policy on the question of public access to information. However, **if disclosure of the information is warranted under the common law, OPRA provisions cannot be invoked to defeat a citizen’s right of access.**

[Bergen Cnty. Improvement Auth., 370 N.J. Super. at 509-10 (emphasis added).]

Similarly, the Court in Michelson considered “HIPAA. N.J.A.C. 17:9-1.2(b)” and the protection of “personnel and pension information” in OPRA as establishing “legislatively recognized confidentiality concerns” but did not use those exemptions to deny a common law request not to release under the common law. Michelson, 379

N.J. Super. at 621. Rather, the Appellate Division in Michelson engaged in a balancing of interests as required by the common law analysis and it protected the privacy rights of public employees by concluding,

[W]e hold that plaintiff has a common law right to access public records that reveal the type of coverage elected by eligible employees, officials, and retirees. Plaintiff is not entitled to addresses, names of spouses, domestic partners and children, any personal health information and any other confidential information.

[Id. at 626.]

Neither Bergen Cnty. Improvement Auth. nor Michelson create a presumption that release of the webinar and course materials for the course presented by the New Jersey Attorney General’s Advocacy Institute titled “Ethically and Effectively Representing State Agencies” is not in the public interest and the Court below erred in so holding.

The Supreme Court has made clear that OPRA exemptions do not limit the common law analysis. In Mason v. City of Hoboken, 196 N.J. 51, 67 (2008), the Supreme Court specifically held that “OPRA does not limit the common law right of access to government records. N.J.S.A. 47:1A-8.” In Am. Civil Liberties Union of N.J. v. Cnty. Prosecutors Ass’n of N.J., 257 N.J. 87, 110 (2024), the Supreme Court reiterated the point:

Although both paths raise similar considerations, OPRA does not limit the right of access to government records under the common law. Rivera v. Union Cnty. Prosecutor’s Off., 250 N.J. 124, 143 (2022) (citing N. Jersey Media Grp., Inc. v. Township of Lyndhurst, 229 N.J.

541, 578 (2017)); see also N.J.S.A. 47:1A-8 (“Nothing contained in [N.J.S.A. 47:1A-1 to -13] shall be construed as limiting the common law right of access to a government record, including criminal investigatory records of a law enforcement agency”).

Accordingly, the Court below erred in holding that “a court should presume that the release of the government record is not in the public interest” even if it is exempt under N.J.A.C. 13:1E-3.2(a)(3), which it is not for the reasons discussed above in Point I.

2. A proper balance requires disclosure of the webinar and course materials for the course presented by the New Jersey Attorney General’s Advocacy Institute titled “Ethically and Effectively Representing State Agencies” with “case or matter specific legal strategy or advice” if any, redacted.

AGREAT requested the Custodian of Record to redact from the training materials any “case or matter specific legal strategy or advice” and the Custodian of Records did not do so, perhaps because there is no “case or matter specific legal strategy or advice” protected from disclosure by N.J.A.C. 13:1E-3.2(a)(3).

As to the training materials with “case or matter specific legal strategy or advice” redacted, there is no justification for withholding the materials under the common law. The balancing of the competing interests in disclosure and confidentiality often involves an “exquisite weighing process by the trial judge.” Loigman v. Kimmelman, 102 N.J. 98, 108 (1986) (citation omitted). In the case of public records, once a plaintiff proves an interest in the material, “the State must then demonstrate that its need for nondisclosure outweighs the plaintiff’s need

for disclosure.” O’Boyle v. Borough of Longport, 426 N.J. Super. 1, 13 (App. Div. 2012), aff’d, 218 N.J. 168 (2014) (citation omitted). Newark Morning Ledger Co. v. New Jersey Sports & Exposition Auth., 423 N.J. Super. 140, 172 (App. Div. 2011).

In Am. Civil Liberties Union of N.J. v. Cnty. Prosecutors Ass’n of N.J., 257 N.J. 87, 110-11 (2024), the Supreme Court set forth the analysis to be used by lower courts in assessing a common law right to public records:

To access public documents under the common law, “requestors must make a greater showing than required under OPRA: (1) ‘the person seeking access must “establish an interest in the subject matter of the material”’; and (2) ‘the citizen’s right to access “must be balanced against the State’s interest in preventing disclosure.”’” Mason, 196 N.J. at 67-68 (quoting Keddie, 148 N.J. at 50)). We have identified factors to guide that determination. See Rivera, 250 N.J. at 144-49 (identifying factors addressing a common-law request for police internal affairs materials); Loigman v. Kimmelman, 102 N.J. 98, 113 (1986) (setting forth factors for consideration in the balancing test).

The Court below correctly held that AGREAT “meets the first two requirements for access to public records under the common law [because the] requested materials are public records and Plaintiff asserted a wholesome public interest in how government attorneys represent State agencies.” (Pa60).

As to the holding of the Court below that AGREAT’s “right to access does not outweigh Defendants’ interest in preventing disclosure” (Pa60), the Court below found that the Division of Law’s interests in secrecy “include the ability to effectively represent their clients and avoiding a chilling effect on future trainings” and “the requested material contains confidentiality concerns recognized in N.J.A.C.

13:1E-3.2(a)(3), raising the presumption that releasing the records is not in the public interest.” (Pa60-Pa61).

The proposition that N.J.A.C. 13:1E- 3.2(a)(3), creates a presumption that “releasing the records is not in the public interest” is countered in section 1 above. Also, the analysis of the Court below ignores the fact that redaction of “case or matter specific legal strategy or advice” would address any exemption.

With regard to the finding by the Court below that release of the webinar and course materials would be detrimental to the ability of Deputy Attorneys General “to effectively represent their clients,” this finding lacks support in the record. In fact, the opposite is true. Public disclosure of the training of Deputy Attorneys General will enhance their ability to effectively represent their government clients by subjecting the training to public scrutiny. Thus, the goal of the training to provide new Deputy Attorneys General with “an analytical framework to consider questions of legal ethics” including the Division of Law’s “internal policies that were created with the relevant RPC, rules of the court, and case law in mind” is enhanced and not undermined by release of redacted training materials.

Similarly, the Court below erred by stating that disclosure of the webinar and course materials for the course “Ethically and Effectively Representing State Agencies” would have a chilling effect on future trainings. This would only be true if the training was wrong and not corrected or if future training was wrong. The

Division of Law should be proud of its training of new attorneys in ethically and effectively represented State Agencies. In any event, disclosure of how Deputy Attorneys General are trained to “Ethically and Effectively Representing State Agencies” is in the public interest.

Deputy Attorneys General have a great responsibility in representing and advising state agencies and state employees and the public has a right to review the quality of their training, especially on matters of ethics. This public interest in disclosure of the training materials outweighs the Division of Law’s interest in secrecy. Accordingly, AGREAT respectfully submits that the Court below erred by denying AGREAT’s request for the webinar and related materials under the common law right of access.

CONCLUSION

For the reasons set forth above, this Court should, respectfully, reverse the trial court and remand the matter for the purpose of granting access to the webinar and course materials for the course presented by the New Jersey Attorney General’s Advocacy Institute titled “Ethically and Effectively Representing State Agencies” with “case or matter specific legal strategy or advice,” if any, redacted pursuant to OPRA and the common law and awarding reasonable attorney’s fees and costs in favor of AGREAT as the prevailing party.

Respectfully submitted,

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Dated: April 1, 2025

TABLE OF CONTENTS

| | <u>Page No.</u> |
|--|-----------------|
| PRELIMINARY STATEMENT | 1 |
| PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS | 3 |
| A. The New Jersey Attorney General’s Advocacy Institute | 3 |
| B. AGAI Program: Ethically and Effectively Representing State Agencies .. | 6 |
| C. OPRA Request..... | 7 |
| D. Trial Court Upheld the Division's Decision Holding the OPRA Request was Properly Denied Under the Department's Regulation and that Disclosure of the Trainings Would Put the Department on Uneven Playing Field with Private Attorneys | 8 |
| ARGUMENT | 10 |
| I. THE TRIAL COURT CORRECTLY HELD THAT THE REQUESTED TRAINING MATERIALS ARE EXEMPT UNDER N.J.A.C. 13:1E-3.2 AS TRAINING MATERIALS | 10 |
| II. THE STATE’S LEGAL TRAINING MATERIALS ARE EXEMPT FROM ACCESS AS ATTORNEY WORK PRODUCT..... | 16 |
| III. THE TRIAL COURT PROPERLY FOUND THAT THE STATE’S INTEREST IN PROTECTING ITS TRAININGS OUTWEIGHS THE PUBLIC INTEREST IN DISCLOSURE UNDER THE COMMON LAW. | 19 |
| IV. THE TRIAL COURT CORRECTLY DETERMINED THAT AGREAT IS NOT ENTITLED TO ATTORNEYS FEES. | 24 |
| CONCLUSION..... | 25 |

TABLE OF AUTHORITIES

| Cases | Page(s) |
|---|----------------|
| <u>Asbury Park Press v. Ocean Cnty. Prosecutor’s Office,</u> 374 N.J. Super. 312 (Law Div. 2004) | 11 |
| <u>Ass’n for Governmental Resp., Ethics and Transparency v. Borough of Mantoloking,</u> 478 N.J. Super. 470 (App. Div. 2024) | 17 |
| <u>Bergen Cnty. Imp. Auth. v. N. Jersey Media Grp., Inc.</u> 370 N.J. Super. 504 (App. Div. 2004)..... | 21 |
| <u>Gannett Satellite Info. Network, LLC v. Twp. of Neptune,</u> 254 N.J. 242 (2023) | 25 |
| <u>Hickman v. Taylor,</u> 329 U.S. 495 (1947) | 18 |
| <u>K.L. v. Evesham Twp. Bd. of Educ.,</u> 423 N.J. Super. 337 (App. Div. 2011) | 17 |
| <u>Keddie v. Rutgers,</u> 148 N.J. 36 (1997) | 20 |
| <u>Loigman v. Kimmelman,</u> 102 N.J. 98 (1986)..... | 10 |
| <u>L.R. v. Camden City Public School Dist.,</u> 238 N.J. 547 (2019) | 12, 15 |
| <u>Mason v. City of Hoboken,</u> 196 N.J. 51 (2008) | 11, 25 |
| <u>Michelson v. Wyatt,</u> 379 N.J. Super. 611 (App. Div. 2005) | 9, 21 |
| <u>Miller v. J.B. Hunt Transp., Inc.,</u> 339 N.J. Super. 144 (App. Div. 2001) | 17 |
| <u>N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office,</u> 447 N.J. Super. 182 (App. Div. 2016) | 20, 21 |
| <u>N. Jersey Media Grp., Inc. v. State, Office of Governor,</u> | |

451 N.J. Super. 282 (App. Div. 2017) 11

O’Boyle v. Borough of Longport,
218 N.J. 168 (2014) 18

O’Shea v. Twp. Of W. Milford,
410 N.J. Super. 371 (App. Div. 2009) 11

Rivera v. Union Cnty. Prosecutor’s Office,
250 N.J. 124 (2022) 20

Singer v. State
95 N.J. 487 (1984) 25

Sussex Commons Assocs., LLC v. Rutgers,
210 N.J. 531 (2012) 13, 16

Statutes

N.J.S.A. 47:1A-6..... 24

N.J.S.A. 47:1A-9 11, 17

N.J.S.A. 52:17A-1.....3

N.J.S.A. 52:17A-2.....3

N.J.S.A. 52:17A-4 3

N.J.S.A. 52:17B-4 4, 12

Regulations

N.J.A.C. 13:1E-3.2(a)(3) passim

Rules

45 N.J.R. 2023 12, 15, 21

R. 4:10-2 17

Other Authorities

Restatement (Third) of Law Governing Lawyers §87 cmt. i (1998) 17

PRELIMINARY STATEMENT

Former Attorney General John J. Farmer, Jr. established the Attorney General's Advocacy Institute (AGAI) in 2002, with the purpose of enhancing the administration of justice in the State by ensuring that attorneys representing governmental entities maintain the highest degree of professionalism. Dedicated to fostering and developing governmental attorneys' understanding and appreciation of particular legal strategies, AGAI conducts trainings on a wide variety of topics to ensure effective representation of the State's client agencies. Significantly, its trainings, along with the associated training materials, are only available for government attorneys.

Here, AGREAT seeks to gain access to the State's legal strategies by obtaining AGAI's training materials through OPRA which are specifically excluded from public access by a Department of Law & Public Safety (Department) regulation – N.J.A.C. 13:1E-3.2(a)(3). As the trial court correctly held, providing the AGAI training materials under OPRA would be unfair because private attorneys could then obtain government attorneys' strategy.

Under this same rationale, AGREAT's purported common law interest in the training materials fares no better. Significantly, as the trial court properly recognized, the government's paramount interest in training its attorneys and instructing them on legal strategy and providing internal advice greatly outweighs

AGREAT's generalized interest in transparency. And to the extent AGREAT seeks insight on the standards for ethical representation, those can be found by reviewing the Rules of Professional Conduct and case law independently. In contrast, disclosure of AGAI's training materials would reveal the State's case or matter specific legal strategies, directly affecting how the State trains its attorneys, as well as the effectiveness of representation of its client agencies.

As the trial court found, the Department's interests in expertly representing its clients would be hamstrung if AGAI trainings were openly available to the public, thereby creating a chilling effect on future trainings. Thus, disclosure would only prejudice the State's ability to present internal trainings with minimal benefit to AGREAT.

Accordingly, the trial court recognized the significant confidentiality protections applicable to AGAI training materials and appropriately dismissed AGREAT's complaint. This court should affirm.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

A. The New Jersey Attorney General’s Advocacy Institute

The Legislature created the Department, headed by the Attorney General, to provide legal services to the Governor and all State entities. N.J.S.A. 52:17A-1, -2. The Division of Law (DOL) sits within the Department and acts as the sole legal advisor and counsel to the State in most government matters. N.J.S.A. 52:17A-4.

To enhance the administration of justice in the State and ensure that attorneys representing governmental entities maintain the highest degree of professionalism, in May 2000, former Attorney General John J. Farmer Jr. established the New Jersey AGAI within the Department, and tasked it with training and satisfying professional development needs of deputy and assistant attorneys general, county prosecutors and other government lawyers. (Ra1), available at [\[\]njoag.gov/about/divisions-and-offices/attorney-generals-advocacy-institute-home/](http://[]njoag.gov/about/divisions-and-offices/attorney-generals-advocacy-institute-home/)². AGAI trainings encompass a wide variety of practical skills programs and topical presentations covering the diverse areas of public sector law practice to address the continuing education needs of government attorneys, focusing on its core constituencies of deputy and assistant

¹ The procedural history and counterstatement of facts are inextricably intertwined and have been combined for the court’s convenience.

² Web addresses throughout the brief have been modified by excluding the leading “www” in order to disable all hyperlinks. Such omissions are represented by empty brackets (“[]”).

attorneys general and county prosecutors. (Pa41 at ¶8)³. AGAI is dedicated to fostering and developing government attorneys’ understanding and appreciation of particular legal strategies and how to analyze issues that often confront them. Ibid.

AGAI’s trainings are not open to everyone. Because they discuss frameworks for legal analysis, legal strategy and internal advice on how to handle specific matters, the Attorney General has expressly made them confidential by regulation to avoid revealing internal legal analysis, strategies and guidance. See N.J.S.A. 52:17B-4(d) (authorizing the Attorney General to “formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the department, its officer and employees”). Relevant here, records including “training materials” that reveal “case or matter specific legal strategy or advice” and “attorney work product” are exempt from disclosure under OPRA. N.J.A.C. 13:1E-3.2(a)(3).

Not only are these training materials exempt from public disclosure under N.J.A.C. 13:1E-3.2(a)(3), the AGAI’s administration of these trainings underscore their confidential nature. Notably, registration for each training is limited based on its subject matter and intended audience. (Pa39-40, at ¶5). The participants usually include attorneys in the Department, but certain programs are sometimes available to other government employees. Ibid. However, AGAI programs are never open to

³ “Pa” refers to AGREAT’s Appendix, “PBr” refers to AGREAT’s brief, and “Ra” refers to Respondents’ appendix.

the public or private bar. Ibid. And to ensure its confidentiality, AGAI “has made a conscious decision to not publicly broadcast training materials on its website.” (Pa41 at ¶8).

AGAI submits its programs to the New Jersey Board on Continuing Legal Education for accreditation. (Pa40 at ¶6). This process includes submitting the program’s “substantive course category, course title, degree of difficulty, whether the course is ‘in-house,’ course description, format, date and time, and total minutes.” Ibid. Despite the accreditation requirement that each course include “thorough, high-quality, and carefully written materials,” the training materials themselves are not required to be submitted to the Board for consideration. See (Ra12-13), Board on Continuing Legal Education, Regulations, Course Accreditation Standards 301:1(d) (BCLE Regulation)⁴; (Pa40 at ¶6).

Finally, the majority of AGAI’s programs limit participation to attorneys within the Department, and thus are registered as “in-house” programs with the Board of Continuing Legal Education. (Pa40 at ¶6). Pursuant to BCLE Regulation 103:1(m), “‘in-house continuing legal education activity’ shall mean courses or programs offered or conducted by law firms, either individually or in connection with other law firms, corporate legal departments, government legal departments, or

⁴ Available at [njcourts.gov/sites/default/files/attorneys/continuing-legal-education/cleregs_0.pdf]

similar entities primarily for the education of their members, which providers have been approved in advance by the Board[.]” (Ra5). Therefore, similar to in-house trainings by law firms, AGAI programs are limited primarily to education of government attorneys.

B. AGAI Program: Ethically and Effectively Representing State Agencies

To further its mission to train the State’s attorneys, AGAI created the “Basic Civil Administrative Practice” program series (BCAP) to provide instruction to the DOL’s newly hired Deputy Attorneys General (DAsG). (Pa41 at ¶9). BCAP is mandatory for all new DOL DAsG. Ibid. The BCAP is a series of continuing legal education programs that are designed to instruct DAsG on their legal responsibilities, hone basic legal skills, introduce matter specific legal strategies and analyses, and highlight legal issues that they are likely to encounter as government attorneys. Ibid. Additionally, the BCAP programs teach DAsG the DOL internal policies and processes for considering specific subjects. Ibid. Based on all that, the BCAP series is only available to DAsG. Ibid.

Relevant here, on April 10, 2024, AGAI offered one of its BCAP courses, “Ethically and Effectively Representing State Agencies.” (Pa18). As a BCAP course, participation was limited to DOL DAsG, and was mandatory for DOL DAsG hired after October 2023 who had not previously completed the BCAP series of courses. Ibid. The course was prepared and presented by Assistant Attorney General

and then Deputy Director of the Division of Law, Michael C. Walters.⁵ (Pa44 at ¶4). The presentation included material that AAG Walters believed would be most helpful to DOL deputies as they navigate the responsibility of representing State entities, including selected case law and Rules of Professional Conduct (RPC) tailored to the types of issues that DAsG typically face, highlighting the potential pitfalls that DOL attorneys may encounter, and providing an analytical framework to consider questions of legal ethics. (Pa44-45 at ¶¶5-6). The training also advised new deputies on DOL’s internal policies created to implement the relevant RPCs, rules of court, and case law. (Pa45 at ¶ 7).

C. OPRA Request

On May 3, 2024, AGREAT’s counsel filed an OPRA and common law records request to the DOL. Specifically, AGREAT requested “the webinar and course materials” for the AGAI’s April 10, 2024 program on “Ethically and Effectively Representing State Agencies.” (Pa18, 24).

On May 10, 2024, DOL timely responded to AGREAT’s request, denying access to the AGAI training pursuant to the Department’s regulation, N.J.A.C. 13:1E-3.2(a)(3), which states that standard operating procedures, manuals, and training materials that may reveal legal strategy, advice, attorney work product or other privileged material are confidential, and not subject to OPRA. (Pa24). In

⁵ AAG Walters is currently the Acting Director of the Division of Law.

support, the DOL further explained “the Advocacy Institute is an internal training unit of the Attorney General’s Office. The training it provides is only open to attorneys in the Attorney General’s office and to assistant prosecutors.” Ibid.

That same day, AGREAT responded requesting that the records be provided under the common law and State Constitution, without providing any stated interest in the requested training materials. (Pa26). The next day, AGREAT sought the training materials, with redactions for information declared exempt with a Vaughn index, while maintaining that it was entitled to review the materials under the common law. Ibid.

On May 16, 2024, DOL responded to AGREAT’s subsequent requests, noting receipt of its objection, but maintaining its initial response. (Pa27). On June 24, 2024, AGREAT filed its Order to Show Cause and Verified Complaint seeking access to the training under OPRA and the common law. (Pa1-30).

D. Trial Court Upheld The Division’s Decision Holding The OPRA Request Was Properly Denied Under The Department’s Regulation And That Disclosure Of The Trainings Would Put The Department On Uneven Playing Field With Private Attorneys.

Following briefing and oral argument, on September 30, 2024, the Honorable Robert Lougy, A.J.S.C. issued an order and accompanying decision holding DOL’s denial of AGREAT’s request for the requested training materials was proper under both OPRA and the common law right of access, and dismissing AGREAT’s complaint with prejudice. (Pa46-Pa61). Judge Lougy held the materials for the

AGAI's course entitled "Ethically and Effectively Representing State Agencies" are government records that are not subject to public access under N.J.A.C. 13:1E-3.2(a)(3). (Pa57). Finding that the DOL met its burden of showing the requested records are exempt from disclosure under OPRA, the court held the training materials reveal specific legal strategy and advice, because the training and accompanying materials "teach new government attorneys particular legal strategies related to specific issues they are likely to encounter," they "provide[] legal guidance" and "instruct[] new government attorneys on legal issues the [DOL] expects to be raised in litigation[.]" (Pa57-Pa58).

In further support of its conclusion, the court held AGREAT's interest in understanding how attorneys representing State agencies are trained does not outweigh the State's interest in confidentiality, reasoning that disclosure of these types of documents and trainings under OPRA "would create an uneven playing field in which private attorneys enter litigation with the State armed with their opponent's strategy." (Pa58).

The trial court likewise denied AGREAT's request for the webinar and training materials under the common law right of access. (Pa58-61). The court assessed AGREAT's interest against the backdrop of this court's ruling in Michelson v. Wyatt, 379 N.J. Super. 611, 621 (App. Div. 2005), which held "if in balancing the factors, 'the requested material appears on its face to encompass legislatively

recognized confidentiality concerns, a court should presume that the release of the government record is not in the public interest.” (Pa60). Because the training materials sought presented “confidentiality concerns recognized in N.J.A.C. 13:1E-3.2(a)(3)” on their face, the trial court found a presumption that release is not in the public interest. (Pa60-61).

Judge Lougy also concluded that a balancing of the common law factors set forth in Loigman v. Kimmelman, 102 N.J. 98, 113 (1986), also militates against disclosure. (Pa60). Finding that the Department’s interests in its ability to effectively represent its clients and avoid a chilling effect on future trainings outweighed AGREATs asserted interest in learning how government attorneys represent State agencies, the trial court denied disclosure. (Pa60-61).

This appeal follows. (Pa62-66).

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY HELD THAT THE REQUESTED MATERIALS ARE EXEMPT UNDER N.J.A.C. 13:1E-3.2 AS TRAINING MATERIALS.

The trial court’s decision dismissing AGREAT’s complaint should be affirmed because DOL’s “Ethically and Effectively Representing State Agencies” training materials are exempt under N.J.A.C. 13:1E-3.2(a)(3). Indeed, the requested training materials are exempt because they would reveal matter specific legal

strategy or advice which is not subject to disclosure under OPRA. Therefore, this court should affirm the trial court's decision to dismiss AGREAT's complaint.

A "trial court's determinations with respect to the applicability of OPRA are legal conclusions subject to de novo review." N. Jersey Media Grp., Inc. v. State, Office of Governor, 451 N.J. Super. 282, 301 (App. Div. 2017); O'Shea v. Twp. Of W. Milford, 410 N.J. Super. 371, 379 (App. Div. 2009). Here, as properly held by the trial court, AGREAT seeks training materials that would "reveal specific legal strategy and advice," and thus are squarely exempt from public disclosure under N.J.A.C. 13:1E-3.2(a)(3). (Pa18, 24, 57-58).

The purpose of OPRA is to "maximize public knowledge about public affairs in order to ensure an informed citizenry." Mason v. City of Hoboken, 196 N.J. 51, 64 (2008)(quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law. Div. 2004)). However, OPRA contains multiple exemptions and exclusions, including the ability of a public agency to exempt records through promulgation of a regulation. N.J.S.A. 47:1A-9(a) provides that OPRA "shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . regulation promulgated under the authority of any statute or Executive Order of the Governor[.]"

The Attorney General, as the head of the Department, is statutorily required to promulgate rules and regulations "for the efficient conduct of the work and general

administration of the department, its officers and employees.” N.J.S.A. 52:17B-4(d). Under N.J.A.C. 13:1E-3.2, the Department designated certain records as confidential, specifically providing that “[r]ecords, including standard operating procedures, manuals, and training materials that may reveal: case or matter specific legal strategy or advice, attorney work product, attorney client privileged material, or other privileged material” are not government records subject to public disclosure. N.J.A.C. 13:1E-3.2(a)(3); see 45 N.J.R. 2023(a) (clarifying the purpose of the regulation is to “to ensure the effectiveness of the Department’s legal services[.]”). Moreover, it is well-settled that courts should defer to the agency’s interpretation of its own regulation unless it is “plainly unreasonable.” L.R. v. Camden City Public School Dist., 238 N.J. 547, 579 (2019).

Moreover, maintaining the confidentiality of its training materials is essential to fulfilling AGAI’s purpose of training Department’s attorneys, and thus “ensur[ing] the effectiveness of the Department’s legal services[.]” 45 N.J.R. 2023(a). AGAI course instructors prepare presentations and the accompanying materials with the understanding that participation in these courses is not open to the general public and New Jersey Bar; that allows for more candid discussions and analysis of internal legal theories and strategies amongst government attorneys. (Pa39-41 at ¶¶ 5,8). Disclosure of these materials would hinder the ability of course instructors to prepare substantive and effective presentation materials, as instructors

would have to change their presentations to omit highly relevant and essential information concerning legal strategies and considerations. Thus, disclosure of AGAI training materials would have a detrimental effect on the Department's ability to train its attorneys, and by extension hinder its ability to ensure effective legal services. See Sussex Commons Assocs., LLC v. Rutgers, 210 N.J. 531, 546-47 (2012) (recognizing disclosure of Rutgers' clinical legal program records would not promote OPRA's public interest of transparency in government, but would rather undermine academic freedom and have "real consequences for clinical education.").

Also, as the trial court noted, applying OPRA to AGAI trainings meant solely to train LPS members "would create an uneven playing field in which private attorneys enter litigation with the State armed with their opponent's strategy." (Pa58). The Supreme Court's decision in Sussex Commons is useful here. There, the Court recognized the absurd outcome that would result from a ruling making the law clinic of a public law school subject to disclosure under OPRA solely because of its link to public education. 210 N.J. at 548. The same rationale applies here. Similar to the Court's recognition in Sussex Commons, the trial court properly held that requiring the State's attorneys to openly reveal their training materials, while allowing private law firms to privately train their attorneys would create an absurd result. (Pa58).

AGREAT contends that N.J.A.C. 13:1E-3.2(a)(3) is inapplicable on the theory that the AGAI's course "Ethically and Effectively Representing State Agencies," a BCAP course restricted solely to DAsG of the DOL, and registered as an "in-house" program with the Board of Continuing Legal Education, does not reveal "'case or matter specific legal strategy or advice' . . . to any real-world facts or client confidences." (Pb15).

However, AGREAT's argument lacks logic. Contrary to its assertion, the phrase "case or matter specific" is not limited to specifically identified cases, but encompasses matters or types of matters generally faced by the State's attorneys and the specific legal strategies or judgments used when faced with such types of cases or issues. DOL, as the primary legal counsel for State government, is tasked with providing an array of legal services to its client agencies including providing legal advice, defending the State in civil litigation, and bringing civil lawsuits to uphold the law. (Pa44 at ¶5). Naturally, the breadth and volume of litigation faced by DOL deputies creates unique legal issues and potential pitfalls; the purpose of the AGAI training is to prepare new DAsG to handle them. (Pa44-45 at ¶¶5-6). Contrary to AGREAT's assertions, the requested training directly addresses these matters, and provides new Deputies with legal guidance on how to best ensure ethical and effective representation of their clients. Ibid.

Thus, AGREAT's request for this court to interpret N.J.A.C. 13:1E-3.2(a)(3) to apply only to legal strategy or advice applied to specific "real-world facts or client confidences" was appropriately rejected by the trial court. (Pb15). The training materials include legal strategy adopted by DOL for an array of matters that the Department has come to expect as government attorneys. See Pa44-45 at ¶¶5-7. Although this training may not be linked to a particular identified case, it would reveal the DOL's legal strategy or advice generally given when certain matters arise. Interpreting the regulation to only protect case or matter specific legal strategy that pertains to a particular identified case would create an absurd result by requiring the Department to reveal its legal strategy as it generally applies to matters often faced by government attorneys. Such disclosure would directly hinder the effectiveness of the Department's legal services by creating an obstacle to training DAsG on generalized legal strategies and considerations in handling particular sorts of matters. It would also create a disparity between public attorneys and private law firms who are able to train their attorneys in private. And that, in turn, would undermine the purpose of the regulation itself. See 45 N.J.R. 2023(a); L.R., 238 N.J. at 579 (courts should defer to the agency's interpretation of its own regulation unless it is "plainly unreasonable.").

For these same reasons, contrary to AGREAT's assertions, DOL properly withheld the entirety of the requested training materials rather than produce it with

redactions. The plain language of the regulation itself specifies “[r]ecords, including . . . training materials that may reveal: case or matter specific legal strategy or advice” are confidential. N.J.A.C. 13:1E-3.2(a)(3)(emphasis added). Moreover, while there are instances when only a portion of a record may be exempt from public access under OPRA, redactions to confidential information are not required here where the entire record is exempt because redactions would not adequately protect the DOL’s legal strategies.

For these reasons, this court should affirm the trial court’s decision to dismiss AGREAT’s complaint because the training materials are exempt from OPRA under N.J.A.C. 13:1E-3.2(a)(3) and as supported by the Court’s rationale in Sussex Commons.

POINT II

THE STATE’S LEGAL TRAINING MATERIALS ARE EXEMPT FROM ACCESS AS ATTORNEY WORK PRODUCT.

Although raised by DOL but not addressed by the court below, DOL also properly denied AGREAT’s records request as confidential because the training materials constitute attorney work product. Such privileged and confidential materials are not accessible under OPRA because they are specifically exempt from disclosure under N.J.S.A. 47:1A-9(b) and N.J.A.C. 13:1E-3.2(a)(3).

N.J.S.A. 47:1A-9(b) provides that OPRA “shall not abrogate or erode any . . . grant of confidentiality heretofore established or recognized by . . . court rule or judicial case law, which privilege or grant of confidentiality may be duly claimed to restrict public access to a public record or government record.” It is well-settled that attorney work product is privileged and exempt from disclosure under OPRA. Ass’n for Governmental Resp., Ethics and Transparency v. Borough of Mantoloking, 478 N.J. Super. 470, 494 (App. Div. 2024).

The work product privilege is designed to protect “against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.” R. 4:10-2(c). Our courts have held that, under this Rule, work product encompasses materials prepared in reasonable anticipation of litigation. K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 354 (App. Div. 2011). The “reasonableness of anticipation is determined objectively by considering the factual context in which materials are prepared, the nature of the materials, and the expected role of the lawyer in ensuing litigation.” Miller v. J.B. Hunt Transp., Inc., 339 N.J. Super. 144, 149 (App. Div. 2001)(quoting Restatement (Third) of Law Governing Lawyers §87 cmt. i (1998)).

At its core, the work product privilege is aimed at securing “the need for lawyers to ‘work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.’” O’Boyle v. Borough of Longport, 218 N.J.

168, 189 (2014)(quoting Hickman v. Taylor, 329 U.S. 495, 511 (1947)). Indeed, as United States Supreme Court explained, effective legal representation requires sifting through information to determine what is most relevant, and preparing legal theories and strategies. Hickman, 329 U.S. at 511. And such processes are often memorialized in writing. Ibid. But if these materials were accessible by request, “much of what is now put down in writing would remain unwritten” resulting in inefficiency and unfairness. Ibid. Accordingly, our courts recognize that legal work product should be exempt from disclosure. That remains true for government attorneys and requests under OPRA.

Here, the “Ethically and Effectively Representing State Agencies” training materials are exempt from disclosure because they meet both requirements to establish attorney work product. First, the training materials clearly constitute an attorney’s mental impressions, conclusions, legal theories, or opinions. (Pa44-45 at ¶¶1, 4-7). That is because the training analyzes, highlights, and presents case law and RPC provisions that the DOL has identified as essential to consideration of the issues DAsG typically face while representing State agencies. (Pa44-45 at ¶¶5-6). Stated differently, the training materials are shaped to address the DAsG’ unique work for State agencies and provide a framework of case law and RPCs for DAsG to consider when confronted with legal ethics questions. (Pa44-45 at ¶¶4-7).

Second, the training materials constitute attorney work product because they were created based upon a reasonable expectation of litigation. As the primary legal counsel for State agencies, DAsG are consistently asked to provide legal advice to their clients, defend the State in civil litigation, and commence civil litigation to uphold the law. (Pa44 at ¶5). In turn, DAsG face unique legal issues and potential pitfalls, given their specialized area of practice. (Pa44-45 at ¶¶5-7). The training directly addresses these issues, and guides new DAsG on how to best ensure ethical and effective representation of their clients. Ibid.

Because these training materials provide a framework of relevant legal authority to consider when confronted with legal ethical questions, and were created in reasonable anticipation of litigation, they constitute attorney work product. Accordingly, the “Ethically and Effectively Representing State Agencies” training materials are exempt from disclosure under OPRA and N.J.A.C. 13:1E-3.2(a)(3). For these reasons, DOL appropriately denied AGREAT’s OPRA request.

POINT III

**THE TRIAL COURT PROPERLY FOUND THAT
THE STATE’S INTEREST IN PROTECTING ITS
TRAININGS OUTWEIGHS THE PUBLIC
INTEREST IN DISCLOSURE UNDER THE
COMMON LAW**

The trial court’s decision dismissing AGREAT’s complaint under the common law right of access should also be affirmed because protecting DOL’s legal

work and services outweighs AGREAT's purported interest. As detailed above, DOL possesses an essential interest in confidentiality because protecting its trainings is crucial to further the AGAI's mission to train DAsG. Contrary to AGREAT's assertions that its generalized interest in transparency is enough to warrant disclosure of these legal trainings and associated materials, (PBr24-26), as the trial court properly recognized, the government's paramount interest in training its attorneys and instructing them on legal strategy and providing internal advice greatly weighs in favor of confidentiality. Otherwise, "private attorneys [would] enter litigation against the State armed with their opponent's strategy." (Pa58).

"[T]he right to access common law records is a qualified one . . . and the showing a requester must make to gain access is greater than that required under OPRA." N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Office, 447 N.J. Super. 182, 210 (App. Div. 2016) (citations omitted). To gain access to public records under the common law right of access, a requestor must show: (1) the records are common-law public documents; (2) the person seeking has an interest in the subject matter of the material; and (3) the citizen's right to access outweighs the State's interest in preventing disclosure. Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (internal quotation marks and citations omitted); see also Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124, 144 (2022). When balancing these interests, courts "recognize that administrative regulations bestowing confidentiality upon an

otherwise public document . . . weigh ‘very heavily’ . . . as a determination by the Executive Branch of the importance of confidentiality.” Bergen Cnty. Imp. Auth. v. N. Jersey Media Grp., Inc., 370 N.J. Super. 504, 521 (App. Div. 2004). In other words, there is a presumption “that the release of the government record is not in the public interest” when “the requested material appears on its face to encompass legislatively recognized confidentiality concerns.” Michelson, 379 N.J. Super. at 621. A court’s determinations regarding the common law right to access are reviewed de novo. N. Jersey Media Grp., Inc., 447 N.J. Super. at 194.

Here, as the trial court recognized, N.J.A.C. 13:1E-3.2(a)(3) creates a presumption of confidentiality under the common law. What’s more, AGREAT cannot overcome that presumption based on a generalized interest in transparency. First, the Department promulgated the administrative regulation – N.J.A.C. 13:1E-3.2(a)(3) – to specifically exempt its training materials that include matter specific legal strategy or advice from public access. See 45 N.J.R. 2023(a). AGREAT’s generalized interest in transparency is not sufficient to warrant disclosure of these legal training materials.

Even if the presumption did not exist, the State possesses a significant interest in non-disclosure of AGAI training materials, including the requested “Ethically and Effectively Representing State Agencies” program. For starters, as detailed above, the State has a substantial interest in protecting the internal legal training it provides

to its attorneys, including materials reflecting legal analysis and strategy. Beyond expressly exempting the materials at issue here from public disclosure by regulation, the DOL has taken numerous additional steps to ensure that internal training materials remain limited to DAsG. For example, the “Ethically and Effectively Representing State Agencies” training was limited to DOL attorneys only and registered as an “in-house” training for its employees. (Pa40-41 at ¶7). And the training materials were only provided to the eligible participants that registered for the program – not broadcasted anywhere. (Ibid.; Pa41 at ¶8). The disclosure of this information, as the trial court recognized, would detrimentally affect the State’s ability to effectively represent its clients. (See Pa60).

Moreover, the disclosure of the training materials at issue would create a chilling effect for all future trainings. That is because if AGAI trainings are subject to public disclosure, government attorneys may be reluctant to create detailed training materials for DOL attorneys since doing so would reveal internal strategy, guidance and advice. Additionally, candid discussions and legal strategy or advice related to the specific matters would be chilled – thereby undermining AGAI’s purpose. Consequently, if AGAI trainings became publicly accessible, the quality of trainings and representation of state entities would ultimately suffer.

Against that legitimate interest in confidentiality, AGREAT’s interest in obtaining the subject training materials is insufficient to warrant disclosure. To

support its application, AGREAT contends that the “public disclosure of the training will enhance [DAsG] ability to effectively represent their government clients.” (PBr25). But in fact the opposite is true. As previously mentioned, disclosure of AGAI training materials would create a chilling effect and detrimentally impact the quality of trainings.

AGREAT also argues that the “public has a right to review the quality of [DAsG] training, especially on the matter of ethics,” and the “public’s interest in disclosure” of these training materials outweighs DOL’s interest in secrecy. (PBr25-26). However, that argument also fails because disclosure would expose the State’s legal strategies and internal advice to adversaries substantially hindering the DOL’s mission to provide legal services to government agencies. (Pa58). In this context, public disclosure would seriously hamper the Department’s ability to train its attorneys.

In other words, AGREAT’s purported generalized interest in transparency does not outweigh the State’s legitimate interest in confidentiality here. To the extent AGREAT seeks insight on the standards for ethical representation those can be found by reviewing the RPCs and case law independently. Revealing such training materials would prejudice the State with minimal benefit to AGREAT. Thus, AGREAT’s purported interest is negligible at best.

For these reasons, DOL’s substantial interest in protecting its internal trainings outweighs AGREAT’s purported interest in disclosure. As the trial court recognized, the State’s ability to effectively represent its clients and avoid the chilling effect on future trainings rests on the ability to offer trainings with confidence that they will not reveal legal strategy or internal advice. (Pa60-61). On balance, these interests favor non-disclosure under the common law.

This court should affirm the trial court’s well-reasoned decision to dismiss AGREAT’s complaint with prejudice.

POINT IV

THE TRIAL COURT CORRECTLY DETERMINED THAT AGREAT IS NOT ENTITLED TO ATTORNEYS FEES.

Lastly, the trial court’s decision to deny AGREAT’s motion for an award of costs and counsel fees should be affirmed.

It is well-settled that a prevailing party in any proceeding under OPRA “shall be” entitled to reasonable attorney’s fees. N.J.S.A 47:1A-6.⁶ To constitute “a prevailing party” under OPRA the requestor must show “(1) ‘a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved’; and (2) ‘that the

⁶ After AGREAT filed the OPRA request and related complaint at issue here, the Legislature amended OPRA to make attorneys’ fees for prevailing parties discretionary. This amendment became effective on September 3, 2024, and is not retroactive.

relief ultimately secured by plaintiffs had a basis in law.” Mason, 196 N.J. at 76 (quoting Singer v. State 95 N.J. 487, 495 (1984)). And, under the common law right of access, even if successful, a party is not entitled to an award of attorney fees. Gannett Satellite Info. Network, LLC v. Twp. of Neptune, 254 N.J. 242, 264 (2023).

Here, because DOL’s denial of the records request was proper, AGREAT is not entitled to an award of costs and attorney fees under either OPRA or the common law right of access. Accordingly, this Court should affirm the trial court’s decision to deny AGREAT’s request for costs and attorney fees.

CONCLUSION

For all these reasons, the trial court’s decision dismissing AGREAT’s complaint with prejudice and denying its Order to Show Cause should be affirmed.

Respectfully submitted,

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DATED: July 2, 2025

***Superior Court of New Jersey
Appellate Division
Docket No.: A-000716-24***

**ASSOCIATION FOR
GOVERNMENTAL
RESPONSIBILITY,
ETHICS AND
TRANSPARENCY,**

Plaintiff-Appellant,

v.

**STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY
GENERAL, DEPARTMENT OF
LAW AND PUBLIC SAFETY,
DIVISION OF LAW AND
OCTAVIA BAKER AS
CUSTODIAN OF RECORDS,**

Defendants-Respondents.

Civil Action

**On Appeal from Order Dismissing
the Complaint With Prejudice**

**Docket No. Below: MER-L-1233-
24**

**Sat Below: Honorable Robert T.
Lougy, A.J.S.C.**

**Reply Brief of Plaintiff-Appellant Association for Governmental
Responsibility, Ethics and Transparency**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED ii

PRELIMINARY STATEMENT 1

LEGAL ARGUMENT 2

Point I

THE TRIAL COURT AND RESPONDENTS MISCONSTRUE N.J.A.C. 13:1E-3.2(a)(3)..... 2

Point II

THE “UNEVEN PLAYING FIELD” ARGUMENT IS MISPLACED..... 4

Point III

RESPONDENTS CANNOT EVADE THEIR REDACTION OBLIGATIONS 5

Point IV

RESPONDENTS’ NEW “WORK PRODUCT” THEORY IS IMPROPER AND MERITLESS..... 6

Point V

THE TRIAL COURT MISAPPLIED THE COMMON LAW BALANCING TEST 7

Point VI

AGREAT IS ENTITLED TO A REASONABLE ATTORNEY’S FEE IF IT PREVAILS..... 7

CONCLUSION..... 8

TABLE OF AUTHORITIES

| CASES | Page(s) |
|---|---------|
| <u>Courier News v. Hunterdon Cnty. Prosecutor’s Office</u> , 358 N.J. Super. 373 (App. Div. 2003) | 6 |
| <u>Hickman v. Taylor</u> , 329 U.S. 495 (1947) | 6 |
| <u>Loigman v. Kimmelman</u> , 102 N.J. 98 (1986)..... | 7 |
| <u>Mason v. City of Hoboken</u> , 196 N.J. 51 (2008) | 4, 7, 8 |
| <u>Rivera v. Union Cnty. Prosecutor’s Office</u> , 250 N.J. 124 (2022) | 7 |
| STATUTES | |
| N.J.S.A. 47:1A-1 | 3, 4 |
| N.J.S.A. 47:1A-5(g) | 5, 6 |
| REGULATIONS | |
| N.J.A.C. 13:13.2(a)(3) | 2 |
| N.J.A.C. 13:1E-3.2..... | 2, 3, 5 |
| N.J.A.C. 13:1E-3.2(a)(3)..... | 2 |
| RULES | |
| <u>R. 4:10-2(c)</u> | 6 |

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED

| | |
|--|------|
| 6-3-22 Order and Opinion Dismissing the Complaint with Prejudice | Pa40 |
|--|------|

PRELIMINARY STATEMENT

This case concerns the public’s right to know how newly hired government lawyers are trained to “Ethically and Effectively Represent State Agencies.” The trial court’s ruling—and Respondents’ defense of it—converts a narrow regulatory exemption into a sweeping shield for all internal training, contrary to OPRA’s command that exemptions be narrowly construed and access broadly provided.

The training materials at issue summarize RPCs, case law, and agency policies. These do not reveal any *case or matter specific* strategy. Even if discrete content were exempt, OPRA requires redaction of that content and disclosure of the remainder. By refusing to redact and instead categorically withholding the training materials, Respondents failed to meet their statutory burden.

The training materials should also be disclosed pursuant to the common law. The common law requires a balancing of the government’s interest in secrecy with the public’s right, advanced by the Association for Governmental Responsibility, Ethics and Transparency here, to review the quality of the training of new government attorneys in how to ethically represent state agencies. This public interest in disclosure of the training materials outweighs the Division of Law’s interest in secrecy articulated by Respondents as “crucial to further the AGAI’s mission to train DAsG.” (Db20). There is no support for Respondent’s position that secrecy is “crucial to further the AGAI’s mission to train DAsG” (Db20) and

outweighs the public's right to review the training materials. Further, Respondents parrot the trial court's unsupported proposition that N.J.A.C. 13:13.2(a)(3) raises "the presumption that releasing the records is not in the public interest" (Pa61) when there is no such presumption. In this regard, the government promulgated N.J.A.C. 13:13.2(a)(3) to advance its interests of secrecy and, rather than presuming this carries over to a common law analysis, the common law is an important check on government and its self-serving regulations.

For these reasons, and those set forth below, the dismissal of AGREAT's Complaint should be reversed and the matter remanded for disclosure of the records with any appropriate redactions and an award of attorney's fees.

LEGAL ARGUMENT

Point I

THE TRIAL COURT AND RESPONDENTS MISCONSTRUE N.J.A.C. 13:1E-3.2(a)(3)

The regulation relied upon by the trial court and Respondents to deny AGREAT's government records request, N.J.A.C. 13:1E-3.2(a)(3), exempts training materials only if they reveal "case or matter specific legal strategy or advice." The trial court replaced the phrase "case or matter specific legal strategy or advice" with "specific legal strategy and advice," deleting crucial words and broadening the exemption beyond its text. The Respondents do not address this misquote by the trial court of the regulation.

Importantly, the Certification of Deputy Director of the Division of Law Michael C. Walters submitted by Respondents to the trial court confirms the course presented RPCs, case law, and agency policies, but never identified any privileged, case-specific advice. (Michael Walters' Certification, paragraphs 6 and 7, Pa45).

Again, Respondents do not address the failure of Respondents to present evidence supporting the proposition that release of the webinar and course materials may reveal "**case or matter specific** legal strategy or advice, attorney work product, attorney-client privileged material, or other privileged material." N.J.A.C. 13:1E-3.2 (emphasis added). The Court's disregard of this important limiting language requires a remand.

Further, Respondents do not address, much less acknowledge, the established legal proposition that, as an exemption, N.J.A.C. 13:1E-3.2 must be construed in favor of disclosure because OPRA provides that "[a]ny limitations on the right of access . . . shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1. The trial Court's disregard of this important principle advancing transparency also requires a remand.

In this regard, OPRA declares that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access . . . shall be construed in favor of the public's right of access."

N.J.S.A. 47:1A-1 (emphasis added). See Mason v. City of Hoboken, 196 N.J. 51, 64 (2008).

The trial court's expansion of the regulation by disregarding the limiting words "**case or matter specific**" is error and the matter should be remanded.

Point II

THE "UNEVEN PLAYING FIELD" ARGUMENT IS MISPLACED

Respondents and the trial court contend disclosure would allow private attorneys to gain an unfair advantage. (Db9, Pa58). Nowhere is there an explanation as to how a materials setting forth "relevant case law and Rules of Professional Conduct (RPC), that would provide DOL deputies with an introduction to the RPC and issues related to the RPCs that DOL attorneys face when representing state entities PCs, case law, and agency policies" would provide private attorneys with an unfair advantage. The Certification of Deputy Director of the Division of Law Michael C. Walters submitted by Respondents to the trial court does not support such a statement and it is difficult to fathom how revealing training materials providing an "introduction to the RPC and issues related to the RPCs that DOL attorneys face when representing state entities" and "relevant RPC, rules of the court, and case law" (Deputy Director Walters' Certification, Pa44-Pa45) would provide an advantage to private attorney over government attorneys. There is nothing in the record to support the statement by the trial court that disclosure of training materials

used in the course entitled “Ethically and Effectively Representing State Agencies” (Pa4) discloses any government attorney’s “strategy” and nothing to support the conclusion that disclosure “would create an uneven playing field in which private attorneys enter litigation with the State armed with their opponent’s strategy.” (Pa58, Db9).

OPRA is not designed to protect the State’s litigation posture; it is designed to maximize transparency. Ethics training on topics like litigation holds, acceptance of service, and communications with represented parties does not reveal litigation tactics or strategy. Conflating ethics training with trial playbooks undermines OPRA’s purpose and fuels public distrust.

Point III

RESPONDENTS CANNOT EVADE THEIR REDACTION OBLIGATIONS

N.J.S.A. 47:1A-5(g) requires custodians to redact exempt material and release the remainder. Respondents categorically withheld the training materials, refusing even to consider redaction or provide a Vaughn index as required by the statute, which states “the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.” This violates OPRA’s plain terms and the agency’s burden to provide “specific reliable evidence” of exemption. Courier News v. Hunterdon Cnty. Prosecutor’s Office, 358 N.J. Super. 373, 383 (App. Div. 2003).

Thus, the trial court erred by holding that N.J.A.C. 13:1E-3.2 required a blanket exemption of all of the training materials requested in disregard of the statutory mandate that a Custodian of Records must “excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.” N.J.S.A. 47:1A-5(g).

Point IV

RESPONDENTS’ NEW “WORK PRODUCT” THEORY IS IMPROPER AND MERITLESS

The trial court did not rule on a work product basis. Respondents did not cross appeal and cannot raise this in this appeal. Substantively, work product applies to materials “prepared in anticipation of litigation.” R. 4:10-2(c); Hickman v. Taylor, 329 U.S. 495 (1947). The work product privilege is designed to protect “against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning **the litigation**.” R. 4:10-2(c) (emphasis added). Respondents have not identified any litigation that the training materials were prepared for or any “mental impressions, conclusions, opinions, or legal theories” pertaining to any pending or anticipated litigation. Even if there is any such material, the Custodian of Records was obligated to redact it pursuant to N.J.S.A. 47:1A-5(g).

Summaries of RPCs and case law for ethics training are not litigation documents. Expanding work product to cover generic training would insulate nearly all internal materials from OPRA.

Point V

THE TRIAL COURT MISAPPLIED THE COMMON LAW BALANCING TEST

The trial court presumed nondisclosure because the regulation referenced confidentiality. But Loigman v. Kimmelman, 102 N.J. 98 (1986) requires the State to demonstrate specific harm. AGREAT’s interest is not “generalized”: the public has a compelling right to know how government attorneys are trained in ethics. Courts have emphasized transparency in ethics-related matters as central to public trust. Mason, 196 N.J. at 64; Rivera v. Union Cnty. Prosecutor’s Office, 250 N.J. 124 (2022).

Point VI

AGREAT IS ENTITLED TO A REASONABLE ATTORNEY’S FEE IF IT PREVAILS

Respondents argue no fees are available because AGREAT has not yet prevailed. But OPRA provides for fees if a party prevails “in whole or in part.” N.J.S.A. 47:1A-6. Courts interpret this broadly. Mason, 196 N.J. at 79. If the Court orders disclosure—redacted or otherwise—AGREAT qualifies as a prevailing party.

Respondents' categorical denial, without attempting redaction, supports entitlement to a reasonable attorney's fee.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed. The matter should be remanded with instructions to order disclosure of the requested training materials with redactions for any genuinely case-specific privileged content. Further, AGREAT should be awarded a reasonable attorney's fee as the prevailing party.

Respectfully submitted,

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