

<p>RAJEH A. SAADEH, Plaintiff(s)-Appellant, v. BOROUGH OF WATCHUNG, Defendant(s)-Respondent.</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2215-24 <u>CIVIL ACTION</u> On appeal from: SUPERIOR COURT OF NEW JERSEY LAW DIVISION SOMERSET COUNTY DOCKET NO. L-463-25 Sat below: Kevin M. Shanahan, A.J.S.C.</p>
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**BRIEF ON BEHALF OF PLAINTIFF-APPELLANT,
RAJEH A. SAADEH**

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Date submitted: **July 23, 2025**

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PRELIMINARY STATEMENT

Defendant's police department took no meaningful action regarding an incident in which a white male assaulted Plaintiff's mother with an automobile, likely because of her identity as a Muslim woman.

Exacerbating the crime, Defendant refused to comply with Plaintiff's OPRA request using the irrelevant excuse that the matter is being investigated as a bias incident by the county prosecutor.

Adding further insult to injury, right after this OPRA-enforcement case was filed, the judge dismissed it sua sponte because he concluded – without evidence – that the documents sought are not with Defendant and only with the county prosecutor, a belief contradicted by Defendant's response denying Plaintiff's OPRA request.

Plaintiff and his mother have the right to know who assaulted her. Defendant refuses to disclose documents it has that would reveal this. Instead of enforcing OPRA, the judge validated the concealment. All the while, neither the local police nor county prosecutor have done anything regarding the crime.

Plaintiff and his mother intend to pursue justice against the criminal, but they can only do so after the government is made to disclose what it's hiding, which requires this panel's swift correction of the judge's dismissal.

RELEVANT PROCEDURAL HISTORY

On March 24, 2025, Plaintiff filed a Verified Complaint (“Complaint”) and an application for an order to show cause under OPRA. (Pa5). On March 26, 2025, the judge dismissed the Complaint. (Pa1). Plaintiff now appeals. (Pa12).

STATEMENT OF FACTS

Ms. Mariam Saadeh is our client and Plaintiff’s mother. (Pa18).

On February 4, 2025, Ms. Saadeh was walking through the parking lot of the Walmart in Watchung, New Jersey, while wearing a hijab, a headscarf that she proudly wears as a Muslim woman. (Pa5). An unidentified white male saw Ms. Saadeh and intentionally assaulted and struck her with his vehicle. (Pa5). The police were promptly notified and generated a report in the ordinary course of its business. (Pa6). The report number is 25-02359. (Pa6).

On or about February 5, 2025, Plaintiff submitted to Defendant a request for documents and records under OPRA and the common law right of access regarding said incident. (Pa15). Defendant is the custodian of the documents and records Plaintiff sought. (Pa20).

On or about February 6, 2025, Defendant’s police department responded to Plaintiff’s request for documents and records, stating:

We have received your OPRA request regarding #25-02359. Unfortunately, we are unable to release any reports or video at this time due to the matter being forwarded to

the Somerset County Prosecutor's Office while it is under review for a possible bias incident. (Pa6).

LEGAL ARGUMENT

I. DEFENDANT HAS THE DOCUMENTS AND RECORDS PLAINTIFF SOUGHT. (Pa6; Pa20).

Appellate courts generally do not disturb trial court factual finding unless they are “so manifestly unsupported or inconsistent with the competent relevant and reasonably credible evidence as to offend the interests of justice.” D’Agostino v. Maldonado, 216 N.J. 168, 182 (2013) (quoting Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011)). The appellate court's role is to determine whether the trial court's findings could reasonably have been reached based on "adequate, substantial, and credible evidence" in the record. Cesare v. Cesare, 154 N.J. 394, 411-412 (1998); Potomac Ins. Co. of Illinois ex rel. One Beacon Ins. Co. v. Pa. Mfrs. Ass’n Ins. Co., 425 N.J. Super. 305, 319 (App. Div. 2012); State in re W.M., 364 N.J. Super. 155, 165 (App. Div. 2003). If the trial court's factual findings are clearly mistaken or unsupported by the record, then appellate intervention is warranted, which can include an appeals court making its own factual findings. Cesare, 154 N.J. at 399. Although rare, an appellate court may even exercise original fact-finding jurisdiction in clear cases where there is no doubt about the matter. Id.; Seidman, 205 N.J. at 181.

Defendant's police department indicated that it is "unable to release any reports or video at this time due to the matter being forwarded to the Somerset County Prosecutor's Office." (Pa6). This means Defendant has the records Plaintiff sought and refused to disclose them.

The judge's claim that Defendant does not have the records Plaintiff sought is not based on fact or evidence and is contradicted by Defendant's acknowledgment that it is not releasing the records Plaintiff requested. If Defendant did not have the records requested, Defendant could and would have said so. Instead, Defendant said that it is not disclosing the records requested, meaning it has them. The judge's belief to the contrary is based on no evidence and contrary to evidence, particularly from Defendant.

Accordingly, the judge's order of March 26, 2025, must be reversed.¹

CONCLUSION

The judge dismissed the Complaint based on its beliefs that are not supported by the evidence and even contradict the evidence. This is sufficient reason to reverse the order of March 26, 2025.

¹ The timing and basis of the judge's decision obviated the need for Defendant to participate or articulate positions below. This precludes us from knowing and therefore being able to address those positions in this appeal, in which it would be inappropriate for Defendant to first raise them. We therefore preemptively object to Defendant raising such unknown positions in this appeal, and we reserve the right to address them where they should be first raised: on remand. (Pa1-4).

The sua sponte dismissal and circumstances surrounding it constitute a material example of the judge's inclination to deny Plaintiff relief. To avoid impropriety or – at the very least – the appearance thereof, the matter must be heard by a different judge on remand.

Respectfully Submitted,
THE LAW OFFICE OF RAJEH A. SAADEH, L.L.C.
Attorneys for **Plaintiff-Appellant**

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RAJEH A. SAADEH,

Plaintiff/Appellant,

v.

BOROUGH OF WATCHUNG,

Defendant/Respondent.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

APPELLATE DOCKET NO. A-002215-24

On Appeal From:
SOMERSET COUNTY SUPERIOR COURT
LAW DIVISION
DOCKET NO.: SOM-L-463-25

Sat Below:
Hon. Kevin M. Shanahan, A.J.S.C.

**DEFENDANT/RESPONDENT'S APPELLATE BRIEF
IN OPPOSITION TO PLAINTIFF/APPELLANT'S APPEAL**

Of Counsel and On the Brief:
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PRELIMINARY STATEMENT

This matter arises out of an OPRA¹ request submitted by Appellant Rajeh A. Saadeh ("Appellant" or "Saadeh") to the Respondent Borough of Watchung ("Borough" or "Watchung") seeking police records relating to case number 25-02359 involving Mariam Saadeh and any other person regarding an incident occurring on February 4, 2023, at or around the Walmart in in the Borough. The OPRA request was dated February 5, 2025. The Borough responded via e-mail to the OPRA request the very next day on February 6, 2025, advising that the records requested were unable to be released at that time due to the fact that they were currently under review by the Somerset County Prosecutor's Office as a possible bias incident. In the same February 6th e-mail, the Borough further advised that the Appellant to "[p]lease feel free to check back at a later date."

Instead of checking back with the Borough, on March 24, 2025, the Appellant filed an Order to Show Cause pursuant to R. 4:67 and Verified Complaint, bearing Docket No. SOM-L-000463-25, against the Borough alleging that the Borough wrongfully denied the OPRA request, seeking damages, interest and attorney's fees, in addition to access to the records sought.

The Borough was never served with the Order to Show Cause or Verified Complaint. The Order to Show Cause was denied

¹ "OPRA" refers to the Open Public Records Act, N.J.S.A. 47:1A-1, et seq.

without prejudice by The Honorable Kevin M. Shanahan, A.J.S.C., on March 26, 2025. In the March 26th Order, Judge Shanahan noted that "Defendant (the Borough) cannot comply with the OPRA request due to records being at the Somerset County Prosecutors Office." As such, the Borough did not participate in the underlying matter before the Superior Court in connection with the denial of the Order to Show Cause.

The Borough was not aware that there was even a challenge to its response to the OPRA request until receipt of the Notice of Appeal filed by Appellant, a copy of which was provided to the Borough Attorney via e-mail on March 28, 2025.

Ultimately, the Borough properly denied the OPRA request pursuant to N.J.S.A. 47:1A-9(b) and N.J.S.A. 40A:14-181, as the records requested were part of an internal affairs investigation pending with the Somerset County Prosecutor's Office at the time the request was made. The Borough even advised the Appellant to check back later, after the Prosecutor's investigation has been completed, to see if the requested records can then be provided. Instead, Appellant decided to file litigation, which was properly denied by Judge Shanahan. Based on the foregoing, Appellant's Order to Show Cause and Verified Complaint were properly denied; and this appeal should be denied as well.

CONCISE PROCEDURAL HISTORY

On February 5, 2025, Appellant submitted an OPRA request to the Borough seeking the following records:

Regarding police case number 25-02359 involving Mariam Saadeh and any other person regarding the incident of February 4, 2025, at or around the Walmart in Watchung:

- all documents and records, including photos, dashcam videos, bodycam videos, notes, reports, and any other documents or records.

(Pa15a)

The OPRA request further provided that Appellant was requesting the documents under the Common Law Right of Access. (Pa18a) The Appellant provided the following for his interest in the records: "We are also requesting the documents and records, photos, dashcam and bodycam videos, notes and reports because The Law Office of Rajeh A. Saadeh, L.L.C. represents Mariam Saadeh." (Pa18a)

On February 6, 2025, via e-mail (utilizing the e-mail address provided by Appellant), the Borough responded to the OPRA request as follows:

Good morning,
We have received your OPRA request regarding #25-02359. Unfortunately, we are unable to release any reports or video at this time due to the matter being forwarded to the Somerset county Prosecutor's Office while it is under review for a possible bias incident. Please feel free to check back at a later date.
Thank you,
Maureen Rondena
Watchung Police Department.

(Pa20a & Da1²) (Emphasis added.)

On the OPRA request form, the Borough noted in the "Disposition Notes" that the request was denied based on the fact that the "bias incident being reviewed by SCPO [Somerset County Prosecutor's Office]." (Pa20a)

The Borough did not hear anything further from the Appellant until receipt of the Notice of Appeal filed with the Appellate Division on March 28, 2025. (Pa12a) The Borough later learned that the Appellant had filed an Order to Show Cause and Verified Complaint against the Borough in the Superior Court of New Jersey on March 24, 2025, which was denied without prejudice by The Honorable Kevin M. Shanahan, A.J.S.C., on March 26, 2025. (Pa1a through Pa11a) Judge Shanahan noted that "Defendant cannot comply with the OPRA request due to records being at the Somerset County Prosecutors Office." (Pa4a) Appellant is now appealing Judge Shanahan's Order.

CONCISE STATEMENT OF FACTS

The facts of this matter are set forth in the Concise Procedural History. There are no other material facts known to the Borough.

² Appellant failed to include the Borough's February 6th e-mail as part of the Borough's response to the OPRA request in its Appendix.

LEGAL ARGUMENT

THE TRIAL COURT DID NOT ERR IN DENYING
APPELLANT'S ORDER TO SHOW CAUSE.

Appellate review of a denial an order to show cause and dismissing a complaint pursuant to R. 4:67-1 is governed by the usual standards of review of civil cases. No special standards of appellate review govern summary actions conducted pursuant to R. 4:67, with the usual standards of review for civil cases apply. O'Connell v. N.J. Mfrs. Ins. Co., 306 N.J. Super. 166, 172-173 (App. Div. 1997) (applying substantial-credible-evidence standard in reviewing a decision from a summary action).

Appellant's attempt to raise allegations relating to the actions of the Borough Police Department in this appeal are of no moment. The actions of the Borough in response to the OPRA request were direct and fully compliant with the applicable law. Appellant requested police records that were under review by the Somerset County Prosecutor's Office as an internal affairs investigation as a potential bias incident. Such records are not subject to release under OPRA pursuant to N.J.S.A. 47:1A-9(b) and N.J.S.A. 40A:14-181. See Rivera v. Union County Prosecutor's Office, 250 N.J. 124, 142-143 (2022) (holding that OPRA exempts internal affairs reports from public disclosure). The Borough advised the Appellant that the requested records

were unavailable "at this time" to do this investigation; and, in fact, advised the Appellant to "[p]lease feel free to check back at a later date." The fact that Appellant decided not to do so, but rather file litigation, unnecessarily expending time and money on behalf of themselves as well as the Borough, was their decision, and not the fault of the Borough.

The law is clear. Police records that are subject to internal affairs review by the County Prosecutor's Office are not subject to public release. The New Jersey Supreme Court in Rivera, supra, has held that internal affairs reports are exempt from public disclosure under OPRA, specifically pursuant to N.J.S.A. 47:1A-9(b) and N.J.S.A. 40A:14-181. Rivera, supra, 250 N.J. at 142-143.

Appellant also requested the records under the Common Law Right of Access. The Rivera Court held that while OPRA does not permit access to internal affairs reports, those records may be disclosed under the common law right of access when interests that factor disclosure outweigh concerns for confidentiality. Rivera, supra, 250 N.J. at 135. New Jersey courts have consistently utilized six (6) factors to consider when balancing the requestor's interest in the subject matter of the public record against the State's interest in preventing disclosure (or preserving confidentiality). See Loigman v. Kimmelman, 102 N.J. 98, 113 (1986). These factors include:

(1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;

(2) the effect of 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 decisionmaking 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 individuals asserted need for the materials.

Id.

Here, when the OPRA request (inclusive of the common law right of access request) was submitted, the records sought were under investigation by the Somerset County Prosecutor's Office for a determination as to whether any misconduct had occurred. The investigation was not yet concluded. As such, the Borough had a strong interest in keeping such information confidential until the Prosecutor's Office's investigation was completed. On the other hand, the only interests in the records presented by the Appellant was based on the fact that "The Law Office of Rajeh A. Saadeh, L.L.C. represents Mariam Saadeh." (Pa18a)

In the event that Appellant attempts to present any new interests in the release of the requested records in this appeal, it should be rejected by the Appellate Division as such information was not provided to the Borough when the OPRA request was submitted; thus could not have been considered by the Borough when weighing the interests in connection with the common law right of access request. Any such information was not in the record below and should not be considered by this Appellate Court. See Townsend v. Pierre, 221 N.J. 36, 45 n.2 (2015); Nieder v. Royal Idem. Ins. Co., 62 N.J. 299, 235 (1973); and State v. Walker, 385 N.J. Super. 388, 410 (App. Div. 2006) (holding “[g]enerally, issues not raised below, even constitutional issues, will not ordinarily be considered on appeal unless they are jurisdictional in nature or substantially implicate public interest.”)

When reviewing the Order to Show Cause and Verified Complaint, Judge Shanahan saw the fact that the requested records were not subject to public disclosure under OPRA, and the fact that the balancing of the interests clearly side on keeping the documents confidentiality at such time; therefore properly denied the Order to Show Cause. Judge Shanahan did so without prejudice as he knew that if the same or similar request was resubmitted to the Borough after the investigation was completed, then the Appellant may be entitled to the records.

Indeed, the Borough understood this as well; which is why the Borough's response clearly stated that it was denied "at this time," and, in fact, recommended that the Appellant "check back at a later date."

Appellant's misunderstanding of the applicable law and underlying facts is exemplified in its legal brief. Appellant argues that the Judge denied the appeal based on the fact that the Borough did not physically have the records; i.e. the physical records being in the position of the Somerset County Prosecutor's Office. This is clearly a misunderstanding and not what the Judge was holding. The denial of the OPRA request was due to the fact that the records related to an internal affairs matter that was under investigation by the Prosecutor's Office, not that the Borough did not have physical copies of same. Furthermore, as stated above, the Borough lawfully denied the OPRA request based on the Prosecutor's pending investigation.

Based on the foregoing, Appellant's Order to Show Cause and Verified Complaint challenging the Borough's denial of the OPRA request was properly denied by Judge Shanahan. Accordingly, Appellant's appeal should be denied, affirming Judge Shanahan's Order.

CONCLUSION

For the foregoing reasons, the Borough respectfully submits that the Appellate Division affirm Judge Shanahan's denial of Appellant's Order to Show Cause and Verified Complaint, finding that the Borough properly denied the OPRA request, and deny Appellant's appeal.

Respectfully submitted,

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JOSEPH V. SORDILLO

Dated: September 2, 2025

<p>RAJEH A. SAADEH, Plaintiff(s)-Appellant, v. BOROUGH OF WATCHUNG, Defendant(s)-Respondent.</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2215-24 <u>CIVIL ACTION</u> On appeal from: SUPERIOR COURT OF NEW JERSEY LAW DIVISION SOMERSET COUNTY DOCKET NO. L-463-25 Sat below: Kevin M. Shanahan, A.J.S.C.</p>
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**REPLY BRIEF ON BEHALF OF PLAINTIFF-APPELLANT,
RAJEH A. SAADEH**

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Date submitted: **September 16, 2025**

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PRELIMINARY STATEMENT

Defendant claimed it denied Plaintiff's OPRA request because the underlying incident was under review by the prosecutor's office. That is not a basis under OPRA to deny disclosure.

So, Plaintiff filed an OPRA enforcement action, which the lower court dismissed based on its evidence-free belief that the documents Plaintiff requested were with the prosecutor's office. Defendant's brief confirms the lower court's claim was incorrect.

As predicted in the only footnote in our merits brief, Defendant makes a new argument based on mischaracterizing Plaintiff request as one for IA records. But, Defendant did not deny Plaintiff's OPRA request for seeking IA records, and the lower court did not dismiss Plaintiff's OPRA enforcement action for seeking IA records, both for good reason: Plaintiff did not seek IA records.

RELEVANT PROCEDURAL HISTORY

Pb 2. Aside from what is already in Plaintiff's merits brief, the procedural history section of Defendant's brief is irrelevant to this appeal.

STATEMENT OF FACTS

Pb 2-3.

LEGAL ARGUMENT

I. PLAINTIFF'S OPRA REQUEST DID NOT SEEK INTERNAL AFFAIRS RECORDS. (Not raised below).

II. DEFENDANT DID NOT DENY PLAINTIFF’S OPRA REQUEST FOR SEEKING INTERNAL AFFAIRS RECORDS. (Not raised below).

III. THE LOWER COURT DID NOT DISMISS PLAINTIFF’S OPRA ENFORCEMENT ACTION FOR SEEKING INTERNAL AFFAIRS RECORDS. (Not raised below).

Internal affairs (“IA”) records include documents concerning investigations of law enforcement officers, discipline of police officers, and other employment-related matters involving law enforcement. See N.J.S.A. 40A:14-181 (mandating law enforcement agencies to adopt guidelines consistent with the Attorney General’s Internal Affairs Policy and Procedures, including maintaining the confidentiality of IA records); Rivera v. Union County Prosecutor’s Office, 250 N.J. 124, 142-143 (2022); Gannett Satellite Info. Network, LLC v. Twp. of Neptune, 467 N.J. Super. 385, 394 (2021). For example, N.J.S.A. 52:17B-247 states that IA files are part of the records that law enforcement must share with other agencies during hiring processes. Similarly, N.J.A.C. 13:1-10.2 allows for the review of IA records during employment-related investigations.

Defendant’s argument assumes Plaintiff sought IA records. That assumption is incorrect, and Defendant provided no law in support of its belief that Plaintiff sought IA records. Plaintiff sought documents and records concerning a bias-crime committed against Plaintiff’s mother by an elderly white male in a Walmart parking lot. Said documents and records have nothing to do with any investigations of (not

by) police officers, police hiring, and law enforcement disciplinary processes or outcomes. Thus, said documents are not IA records.

Defendant did not deny Plaintiff's OPRA request for seeking IA records either. See N.J.S.A. 47:1A-5(g) (custodians must state the specific legal bases for denying an OPRA request). Instead, Defendant wanted Plaintiff to wait for the prosecutor's investigation to conclude before following up or making another OPRA request. This reveals the disingenuousness of Defendant's argument; if Plaintiff requested IA records, Defendant would have denied said request for said reason, and following up on Defendant's refusal to comply with Plaintiff's OPRA request would have been futile.

The lower court did not dismiss Plaintiff's OPRA enforcement action for seeking IA records either, and for good reason: Plaintiff did not request IA records, and Defendant did not deny Plaintiff's request for seeking IA records. See also State v. Robinson, 200 N.J. 1, 20 (2009) (appellate review is limited to the lower court record).

This case has nothing to do with IA records -- not in Plaintiff's request, not in Defendant's denial, and not in the lower court's dismissal.

CONCLUSION

Plaintiff did not seek IA records. Defendant did not deny Plaintiff's request for seeking IA records. The lower court did not dismiss Plaintiff's enforcement action for seeking IA records.

For these reasons and those in our merits brief, the order of March 26, 2025, must be reversed, and the matter should be remanded for further proceedings.

Respectfully Submitted,
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Attorneys for **Plaintiff-Appellant**

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Christopher C. Dombakly