

STEVEN WRONKO, Plaintiff-Appellant, v. MONMOUTH COUNTY SOCIETY FOR THE PREVENTION OF CRUELTY OF ANIMALS, a domestic New Jersey non-profit corporation, and the RECORDS CUSTODIAN of the Monmouth County Society for the Prevention of Cruelty of Animals, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION CIVIL ACTION On appeal from a final judgment of the Law Division Dated: June 27, 2024 A-000155-23T4 MON-L-000696-23 SAT BELOW: Hon. Owen C. McCarthy, P.J.Cv. Superior Court, Monmouth County
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BRIEF OF PLAINTIFF-APPELLANT

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Submitted November 4, 2024
Corrected November 7, 2024

TABLE OF CONTENTS

	<u>PAGE</u>
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS AND PROCEDURAL HISTORY	2
LEGAL ARGUMENT	12
POINT I	
Standard of Review (Not Raised Below)	12
POINT II	
The MCSPCA is a Public Agency Within the Meaning of OPRA and the Common Law Right of Access Because it Employs Law Enforcement Officers and Enforces Animal Cruelty Laws (Raised Below at Pa1-8, Pa303-312; 1T13:25-14:22; 2T14:13-15:19).....	13
CONCLUSION.....	23

TABLE OF AUTHORITIES

	<u>PAGE</u>
<i>Cases</i>	
<u>ACLU vs. New Jersey County Prosecutor’s Association,</u> 257 N.J. 87	11
<u>American Civil Liberties Union of New Jersey v. County Prosecutors</u> <u>Association of New Jersey,</u> 474 N.J. Super. 243 (App. Div. 2022), aff’d, 257 N.J. 87 (2024)	21
<u>Asbury Park Press v. Ocean County Prosecutor’s Office,</u> 374 N.J. Super. 312 (Law Div. 2004)	13
<u>Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities,</u> 207 N.J. 489 (2011).....	14, 18
<u>Libertarian Party of Cent. New Jersey v. Murphy,</u> 384 N.J. Super. 136 (App. Div. 2006).....	13
<u>Manalapan Realty, L.P. v. Twp. Comm. of Manalapan,</u> 140 N.J. 366 (1995)	12
<u>Mayflower Sec. Co. v. Bureau of Sec. in Div. of Consumer Affairs</u> <u>of Dep’t of Law & Public Safety,</u> 64 N.J. 85 (1973).....	12
<u>Simmons v. Mercado,</u> 247 N.J. 24 (2021)	12
<u>Times of Trenton Publ’g Corp. v. Lafayette Yard Cmty. Dev. Corp.,</u> 183 N.J. 519 (2005).....	13
<u>Yueh v. Yueh,</u> 329 N.J. Super. 447 (App. Div. 2000)	12
<u>Verry v. Franklin Fire District No. 1,</u> 230 N.J. 285 (2017).....	20, 21

TABLE OF AUTHORITIES (Continued)

PAGE

Statutes

N.J.S.A. 4:22-14.4(a)(2)(b).....19

N.J.S.A. 4:22-14.5 4

N.J.S.A. 47:1A-1 13

N.J.S.A. 47:1A-1.1 7, 14

Other Sources

Black's Law Dictionary 814 (8th ed. 2004)18

New Jersey Senate Bill No. 3558 2

TABLE OF JUDGMENTS, ORDERS, AND RULINGS

Reconsideration Order (Granted)

Filed: June 27, 2024430a

Transcript of Oral Decision

Dated: June 27, 2024 3T

PRELIMINARY STATEMENT

This appeal presents (among other issues) an opportunity for this Court to hold that Defendant-Respondent Monmouth County Society for the Prevention of Cruelty of Animals (“Defendants” or “MCSPCA”) is a public agency and therefore subject to the Open Public Records Act (“OPRA”).

Plaintiff-Appellant Steven Wronko (“Plaintiff” or “Mr. Wronko”) filed a Verified Complaint and Order To Show Cause to compel the MCSPCA to produce records response to two OPRA requests.

Specifically, the MCSPCA has law enforcement powers which are derived directly from statute. For example the appointed officers of the MCSPCA are authorized to carry firearms, drive vehicles marked as law enforcement vehicles, and have authority to arrest and bring charges without prior approval of the Monmouth County Prosecutor (“MCPO”). Finally, despite arguments made to the Trial Court that OPRA requests directed to the MCSPCA would be fielded by the MCPO, requests submitted to the MCPO by Plaintiff after the Trial Court’s decision, have all been summarily denied based on because of the MCPO’s position that it “is not the custodian of records for the MCSPCA for purposes of OPRA and requests for public records under the common law.”

As more fully discussed below, the order of the Trial Court must be reversed, and this Court should (1) vacate the Trial Court's June 27, 2024 order granting relief to the Defendants; and (2) hold that Plaintiff is entitled to prevailing party counsel fees.

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

On January 19, 2023, Mr. Wronko sent two OPRA requests seeking, *inter alia*, "all contracts that are active and current as of January 19, 2023," and then the latest payroll records for all employees that work for the MCSPCA as of January 19, 2023. (Pa5).

On January 20, 2023, Defendants denied access to the records requested by Plaintiff, asserting that the MCSPCA was not a public agency within the meaning of OPRA because of the passage of New Jersey Senate Bill No. 3558. (Pa5).

On March 6, 2023, Plaintiff filed a Verified Complaint and Order To Show Cause to compel the MCSPCA to produce the records responsive to his OPRA requests. (Pa1-186).

In this pleading, Plaintiff presented evidence of the MCSPCA's status as a law enforcement agency, including the fact that the MCSPCA employees

¹ Because the facts and procedural history are intertwined, those sections have been combined.

include “sworn and authorized law enforcement officers who investigate allegations of animal cruelty, have law enforcement powers, and charge suspects by swearing out criminal complaints against them.” (Pa2). The charges that the MCSPCA officers can bring, namely “violations of New Jersey’s animal cruelty laws[,] constitute disorderly persons offenses or crimes of the third or fourth degrees.” (Pa2). The MCSPCA’s own website described aspects of its work as “law enforcement.” (Pa3). Finally, “the [MCPO] has appointed the MCSPCA to exercise law enforcement powers in Monmouth County and has appointed specific individuals as humane law enforcement officers,” including a “Chief Humane Law Enforcement Officer” (“CHLEO”) and “Humane Law Enforcement Officers” (“HLEO”) who report to the CHLEO. (Pa3-4). The CHLEO and HLEO’s were authorized to carry firearms, drove vehicles marked as law enforcement vehicles, and had authority to arrest and bring charges without prior approval of the MCPO. (Pa4-5).

On March 7, 2023, the Trial Court entered the requested Order to Show Cause, and set a briefing schedule and a hearing date. (Pa187-191).

On April 14, 2023, Defendants filed an answer to the Verified Complaint, (Pa192-197), and an opposition to the relief requested by way of Order to Show Cause. (Pa200-291). Defendants argued that the proceeds from any convictions of animal cruelty charges no longer are received by the MCSPCA, but instead

go to Monmouth County. (Pa201). Furthermore, Defendants argued that the Memorandum of Understanding which authorized the MCSPCA

to exercise law enforcement functions to assist with the investigations subject to the provisions of N.J.S.A. 4:22-14.5 . . . acknowledges that the [MCSPCA] is not a department, office, or agency of the County of Monmouth and the MCPO has no role or involvement in the organization, operations, or functions of the [MCSPCA].

(Pa201).

On May 26, 2023, the Trial Court held oral argument on the Order to Show Cause. (Pa303; 1T).² At the outset, Judge Thornton cut to the very issue now before the Court: “How do we say that people can go around executing warrants, arresting people, detaining people, and that they do not have indicia of a public agency?” (1T:8:1-4).

Plaintiff argued that the CHLEO and HLEO were appointed by the MCPO, and also contracted with by multiple municipalities to perform law enforcement duties such as “fil[ing] summons’ and complaints and mak[ing] arrests.” (1T8:9-23. Furthermore, these powers exercised by the CHLEO and HLEO, while they may be set out in the Memorandum of Understanding, were derived from “the statute.” (1T9:6-11). The Trial Court itself seemed to view the MCSPCA as

² References to transcripts are as follows: May 26, 2023 (1T); May 24, 2024 (2T); and June 27, 2024 (3T).

“created by the legislative branch” because “you can’t argue that it’s created by the Prosecutor’s Office.” (1T10:24-11:7). Essentially, Plaintiff argued, “the law enforcement division [of] the MCSPCA is an instrumentality of the State based on the State statutes that authorize the Prosecutor’s Office to do this” and that

any other interpretation would be really tough to accept . . . because that would mean that we have law enforcement officers and the surrounding apparatus, which is the MCSPCA, would not be subject to OPRA, and there’s really no analogy to that.

There’s -- I can’t think of any other example where law enforcement officers, who can carry guns and execute search warrants and arrest folks and drive unmarked cars, the whole package.

I can’t think of any other fact pattern or counter example where those law enforcement officers would not -- and the supporting administrative apparatus would not be subject to OPRA.

(1T13:20-14:12). The Trial Court then went through the entirety of the Memorandum of Understanding, pointing out all of the provisions that made it clear that the CHLEO and HLEO had broad law enforcement powers. (1T17:21-19:9). The Trial Court also acknowledged that, if the facts were different, then the MCSPCA might not be a public entity that the law enforcement powers weren’t entirely dependent on the Memorandum of Understanding:

. . . it sounded like you were saying but for the MOU, they probably wouldn’t be considered a public agency. And while I’m not going to give an advisory opinion, you know, that may be the case. If it weren’t for the MOU and they couldn’t carry guns and they couldn’t

make arrests and they couldn't do shelter and care, because I think the statute says that if they want to do shelter and care even, the Monmouth County Prosecutor's Office has to authorize them to do that.

(1T22:3-12). In response to Defendants' argument that they were created by the legislature to be a non-profit organization, the Trial Court stated that "a lot of any non-profit is not allowed to have people go around with guns, arrest people, detain them. These are serious constitutional issues." (1T25:5-18). Furthermore, the Trial Court opined that the 2018 revisions to the statute only strengthened the claim that the MCSPCA was a public entity:

You look at the legislative history. Listen to the hearings. They say we're just, we're not comfortable with that. We have to revise these statutes because we need some control. And in many ways, these revisions provide more control, more statutory and government control. That nexus is far stronger than it was before.

(1T27:8-14). And the Trial Court also recognized that "there's a provision of OPRA that says that law enforcement functions are public." (1T30:13-15).

Tragically, that same evening, on March 26, 2023, the Honorable Lisa P. Thornton, A.J.S.C., passed away. The matter was eventually reassigned to the Honorable Owen C. McCarthy, P.J.Civ. (Pa303).

On March 28, 2024, the Trial Court filed an order holding that the MCSPCA was a public agency and therefore subject to OPRA. (Pa302). The Trial Court ordered Defendants to produce the records for *in camera* review by

April 12, 2024, and requested supplemental briefing on the issue of whether there were any applicable privileges. (Pa302). The Trial Court based its decision on “all briefs and submissions of the parties and the May 26, 2023 oral argument on Court Smart.” (Pa303).

Specifically, the Trial Court found that

Based on a comprehensive examination of the facts , it is evident that [D]efendant meets the criteria to be considered a “public agency” under OPRA. The Legislature’s establishment of a mechanism for the creation of county agencies directly led to the existence of defendant. Despite being a non-profit organization, the MCPO has granted defendant extensive law enforcement powers, specifically for the purpose of enforcing animal cruelty laws. Defendant does not dispute this fact and has even acknowledged this on its website. Furthermore, [D]efendant is subject to a statutory structure, as the county societies for the prevention of cruelty to animals (“SPCAs”) are explicitly referenced in statute.

. . . .

A plain reading of the OPRA statute indicates defendant qualifies as a “public agency” because it exercises “law enforcement responsibilities” as determined by the Attorney General. N.J.S.A. 47:1A-1.1. There is no doubt that [D]efendant conducts investigations and enforces animal cruelty laws and ordinances, employs law enforcement officers, including a chief of enforcement, files complaints, and possesses the authority to make arrests. These substantial factors strongly support the conclusion that [D]efendant falls within the definition of a “ public agency” and is thus subject to the requirements of OPRA.

[(Pa311-312).]

On April 17, 2024, Defendants filed a motion for reconsideration and, on consent of the parties, the prior disclosure order was stayed. (Pa314; Pa315; Pa316-322).

In support of their motion for reconsideration, Defendants submitted a certification which characterized Plaintiff as a “serial requestor” who, in February of 2022, requested information contained on “volunteer’s personal cell phone.” (Pa320). Defendants claimed to fear that, if Trial Court’s determination that the MCSPCA was a public agency was allowed to stand, “[Plaintiff] will continue to demand access to the personal cell phones, personal computers, or other devices owned by our volunteers,” and that taken together with requests by other “serial requestor[s],” “these requests exert a chilling effect on the donations that now comprise a significant portion of the MCSPCA’s funding.” (Pa320).

Furthermore, Defendants asserted, “The MCSPCA already works with the Monmouth County Prosecutor’s Office to supply documents to the Prosecutor’s Office for OPRA requests related to any law enforcement activities.” (Pa320). Moreover, Defendants certified that “[t]he [HLEO] reports to the CHLEO, who in turn reports to the Chief of Detectives of the Monmouth County Prosecutor’s Office.” (Pa321). Defendants stated that the CHLEO “does not report directly

to the Board of Trustees of the MCSPCA for his law enforcement activities,” and that “[t]he Board of Trustees of the MCSPCA does not supervise or control any law enforcement activities undertaken by the CHLEO or the HLEO.” (Pa321).

On May 2, 2024, Plaintiff filed an opposition to Defendants’ motion. (Pa324-405). On May 6, 2024, Defendants filed a reply. (Pa406-429). On May 24, 2024, Defendants’ motion was argued. (2T).

Defendants argued that the MCSPCA was “not a public agency, as defined under OPRA. Rather, it’s an instrumentality of the County Prosecutor’s Office.” (2T5:22-25). Defendants pointed to case law decided by the New Jersey Supreme Court to support their assertion. (2T6:15-7:3). Defendants argued that “All of the MCSPCA’s authority flows by contract through [the Memorandum of Law] to the two individuals designated as the chief humane law enforcement officer and the subsidiary humane law enforcement officer.” (2T7:15-18). Furthermore, Defendants argued that Plaintiff was not without recourse under OPRA, because the MCPO routinely fields those OPRA requests, and therefore future requests for documents related to the MCSPCA can be directed to the MCPO. (2T10:8-11:12). Moreover, Defendants complained that if the MCSCPA was a public agency, records could be requested which had nothing to do with their role as a law enforcement agency. (2T11:20-12:5).

Plaintiff argued that the MCPO was not a party to the case, therefore they didn't know what the MCPO would do if presented with a records request related to the MCSCPA, it was speculative to argue that records requests should be directed to the MCPO in the future. (2T13:3-17). The fact that the CHLEO and the HLEO are employees of the MCSCPA, not the MCPO, "is what makes the [MCSCPA] a public entity." (2T14:7-16). Whether or not a particular request made to the MCSCPA (as a public entity) sought public records was not the question before the Trial Court at that time, though it posed an "interesting question" to perhaps be decided on another day. (2T14:17-23; 2T23:9-12).

Plaintiff pointed to the fact that the MCSPCA has agreements with several local municipalities (aside and apart from the MCPO) to provide law enforcement services shows that Defendants' law enforcement powers is derived from state statute, not solely from the MCPO. (2T14:23-15:19). These law enforcement powers include the "authority to certify complaints and issue summonses and give warrants." (2T16:5-8). Plaintiff acknowledged that if the MCSPCA "did not have agreements with the municipalities, those animal control officers, and they did not have an agreement with the [MCPO] then . . . there's an argument that they would not be subject to OPRA," but emphasized that those were not the facts before the Trial Court. (2T19:20-21). The fact that the CHLEO and the HLEO report to the MCPO is not unusual or determinative,

as “all law enforcement officers report to the Prosecutor’s Office.” (2T20:13-21).

On June 27, 2024 the Trial Court entered an order which granted Defendants’ motion for reconsideration and held that “Defendants are not deemed a public agency under the [OPRA],” and based its decision on remarks stated on the record. (Pa430-431; 3T).

Specifically, in support of its decision, the Trial Court stated that “this was an appropriate Motion for Reconsideration” because “the case of ACLU vs. New Jersey County Prosecutor’s Association, 257 N.J. 87, a 2024 Decision that was decided after this Court’s initial opinion, and provides relevant guidance to the instant matter.” (3T6:13-19). Then the Trial Court stated that “this Court finds the [MCSPCA] is an instrumentality of an instrumentality and, therefore, it does not fall within the scope of OPRA.” (3T13:1-5). The Trial Court then emphasized that “to the extent Plaintiff or any other member of the public seeks records relating to law enforcement, those records can be requested directly from the [MCPO].” (3T13:6-10).

This appeal followed. (Pa432).

LEGAL ARGUMENT

POINT I

STANDARD OF REVIEW

(Not Raised Below)

The standard of review in this case is de novo. “[D]eterminations about the applicability of OPRA and its exemptions are legal conclusions and are therefore subject to de novo review.” Simmons v. Mercado, 247 N.J. 24, 38 (2021) (citation and internal quotation marks omitted). The Trial Court’s legal conclusions and interpretations of law are reviewed de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

To the extent that we are asking this Court to rule on the Trial Court’s determination of whether the MCSPCA is a public agency and therefore subject to the strictures of OPRA, that is an issue of law. This Court owes no deference to an agency’s “determination of a strictly legal issue.” Mayflower Sec. Co. v. Bureau of Sec. in Div. of Consumer Affairs of Dep’t of Law & Public Safety, 64 N.J. 85, 93 (1973). In addition, this Court owes no deference to findings that are not based on witness testimony or credibility findings. Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000).

POINT II

THE MCSPCA IS A PUBLIC AGENCY WITHIN THE MEANING OF OPRA AND THE COMMON LAW RIGHT OF ACCESS BECAUSE IT EMPLOYS LAW ENFORCEMENT OFFICERS AND ENFORCES ANIMAL CRUELTY LAWS

(Raised Below at Pa1-8, Pa303-312; 1T13:25-14:22; 2T14:13-15:19)

The Trial Court erred when it granted reconsideration, thereby reversing its decision to hold that the MCSPCA was a public entity and therefore subject to OPRA.

The Open Public Records Act (“OPRA”) mandates 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 accorded [under OPRA] as amended and supplemented, shall be construed in favor of the public’s right of access.” Libertarian Party of Cent. New Jersey v. Murphy, 384 N.J. Super. 136, 139 (App. Div. 2006) (citing N.J.S.A. 47:1A-1).

“The purpose 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.’” Times of Trenton Publ’g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (quoting Asbury Park Press v. Ocean County Prosecutor’s Office, 374 N.J. Super. 312, 329 (Law Div. 2004)).

“Those who enacted OPRA understood that knowledge is power in a democracy, and that without access to information contained in records maintained by public agencies citizens cannot monitor the operation of our government or hold public officials accountable for their actions.” Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489, 502 (2011).

In this appeal, we request that this Court hold that Trial Court erred by finding that the MCSPCA is not a public agency which is subject to OPRA. OPRA defines a public agency as

any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

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

The MCSPCA is a public agency within the definition of OPRA because it has law enforcement powers. The MCSPCA’s CHLEO and HLEOs are police

officers. The MCSPCA's CHLEO and HLEOs, operating under the supervision of the MCPO, have the following powers, duties and obligations:

- The HLEOs report to the CHLEO, and the CHLEO reports to the MCPO's Chief of Detectives;
- To become a HLEO, they must apply through the MCPO;
- The CHLEO and HLEO must complete the Police Training Commission's course for animal protection law enforcement;
- The training requirement above may be waived if a CHLEO or HLEO has appropriate prior law enforcement training;
- The CHLEO and HLEOs may be authorized to carry firearms, and they are in fact authorized by the MCPO to carry and use firearms;
- The CHLEO and HLEOs must wear uniforms;
- The CHLEO and HLEOs may operate MCPO vehicles, including both marked and unmarked cars;
- The CHLEO and HLEOs may make arrests for violation of animal cruelty laws located at Article 2, Chapter 22 of Title 4;
- To arrest or charge a person for an indictable offense, the CHLEO or HLEO must have prior approval;
- To arrest or charge a person for a disorderly persons offense or petty disorderly persons offense, the CHLEO or HLEO does not have to seek prior approval, unless there is "any question" regarding whether an offense is indictable or not, in which case they must consult with the MCPO's designee;
- The CHLEO or HLEOs may conduct criminal investigations;
- The CHLEO or HLEOs may take statements as part of investigations and may conduct custodial interrogations;

- The CHLEO and HLEOs must follow MCPO standards when gathering and retaining evidence;
- The CHLEO and HLEOs may conduct searches of persons, premises (including a private residence), and vehicles.

[(Pa29-35).]

The foregoing clearly demonstrates that the CHLEO and HLEOs are law enforcement officers. Because they are law enforcement officers employed by the MCSPCA, that means the MCSPCA is an instrumentality of the State and is subject to OPRA.

The MCSPCA's website is also very clear about their mission as a law enforcement agency: "As the Humane Law Enforcement Division of the Monmouth County SPCA, we are granted our Law Enforcement authority by Monmouth County Prosecutor's Office. We are charged with the responsibility of enforcing the State of New Jersey Animal Cruelty Laws in Monmouth County, NJ." (Pa399). The MCSPCA investigates "hundreds of animal cruelty complaints every year," rescues animals, provides medical attention, and "[m]ost importantly," makes sure that "those who caused the suffering of these helpless animals are brought to justice." (Pa399). When on February 3, 2024, the MCSPCA, along with other agencies, investigated and shut down a dog fighting ring in Neptune, the MCSPCA's press release quoted the MCSPCA's Executive Director: "Our **Humane Law Enforcement Division**, along with Neptune Police Department, and the Monmouth

County Forensics unit worked late into the night to investigate this horrific scene and get the 8 dogs to safety.” (emphasis added). (Pa401).

The MCSPCA also acts as the Humane Law Enforcement Officer for many municipalities. On its website, the MCSPCA lists twenty-two towns for which it provides “animal control services.” (Pa311). The MCSPCA has or currently provides law enforcement services to at least three municipalities: Belmar, Fair Haven and Little Silver. (Pa45-67). And while labels are not controlling, the Fair Haven and Little Silver agreements refer to the MCSPCA as a “government entity.” (Pa52-67). All three agreements authorize the MCSPCA to “issue summons for Municipal Ordinances and NJ Title 4 pertaining to all animal laws that apply under the scope of the [Animal Control Officer’s] employment.” (Pa48; Pa55; Pa63).

The MCSPCA’s current CHLEO and HLEO sign complaint-summons as law enforcement officers. (Pa68-123).

The MCSPCA’s 2021 Financial Statement describes one of the MCSPCA’s activities as “law enforcement:” (1) “law enforcement revenue” was \$2,177 (Pa147; Pa176); (2) “law enforcement” program services cost \$177,739 (Pa147); and (3) one of the MCSPCA’s activities is “humane law enforcement” (Pa139; Pa146). The same goes for the 2022 Financial Statement, which shows “law enforcement” salaries and wages of \$130,357, and total law enforcements costs of \$180,793. (Pa332).

The MCSPCA's 2021 and 2022 Form 990 describes one of its "missions" or "most significant activities" as "humane law enforcement." (Pa146; Pa362) (describing activities or income related to law enforcement in 2021 and 2022, respectively); (Pa174) (listing one of their 2021 "accomplishments" as, under the category of "law enforcement," the MCSPCA investigated "250 incidents of animal cruelty and neglect"); (Pa390) (listing one of their 2022 "accomplishments" as, under the category of "law enforcement," the MCSPCA investigated "290 incidents of animal cruelty and neglect").

Based on the foregoing facts, it is clear and obvious that the MCSPCA is an "instrumentality" of the State because it has law enforcement powers.

As observed by the Court in Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489, 503 (2011), OPRA does not define an "instrumentality." Thus, the Supreme Court defined an "instrumentality" as "[a] thing used to achieve an end or purpose" and, alternatively, as "[a] means or agency through which a function of another entity is accomplished, such as a branch of a governing body." Ibid. (citing and quoting Black's Law Dictionary 814 (8th ed. 2004)).

Here, the MCSPCA is accomplishing the traditional government function of law enforcement. The MCSPCA derives its law enforcement powers directly from statute. Although the MCPO appoints the MCSPCA and its CHLEO and HLEOs,

the power to make those appointments and create those relationships is derived directly from State law. Pursuant to N.J.S.A. 4:22-14.4(a)(2)(b), county prosecutors may through a memorandum of understanding “designate” a county society (such as the MCSPCA)

under the supervision of the county prosecutor, to assist with enforcement of article 2 of chapter 22 of Title 4 of the Revised Statutes, and to designate humane law enforcement officers, subject to the provisions of section 29 of P.L.2017, c.331 (C.4:22-14.5), to assist with investigations, arrest violators, and otherwise act as an officer for detection, apprehension, and arrest of offenders against the provisions of article 2 of chapter 22 of Title 4 of the Revised Statutes[.]

There was no dispute below that the MCPO has designated the MCSPCA and its CHLEO and HLEOs as law enforcement officers within the meaning of Title 4. (Pa27; Pa29). The Memorandum of Understanding between the Monmouth County Prosecutor’s Office (“MCPO”) and the MCSPCA specifically describes it as “the granting of and the supervisory authority over the **MCSPCA’s exercise of Title 4 law enforcement powers** as set forth in this directive.” (Pa28). Certainly any entity that “exercises” “law enforcement powers” is subject to OPRA as an instrumentality of the State.

As such, the CHLEO and HLEOs are empowered and authorized to “act as an officer” and detect, apprehend and arrest those suspected of animal cruelty. (Pa27). Thus, the MCSPCA is an instrumentality of the State regarding enforcement of animal cruelty laws and is thus subject to OPRA.

MCSPCA is not an “instrumentality of an instrumentality,” as the Trial Court held. CHLEOs and HLEOs derive their power from statute. Their law enforcement powers are based on the State’s power to enforce its laws. As set forth in the MCPO’s MOU, CHLEOs and HLEOs may arrest and charge persons for crimes and disorderly persons offenses. These powers are not derived from the MCPO; rather, they are derived directly from New Jersey statutes. Thus, the MCSPCA is not an “instrumentality of an instrumentality.”

The Trial Court relied on Verry v. Franklin Fire District No. 1, 230 N.J. 285 (2017), to conclude that the MCSPCA is an “instrumentality of an instrumentality.” But in Verry, the second instrumentality was a volunteer fire department. There is no comparison between volunteer firefighters and law enforcement officers. Volunteer fire fighters can’t carry firearms or drive police cars or conduct criminal investigations or sign summons and complaints. As described above, the MCSPCA’s CHLEOs and HLEOs can do all of these things.

Moreover, the volunteer fire department in Verry was two steps removed from a political subdivision. The volunteer fire department was an instrumentality of the Fire District; in turn, the Fire District was an instrumentality of the municipality. Here, the MCSPCA is a direct instrumentality of the MCPO. There is a direct relationship between the MCPO and the MCSPCA. While the relationship is governed by a contract, the authority law enforcement powers that employees of the MCSPCA utilize are based directly on New Jersey state statutes.

Likewise, the other case specifically relied upon by the Trial Court American Civil Liberties Union of New Jersey v. County Prosecutors Association of New Jersey, 474 N.J. Super. 243 (App. Div. 2022), *aff'd*, 257 N.J. 87 (2024), does not apply to this case because the MCSPCA's law enforcement division does not derive its power from the MCPO; rather, the MCSPCA derives its powers based on State statute.

The MOU applicable to the relationship between the MCSCPA and the MCPO proves our point. Once the MCPO appoints the MCSPCA and the CHLEO and HLEO as law enforcement, they are not acting pursuant to powers granted to them by the MCPO, they are acting pursuant to powers granted to them by the State of New Jersey. In truth, the fact that the CHLEO and HLEO are supervised by the MCPO actually reinforces the idea that the MCSPCA is a law enforcement

instrumentality. All local law enforcement is subject to supervision by the applicable County Prosecutor's Office or the Attorney General's office.

No one would ever doubt that police officers are not subject to OPRA. Police officers are authorized under the laws of New Jersey to enforce those laws, and they also enjoy other broad powers, such as the power to investigate crime; the power to detain individuals; and the power to issue summons and complaints. The MCSPCA law enforcement officers have the same powers as police officers. Their authority is derived directly from State law. The fact that the MCSPCA's CHLEOs and HLEOs are appointed by the MCPO makes no difference. All law enforcement officers are appointed. Ultimately, there really is no distinction between police officers in general and the MCSPCA's CHLEOs and HLEOs.

Clearly, the Trial Court erred when it granted reconsideration, thereby reversing its decision to hold that the MCSPCA was a public entity and therefore subject to OPRA.

CONCLUSION

For the foregoing reasons, the order of the Trial Court must be reversed, and this Court should (1) vacate the Trial Court's June 27, 2024 order granting relief to the Defendants; and (2) hold that Plaintiff is entitled to prevailing party counsel fees.

Respectfully submitted,

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November 7, 2024

STEVEN WRONKO,

Plaintiff-Appellant,

v.

MONMOUTH COUNTY SOCIETY
FOR THE PREVENTION OF
CRUELTY OF ANIMALS, a
domestic New Jersey non-profit
corporation, and the RECORDS
CUSTODIAN of the Monmouth
County Society for the Prevention of
Cruelty of Animals,

Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-003643-23T4

Civil Action

On appeal from a final judgment of the
Law Division Dated: June 27, 2024

Trial Court Docket No.
MON-L-000696-23

Heard Below:

Hon. Owen C. McCarthy, P.J.Cv.,
Monmouth County Superior Court, Law
Division

BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
QUESTION PRESENTED	1
PRELIMINARY STATEMENT	2
COUNTERSTATEMENT OF THE CASE AND PROCEDURAL HISTORY	5
LEGAL ARGUMENT	18
POINT I	
THE SUPERIOR COURT CORRECTLY HELD THAT A PRIVATE NONPROFIT HUMANE SOCIETY IS NOT A PUBLIC AGENCY UNDER OPRA (3T; Pa0430 – 0431)	
A. Standard of Review.....	13
B. The MSPCA Is an Instrumentality of an Instrumentality Because the County Prosecutor is an Instrumentality of the Legislature. (3T; Pa0430 – 0431)	13
C. The County Prosecutor Can Field All OPRA Requests Related to Enforcement of Animal Cruelty Laws.	33
CONCLUSION	34

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>ACLU of NJ v. County Prosecutor’s Association of NJ</i> 2024 N.J. LEXIS 365 (April 17, 2024)	14, 15
<i>American Civil Liberties Union of New Jersey v. County Prosecutors Association of New Jersey</i> 474 N.J. Super 243 (App. Div. 2022).....	passim
<i>Fair Share Hous. Ctr., Inc. v. N.J. State League of Muns.</i> 207 N.J. 489 (2011)	20, 31
<i>Manalapan Realty, L.P. v. Twp. Comm. of Manalapan</i> 140 N.J. 366 (1995)	19
<i>Paff v. N.J. State Firemen's Association</i> 431 N.J. Super 278 (App. Div. 2013).....	21, 30
<i>Simmons v. Mercado</i> 247 N.J. 24 (2021)	19
<i>Verry v. Franklin Fire Dist. No. 1</i> 230 N.J. 285 (2017)	passim
 Statutes	
N.J.S.A. 4:22-14.4.....	24
N.J.S.A. 4:22-14.4(a)(2)(a)	6, 27
N.J.S.A. 4:22-14.4(a)(2)(b).....	6
N.J.S.A. 4:22-14.4(a)(2)(c)	6
N.J.S.A. 47:1A-1	20
N.J.S.A. 47:1A-1.1	20
N.J.S.A. 52:17B-112(a)	28
 Other Authorities	
P.L.2017, c.331	5, 6, 28

Senate Budget and Appropriations Committee, <i>Statement to the Senate Committee Substitute for Senate</i> , No. 3558 (Dec. 14, 2017),.....	7, 24, 28
Senate Economic Growth Committee, <i>Statement to Senate</i> , No. 3558 (Nov. 17, 2017)	5, 6, 7, 29

QUESTION PRESENTED

Did the Superior Court correctly determine that the Respondent Monmouth County Society for the Prevention of Cruelty to Animals (“MCSPCA”) Is Not a “Public Agency” as Defined Under the Open Public Records Act (“OPRA”) Because It Is the Instrumentality of an Instrumentality Where the Law Enforcement Duties Performed by Two Designated Individuals Flow Through the MCSPCA’s Contract with the Monmouth Prosecutor’s Office (“MCPO”)?

PRELIMINARY STATEMENT

This Court should affirm Judge McCarthy’s well-reasoned opinion that the MCSPCA is not a “public agency” under OPRA. The decision below follows recent jurisprudence and comports with the Legislature’s overhaul of our State’s animal cruelty enforcement system. The Monmouth County Prosecutor’s Office (“MCPO”) contracts with the MCSPCA so that two specific individuals can assist the MCPO with animal cruelty law enforcement, but that limited contractual relationship does not render the entire private nonprofit organization a “public agency” under OPRA. At best, the MSPCA is an “instrumentality of an instrumentality” because the MCPO controls, supervises, and retains the power to retract all the law enforcement powers at issue here. OPRA requests related to enforcement of animal cruelty statutes should be directed to the instrumentality charged with enforcing those statutes—the MCPO.

The Legislature’s sweeping overhaul of the animal cruelty enforcement scheme dooms Appellant’s arguments. The Legislature pushed the MSPCA two steps away from any cognizable political subdivision when it abolished the old animal cruelty enforcement system in 2018. Under the new scheme, the Legislature granted statutory enforcement powers to the county prosecutors (instead of the state and county humane societies). The Legislature also charged the county prosecutors with statutory duties to supervise any persons assisting with the

enforcement of animal cruelty laws. Finally, the Legislature shifted the payment of all fines collected to counties or municipalities (again, instead of the state and county humane societies). Thus, any role played by individual MSPCA members flows through contract with the MCPO, an “instrumentality” under OPRA.

Appellant’s position leads to absurd results. The MCPO does not create a new “public agency” every time it designates a Chief Human Law Enforcement Officer (“CHLEO”) or a Human Law Enforcement Officer (“HLEO”). After the Legislature completely overhauled the animal cruelty enforcement statutes, all enforcement authority is vested with the county prosecutors. They have the discretion to appoint CHLEOs and HLEOs on their own, or to contract with county humane societies for the prevention of cruelty to animals for enforcement assistance (under the supervision of the county prosecutor). Under Appellant’s dubious interpretation, counties societies would be discouraged from assisting with animal cruelty enforcement because it would forever render them a “public agency.” Or, a county society would become and then cease to be a “public agency” as the county prosecutor entered into a contract with them or that contract terminated. These interpretations of the law run contrary to the statute’s plain text and also lead to absurd results.

The far more logical interpretation, consistent with the statutory text, is that only the county prosecutors possess the law enforcement authority cited by

Plaintiff. The county prosecutors enjoy the statutory authority to designate officers to assist their offices with enforcement of the animal cruelty statutes. Moreover, the county prosecutors retain the statutory duty to hold records related to animal cruelty law enforcement and report on same to the Office of the Attorney General. Thus, the only logical interpretation of the animal cruelty enforcement framework as it relates to OPRA is that the county prosecutors possess and must disclose those animal cruelty enforcement public records subject to OPRA.

Appellant can still obtain the law enforcement records he seeks. The MCPO has a statutory duty to enforce animal cruelty laws and holds the records related to that enforcement. But a decision recognizing the MSPCA as a “public agency” exposes its donors and volunteers to unwarranted public scrutiny by serial requestors like Appellant, and it chills future cooperation by individuals or nonprofit organizations with county prosecutor’s offices. The MSPCA performs a host of nongovernmental functions as a charitable organization, and a decision rendering the entire nonprofit a “public agency” puts those charitable activities at risk. Appellant’s proffered rule discourages other nonprofits or individuals from assisting county prosecutors in the future. Therefore, the MSPCA respectfully requests that the Court affirm the decision below.

COUNTERSTATEMENT OF THE CASE AND PROCEDURAL HISTORY¹

A. The MSPCA Is a Non-Profit Organization.

The Monmouth County Society for the Prevention of Cruelty to Animals (the “MSPCA”) is a 501(c)(3) tax-exempt charitable non-profit organization. (Pa0200); (Pa0202 – 0213). The MSPCA adopted Bylaws that took effect on or about April 19, 2018. (Pa0202 – 0213). All corporate powers and authority of the MSPCA are vested in its Board of Trustees. (Pa0203 – 0204).

With respect to law enforcement activities, the Chief Law Enforcement Officer of the MSPCA discharges his duties under the Bylaws only to the extent permitted “under the laws and regulations of the State of New Jersey.” (Pa0208). The Bylaws also provide that if the charter of the MSPCA is revoked, the animal shelter it operates shall be continued in the name Homeward Bound Adoption Center and Vogel Spray/Neuter Clinic. (Pa0212).

B. In 2018, the Legislature Eliminated All Statutory Authority Previously Granted to the MSPCA.

Although the MSPCA was originally chartered under the statutory authority granted to the New Jersey Society for the Prevention of Cruelty to Animals (“NJSPCA”), the Legislature abolished this charter system in January of 2018. P.L. 2017, c.0331 (Da1 – 25); Senate Economic Growth Committee, *Statement to*

¹ Because Appellant combined his Statement of Facts and Procedural History, Respondent also combines these sections for its Counterstatement. *See* Brief of Appellant 2, n.1. Respondent agrees that the factual and legal history are intertwined in this matter.

Senate, No. 3558 (Nov. 17, 2017), (Da26). This sweeping legislation eliminated any statutory law enforcement authority held by the state or county society for the prevention of cruelty to animals that existed under the prior legislative scheme. P.L. 2017, c.0331 (Da1 - 25). Senate Economic Growth Committee, *Statement to Senate*, No. 3558 (Nov. 17, 2017) (Da26).

Under the new statutory scheme, the county prosecutor alone has the authority to designate both a Chief Humane Law Enforcement Officer (“CHLEO”) and supporting Humane Law Enforcement Officers (“HLEO”). N.J.S.A. 4:22-14.4(a)(2)(a). The county prosecutor also has the authority to enter into a memorandum of understanding with a county society for the prevention of cruelty to animals to assist the county prosecutor in the discharge of its duties under the new statutory scheme. N.J.S.A. 4:22-14.4(a)(2)(b). However, even after entering into such a memorandum of understanding, the county prosecutor still has the statutory duty to “supervise” the county society, and the role of the county society is limited. *See id.* Finally, the new statutory scheme also empowers the county prosecutor to “designate a county society for the prevention of cruelty to animals” under 4:22-14.8 to allow the “county prosecutor and county sheriff” to “coordinate shelter and care for animals.” N.J.S.A. 4:22-14.4(a)(2)(c).

As observed by the Senate Budget and Appropriations Committee, “[t]his substitute bill revises the way animal cruelty law is enforced in the State by

transferring the power of humane law enforcement from the New Jersey Society for the Prevention of Cruelty to Animals (NJSPCA) to the county prosecutor in each county.” Senate Budget and Appropriations Committee, *Statement to the Senate Committee Substitute for Senate*, No. 3558 (Dec. 14, 2017), (Da29 – 31). Under the new scheme, county-level enforcement of animal cruelty laws flows through the county prosecutor’s office in two ways. (*Id.*). First, the county prosecutor designates and thereafter supervises a county HLEO or enters into a memorandum of understanding with a county humane society for assistance, all under the supervision and control of the county prosecutor’s office. (*Id.*). Second, the new legislative scheme authorizes the county prosecutor to designate a county humane society to assist with shelter and care for animals recovered through the prosecutor’s enforcement activities. (*Id.*).

C. The Monmouth County Prosecutor Entered Into a Memorandum of Understanding with the MSPCA For Assistance With the Prosecutor’s Statutory Enforcement Duties.

Pursuant to the new legislative scheme, the Monmouth County Prosecutor’s Office (“MCPO”) entered into a Memorandum of Understanding (“MOU”) with the MSPCA and certain individuals. (Pa0215 – 0226). The MOU provides that the MCPO has the statutory discretion to enter into such an agreement. (Pa0215 – 0216). The MOU further provides that the MCPO has the “constitutional and statutory authority to supervise all law enforcement activities within the county,

including enforcement of the provisions of Title 4 governing animal cruelty.” (*Id.*). The MOU also provides that it is “the **exclusive mechanism** by which non-sworn law enforcement personnel may exercise law enforcement powers pursuant to Title 4, Chapter 22, Article 2[.]” (Pa0216). The MOU further limits any law enforcement powers granted by its terms to those individual members specifically designated. (*Id.*). It also constitutes a binding agreement by those individuals, and only those individuals, to comply with the training and other requirements of Title 4, Chapter 22 of the New Jersey Statutes. (*Id.*).

The MOU only applies “to the exercise of law enforcement functions” by members of the MSPCA and specifically does not “affect, alter, or in any way impair any other activities of the MSPCA (fundraising, adoptions, veterinary services, etc.).” (Pa0216). The MCPO recognizes through the MOU that the MSPCA “is not a department, office, or agency of the County of Monmouth.” (*Id.*). Indeed, the “MCPO has no role or involvement in the organization, operations or functions of the MSPCA, other than the granting of and the supervisory authority over” the law enforcement powers granted under the MOU. (*Id.*).

The MOU also designates a single individual, Michael Goldfarb, as the Chief Humane Law Enforcement Officer (“CHLEO”) for Monmouth County. (Pa0217). Michael Goldfarb, reports directly to the Chief of Detectives of the

Monmouth County Prosecutor's Office. (*Id.*). The MOU also provides that the MCPO can approve designation of Humane Law Enforcement Officers ("HLEO"). (*Id.*). The MOU only appoints and approves a single HLEO, Michael Maglizzo, who reports to the CHLEO, who in turn reports to the Chief of Detectives of the Monmouth County Prosecutor's Office. (*Id.*). The MCPO performs a character and fitness background check for any HLEO. (Pa0217 – 0218).

The CHLEO and all HLEOs designated under the MOU must immediately notify the MCPO of any potential animal cruelty case arising under Title 4. (Pa0219 – 0220). They must also work through the MCPO before providing any information to the press. (Pa0220). The MOU further recognizes that the MCPO has the "exclusive authority to authorize a HLEO to possess, carry and use a firearm[.]" (*Id.*).

The MOU further authorizes the CHLEO and HLEO to make arrests for violations of article 2 of chapter 22 of Title 4 of the New Jersey Statutes. (Pa0221). However, they "must have prior approval from the MCPO" before making any arrest for an indictable violation. (*Id.*) (alteration in original). The MOU also sets forth detailed control provisions for any investigation by the CHLEO or HLEO. (Pa0221 – 0224).

All fines collected from law enforcement activities under the MOU shall be paid to Monmouth County for indictable offences. (Pa0224).

D. The County Prosecutor's Office Already Fields OPRA Requests Related to Humane Law Enforcement Activities.

The MSPCA already works with the Monmouth County Prosecutor's Office to supply documents to the Prosecutor's Office for OPRA requests related to any law enforcement activities. (Pa0320). The Chief Humane Law Enforcement Officer ("CHLEO") for Monmouth County, Michael Goldfarb, reports directly to the Chief of Detectives of the Monmouth County Prosecutor's Office. He does not report directly to the Board of Trustees of the MSPCA for his law enforcement activities. (Pa0320 - 0321). The Humane Law Enforcement Officer ("HLEO"), Michael Magliozzo, reports to the CHLEO, who in turn reports to the Chief of Detectives of the Monmouth County Prosecutor's Office. (Pa0321). The Board of Trustees of the MSPCA does not supervise or control any law enforcement activities undertaken by the CHLEO or the HLEO. (*Id.*).

E. Appellant Demands Documents from MSPCA Instead of Through the County Prosecutor.

Appellant Steven Wronko ("Appellant") has directed numerous purported Open Public Records Act ("OPRA") requests to the MSPCA over the past two years. (Pa0320). Those requests include complete payroll records for all MSPCA employees, including those employees who are not involved in any law enforcement activity. (*Id.*). Plaintiff also made a request via email on or about

February 10, 2022, for any photographs or video files related to MSPCA work contained in a volunteer's personal cell phone. (*Id.*).

The Executive Director of the MSPCA fears that if the Court grants Plaintiff's application to designate the entirety of the MSPCA as a "public agency" under OPRA, he will continue to demand access to the personal cell phones, personal computers, or other devices owned by MSPCA volunteers. (*Id.*). Another serial requestor has demanded all documents related to the solicitation or receipt of donations for the MSPCA. (*Id.*). Taken together, these requests exert a chilling effect on the donations that now comprise a significant portion of the MSPCA's funding. (*Id.*).

Appellant also indicated to MSPCA representatives via email that he "will be coming in [to the MSPCA office] quite frequently now. . ." on or about February 2, 2022. (*Id.*).

F. Appellant Seeks Review of His Improper OPRA Requests for Private Employee Information.

Appellant did not stop there. On January 19, 2023, he sent two additional OPRA requests to the MCSCPA. Appellant sought private information from the nonprofit organization, including "all contracts that are active and current as of January 19, 2023," and the latest payroll records for all MCSCPA employees. (Pa0005). Recognizing that the MCSPCA is not a "public agency" under OPRA

after the Legislature's amendments, the MCSPCA denied these requests for private records.

Appellant filed a Verified Complaint on March 6, 2023, to force the MCSCPA to divulge its private employee salary information. (Pa0001 - 0186). In the Complaint, Appellant relied entirely on the law enforcement duties undertaken by two specific MCSCPA members, the HLEO and CHLEO. (Pa0004 - 0005). Appellant advanced a novel but incorrect legal theory that the grant of limited enforcement powers by contract to the two individuals somehow rendered the entire MCSCPA a "public agency." (*Id.*).

Respondent MCSPCA answered the Complaint on April 14, 2023. (Pa0192 - 0197). Respondent MCSPCA defended itself by pointing to its contract with the MCPO, the Memorandum of Understanding ("MOU"). (Pa0200 - 0291). Respondent MCSPCA pointed out that its contract only conferred limited powers on two specific individuals and that the powers could only be executed through this contract and with prior approval from the MCPO. (*Id.*).

At the preliminary hearing on the Order To Show Cause, Judge Thornton acknowledged that the law enforcement powers at issue flowed entirely through the MCSCPA's contract with the MCPO, the MOU. (1T13:20-14:12; 22:3-12). Judge Thornton even contemplated that absent the MOU, the MCSPCA would not be a "public agency" under OPRA. (*Id.*). During this oral argument, Judge

Thornton grappled with the problem that dooms Appellant's arguments here: the MCSCPA had no law enforcement authority itself while the MCPO retained the discretion to revoke those powers at a moment's notice and still required prior approval before any exercise of those powers. (*Id.*). Unfortunately, Judge Thornton tragically passed away before she rendered a decision.

Judge McCarthy took the case in March of 2024. (Pa0303). He issued an initial ruling that the MCSCPA is a "public agency" under OPRA but did not dispose of the matter. (Pa0311 - 0314). Instead, the parties were directed to engage in certain disclosures while the matter remained before the court. (*Id.*).

G. Respondent Demonstrates That It Was Not a "Public Agency" Where the MCPO Retains the Statutory Powers at Issue.

Respondent MCSPCA moved for reconsideration on April 17, 2024, after it retained new counsel. (Pa0316 - 0322). Appellant consented to the stay of Judge McCarthy's interlocutory disclosure order. (*Id.*).

Respondent made the arguments repeated herein. Respondent also provided a certification from the President of the MCSPCA, Ross Licitra, to clarify the facts at issue. (Pa0316 - 0322). Mr. Licitra pointed out that Appellant had sent numerous OPRA requests to Respondent MCSPCA, including requests for its private donor information and for cell phone records for its volunteers. (Pa0320). Mr. Licitra also noted for Judge McCarthy that the MCSPCA already works with the MCPO to

provide any records related to the CHLEO and HLEO's work for the MCPO directly to the County Prosecutor. (*Id.*).

Appellant opposed this motion for reconsideration. (Pa0324 - 0405).

Appellant made the same arguments it now makes before this panel. (*Id.*).

H. The Supreme Court Issues a Decision Affecting the Merits of This Case During the Briefing on the Motion for Consideration.

Respondent filed a reply brief on May 6, 2024. (Pa0406 - 0429). Respondent pointed out that on April 17, 2024, the Supreme Court issued a decision in *ACLU of NJ v. County Prosecutor's Association of NJ*. 2024 N.J. LEXIS 365 (April 17, 2024). (Pa0409 – 0428). Respondent highlighted for Judge McCarthy how the Supreme Court held that the County Prosecutors' Association is not subject to OPRA because it is a mere instrumentality of the offices of the county prosecutors, which are themselves instrumentalities. *Id.* at *28-30 (quoting the following: "The ACLU's reliance on CPANJ's law enforcement functions and relationship with the Attorney General is misplaced; because a prosecutor does not meet the definition of a "political subdivision" under N.J.S.A. 47:1A-1.1's plain language, CPANJ's role in law enforcement does not confer on it public agency status for purposes of OPRA.")).

Respondent also pointed out that the Supreme Court directed the requestor in *County Prosecutors'* to request records directly from the public agencies, the county prosecutor's offices:

Our decision affirming the dismissal of the ACLU's OPRA claim against CPANJ does not preclude the ACLU from requesting the same categories of documents from one or more public agencies subject to OPRA.

Id. at *28-30.

I. Judge McCarthy Follows *Verry* and *County Prosecutors' Association* To Rule that the MCSPCA Is not a “Public Agency” Under OPRA.

The court heard oral argument on the motion for reconsideration on May 24, 2024. (2T). During oral argument, counsel for Appellant admitted that the MCPO appointed the two law enforcement officers at issue. (2T16:4-8) (“And yes, are they appointed by the Prosecutor pursuant to the MOU? Yes, they are.”). Counsel for Appellant admitted that absent any agreement conferring law enforcement authority on these two individuals, the MCSPCA would not be a public agency under OPRA. (2T19:20-20:16).

Respondent’s counsel pointed out that the law enforcement powers exercised by these two individuals flows only through contract, not statute. (2T33:1-34:23). Respondent’s counsel argued that Appellant’s interpretation of the applicable statute contradicts the directive of the Legislature. (*Id.*). (“I know counsel is making the argument that this enforcement authority comes from the Legislature, but that’s not the case. Without the MOU, without the Memorandum, these two individual humane law enforcement officers don’t have any law enforcement authority. That they -- and that MOU, by the way, is -- the County Prosecutor’s

Office has the unilateral power to terminate that MOU upon breach. So the MO -- the County Prosecutor is the enforcement authority charged with enforcing these statutes under this new scheme.”).

Moreover, the court below also considered the contractual nature of Respondent’s role. One interchange between Judge McCarthy and Appellant’s counsel demonstrates how the court below focused on the contract at issue:

THE COURT: But absent the agreement with the -- absent any agreement with the Prosecutor, that kind of makes them an instrumentality of an instrumentality, how do they get that authority?

MR. LUERS: Well --

THE COURT: If the Monmouth County Prosecutor’s Office didn’t enter into the MUA, the -- you say that the statute gives them the authority, but there would be no authority because the Prosecutor’s Office does not have the agreement making them an instrumentality of an instrumentality.

(2T19:15-25).

Judge McCarthy ultimately ruled in favor of Respondent. (Pa0430 - 0431; 3T). He agreed that the MCSPCA is not a “public agency” under OPRA where the MCPO has the statutory enforcement authority at issue. (Pa0431).

First, Judge McCarthy noted for the record that reconsideration was proper under the circumstances. (3T5:4-6:20). Judge McCarthy noted that his prior opinion was subject to reconsideration under Rule 4:42-2. (*Id.*). He also observed that the Supreme Court’s April 17, 2024, decision in *ACLU v. New Jersey County Prosecutor’s Association* warranted the court’s reconsideration of its decision

involving OPRA's application to another instrumentality of a county prosecutor's office, the MCSPCA. (*Id.*)

Next, Judge McCarthy observed how the decisions in both *County Prosecutors' Association* and *Verry* demanded a ruling in favor of Respondent. (3T8:7-13:5). At the end of his oral decision, Judge McCarthy ruled as follows:

“In short, the county prosecutor is not the alter ego of the county itself and does not constitute a political subdivision, as the term is used within N.J.S.A. 47:1A-1.1.” That's pages 106 to 108 of County Prosecutor's Association.

Consistent with this authority, specifically the County Prosecutor's Association and the re-affirmance of the Verry Decision, this Court finds the Monmouth County Society for the Prevention of Cruelty of Animals is an instrumentality of an instrumentality and, therefore, it does not fall within the scope of OPRA.

(3T12:19-13:5).

Despite this well-reasoned opinion, Appellant continued his quest for private payroll records of nonprofit employees by filing this appeal. (Pa0432).

LEGAL ARGUMENT

POINT I

THE SUPERIOR COURT CORRECTLY HELD THAT A PRIVATE NONPROFIT HUMANE SOCIETY IS NOT A PUBLIC AGENCY UNDER OPRA. (3T; Pa0430 – 0431)

Judge McCarthy correctly held that the MSPCA is not a “public agency” under OPRA. The MSPCA does not receive government funding and is not subject to control by any political subdivision. The MSPCA does not perform the sovereign functions of government as an entity. Even the statute that originally authorized the creation of the MSPCA has been amended such that the governmental function previously assigned to the MSPCA has been transferred to the Monmouth County Prosecutor’s Office. Where the MCPO is an “instrumentality” under OPRA, the members of the MSPCA authorized by the MCPO to assist with statutory enforcement of animal cruelty laws can only be considered “instrumentalities of an instrumentality” and therefore outside the ambit of OPRA.

To be sure, this interpretation does not rob the public of access to government records. All records pertaining to governmental functions like law enforcement can and should be requested through the MCPO. But this Court should resist expanding OPRA’s application to a host of private charitable activities like fundraising and donations for the care and treatment of animals in

Monmouth County. The Court should also resist conflating the MCPO with the MSPCA where the Legislature explicitly abolished the old statutory regime under which the MSPCA had direct statutory enforcement powers itself.

A. Standard of Review.

The Appellate Division reviews decisions concerning the applicability of OPRA de novo. *Simmons v. Mercado*, 247 N.J. 24, 38 (2021) (citation and internal quotation marks omitted); *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378 (1995).

B. The MSPCA Is an Instrumentality of an Instrumentality Because the County Prosecutor that Appoints HLEOCs is an Instrumentality of the Legislature. (3T; Pa0430 – 0431)

The Court affirm the holding that the MSPCA is not a “public agency” under OPRA because it does not perform any governmental functions itself. Instead, a few select people associated with the MSPCA have been granted limited law enforcement powers through the officer of the Monmouth County Prosecutor. The Prosecutor’s Office supervises and controls the exercise of those law enforcement powers, so any OPRA request regarding same should be directed to the County Prosecutor. Moreover, where the Appellate Division reasoned in 2022 that county prosecutors are “instrumentalities” under OPRA, the MSPCA must be an instrumentality of an instrumentality that falls outside OPRA’s ambit.

OPRA establishes New Jersey’s public policy 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.” N.J.S.A. 47:1A-1 (emphasis added). Courts recognize that OPRA's purpose “is to maximize public knowledge about public affairs . . . and to minimize the evils inherent in a secluded process.” *Fair Share Hous. Ctr., Inc. v. N.J. State League of Muns.*, 207 N.J. 489, 501 (2011) (quoting *Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp.*, 183 N.J. 519, 535 (2005)).

However, OPRA’s broad mandate only applies to entities that can be considered a “public agency,” defined as:

any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

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

The determination of “whether an entity is a public agency involves a fact-sensitive inquiry” into the “substantive attributes” of an entity. *Paff v. State*

Firemen's Ass'n, 431 N.J. Super. 278, 288 (App. Div. 2013). In 2017, the Supreme Court reasoned that the “creation” or “governmental-function” tests for whether an entity qualifies as a public agency under OPRA are “useful only inasmuch as they effectuate application of the statutory language.” *Verry v. Franklin Fire Dist. No. 1*, 230 N.J. 285, 302 (2017).

Indeed, the Supreme Court’s decision in *Verry* should inform this Court’s analysis. In *Verry*, the Court determined that the Millstone Valley Fire Department, a volunteer fire company operating within Franklin Fire District No. 1 (District), was not a public agency because it did not have a “direct connection to a political subdivision.” *Id.* at 301. Crucially the Court found that the District was an “instrumentality” of a political subdivision because (1) it was created by a municipality pursuant to N.J.S.A. 40A:14-70 and (2) “the Legislature did not provide that the fire district being created would itself be a political subdivision.” *Id.* at 296-97. Even though the volunteer fire department was itself created pursuant to N.J.S.A. 40A:14-70.1, the volunteer department could only “be regarded as an instrumentality of a fire district,” or “the instrumentality of an instrumentality.” *Id.* at 300-01. Moreover, where OPRA “does not provide that an instrumentality of an instrumentality constitutes a public agency,” the Court could not “conclude from the language used by the Legislature that it intended for a volunteer fire company to be considered a separate public agency for OPRA

purposes under N.J.S.A. 40A:14-70.1(a).” *Id.* at 301 (emphasis added). So, even though the volunteer fire department was referenced by and created pursuant to N.J.S.A. 40A:14-70.1, the Court looked to its relationship with the fire district to determine that it was an “instrumentality of an instrumentality” and therefore not a “public agency” subject to OPRA. *See id.*

Following *Verry*, the Appellate Division published a decision in 2022 that dooms Plaintiff’s arguments here. In *American Civil Liberties Union of New Jersey v. County Prosecutors Association of New Jersey*, the court held that the County Prosecutors Association of New Jersey was not a “public agency” as defined under OPRA because the Association was an “instrumentality of an instrumentality.” 474 N.J. Super. 243, 257-268 (App. Div. 2022). Importantly, the court found that the county prosecutors’ offices were themselves “instrumentalities.” *Id.* at 263-66. The court reasoned that county prosecutors’ offices were “office[s] . . . created by the Legislative Branch” because “the task of defini[ng]” their “powers, rights, duties and responsibilities” was “left to the Legislature.” *Id.* at 263 (citing N.J.S.A. 47:1A-1.1 and N.J.S.A. 2A:158-1 (providing for the appointment of county prosecutors and assigning them “all of the powers and . . . all of the duties formerly had and performed by the prosecutor[s] of the pleas of such count[ies]”)) (internal quotations omitted). The court’s holding bears so directly on this case that it must be reproduced in full here:

Thus, **any entity created by the county prosecutors is, at most, an instrumentality of instrumentalities or of offices.** Such an entity does not constitute a public agency, because an “instrumentality” only qualifies as a “public agency” if it is “within or created by” a “principal department[] in the Executive Branch,” “the Legislative Branch,” or “a political subdivision . . . or combination of political subdivisions,” or if it is an “independent State . . . instrumentality.” N.J.S.A. 47:1A-1.1. OPRA “does not provide that an instrumentality of an instrumentality constitutes a public agency,” *Verry*, 230 N.J. at 301, or that an instrumentality of offices constitutes a public agency, N.J.S.A. 47:1A-1.1.

Id. at 262-64 (emphasis added).

In the same ruling, the Appellate Division also dismissed the notion that county prosecutors could somehow qualify as a “political subdivision” themselves. *Id.* at 265-66 (“the county prosecutors' offices do not constitute political subdivisions because the Legislature did not designate them so.”) (internal quotations and alterations omitted).

With respect to animal cruelty law enforcement, the County Prosecutor holds all authority to designate law enforcement officers and supervise their activities:

a. Each county prosecutor shall:

(1) designate any municipal or county prosecutor as the animal cruelty prosecutor of the county, and may designate any assistant animal cruelty prosecutor as needed, who shall investigate, prosecute, and take other legal action as appropriate for violations of any provision of article 2 [C.4:22-15 et seq.] of chapter 22 of Title 4 of the Revised Statutes, and who may serve in such capacity on a part-time basis if the responsibilities of the position allow;

(2)

(a) designate, in consultation with the county sheriff, a county law enforcement officer to serve as the chief humane law enforcement officer of the county, and may designate any other law enforcement officer under the supervision of the chief humane law enforcement officer, who shall assist with investigations, arrest violators, and otherwise act as an officer for detection, apprehension, and arrest of offenders against the provisions of article 2 of chapter 22 of Title 4 of the Revised Statutes; or

(b) enter into a memorandum of understanding with the county society for the prevention of cruelty to animals designated pursuant to section 32 of P.L.2017, c.331 (C.4:22-14.8), which authorizes the county society, **under the supervision of the county prosecutor**, to **assist** with enforcement of article 2 of chapter 22 of Title 4 of the Revised Statutes, and to designate humane law enforcement officers, subject to the provisions of section 29 of P.L.2017, c.331 (C.4:22-14.5), to assist with investigations, arrest violators, and otherwise act as an officer for detection, apprehension, and arrest of offenders against the provisions of article 2 of chapter 22 of Title 4 of the Revised Statutes[.]

N.J. Stat. § 4:22-14.4 (emphasis added).

As observed by the Senate Budget and Appropriations Committee, “[t]his substitute bill revises the way animal cruelty law is enforced in the State by transferring the power of humane law enforcement from the New Jersey Society for the Prevention of Cruelty to Animals (NJSPCA) to the county prosecutor in each county.” Senate Budget and Appropriations Committee, *Statement to the Senate Committee Substitute for Senate, No. 3558* (Dec. 14, 2017) . (Da29 – 31).

Any law enforcement activities conducted by two distinct employees of the MCSPCA are performed under contract. The MOU provides that the MCPO has the statutory discretion to enter into such an agreement. (Pa0215 – 0216). The MOU further provides that the MCPO has the “constitutional and statutory

authority to supervise all law enforcement activities within the county, including enforcement of the provisions of Title 4 governing animal cruelty.” (*Id.*). The MOU also provides that it is “the **exclusive mechanism** by which non-sworn law enforcement personnel may exercise law enforcement powers pursuant to Title 4, Chapter 22, Article 2[.]” (*Id.*). The MOU further limits any law enforcement powers granted by its terms to those individual members specifically designated. (*Id.*). It also constitutes a binding agreement by those individuals, and only those individuals, to comply with the training and other requirements of Title 4, Chapter 22 of the New Jersey Statutes. (*Id.*). The MOU only applies “to the exercise of law enforcement functions” by members of the MSPCA and specifically does not “affect, alter, or in any way impair any other activities of the MSPCA (fundraising, adoptions, veterinary services, etc.).” (Pa0216). The MCPO recognizes through the MOU that the MSPCA “is not a department, office, or agency of the County of Monmouth.” (*Id.*). Indeed, the “MCPO has no role or involvement in the organization, operations or functions of the MSPCA, other than the granting of and the supervisory authority over” the law enforcement powers granted under the MOU. (*Id.*). Thus, MCSCPA only assists the County Prosecutor’s law enforcement efforts by way of contract.

Yet, in his repeated and recurring demands for public records, Appellant seeks to bypass this structure for his own purposes. But Appellant cannot dictate

which agency is a “public agency” under OPRA. There was a time when Appellant submitted public record requests to the MCSPCA, and the MCSPCA was, arguably, a public agency when it exercised its’ law enforcement function. The statutory revision to this law enforcement scheme changed all of that. As much as Appellant would like to continue to be able to shower the MCSPCA with public record requests, there is no legal basis for him to do so. The Monmouth County Prosecutor’s Office is an instrumentality under OPRA, and the agents of the MCSPCA can only be deemed “instrumentalities of an instrumentality,” and therefore not subject to OPRA

Here, just as the court in *County Prosecutors Association of New Jersey* held that the Association was not a “public agency” as defined under OPRA because the Association was an “instrumentality of an instrumentality,” the MSPCA is not a “public agency” as defined under OPRA because it is an “instrumentality of an instrumentality.” *See* 474 N.J. Super. at 257-268. Just as in *County Prosecutors*, where the county prosecutor’s offices created Association as “a means by which the county prosecutors fulfill their obligation under the Criminal Justice Act of 1970 to ‘cooperate with and aid the Attorney General,’ N.J.S.A. 52:17B-112(a), with the aim of “secur[ing] the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State,” here, the MCPO granted limited law enforcement powers to certain MSPCA

individuals as a means to assist with the enforcement of animal cruelty laws under Title 4, Chapter 22 of the New Jersey Revised Statutes. *See id.* at 266-67 (citing N.J.S.A. 52:17B-98). In both cases, the “instrumentality of an instrumentality” serves as a means for the instrumentality that is the county prosecutor’s office to accomplish a governmental end. *See id.*

The statutory scheme and the MOU both demonstrate that the MCPO designates certain individuals as instrumentalities to achieve its statutory goal of enforcement. The CHLEO and HLEO derive their law enforcement powers entirely through a discretionary act of the MCPO, an act enshrined by the MOU. *See* N.J.S.A. 4:22-14.4(a)(2)(a). Even after entering into such a memorandum of understanding, the county prosecutor still has the statutory duty to “supervise” the county society, and the role of the county society is limited. *See id.* As observed by the Senate Budget and Appropriations Committee, “[t]his substitute bill revises the way animal cruelty law is enforced in the State by transferring the power of humane law enforcement from the New Jersey Society for the Prevention of Cruelty to Animals (NJSPCA) to the county prosecutor in each county.” Senate Budget and Appropriations Committee, *Statement to the Senate Committee Substitute for Senate, No. 3558* (Dec. 14, 2017) (Da29 – 31). The MOU also provides that it is “the **exclusive mechanism** by which non-sworn law enforcement personnel may exercise law enforcement powers pursuant to Title 4, Chapter 22,

Article 2[.]” (Pa0215 – 0226). The MOU further limits any law enforcement powers granted by its terms to those individual members specifically designated. (*Id.*). It also constitutes a binding agreement by those individuals, and only those individuals, to comply with the training and other requirements of Title 4, Chapter 22 of the New Jersey Statutes. (*Id.*). Thus, these designated individuals are a mere “instrumentality of an instrumentality” outside the ambit of OPRA, just as the County Prosecutors Association was such an “instrumentality” even though it furthers the county prosecutors’ statutory purpose under the Criminal Justice Act of 1970 to ‘cooperate with and aid the Attorney General,’ N.J.S.A. 52:17B-112(a). *See County Prosecutors Association of New Jersey*, 474 N.J. Super. at 257-268.

The Supreme Court’s decision in *Verry* also reinforces this interpretation. *See Verry v. Franklin Fire Dist. No. 1*, 230 N.J. 285, 302 (2017). Just as in *Verry*, where the Court determined that the volunteer fire company operating within Franklin Fire District No. 1 (District) was not a public agency because it did not have a “direct connection to a political subdivision,” here, the MSPCA no longer has a direct connection to any political subdivision because the statutory charter scheme was abolished. *See id.* at 301; P.L.2017, c.331 (Da1 – 25).; *see also* Senate Economic Growth Committee, *Statement to Senate*, No. 3558 (Nov. 17, 2017) (“The charter system applicable to county societies under current law is abolished by the bill.”). (Da26). Just as in *Verry*, where the Court found that the District was

an “instrumentality” of a political subdivision because (1) it was created by a municipality pursuant to N.J.S.A. 40A:14-70 and (2) “the Legislature did not provide that the fire district being created would itself be a political subdivision,” here the MSPCA received authorization of law enforcement powers for two individuals through the MCPO and “the Legislature did not provide that the [MCPO] would itself be a political subdivision.” *See Verry*, 230 N.J. at 296-97. Moreover, just as in *Verry*, where the volunteer fire department was itself created pursuant to N.J.S.A. 40A:14-70.1 but it could only “be regarded as an instrumentality of a fire district,” or “the instrumentality of an instrumentality,” here the MSPCA can only “be regarded as an instrumentality of [the MCPO],” or “the instrumentality of an instrumentality” even though it was originally chartered through a statute in a manner similar to the volunteer fire department. *See id.* at 300-01. Like the Supreme Court in *Verry*, this Court should not “conclude from the language used by the Legislature that it intended for [the MSPCA] to be considered a separate public agency for OPRA purposes” when it specifically abolished the old charter system for human societies and transferred enforcement authority to county prosecutors. *See id.* at 301 (emphasis added).

This case does not resemble the other leading cases involving instrumentalities because the MSPCA does not bear the hallmarks of a “public agency” under OPRA. In *Paff v. N.J. State Firemen's Association*, the Appellate

Division “ground[ed its] decision principally on the Association's statutory powers.” 431 N.J. Super. 278, 284 (App. Div. 2013). The Association was empowered by statute to adopt rules and regulations to govern the local associations, N.J.S.A. 43:17-10, to exercise oversight over their expenses, N.J.S.A. 43:17-29, and “to make direct benefit payments,” N.J.S.A. 43:17-41. *Id.* at 280-81. Thus, the Association was an “an independent State instrumentality” and thus a public agency. *Id.* at 293 (emphasis added). Unlike the Association, which could adopt rules and regulations and make direct benefit payments, here, the MSPCA has no direct statutory powers and instead exercises any governmental function through the discretionary grant of limited enforcement power by the MCPO. *See id.*; (Pa0215 – 0226). Instead, the MSPCA bears a more striking resemblance to the Prosecutors Association that was not a “public agency” under OPRA even though the Prosecutor’s Association was referenced in statutes but did not have direct statutory governmental authority. *See County Prosecutors Association of New Jersey*, 474 N.J. Super. at 267 (“CPANJ has statutorily designated membership on the Police Training Commission, N.J.S.A. 52:17B-70, and the New Jersey Parole Advisory Board, N.J.S.A. 30:4-123.47A . . . while CPANJ has a role in formulating criminal justice policy, it does so as a private entity that has no governmental authority.”).

Similarly, the MSPCA cannot be compared to the League of Municipalities. *See Fair Share Hous. Ctr., Inc. v. N.J. State League of Muns.*, 207 N.J. 489 (2011). In that decision, the court gave the word “instrumentality” its generally accepted meaning: “[a] means or agency through which a function of another entity is accomplished, such as a branch of a governing body.” *Id.* at 503 (alterations in original) (quoting Black's Law Dictionary 814 (8th ed. 2004)). In that case, the League was an “instrumentality” of political subdivisions because it was created directly by all 566 of New Jersey’s municipalities, themselves a “political subdivision” as defined by OPRA. *See id.* The Court also considered that the League was “controlled by elected or appointed officials from the very municipalities it represents” and that the member municipalities created the League after the Legislature enacted a statute permitting the creation of such an organization. *Id.* at 503-04 (citing N.J.S.A. 47:1A-1.1; N.J.S.A. 40:48-22). Unlike in *League of Municipalities*, where the League was subject to OPRA because it was itself an “instrumentality” of a political subdivision, here, the MSPCA is merely an “instrumentality of an instrumentality” because it performs any governmental function through the discretionary grant of authority flowing from the MCPO, itself an “instrumentality.” *See id.* Therefore, the MSCPA is at best an “instrumentality of an instrumentality” that falls outside the ambit of OPRA.

This comports with common sense. The new legislative enforcement scheme enacted in 2018 for animal cruelty laws in this State empowers county prosecutors to appoint HLEOs and CHLEOs. If the Court adopts Appellant’s interpretation, the identifiable “public agency” under OPRA for animal cruelty enforcement in a county could change year to year as the prosecutor’s office selects new CHLEOs and HLEOs. Indeed, under Appellant’s interpretation, an individual could be a “public agency” simply through the exercise of law enforcement powers as an HLEO or a CHLEO. The Legislature clearly did not intend to create such a shifting, amorphous public records landscape. Instead, the Legislature vested enforcement authority in a clearly identifiable office, the county prosecutor, so that the public (and indeed the Attorney General) could stay abreast of animal cruelty enforcement efforts in each county. The most reasonable interpretation of the new statutory scheme is that the county prosecutor is the instrumentality of enforcement chosen by the Legislature, and that the buck stops at the county prosecutor’s office. Thus, the decision below should be affirmed.

C. The County Prosecutor Can and Does Field All OPRA Requests Related to Enforcement of Animal Cruelty Laws.

Critically, the decision below still leaves a path to relief for Appellant. He should simply direct his OPRA requests to the MCPO. In *Verry*, the Court found that the Fire District was the “instrumentality” of a political subdivision because it was created by a municipality pursuant to N.J.S.A. 40A:14-70 and because “the Legislature did not provide that the fire district being created would itself be a political subdivision.” *Verry*, 230 N.J. at 296-97. In contrast, the volunteer fire department, created pursuant to N.J.S.A. 40A:14-70.1, could only “be regarded as an instrumentality of a fire district,” that is, “the instrumentality of an instrumentality.” *Id.* at 300-01. Yet, the Court held that “the documents requested from the [fire company] must be either on file with the District or subject to the District's demand for production,” and “[a]s such, they are documents necessary to the District's performance of its responsibilities and properly were ordered by the [Government Records Council] to be produced.” *Id.* at 303-04.

Here, the MSPCA already works with the Monmouth County Prosecutor's Office to supply documents to the Prosecutor's Office for OPRA requests related to any law enforcement activities. (Pa0320). The Chief Humane Law Enforcement Officer (“CHLEO”) for Monmouth County, Michael Goldfarb, reports directly to the Chief of Detectives of the Monmouth County Prosecutor's Office. He does not

report directly to the Board of Trustees of the MSPCA for his law enforcement activities. (*Id.*). The Humane Law Enforcement Officer (“HLEO”), Michael Maglizzo, reports to the CHLEO, who in turn reports to the Chief of Detectives of the Monmouth County Prosecutor’s Office. (Pa0321). The Board of Trustees of the MSPCA does not supervise or control any law enforcement activities undertaken by the CHLEO or the HLEO. (*Id.*). Where the MCPO supervises the governmental activities of the CHLEO and the HLEO, OPRA requests concerning these governmental activities should be directed to the MCPO, just as the Court directed such requests to the Fire District in *Verry*. See *Verry*, 230 N.J. at 303-04.

Thus, Appellant still has recourse to obtain any actual governmental record he seeks. What he cannot do, however, is use OPRA to rummage through the personal cell phones of MSPCA volunteers or delve into payroll records of MSPCA employees who do not have any connection to a governmental function. Such an interpretation of OPRA would chill future cooperation with law enforcement and potentially reduce charitable contributions to the worthy cause of animal rescue in New Jersey.

CONCLUSION

For all the foregoing reasons, the decision below should be **AFFIRMED** in its entirety. The MCSPCA is not a “public agency” under OPRA where the limited law enforcement powers exercised by two specific members flow only through

contract with the MCPO and remain subject to the MCPO's supervision and control.

Respectfully Submitted,
BYRNES, O'HERN & HEUGLE, LLC

s/John F. Byrnes
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Dated: December 13, 2024



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January 8, 2025

VIA ECOURTS

Superior Court, Appellate Division
P.O. Box
Trenton, New Jersey 08625

**Re: *Wronko v. Monmouth County Society for the Prevention of
Cruelty to Animals, et al.***

**Superior Court – Appellate Division
Civil Action, On Appeal from a Final Judgment of the Law
Division**

**Sat Below: Hon. Owen C. McCarthy, P.J.Cv.
Docket No. Below: MON-L-000696-23**

**Our File No. 40,759-9
Docket No. A-3643-23**

Dear Honorable Judges of the Appellate Division:

We represent the Plaintiff in the above-referenced appeal and we submit this
letter brief in lieu of a formal brief in reply to Defendants' brief.

TABLE OF CONTENTS

Reply Statement of Facts	1
Statement of Procedural History.....	4
Legal Argument	4

**Point I: The Trial Court Erred In Finding That
the MCSCPA Is Not A Public Entity, Because It**



Docket No. A-3643-23

Employs Two Law Enforcement Officers Who Engage In Law Enforcement Activities (Raised Below at Pa1-8, Pa303-312; 1T13:25-14:22; 2T14:13-15:19).....	4
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Conclusion.....	15
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Defendants’ opposition brief relies heavily on their contention that the MCSPCA is an “instrumentality of an instrumentality.” However, there is no set definition of an “instrumentality,” and under the fact sensitive inquiry that our courts are required to undertake, this Court should find that the MCSPCA is a public agency and therefore subject to OPRA.

As discussed more fully below and in our opening brief, the Trial Court should be reversed and this matter remanded to the Trial Court for consistent proceedings. Specifically, the Trial Court should be directed to enter an order finding that the MCSPCA is a public entity, that the requested records must be disclosed, and for an award of prevailing party counsel fees in favor of Plaintiff.

REPLY STATEMENT OF FACTUAL HISTORY

Under the prior “charter system,” county societies, including the MCSPCA, had law enforcement powers, including to “enforce all laws and ordinances enacted for the protection of animals” and “appoint agents for enforcing all laws and



Docket No. A-3643-23

ordinances enacted for the protection of animals and for the investigation of alleged acts of cruelty to animals within the State[.]” N.J.S.A. 4:22-11.7 (repealed by Pub. Law 2017, c. 331, § 35, eff. Aug. 1, 2018).

This “charter system” under which the NJSCPA and the county societies was abolished, but it was replaced by the current system where county prosecutors could contract with a county society (such as the MCSPCA) “to assist with enforcement of article 2 of chapter 22 of Title 4 of the Revised Statutes, N.J.S.A. 4:22-14.4(a)(2)(b) and appoint a Chief Humane Law Enforcement Officer (“CHLEO”) and supporting Humane Law Enforcement Officers (“HLEO”) to “assist with investigations, arrest violators, and otherwise act as an officer for detection, apprehension, and arrest of offenders[.]” N.J.S.A. 4:22-14.4(a)(2)(b). A “county society for the prevention of cruelty to animals which is chartered as such as of the day prior to the enactment of [N.J.S.A. 4:22-14.1, et seq.]” may be designated as “the county society for the prevention of cruelty to animals” upon enactment of that law. N.J.S.A. 4:22-14.8.

So, while the charter system under which the now abolished NJSCPA formerly operated is gone, the specific law enforcement powers exercised by the MCSPCA continue by operation of the Memorandum of Understanding.



Docket No. A-3643-23

While the CHLEO may report to the Prosecutor's Office, they also report to the MCSPCA's Executive Director. According to Article IV, Section 11 of the MCSPCA's by-laws, "The Chief Law Enforcement Office shall supervise the day-to-day cruelty investigations and enforcement of all laws enacted for the protection of all animals within Monmouth County under the laws and regulations of the State of New Jersey. The Chief Law Enforcement Officer shall report to the Executive Director." (Pa202-213).

According to Attorney General Directive 2016-6 v3.0, all law enforcement officers must consult with an on-call prosecutor after making an arrest for any indictable crime, and no complaint-summons or complaint-warrant may issue for any indictable crime or a disorderly persons offense involving domestic violence "without the express approval of an assistant prosecutor or deputy attorney general[.]" (Pa355).

Even then, the CHLEO and HLEOs may make arrests without prior authorization if they witness an act of animal cruelty and "notification to the Animal Cruelty Prosecutor would be impractical and/or detrimental to the welfare of the animal under the circumstances." (Pa33). And the CHLEO and HLEOs can make



Docket No. A-3643-23

arrests for disorderly persons and petty disorderly persons offenses without prior authorization. (Ibid.)

STATEMENT OF PROCEDURAL HISTORY

Plaintiff incorporates by reference and relies upon the procedural history set forth in his opening brief.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN FINDING THAT THE MCSPCA IS NOT A PUBLIC ENTITY, BECAUSE IT EMPLOYS TWO LAW ENFORCEMENT OFFICERS WHO ENGAGE IN LAW ENFORCEMENT ACTIVITIES

(Raised Below at Pa1-8, Pa303-312; 1T13:25-14:22; 2T14:13-15:19)

The MCSPCA chose to become the designated animal shelter to care for animals at the request of law enforcement, just like the Chief of the MCSPCA's Law Enforcement Division chose to be designated as a CHLEO. But the acceptance of those designations comes with certain consequences. One of those is that the MCSPCA, as a "law enforcement" agency, is subject to OPRA.

A. The MCSPCA Engages in Law Enforcement Activity On Authority Derived from New Jersey's Statutes

Our courts have "acknowledged that the definition of 'public agency' is broad." Paff v. N.J. State Firemen's Ass'n, 431 N.J. Super. 278, 288 (App. Div.



Docket No. A-3643-23

2013). “Moreover, a court must look behind the technical form of an entity to consider its substantive attributes. The cases demonstrate that determining whether an entity is a public agency involves a fact-sensitive inquiry.” (*Ibid.*). Here, the fact-sensitive inquiry shows clearly that the MCSPCA is a public entity and is therefore subject to OPRA.

In documents filed with the IRS, in its audited reports, on its website and in its press releases, the MCSPCA proclaims that it engages in law enforcement activity. Furthermore, in contracts with at least three municipal entities, the MCSPCA defines itself as a “**government entity created under New Jersey State Law.**” Last but not least, MCSPCA employees sign and issue summons and complaints enforcing animal control laws, they are authorized to carry firearms, they investigate crimes, and they perform many other law enforcement functions.

In the MCSPCA’s 2022 Form 990, the MCSPCA describes “humane law enforcement” as one of its “most significant activities.” (Pa362). On the second page of their 2022 Form 990, they describe one of their missions as “humane law enforcement.” (Pa363). The MCSPCA’s 2021 Form 990 had the same descriptions. (Pa146-147). Furthermore, in the 2021 990, the MCSPCA listed as one of its accomplishments that the "Animal Cruelty Department Investigated 250 Incidents



Docket No. A-3643-23

of Animal Cruelty and Neglect." (Pa174). In the 2022 Form 990, the MCSPCA stated that it investigated 290 incidents of animal cruelty and neglect. (Pa390).

In its 2021 financial statements, the MCSPCA show "law enforcement" salaries (those of the CHLEO and HLEO), and the CHLEO and HLEO are employed by the MCSPCA. (Pa332). and wages of \$130,357, and total law enforcements costs of \$177,739. (Pa137). In 2022, the MCSPCA's financial statements show "law enforcement" salaries and wages of \$130,357, and total law enforcements costs of \$180,793. (Pa332).

The MCSPCA's frequently asked questions page on its website states "Do your Officers and Agents always issue summonses in all cases?" The answer is "No, in most cases, we will issue a written warning." However, if an owner does not make the necessary corrections, "We will issue a summons. The animal owner will be required to appear in court to answer the charges." (Pa396).

Another part of the MCSPCA's website is noticeably clear about their mission as a law enforcement agency: "As the Humane Law Enforcement Division of the Monmouth County SPCA, we are granted our Law Enforcement authority by Monmouth County Prosecutor's Office. We are charged with the responsibility of enforcing the State of New Jersey Animal Cruelty Laws in Monmouth County, NJ."



Docket No. A-3643-23

The MCSPCA investigates “hundreds of animal cruelty complaints every year,” rescues animals, provides medical attention, and “[m]ost importantly, makes sure that “those who caused the suffering of these helpless animals are brought to justice.” (Pa399). When on February 3, 2024, the MCSPCA, along with other agencies, investigated and shut down a dog fighting ring in Neptune, the MCSPCA’s press release quoted the MCSPCA’s Executive Director: “Our **Humane Law Enforcement Division**, along with Neptune Police Department, and the Monmouth County Forensics unit worked late into the night to investigate this horrific scene and get the 8 dogs to safety.” (emphasis added). (Pa401).

Finally, the MCSPCA’s CHELO describes himself on LinkedIn as being the “Chief of Humane Law Enforcement-Monmouth County SPCA.” (Pa404).

For the foregoing reasons, the MCSPCA is not an “instrumentality of an instrumentality,” it is the instrumentality. The MCSPCA is not one step removed from its law enforcement powers. The MCSPCA derives its law enforcement powers directly from New Jersey statutes. Prior to the 2017 NJSPCA reform, those powers could be traced back to the nineteenth century, and certainly in 2004, the county SPCAs were authorized to enforce humane laws and appoint law enforcement officers. Through the Memorandum of Understanding between the MCSPCA and



Docket No. A-3643-23

the MCPO, the MCSPCA continues to enjoy law enforcement powers. Those law enforcement powers do not flow from the MCPO, rather those law enforcement powers are derived from State law. American Civil Liberties Union of New Jersey v. County Prosecutors Association of New Jersey, 474 N.J. Super. 243 (App. Div. 2022), aff'd, 257 N.J. 87 (2024), does not apply to this case because the MCSPCA's law enforcement division does not derive its power from the MCPO; rather, the MCSPCA derives its powers based on State statute.

The MOU between the Monmouth County Prosecutor's Office and the MCSPCA proves our point. Once the MCPO appoints the MCSPCA and the CHLEO and HLEO as law enforcement, they are not acting pursuant to powers granted to them by the MCPO, they are acting pursuant to powers granted to them by the State of New Jersey. That is what distinguishes this case from all of the cases cited by Defendants. That the CHLEO and HLEO are supervised by the MCPO actually reinforces the idea that the MCSPCA is a law enforcement instrumentality. All local law enforcement is subject to supervision by the applicable County Prosecutor's office or the Attorney General's office. Just like a municipal police force must diligently work with their County's Prosecutor's offices, the MCSPCA's CHLEO and HLEO do the same. The CHLEO and HLEO, who are employees of



Docket No. A-3643-23

the MCSPCA (not employees of Monmouth County or the Prosecutor's Office), are not a private security force, they are law enforcement officers employed by the MCSPCA. Thus, the MCSPCA is a public entity which is subject to OPRA.

The MCSPCA did not have to agree to the Memorandum of Understanding. The MCSPCA could have declined to accept the appointment. The MCPO could have employed the CHLEO and HLEO directly, but they decided not to. The MCPO elected to appoint the MCSPCA and CHLEO and HLEO as law enforcement, and the MCSPCA accepted that appointment. Thus, they must abide by those choices.

Defendants' argument that making the MCSPCA subject to OPRA would create a "shifting, amorphous public records landscape" is speculative and unsupported. The MCSPCA currently has a "law enforcement division" and employs two "law enforcement officers." It's possible that the MCSPCA could decide to shut down its "law enforcement division," terminate or end the MOU and its agreements with municipalities, and fire their CHLEO and HELO, but none of that has happened. Under the facts we have today, the MCSPCA provides law enforcement services and is subject to OPRA.

The MCSPCA's relationships with municipalities reinforce this, and the Prosecutor's Office is not the only public agency that has tapped the MCSPCA's



Docket No. A-3643-23

“Law Enforcement Division” for police services in the form of humane law enforcement services. The MCSPCA has agreements with several municipalities to provide law enforcement services, including Belmar, Fair Haven, and Little Silver. (Pa46-68). The MCSPCA has provided these services for years and receives substantial revenue from the municipalities: in 2021, the MCSPCA received \$728,923 from “animal control contracts.” (Pa136). In 2022, this number was \$846,802. (Pa331).

Each of the contracts with the municipalities references the “Law Enforcement Division” of the MCSPCA on the first page (Pa46; Pa53; Pa61). Paragraph 6 of each of these agreements states that “The MCSPCA Animal Control Officer (ACO) or MCSPCA Humane Law Enforcement Officer shall issue summons for Municipal Ordinances and NJ Title 4 pertaining to all animal laws that apply under the scope of the ACO’s employment. (ie: Dog/Cat licensing, animals running at large, dangerous dog)”. (Pa48; Pa55; Pa63).

Perhaps most importantly, each of these contracts (each of which postdate the statutory amendments) is between the municipality and “the [MCSPCA], a non-profit 501(c)(3) **government entity created under New Jersey State Law**,” and each was signed by Ross Licitra, the Executive Director of the MCSPCA. (Pa46;



Docket No. A-3643-23

Pa53; Pa61) (emphasis added). As such, the MCSPCA, by and through its Executive Director, held itself out as a governmental entity to the municipalities when entering into these contracts. So even if there were no MOU between the MCSPCA and the MCPO, there would be a separate and independent basis upon which this Court could hold that the MCSPCA was a law enforcement instrumentality.

Defendants claim that the case of Paff v. N.J. State Firemen's Association, is distinguishable because there the Association had the “hallmarks of a public agency.” 431 N.J. Super. 278 (App. Div. 2013) (Db. at 30-31). In that case, this Court recognized how the Association was the beneficiary of public monies in the form of tax revenue, that it “owes its existence to state law, which authorized its creation, granted it powers,” and that it “serves numerous governmental functions.” Id. at 290-91. Here, contrary to Defendants’ assertions, the MCSPCA is analogous to the Association. The CHLEO and HLEO act pursuant to powers granted to them by the State of New Jersey and have powers such as the power to sign and issue summons and complaints enforcing animal control laws, carry firearms, investigate crimes, and perform many other law enforcement functions. Furthermore, the MCSPCA receives substantial revenue from municipalities in exchange for providing animal control law enforcement services: in 2021, the MCSPCA received



Docket No. A-3643-23

\$728,923 from “animal control contracts,” (Pa136), and in 2022, received \$846,802. (Pa331). Furthermore, the MCSPCA receives the funds paid by offenders who are fined for animal cruelty violations: in 2021, the MCSPCA received \$2,177 for “program fees and fines – law enforcement” (Pa136); and in 2022, it received \$1,451 for fines. (Pa331).

Similarly, Plaintiff disagrees with Defendants’ claim that the case of Fair Share Hous. Ctr., Inc. v. N.J. State League of Municipalities, is distinguishable because there the League was an “instrumentality of political subdivisions.” 207 N.J. 489 (2011). (Db. at 31-32). There, the League was an instrumentality that was subject to OPRA because it was controlled by elected or appointed officials from the very municipalities it represents.” Id. at 504. Here, the MCSPCA was granted powers by the MCPO under the MOU, and the CHLEO reports to the Chief of Detectives of the Monmouth County Prosecutor’s Office; the Monmouth County Prosecutor is an appointed official. (Pa321).

In their opposition papers, Defendants cite Verry v. Franklin Fire District No. 1, 230 N.J. 285 (2017), and predictably argue that the MCSPCA is an “instrumentality of an instrumentality.” (Db. at 21-22). But, in Verry, the second instrumentality was a volunteer fire department. There is no comparison between



Docket No. A-3643-23

volunteer firefighters and law enforcement officers. Volunteer fire fighters can't carry firearms or drive police cars or conduct criminal investigations or sign summons and complaints. Moreover, as stated in our opening papers, the volunteer fire department in Verry was two steps removed from a political subdivision. The volunteer fire department was an instrumentality of the Fire District; in turn, the Fire District was an instrumentality of the municipality.

Here, the authority law enforcement powers that employees of the MCSPCA utilize are based directly on New Jersey state statutes. No one would ever doubt that police officers are not subject to OPRA. Police officers are authorized under the laws of New Jersey to enforce those laws, and they also enjoy other broad powers, such as the power to investigate crime; the power to detain individuals; and the power to issue summons and complaints. The MCSPCA law enforcement officers have the same powers as police officers. Their authority is derived directly from State law. The fact that the MCSPCA's HLEOs and CHLEOs are appointed by the MCPO makes no difference. All law enforcement officers are appointed. Ultimately, there really is no distinction between police officers in general and the MCSPCA's HLEOs and CHLEOS, and Defendants offer none.



Docket No. A-3643-23

B. There Is No Evidence that the MCPO Would Agree to Seek Records from the MCSPCA

Defendants' arguments that Plaintiff should simply seek records from the MCPO are speculative. The MCPO was not a party to the matter before the Trial Court. The MCPO has never agreed to be the records custodian for documents that are within the possession, custody, or control of the MCSPCA. There is no evidence that the MCPO has consented to being the records custodian for the MCSPCA or that it has agreed to seek records from the MCSPCA on behalf of records requestors. The only support in the record for this proposition is the certification of the Executive Director of the MCSCPA, not any affirmative statement on behalf of the MCPO. (Pa320).

C. There Is No Risk to Privacy or the MCSPCA's Charitable Mission

Just because the MCSPCA is subject to OPRA does not mean any of OPRA's exemptions would be eviscerated. To the contrary, the same OPRA exceptions that would apply to any agency would also apply to the MCSPCA. The question of whether the name of a person who volunteers for the MCSPCA is subject to OPRA is not a question before this Court. However, if the MCSPCA denies access to records, disclosure of those records would be subject to the same rules and



Docket No. A-3643-23

exceptions, including those for privacy, personal financial information, unlisted telephone numbers, as with any other agency.

The MCSPCA's claims of a "chilling" effect are speculative, and it provides no evidence of any chilling effect. To the contrary, the MCSPCA appears to be a robust organization with millions of dollars in revenue and assets. If it truly feared a "chilling" effect, perhaps the MCSPCA should consider ceasing its "humane law enforcement" activities (which is what almost all of the other county SPCAs did after the 2017 reform law became effective).

CONCLUSION

For the foregoing reasons, the Trial Court's judgment in favor of Defendants must be reversed and this matter remanded to the Trial Court with directions that the MCSPCA is a public entity, that the requested records must be disclosed, and for an award of prevailing party counsel fees in favor of Plaintiff.

Respectfully submitted,

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