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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2877-15T2

JOHN PAFF,

Plaintiff-Appellant,

v.

NEW JERSEY STATE POLICE,
THOMAS PRESTON in his
capacity as Custodian of
Records for the New Jersey
State Police, NEW JERSEY
DIVISION OF CRIMINAL JUSTICE
AND ROBERT MCGRATH, in his
capacity as Records Custodian
for the New Jersey Division
of Criminal Justice,

Defendants-Respondents.

Argued July 25, 2017 – Decided August 7, 2017

Before Judges Reisner and Suter.

On appeal from the Superior Court of New
Jersey, Law Division, Mercer County, Docket
No. L-1984-15.

Michael J. Zoller argued the cause for
appellant (Pashman Stein Walder Hayden,
attorneys; CJ Griffin, of counsel; Mr. Griffin
and Meghan Gorman Cohen, on the brief).

Suzanne Davies, Deputy Attorney General,
argued the cause for respondents (Christopher

S. Porrino, Attorney General, attorney; Lisa A. Puglisi, Assistant Attorney General, of counsel; Daniel M. Vannella, Deputy Attorney General, of counsel; Mr. Vannella and Ms. Davies, on the brief).

PER CURIAM

Plaintiff John Paff appeals from a February 5, 2016 order denying his application - to compel defendants to produce certain investigatory records, or alternatively seeking a Vaughn¹ index or in camera review of the documents - and dismissing his complaint based on the common law.² Our review of the trial court's decision is de novo. Drinker Biddle & Reath L.L.P v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 497 (App. Div. 2011). After reviewing the record in light of that standard, we affirm.

Plaintiff's record request asserted that plaintiff had heard rumors that a particular county sheriff might be under investigation for "some sort of impropriety." Plaintiff expressed an interest in posting information about the investigation on his internet blog, in order to inform the public as to the outcome

¹ Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973).

² At oral argument of this appeal, plaintiff's counsel advised us that plaintiff is seeking a Vaughn index or an in camera review of documents, but is not seeking either the names of witnesses or copies of their statements. He conceded that if existing investigatory documents consisted only of witness statements, there would be no need for an in camera review or a Vaughn index, because the statements would not be subject to disclosure.

of the investigation. Plaintiff applied to the county prosecutor, the State Police and the Division of Criminal Justice (DCJ), seeking "[a] copy of each document in your agency's files regarding the investigation[,]" based on his expressed concern about whether those agencies had "conducted a reasonable investigation[.]"

The State Police confirmed that the records plaintiff sought were "part of a criminal investigation and include[d] two investigation reports." Both the State Police and DCJ declined to provide further information, asserting that the documents were exempt from the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1.1, and that the State's interest in the confidentiality of criminal investigatory records outweighed plaintiff's expressed common-law interest in access to the records. Plaintiff filed suit asserting only rights under the common law, and asserting for the first time that the alleged misconduct concerned "sexual impropriety."³

³ Other than plaintiff's complaint, no documents in the record presented to us indicate what type of alleged "impropriety" was involved in the investigation. At oral argument in the trial court, the State declined to disclose the subject matter of the investigation. The State also advised the judge that it was not "in a position to state whether the investigation [was] open or closed." The trial judge's opinion assumed the truth of plaintiff's assertion that the investigation involved alleged sexual harassment, and the trial court's order referred to "alleged sexual misconduct."

After considering the factors set forth in Loigman v. Kimmelman, 102 N.J. 98, 113 (1986), Assignment Judge Mary C. Jacobson determined that plaintiff's interest in discovering the thoroughness of the investigation, was outweighed by the following factors: DCJ's interest in the confidentiality of its criminal investigation; the privacy interests of "any witnesses who gave testimony in the investigation, [including] other law enforcement officers or victims of sexual harassment"; and the sheriff's privacy interest against disclosure of an investigation that had not resulted in an indictment or in the filing of any charges.

The judge credited defendants' argument that releasing criminal investigation reports could result in reprisals against witnesses - or could cause them embarrassment by making public personal details they expected to remain confidential - and could chill the willingness of witnesses to come forward in future investigations. Judge Jacobson also concluded that, "a Vaughn index is not even warranted, because the balance tips so heavily in favor of the law enforcement defendants in this case."

We affirm, substantially for the reasons stated in the judge's December 8, 2015 oral opinion. We add these comments.

After Judge Jacobson issued her opinion, another panel of this court decided North Jersey Media Group, Inc. v. Bergen County Prosecutor's Office, 447 N.J. Super. 182 (App. Div. 2016), and our

Supreme Court decided North Jersey Media Group, Inc. v. Township of Lyndhurst, ___ N.J. ___ (2017). We conclude that Bergen County Prosecutor's Office is pertinent here, because the case involved a citizen inquiry about an investigation that had either never occurred, or had occurred but did not result in the filing of any charges. Bergen Cty. Prosecutor's Office, supra, 447 N.J. Super. at 189. The prosecutor's office there declined to confirm or deny the existence of an investigation, and the court held that such disclosure was not required under either OPRA or the common law. Id. at 209-12. The principles discussed in the case are relevant here: in an investigation of the type presented in that case, and here, the privacy and reputational interests of the person under investigation, the security of witnesses, and the interests of law enforcement in obtaining the cooperation of witnesses, outweigh the inquirer's generalized interest in making sure that all criminal investigations are conducted thoroughly. Id. at 203-04. "It does not constitute a clear showing of . . . public need to say only[,]" as plaintiff does here, "that there may be something corrupt that should be exposed for the benefit of the public." Loigman, supra, 102 N.J. at 108.

We cannot agree with plaintiff that Lyndhurst compels a different result. In Lyndhurst, the Court clarified the application of the common law to requests for law enforcement

investigation records. In addressing a case involving the shooting of a suspect by the police, the Court concluded that the Attorney General's interest in the integrity of the investigation outweighed the interest of a news organization in seeking information about the investigation. The Court held that "the danger to an ongoing investigation would typically weigh against disclosure of detailed witness statements and investigative reports while the investigation is underway, under both OPRA and the common law." Lyndhurst, supra, ___ N.J. ___ (slip op. at 4).


However, the Court also observed that disclosure of dash-cam videos of a police shooting were of great interest to the public, and their disclosure was less likely to compromise an investigation than disclosure of witness statements or police reports. Based on the public's strong interest in the proper investigation of police shootings, the Court determined that once law enforcement has interviewed the principal witnesses to the shooting, the public's interest in disclosure of those police dash-cam videos would outweigh the State's interest in confidentiality under the common law. Id. at ___ (slip op. at 48).

Lyndhurst addressed a case in which the central event was publicly known - the police shot and killed a civilian - and it involved a matter of enormous public interest. By contrast, this case involves a rumor (apparently disseminated by plaintiff

himself through his blog) about some possible impropriety, which has thus far resulted in no arrest, criminal charge, or indictment, nor even a civil complaint by anyone claiming to have been subjected to improper conduct. We agree with plaintiff that the public has a strong interest in ensuring the integrity of law enforcement agencies and officers, but the invocation of that general interest here does not outweigh DCJ's interest in the confidentiality of its investigation. See Bergen Cty. Prosecutor, supra, 447 N.J. Super. at 210-12.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION