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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0759-21**

**BARBARA SALVERO,**

Plaintiff-Appellant,

v.

**CITY OF ELIZABETH and  
JAMES COSGROVE,**

Defendants-Respondents,

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Argued March 14, 2022 – Decided April 6, 2022

Before Judges Rothstadt and Mayer.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Union County, Docket No. L-3295-19.

Paul Castronovo argued the cause for appellant (Castronovo & McKinney, LLC, attorneys; Paul Castronovo, of counsel and on the briefs; Michael K. Fortunato, on the briefs).

Robert F. Varady argued the cause for respondent City of Elizabeth (La Corte, Bundy, Varady & Kinsella, attorneys; Robert F. Varady, of counsel and on the brief; Christina M. DiPalo, on the brief).

Moshood Muftau, First Deputy County Counsel, argued the cause for intervenor Union County Prosecutor's Office (Bruce H. Bergen, Union County Prosecutor, attorney; Moshood Muftau, on the brief).

## PER CURIAM

In this action filed under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -50, we granted plaintiff Barbara Salvero, a police officer with defendant City of Elizabeth, leave to appeal from the Law Division's November 18, 2021 order confirming an earlier order<sup>1</sup> the same motion judge entered that quashed a subpoena to produce documents served upon the UCPO. The documents that plaintiff sought were those relating to the UCPO's internal affairs (IA) investigation into the conduct of Elizabeth's former Police Director, defendant James Cosgrove.

On remand from the Court, the motion judge confirmed his earlier decision to quash, quoting substantially from his initial decision and determining again the files were not relevant to plaintiff's claim of

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<sup>1</sup> On appeal from the earlier order, in its July 29, 2021 order granting plaintiff leave to appeal, the New Jersey Supreme Court summarily remanded the matter to the Law Division judge for reconsideration with instructions to conduct an in camera review of the Union County Prosecutor's Office (UCPO) files and "balance the need for confidentiality against the need for disclosure." Salvero v. City of Elizabeth, 248 N.J. 217 (2021).

discrimination against her and therefore her need for disclosure did not outweigh the UCPO's need for confidentiality.

Thereafter, the parties filed their briefs with us and the matter was scheduled for oral argument, which we considered on March 14, 2022. However, as counsel advised us on that date, one hour before oral argument that day, the Supreme Court issued its opinion in Rivera v. Union County Prosecutor's Office, \_\_ N.J. \_\_ (2022).

In Rivera, the Court considered the discoverability of the same documents as the motion judge reviewed in this case, but did so under both the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law right of access. As explained in its opinion, the Court concluded that the records were not disclosable under OPRA but "should be disclosed under the common law right of access when interests that favor disclosure outweigh concerns for confidentiality." Id. at \_\_ (slip op. at 3). In its remand to the trial judge, the Court in Rivera set forth "factors to help courts evaluate the other side of the balancing test -- the need for public disclosure." Ibid.

Under these circumstances, we conclude that before we consider this matter, the motion judge here, in the first instance, should reconsider his determination, this time with the benefit of the Court's directions in Rivera.

In addition, based on our review to this point, while it appears the motion judge generally considered on the earlier remand the relationship of the subject documents to plaintiff's claim that she was the victim of workplace discrimination, the motion judge's decision reveals little, if anything, about her claim against Elizabeth for failure to maintain an effective policy against workplace discrimination. Moreover, as far as we can determine, the judge did not provide a document-by-document review that is necessary to inform the parties and this court why a document was not discoverable.

For those reasons, we direct the motion judge to reconsider his earlier determination anew in light of Rivera, as well as plaintiff's need for discovery as it relates to her claim against Elizabeth, and to do so with specific references to the documents, while using redactions where necessary to maintain the confidentiality of documents that are not disclosed, if any. We further direct that the remand be completed within the next thirty days.

Vacated and remanded for further proceedings consistent with our opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION