

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-0792-20

AFRICAN AMERICAN DATA
AND RESEARCH INSTITUTE
("AADARI"),

Plaintiff-Appellant,

v.

ADELINNY PLAZA, TOWN OF
WEST NEW YORK POLICE
DEPARTMENT, and TOWN OF
WEST NEW YORK,

Defendants-Respondents.

Submitted February 15, 2022 – Decided April 13, 2022

Before Judges Currier and Smith.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket No. L-0031-20.

Rotimi A. Owoh, attorney for appellant.

Scarinci Hollenbeck, LLC, attorneys for respondents
(Robert E. Levy, of counsel and on the brief; Jorge R.
de Armas, on the brief).

PER CURIAM

This appeal arises out of a denial of plaintiff's New Jersey Open Public Records Act (OPRA) request. Although the trial court initially ordered disclosure of the requested records, it subsequently granted defendants' motion for reconsideration and denied plaintiff's request for counsel fees. While these appeals were pending, the New Jersey Supreme Court issued an opinion in Simmons v. Mercado, 247 N.J. 24 (2021) that definitively resolved the issues before us. Therefore, we reverse the October 30, 2020 order and remand to the trial court for reinstatement of its February 28, 2020 order. On remand, the trial court shall also consider plaintiff's application for attorney's fees.

The issue arises from plaintiff's request for the following records:

Copies of DUI and DWI summonses and complaints that were prepared by your Police Department from January of 2019 to the present.

Copies of drug possession summonses and complaints that were prepared by your Police Department from January of 2019 to the present.

Copies of drug paraphernalia summonses and complaints that were prepared by your Police Department from January of 2019 to the present.

Defendants responded that the police department was not in possession of the requested documents and plaintiff should contact the West New York

Municipal Court for the records. Plaintiff filed an order to show cause compelling defendants to produce the requested documents.

The trial court found plaintiff was entitled to the records and ordered their production in a February 28, 2020 order. In addition, as plaintiff was a prevailing party, the order permitted plaintiff to submit a certification of counsel fees under N.J.S.A. 47:1A-6. Plaintiff filed its counsel fee application on March 5, 2020.

In June 2020, this court considered an identical OPRA request in Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020). We concluded that the trial court did not err in denying the OPRA request made to the municipality's police department because the request should have been directed to the municipal court. Id. at 82.

Defendants moved for reconsideration. On October 30, 2020, the trial court granted reconsideration, vacated its prior order, and denied plaintiff's application for counsel fees. After the Supreme Court granted certification in Simmons v. Mercado, 244 N.J. 342 (2020), we stayed this appeal. The Court issued its decision on June 17, 2021. Simmons, 247 N.J. at 24.

In Simmons, the plaintiffs requested the Millville Police Department (MPD) provide the following documents: (1) DWI/DUI complaints and

summonses; (2) drug possession complaints and summonses; and (3) drug paraphernalia complaints and summonses. Id. at 32. As here, MPD declined to produce the records, stating they were within the possession of the municipal court.

The Court concluded the requested documents were subject to OPRA because the documents were "made, maintained or kept on file in the course of [the police department's] official business" Id. at 39 (citing N.J.S.A. 47:1A-1.1). The Court noted that to create the documents, the police department would input the substantive information regarding arrests and that information was used to populate the documents. Id. at 40. No judge or judicial officer played any part in creating the documents or inputting information into the documents. Ibid. Therefore, to advance OPRA's policy of government transparency in light of modern-day technology, MPD was required to produce the documents responsive to the plaintiff's OPRA request. Id. at 42.

The Court's decision in Simmons resolves the issue presented in this appeal. Defendants concede they no longer have a legal basis for withholding the requested documents. However, defendants contend plaintiff is not entitled to counsel fees because of "the previous unclear status of the law." We disagree.

Plaintiff was a prevailing party under the February 28, 2020 order. The trial court directed plaintiff to submit a certification of services. Plaintiff did so. The court did not rule on that application until October 2020, after this court's Simmons decision was issued and the trial court granted defendants' reconsideration motion. Had the trial court ruled promptly after plaintiff's filing in March 2020, an order for fees would have issued. Plaintiff was then, and is now, a prevailing party entitled to fees under N.J.S.A. 47:1A-6.

The order granting reconsideration is reversed. On remand, the trial court shall reinstate its February 28, 2020 order compelling production of the records and consider plaintiff's application for counsel fees.

Reversed and remanded for further proceedings in accordance with this 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