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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2485-20**

**AFRICAN AMERICAN DATA  
RESEARCH INSTITUTE  
("AADARI") and OBAFEMI  
("BAFFI") SIMMONS,**

**Plaintiffs-Appellants,**

**v.**

**JUNE PROFITT, ANDREA  
VENUTO, CARNEYS POINT  
POLICE DEPARTMENT, and  
CARNEYS POINT TOWNSHIP,**

**Defendants-Respondents.**

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Submitted February 15, 2022 – Decided April 14, 2022

Before Judges Currier and Smith.

On appeal from the Superior Court of New Jersey, Law  
Division, Salem County, Docket No. L-0060-21.

Rotimi A. Owoh, attorney for appellants.

Adam I. Telsey, attorney for respondents.

**PER CURIAM**

This appeal arises out of defendants' denial of plaintiffs' New Jersey Open Public Records Act (OPRA) requests. Plaintiffs appeal from the May 7, 2021 order denying their order to show cause to compel the production of records and dismissing their complaint. In light of the principles espoused in our Supreme Court's recent decision, Libertarians for Transparent Gov't v. Cumberland Cnty., 250 N.J. 46 (2022), we reverse.

I.

Plaintiffs made an OPRA request for the following records:

- (1) Copies of cancelled checks and invoices used to settle complaints that were filed against your police department in the last [five] years.
- (2) Names, date of hire, date of separation and reason for separation and salary of individuals who either resigned or were terminated in the last [five] years from your police department.

In responding to the first request, defendants stated, "We do not have access to this. Paid by insurance company." In response to the second request, defendants provided information about two officers, stating one was "terminated" and the other "resigned."

Plaintiffs filed an order to show cause compelling defendants to produce the requested documents and information. During oral argument on May 7,

2021, defendants advised the court they had provided plaintiffs the day before with a document responsive to the first request and, therefore, they deemed it a "non-issue." Defendants also contended the information provided regarding the second request was responsive to the "reason for separation."

In addressing the first request, plaintiffs agreed the request was completed but because the document was produced outside the statutory time limit, plaintiffs were prevailing parties and entitled to fees. Plaintiffs further noted defendants had not produced a cancelled check but instead provided an invoice from the insurance carrier reflecting payment was made. In response, defendants elaborated that the document was from the Joint Insurance Fund (Fund), entitled "Payment Listing," and it gave the date of the check, check number, payee, and the amount of payment. Defense counsel clarified that when he requested cancelled checks from the Fund, he only received the described document in return. Therefore, defendants could not provide plaintiffs with anything further in response to its request.

As to the second request, plaintiffs asserted it was entitled under OPRA and the common law right of access to "the real reason" for a person's separation from employment.

In an oral decision issued May 7, 2021, the judge concluded that a cancelled check was not a "government record" under OPRA because it was not

received by the government nor made by the government in its official business . . . . It would not be common or expected for the municipality to receive a canceled check that was drawn on an account of the insurance company that insured the county and it would have been sent back to the insurance company that insured the county.

Therefore, the court found the initial failure to provide the cancelled check was not a violation of OPRA.

As to the second request, the court found defendants' response of "terminated" or "resigned" was sufficient under the plain language of OPRA.

The court then turned to a consideration of plaintiffs' requests under the common law right of access doctrine. The court concluded plaintiffs' first request was moot because the requested documents were provided or because the document did not exist.

In addressing the second request, the judge determined she could not undertake the required balancing test because there was no request for a specific document. Plaintiffs' counsel replied he was requesting the document that explained the reason for the employee's resignation or termination, such as a plea agreement or Judgment of Conviction. However, the court reiterated it

could not determine whether the common law right of access was violated because there was no request for a specific document. The relief requested in the order to show cause was denied.

## II.

On appeal, plaintiffs contend cancelled checks are subject to disclosure under OPRA and the common law right of access. And there was a material issue of fact whether the cancelled check still existed either at the insurance company or the insurer's bank. In addition, plaintiffs assert the court erred in not requiring the disclosure of records responsive to the second request. Plaintiffs seek counsel fees as a prevailing party under the first request.

Our review of the statutory interpretation of OPRA is de novo. Brennan v. Bergen Cnty. Prosecutor's Off., 233 N.J. 330, 339 (2018).

As is well-established, OPRA mandates the public be provided with "ready access to government records." Burnett v. Cnty. of Bergen, 198 N.J. 408, 421 (2009). The statute requires disclosure of documents "made, maintained or kept on file in the course of [a public agency's] official business[.]" as well as any document "received in the course of [the agency's] official business[.]" N.J.S.A. 47:1A-1.1.

Although defendants initially replied they did not possess any cancelled checks, they nevertheless forwarded the request to the Fund. In response, the Fund supplied the "Payment Listing" document. A review of that record reflects it contains all of the information found on a cancelled check: the check number, date of check, date of occurrence, name of claimant, payee name, and amount of check. The only missing information—routing information and account number—would be subject to redaction.

The information supplied by defendants in response to plaintiffs' request for cancelled checks and invoices was sufficient to sustain its burden under OPRA. We do not consider the newly raised issues regarding the checks as they were not presented to the trial court for its consideration. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

As to the second request, our Supreme Court recently considered an identical request in its recent decision in Libertarians, 250 N.J. at 48-49. There, the plaintiffs requested a correction officer's "name, title, position, salary, length of service, date of separation and the reason therefore" under N.J.S.A. 47:1A-10. Id. at 50. The plaintiffs were aware from public meeting minutes that the corrections officer had been charged with a disciplinary action and there was a settlement agreement between the officer and the county. Id. at 49-50. In the

OPRA request, the plaintiffs also requested the preliminary notice of disciplinary action (PNDA) and the settlement agreement. Id. at 50.

The defendants did not produce the PNDA or the settlement agreement, asserting the documents were personnel records exempted from disclosure.<sup>1</sup> Id. at 50. The defendants provided information regarding the remainder of the request and stated, "The reason for the separation was a disciplinary infraction." Ibid.

The trial court found the settlement agreement was "a government record subject to disclosure under OPRA" and ordered the county to provide a redacted version. Id. at 51. The court also found the county had misrepresented the officer's reason for separation, in violation of OPRA. Ibid. The parties came to an agreement on a counsel fee award. Ibid.

This court reversed, finding the settlement agreement was not a government record under OPRA but was instead an exempt personnel record. Libertarians for Transparent Gov't v. Cumberland Cnty., 465 N.J. Super. 11, 13 (App. Div. 2020). We concluded that OPRA did not require "government

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<sup>1</sup> In its application before the trial court, the plaintiffs did not reassert their request for the PNDA.

agencies to make exempt personnel and pension records accessible in redacted form." Id. at 24.

Therefore, this court remanded the case to the trial court to determine whether the common law right of access required disclosure of the settlement agreement. Id. at 31. We also reversed the order for fees. Ibid.

After granting the plaintiffs' petition for certification, the Court considered the issue of the disclosure of the settlement agreement, noting that most personnel and pension records were not government records and therefore were exempt from disclosure under OPRA. 250 N.J. at 49. However, an exception existed under N.J.S.A. 47:1A-10, which states that "an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount of and type of any pension received shall be a government record." Id. at 55.

Because § 10 expressly states that the reason for a person's separation from employment was a government record, the "plain reading of the text" requires the "disclosure of a settlement agreement that contains such information once the document has been redacted." Id. at 56.

In applying Libertarians here, plaintiffs are entitled under OPRA to review documents that contain information regarding the reason why an employee was

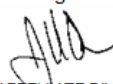


separated from their employment at the police department. The reasons why an employee is no longer at the police department is a government record. See id. at 57. Of course, the documents must be properly redacted.

We reverse the trial court's order denying the records request for an employee's reasons for separating from employment at the police department. Because the denial of those government records violated OPRA, plaintiffs are prevailing parties and entitled to an award of counsel fees. Therefore, we remand to the trial court for a determination on fees if the parties cannot come to an agreement. The court shall also review and redact the disclosed documents.

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