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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2846-20

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

Plaintiffs-Respondents,

v.

RICHARD G. FRANCHETTA,  
CITY OF VINELAND POLICE  
DEPARTMENT, and CITY OF  
VINELAND,

Defendants-Appellants.

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Argued March 29, 2022 – Decided May 23, 2022

Before Judges Currier and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law  
Division, Cumberland County, Docket No. L-0087-20.

Alan G. Giebner, Associate Solicitor, argued the cause  
for appellants (Alena Broshchan and Richard Tonetta,  
Solicitors, attorneys; Alan G. Giebner, on the briefs).

Rotimi A. Owoh argued the cause for respondents.

## PER CURIAM

Defendants appeal from the trial court's decision granting plaintiffs' request for certain records under the New Jersey Open Public Records Act<sup>1</sup> (OPRA), and the common law right of access, as well as the subsequent award for counsel fees. After the court's decision, our Supreme Court issued two OPRA opinions that govern these appeals. Therefore, although we affirm the trial court's order for disclosure of certain documents, we do so for different reasons. In addition, we vacate a portion of the order and remand for the required balancing analysis under the common law right of access. We affirm the award of counsel fees.

Plaintiffs requested defendants produce certain records under OPRA and the common law right of access. Requests three and nine are the subject of this appeal:

3. Copies of the requests for documents or records that were sent to Chief Rudy Beu by the civilian authorities at Vineland. It is our understanding that Chief Beu refused to comply with part of the request. Please specify the items that Chief Beu complied with

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<sup>1</sup> N.J.S.A. 47:1A-1 to -13.

(released) and the items that Chief B[eu] refused to release.<sup>[2]</sup>

. . . .

9. Names, date of hire, date of separation and reason for separation and salary of individuals who either resigned or were terminated in the last [seven] years from your Vineland Police Department.

In responding to request three, defendants stated because it "references an ongoing investigation[,] . . . [it] is not releasable as per N.J.S.A. 47:1A-1.1(4)." Defendants responded to request nine by providing a spreadsheet containing officers' names, hiring dates, termination dates, reasons for the termination, and the officers' base salaries. In addition, defendants stated they would provide a more thorough response within ten days.

Plaintiffs responded to defendants' email, stating "You did not provide records showing the reason(s) for separation and demotion(s) regarding item [nine] . . . . Your data showed the employment actions but does not show the reason(s) for the employment actions."<sup>[3]</sup> Please respond soon so we can resolve

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<sup>2</sup> Chief Beu was the subject of an ongoing investigation by the Vineland Police Department.

<sup>3</sup> On the spreadsheet, defendants listed "other" as the reason for termination for a majority of the officers.

the issues amicably." Defendants did not provide any additional documents outlining the reasons for the employment actions.

Thereafter, plaintiffs filed an order to show cause and verified complaint seeking production of the requested items, reasonable counsel fees and costs, and other equitable relief. After hearing oral argument, the trial court found in an oral decision that plaintiffs were entitled to the documents under request three pursuant to the OPRA exception delineated in N.J.S.A. 47:1A-3. Under the statute, if requested records pertained to an ongoing investigation by a public agency, "the right of access provided [in the statute] . . . may be denied if the inspection, copying, or examination of such record or records shall be inimical to the public interest." N.J.S.A. 47:1A-3.

The trial court found defendants did not make the requisite showing that the provision of records under request three would be inimical to the public interest. Therefore, the records were subject to disclosure under OPRA after appropriate redactions.

In addressing request nine, the court found that in seeking the specific reason behind an officer's separation from employment, plaintiffs were asking for information in an employee's personnel record. And personnel records were exempted from disclosure under OPRA.

However, the trial court found the common law right of access permitted the disclosure of the records sought in request nine, stating that the State's interest in preventing the disclosure was outweighed by the citizen's right to access the information.

The trial court also found that because plaintiffs were entitled under OPRA to the disclosure of records under request three, they were a prevailing party entitled to reasonable attorney's fees under N.J.S.A. 47:1A-6. They were not entitled to fees for the disclosure of the request nine documents because those records were ordered to be disclosed under the common law right of access.

Thereafter, the trial court considered plaintiffs' certification of services and the applicable principles of law and awarded plaintiffs \$2995 in counsel fees and costs. The court noted plaintiffs had challenged three items denied by defendants in the verified complaint.<sup>4</sup> And plaintiffs only prevailed under OPRA on one of the requests. Therefore, plaintiffs were only entitled "to roughly one-third of the amount" of the requested fees. The court addressed each entry in the certification of services, reducing much of the billed time.

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<sup>4</sup> Plaintiffs did not appeal from the court's denial of the third requested item.

On appeal, defendants contend the court erred in ordering the disclosure of records under OPRA regarding request three and in compelling the disclosure of records responsive to request nine under the common law right of access, and in its award of counsel fees.

Our review of the statutory interpretation of OPRA is de novo. Simmons v. Mercado, 247 N.J. 24, 38 (2021) (citing In re N.J. Firemen's Ass'n Obligation, 230 N.J. 258, 273-74 (2017)).

As stated, during the pendency of this appeal, the Supreme Court issued two decisions that essentially resolve the issues presented here. We begin with request three.

In Rivera v. Union Cnty. Prosecutor's Off., 250 N.J. 124 (2022), the Court held that N.J.S.A. 47:1A-9(b) exempted the disclosure of the requested internal affairs report. Id. at 143. However, the Rivera Court found that "OPRA does not limit the right of access to government records under the common law." Ibid. (citing N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 578 (2017)). Under the common law right of access, the definition of a "public record" is broader than under OPRA. Ibid. (citing Mason v. City of Hoboken, 196 N.J. 51, 67 (2008)). Therefore, the Court held that the internal affairs report qualified as a record under the common law right of access. Id. at 149.

Here, defendants denied plaintiffs' request for internal affairs reports regarding an ongoing investigation of Chief Beu. The trial court found OPRA required the records' disclosure. The Rivera holding mandates we reverse the trial court's ruling.

However, the reports are subject to disclosure under the common law right of access, as internal affairs reports are public records. Rivera, 250 N.J. at 149. But, prior to a court ordering disclosure, the requestor must demonstrate they have an interest in the subject matter of the material and that the requestor's right to access outweighs the State's interest in preventing disclosure. Id. at 144.

Because the trial court found OPRA required the disclosure of request three records, it did not conduct a common law right of access analysis or balance the parties' interests as required under Rivera. Therefore, we remand for the trial court to conduct this analysis and to redact any sensitive information.

A second recent Supreme Court opinion controls the issue raised regarding the disclosure of records under request nine. In Libertarians for Transparent Gov't v. Cumberland Cnty., 250 N.J. 46 (2022), the Court held that a settlement agreement involving an internal disciplinary action against a public employee, which included personnel records, was subject to disclosure under

OPRA because it was a "government record" and not precluded under any exemption. Id. at 57. The Court further held that the portion of the settlement agreement detailing the reasons why a government employee was separated from government service qualifies as a government record under N.J.S.A. 47:1A-10 and must be disclosed after it is properly redacted. Id. at 56-58.

Therefore, under Libertarians, 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 documents must be properly redacted. Therefore, the trial court's order to produce those documents is affirmed, albeit for different reasons.

We turn then to a consideration of the counsel fees award. As stated, the court awarded fees to plaintiffs as a prevailing party under request three and not under request nine. In light of our determination today, plaintiffs are still a prevailing party under OPRA and entitled to attorney's fees—although that entitlement is now under request nine and not under request three.

The fact that plaintiffs are entitled to fees under a different OPRA request does not affect the court's fee award. The trial judge carefully considered the fee application, reviewing the certification of services and hourly rate. The court also acknowledged plaintiffs only prevailed on one of the three challenged




requests (which has not changed under this decision) and tailored the award accordingly. The amount of counsel fees was supported by sufficient reasoning. We see no reason to disturb the fee award.

We affirm the court's order regarding the disclosure of documents under request nine. We also affirm the counsel fee award. We vacate the portion of the court's order disclosing records under request three and remand for the court to conduct the appropriate analysis under Rivera for disclosure and redaction under the common law right of access.

Affirmed in part, vacated in part, 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