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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4009-21

NJ CRIMINAL INTERDICTION
LLC d/b/a STREET COP
TRAINING,

Plaintiff-Appellant,

v.

KEVIN WALSH, ACTING STATE
COMPTROLLER, STATE OF NEW
JERSEY, OFFICE OF THE STATE
COMPTROLLER,

Defendant-Respondents.

Argued November 16, 2022 – Decided November 23, 2022

Before Judges Haas, DeAlmeida and Mitterhoff.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-0996-22.

Jonathan F. Cohen argued the cause for appellant (Plosia Cohen LLC, attorneys; Jonathan F. Cohen, of counsel and on the brief).

John D. North argued the cause for respondent (Greenbaum, Rowe, Smith & Davis, attorneys; John D. North, of counsel and on the brief; Christine Machnowsky and Akshar U. Patel, on the brief).

PER CURIAM

Plaintiff New Jersey Criminal Interdiction LLC d/b/a Street Cop Training (Street Cop) appeals from a July 26, 2022 order denying their request for an order quashing defendant, State of New Jersey, Office of the State Comptroller's (OSC), subpoena and granting OSC's request for an order compelling Street Cop to fully respond to the subpoena within fourteen days of the order. We affirm substantially for the reasons set forth in Judge Robert Lougy's written opinion.

We discern the following facts from the record. OSC is an independent state agency focused on the accountability, transparency, and efficiency of the state executive branch and its finances.

Established in 2008, OSC is tasked with examining all aspects of government expenditures, including reviewing public contracts, auditing finances, and evaluating the performance of programs. OSC reviews contracts and conducts audits of the executive branch of State government, including, among other entities, local governments, state colleges and universities, state agencies, and independent state authorities.

In 2010, the powers of the Office of the Inspector General were consolidated under OSC. Since then, OSC has worked to detect and uncover government waste, fraud and abuse, monitor the performance of

executive branch employees, officials, and entities, and issue investigative reports to the public.

OSC, About, Work We Do, <https://www.nj.gov/comptroller/about/work/> (last visited November 2, 2022); see also N.J.S.A. 52:15C-1; 15B-1.

The OSC and the powers it wields are the amalgamation of the Office of the Inspector General, The Office of the Medicaid Inspector General, and the Office of the State Comptroller.

In 2010, the Legislature consolidated the three agencies into the Office of State Comptroller. The powers, functions, and duties of the Office of the Inspector General and the Office of the Medicaid Inspector General were transferred to the Office of State Comptroller to be exercised by the State Comptroller.

OSC, OSC's Statutes, Introduction, <https://www.nj.gov/comptroller/about/statutes/#section0> (last visited November 16, 2022).

The OSC has wide-ranging authority to access documents from state and local law enforcement agencies, including private police training materials and curricula because they are entities that are part of the executive branch or are exercising executive branch authority. See N.J.S.A. 52:15C-14(b). Any state entity, public entity, or private vendor that receives funds from such units in the executive branch of state government and units of local government, must

provide OSC with prompt access to all relevant documents and information requested by OSC. N.J.S.A. 52:15C-14.

In order to provide the oversight necessary to effectuate its mandate, OSC has the authority to "subpoena, any documents, books, records, papers, objects, or other evidence" it "reasonably believes may relate to a matter under investigation." N.J.S.A. 52:15B-8(c). "If any person to whom such subpoena is issued" refuses to comply with the subpoena, then OSC "may apply to the Superior Court and the court may order the person to" comply. Id.

In November 2021, OSC launched the Police Accountability Project, which publicly proclaimed OSC's focus on detecting waste, fraud, abuse, and misconduct in law enforcement agencies exercising executive branch authority and reviewing and reporting to the general public on how taxpayer funds are used for policing. OSC, Police Accountability Project, <https://www.nj.gov/comptroller/about/work/police/> (last visited November 10, 2022).

Street Cop is a private company that provides training to law enforcement in New Jersey and throughout the nation. Street Cop has grown to be one of the largest police training providers in the United States and provides law enforcement training to an estimated 25,000 to 30,000 police officers annually,

including several thousand officers from New Jersey. Most law enforcement officers who attend Street Cop's training seminars have their attendance paid by the governmental agency which employs them. When New Jersey municipalities and other governmental entities send officers to Street Cop's seminars, they typically pay by way of a purchase voucher.

Beginning on October 4, 2021, Street Cop held a five-day Street Cop Training Conference at Harrah's Casino in Atlantic City, New Jersey. The training was attended by approximately 1000 persons, including law enforcement officers from New Jersey and throughout the United States. One of the guest speakers at the event was Tomi Lahren, a Fox News television personality who is popularly associated with the Republican party because of her political viewpoints. Due to Lahren's presence, the conference received media attention from a handful of news outlets with political ideologies at odds with those of Lahren.¹ Approximately half-a-year later, Street Cop received a request for documents from OSC. Street Cop notes that, prior to their October 4th event, the OSC had never contacted Street Cop.

¹ Street Cop implies that their speaker's political viewpoint and the media coverage of their event improperly caused OSC's initial document request.

On May 27, 2022, OSC sent Street Cop a "First Request for Documents" requesting the following documents and information pursuant to authority vested in OSC by N.J.S.A. 52:15C-14(d):

1. Any and all documents and information concerning payment for services by any New Jersey law enforcement agency to Street Cop Training or to NJ CRIMINAL INTERDICTION LLC. This includes, but is not limited to, invoices and receipts for officer training at any and all training classes, training conferences and seminars;
2. A list of the New Jersey law-enforcement officer attendees of the Street Cop Training seminar in Atlantic City on or around October 4-8, 2021, or attended that same training through "On Demand Training," along with the name of the law enforcement agency at which the officer reported they were employed at the time;
3. An unedited video/DVD/or digital copy of the Street Cop Training seminar in Atlantic City on or around October 4-8, 2021, which accurately reflects the entire training seminar. This includes, but is not limited to, full video footage of all classes, any question and answer sessions, and any introductory remarks, statements, speeches, or presentations by guest speakers;
4. Copies of any written or other materials provided to the attendees of the Street Cop Training seminar in Atlantic City on or around October 4-8, 2021, including any documents, manuals, checklists, or other information provided upon registration for the seminar, during the seminar or after the seminar; and

5. Any and all documents and information about qualifications of the instructors at the Street Cop Training seminar in Atlantic City on or around October 4-8, 2021, including but not limited to resumes and copies of training certifications or licenses.

On June 7, 2022, Street Cop filed a verified complaint alleging that OSC exceeded its statutory authority, violated the Administrative Procedures Act (APA), and acted in violation of the New Jersey Civil Rights Act. Street Cop's order to show cause specifically sought to:

- (1) enjoin the OSC from compelling Street Cop to produce the materials sought in its material request;
- (2) declare the Police Accountability Project ultra vires;
- (3) require the Project to establish the relevance of any future document request in advance; and
- (4) award Street Cop fees and costs and such further relief the court may deem just and proper.

On June 9, 2022, counsel for Street Cop emailed OSC requesting "that the June 10, 2022 due date for the production of documents be held in abeyance pending resolution of the court action which [Street Cop] filed [June 9, 2020]." OSC declined:

We will not hold in abeyance our document request, but will accept information on a rolling basis to the extent that some extra time is needed to fully comply with the request. [] Street Cop [] regularly grants law enforcement officers access to video of the "on-

demand” training seminar held Oct. 4-8, 2021 in Atlantic City. There is simply no reason supported by law why OSC cannot be granted the same access by the June 10 due date.

On June 10, 2022, the court denied Street Cop's order to show cause.² On June 14, 2022, Street Cop advised OSC that they would "not provide any documents to the OSC until the matter has been adjudicated as a non-summary action [].".

Thereafter, on June 16, 2022, Street Cop filed a certification of track change requesting that the underlying action be modified from track 1 to track 3, which the court granted on June 22, 2022. The change to track 3 extended the probable date of resolution to 2023.

On June 23, 2022, OSC issued an Administrative Action Subpoena (the subpoena) upon Street Cop's place of business, seeking the same documents and information OSC requested in their First Request.³ OSC further stated that failure to comply may subject Street Cop to penalties.

² The court denied the application because Street Cop did not identify a rule or statute that permitted the court to proceed in a summary manner.

³ The subpoena "does not identify any docket number or other information about a pending or contemplated administrative action in the office of administrative law or elsewhere."

On June 27, 2022, Street Cop filed a motion to quash the subpoena and for a protective order to prevent OSC from filing any other subpoenas until its complaint was adjudicated. In support, Street Cop argued (1) that OSC issued the subpoena in retaliation for Street Cop's complaint; (2) that the subpoena was filed as an administrative action outside of the existing docket; (3) that OSC failed to identify the relevance of the requested documents or the matter at issue; and (4) that the subpoena was an effort to prevent Street Cop from obtaining a meaningful ruling on the merits of its lawsuit.

On July 14, 2022, OSC filed opposition to Street Cop's motion to quash and cross-moved to enforce the subpoena. In support, OSC argued (1) that the subpoena was issued pursuant to OSC's authority to ensure the public funds spent on police training are done so effectively and efficiently; (2) that the subpoena was properly issued pursuant to N.J.S.A. 52:15B-8(c); (3) that OSC's specific enabling statutes of N.J.S.A 52-15B-7 and 15B-8(c) allows OSC to subpoena Street Cop for police training materials; and, (4) that Street Cop's reliance on N.J.A.C. 1:1-11.1 fails because the matter is not a contested case under N.J.S.A. 52:14B-2, but is an exercise of OSC's statutory powers. Within OSC's opposition, Jane Schuster, Senior Advisor for Police Accountability at OSC, certified that the subpoena issued to Street Cop "was issued in furtherance

of an OSC investigation," and "OSC requested the specified information in its subpoena to Street Cop Training based on its belief that the requested information may relate to the matter under investigation."

The trial court heard oral argument on the parties' motions on July 22, 2022. The trial court denied Street Cop's motion to quash and granted the OSC's cross-motion to enforce the subpoena in a July 26, 2022 order, which stated:

1. Plaintiff's request for an Order quashing Defendant's subpoena returnable July 8, 2022 is DENIED.
2. Plaintiff's request for an Order requiring Defendant to seek leave of the Court before filing additional subpoenas during the pendency of this matter is DENIED.
3. Defendant's request for an Order compelling Petitioner to respond fully to the Subpoena is Granted. Plaintiff shall provide Defendant with the requested documents within fourteen days of this Order.

The judge determined that, in order to ensure that the OSC can achieve "its 'goal of subjecting governmental financial activities to uniform, meaningful, and systematic public scrutiny,' private vendors in receipt of public monies must provide unconditional cooperation by granting access to all documents relevant to its business with the governmental entity."

On August 29, 2022, we granted Street Cop's motion for leave to appeal. Plaintiff raises the following issues for our review:

POINT I

THE TRIAL COURT ERRED BY FAILING TO APPLY ACCEPTED LEGAL STANDARDS GOVERNING MOTIONS TO QUASH ADMINISTRATIVE SUBPOENAS.

POINT II

THIS CASE PRESENTS AN EXTRAORDINARY CIRCUMSTANCE WHICH MANDATES THE APPELLATE DIVISION'S INTERVENTION SO AS TO FURTHER THE INTEREST OF JUSTICE.

II.

We review a trial judge's decision on a motion to quash a subpoena for an abuse of discretion. In re Subpoena Duces Tecum, 214 N.J. 147, 162 (2013). Under Rule 1:9-2, a trial court, "may quash or modify [a] subpoena or notice if compliance would be unreasonable or oppressive. . . ." We find no abuse of discretion in the judge's determination that OSC properly wielded their statutory authority in issuing the subpoena to Street Cop.

As the judge found, N.J.S.A 52:15B-8(c) gives the Inspector General, and OSC, the authority to issue a subpoena to compel sworn testimony "in furtherance of an investigation" where "[OSC] reasonably believes [the documents] may relate to a matter under investigation." N.J.S.A 52:15C-14(d) gives OSC the authority to request that "[p]rivate vendors or other persons

contracting with or receiving funds from a unit in the Executive branch of State government. . . upon request by the State Comptroller[,] provide [OSC] with prompt access to all relevant documents and information as a condition of the contract and receipt of public monies."

In this case, the mission statement of the OSC—to subject governmental financial activities to uniform, meaningful, and systematic public scrutiny—and the purpose of the Police Accountability Project—detecting waste, fraud, abuse, and misconduct in law enforcement—provides an investigative purpose that authorizes an OSC subpoena pursuant to N.J.S.A 52:15B-8(c). Further, the subpoena was issued pursuant to" N.J.S.A 52:15C-14(d) because it was relevant to the "contract and receipt of public monies" related to Street Cop's October 2021 police training conference.

Finally, we reject plaintiff's arguments that OSC exceeded its statutory authority by appearing to target Street Cop "based on politics"; by reviewing "the arcane field of private police training curricula"; or by forming the Police Accountability Project. Street Cop's arguments are meritless because, as the judge intimated in his order, police departments have always been subject to investigations and audits in accordance with OSC's enabling legislation.

Regarding OSC's creation of the Police Accountability Project, the judge notes that:

The OSC's decision to create the Police Accountability Project was not an "agency action" or an "agency determination" that requires rulemaking pursuant to the APA. The OSC did not make an agency determination, it announced the project "to assist in carrying OSC's core statutorily-authorized oversight of the Executive Branch and "entities exercising executive branch authority." ⁴

The judge did not abuse his discretion in finding that OSC's subpoena and Police Accountability Project were within OSC's established statutory authority.

We decline to address plaintiff's remaining argument that OSC abused its administrative powers by serving the subpoena in retaliation to Street Cop's June 7, 2022 complaint. We find that the argument lacks sufficient merit to warrant discussion in a written opinion. Rule 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION

⁴ The judge noted that if the question was whether, pursuant to the APA, OSC has the authority to review law enforcement training or create the Police Accountability Project, then the question must be assessed by the Appellate Division. Such an analysis is unnecessary because OSC's actions are authorized by N.J.S.A 52:15B-8(c) and N.J.S.A 52:15C-14(d).