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SUPERIOR COURT
BURLINGTON COUNTY

2017 MAY 25 PM 12:50

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<p>FRAN BROOKS, Plaintiff, v. TOWNSHIP OF TABERNACLE, LaSHAWN R. BARBER in her official capacity as Municipal Clerk and Records Custodian of the Township of Tabernacle, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BURLINGTON COUNTY</p> <p>DOCKET NO. <u>L-1198-17</u></p> <p>CIVIL ACTION</p> <p>VERIFIED COMPLAINT</p>
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Plaintiff Fran Brooks, through her undersigned counsel Law Offices of
Walter M. Luers, LLC, complaining of the Defendants, alleges as follows:

1. This is an action alleging a violation of the Open Public Records Act, *N.J.S.A. 47:1A-1, et seq.* ("OPRA") and the common law right of access.
2. This action is being brought because the Defendants have denied Plaintiff access to the roster of the Tabernacle Rescue Squad that is contained within the Emergency Operations Plan ("EOP") of Tabernacle Township, as well as other rosters that are contained within the EOP.

THE PARTIES

3. Plaintiff Fran Brooks is a citizen of the State of New Jersey and resides at 78 Moores Meadow Road, Tabernacle, New Jersey.
4. Defendant Township of Tabernacle is a public municipal body corporate and politic of the State of New Jersey and is a political subdivision of the State

of New Jersey. Defendant Township's principal place of business is 163 Carranza Road, Tabernacle, New Jersey.

5. Defendant Township is a "public agency" as the term is defined by OPRA, *N.J.S.A. 47:1A-1.1*.

6. Defendant La Shawn R. Barber is the Municipal Clerk and Records Custodian of the Township and by operation of law is a "Custodian of a government record" as that term is defined by *N.J.S.A. 47:1A-1.1*.

7. Defendant Barber's principal place of business is 163 Carranza Road, Tabernacle, New Jersey.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction of this action pursuant to *N.J.S.A. 47:1A-6* and the common law.

9. Venue is proper in this court pursuant to *R. 4:3-2(a)(2)* because all of the relevant events occurred in Burlington County and the Defendants' principal place of business or residence are located in Burlington County.

FACTUAL ALLEGATIONS

10. On March 29, 2017, Plaintiff submitted a written OPRA request to the Defendants that, in relevant part, asked for copies of the rosters of the Tabernacle Rescue Squad ("TRS"), Tabernacle Fire Company #1 ("TFC#1), Community Emergency Response Team ("CERT"), and the Tabernacle Local Emergency Planning Committee ("LEPC") "as currently contained within the Tabernacle Township, Office of Emergency Management, NJOEM approved Emergency Operations Plans."

11. On April 10, 2017, the Defendants, through Ms. Barber, responded in writing to Plaintiff's March 29, 2017 OPRA request. With respect to the Tabernacle Rescue Squad Roster ("TRS Roster"), the Defendants denied access to that record. The Defendants stated "no records responsive to your request exist" and that "Tabernacle OEM retains no files with regard to the membership of the Tabernacle Rescue Squad nor Tabernacle Fire Company outside of the [Emergency Operations Plan]." In that same denial, the Defendants also claimed that the entire Emergency Operations Plan ("EOP") was exempt from access. (The denial of the entire EOP is not being challenged here). Since the Defendants claimed the entire EOP was exempt from access, and the TRS Roster is contained within the EOP, the Defendants denied Plaintiff access to the TRS Roster. (The request and the denial are attached as Exhibit A to the Brooks Certification being filed with this case). With respect to the rosters of the TFC#1, CERT, and LEPC, the Defendants produced rosters that were located outside of the EOP, but declined to produce the rosters that were within the EOP.

12. While certain parts of the EOP might not be subject to access, the TRS Roster and the TFC#1, CERT and LEPC Rosters are public records, even if they are contained within the EOP. Rosters of individuals are not treated as confidential. Such rosters are public records in the same way that names of public employees are public records. Such information is of significant public importance because the Township of Tabernacle, in their emergency planning, is relying on volunteers, including both Tabernacle Fire Company No. 1 and Tabernacle Volunteer Rescue Squad, to play roles in the event of emergencies.

13. Plaintiff has a legitimate private interest and a wholesome public interest in accessing the TRS Roster and other rosters. Plaintiff lives in Tabernacle, owns property there, regularly blogs about Tabernacle's local affairs and politics, and is concerned about the operations of the Tabernacle Rescue Squad. Who is on the squad, what their training and qualifications are, and other facts about the make-up of the Tabernacle Rescue Squad are integral to Plaintiff's ability to understand the provision of emergency services in Tabernacle Township and to ensure that the Township manages all emergency services in a way that promotes the "professional, efficient, cooperative and effective delivery of all emergency services in the Township." The same may be said of TFC#1, CERT and LEPC.

14. Defendants have no legitimate interest in maintaining the confidentiality of the withheld rosters. Defendants' interests do not outweigh the Plaintiff's interest in obtaining the documents.

COUNT I: VIOLATION OF OPRA (N.J.S.A. 47:1A-1, *ET SEQ.*)

15. The Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-14 of the Plaintiff's complaint as though fully set forth at length herein.

16. The Defendants have violated OPRA by not providing a copy of the TRS Roster that was requested by Plaintiff, as well as the TFC#1, CERT and LEPC Rosters located within the EOP, if they are different than what was produced to the Plaintiff.

COUNT II: VIOLATION OF COMMON LAW RIGHT OF ACCESS

17. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-16 of the Plaintiff's complaint as though fully set forth at length herein.

18. Plaintiff has a common law right of access to receive a copy of the TRS Roster and the TFC#1, CERT and LEPC Rosters located within the EOP, if they are different than what was produced to the Plaintiff.

19. Plaintiff has a legitimate private interest and wholesome public interest in the requested records.

20. Defendants have no legitimate interest in maintaining the secrecy of the requested TRS Roster and TFC#1, CERT and LEPC Rosters within the EOP.

Therefore, the Defendants have violated Plaintiff's common law right of access.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against the Defendants:

A. Ordering Defendants to disclose a copy of the current TRS Roster to Plaintiff, as well as copies of the current TFC#1, CERT and LEPC Rosters in the EOP, if they are different than what was produced to Plaintiff;

B. Awarding Plaintiff costs and reasonable attorneys' fees; and

C. For such other or further relief as this Court deems just and equitable.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of

my knowledge and belief. Also, to the best of my knowledge and belief no other action of arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

CERTIFICATION PURSUANT TO R. 1:38-7(B)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Walter M. Luers, Esq. is designated as trial counsel on behalf of Plaintiff.

Respectfully Submitted,

LAW OFFICES OF WALTER M. LUERS, LLC

DATED: May 24, 2017

By: 

Walter M. Luers, Member
Suite 2
122 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656
Counsel for Plaintiff

VERIFICATION

DEPUTY CLERK
SUPERIOR COURT
BURLINGTON COUNTY


2017 MAY 25 PM 12:50

Fran Brooks, of full age, certifies as follows:

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MAY 25 2017

1. I am the Plaintiff in the action captioned "Brooks v. Township of
Tabernacle, *et al.*" All of the facts stated in the verified complaint to which this Verification is
attached are true, and as to those facts that are alleged on information and belief, I believe those
facts to be true.

2. I certify that the foregoing statements made by me are true. I am aware
that if any of the foregoing statements made by me are willfully false, I am subject to
punishment.



Fran Brooks

Dated: May 23 2017