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Attorney for Plaintiff Hirsch

HELEN HIRSCH,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	HUDSON COUNTY
vs.	:	DOCKET NO.
	:	
CITY OF HOBOKEN, CITY CLERK	:	Civil Action
OF THE CITY OF HOBOKEN, and	:	
JOHN CASSESA, FIRE CHIEF OF	:	
THE CITY OF HOBOKEN,	:	
Defendants.	:	
	:	VERIFIED COMPLAINT

Plaintiff Helen Hirsch, by way of complaint against the Defendants City of Hoboken, City Clerk of the City of Hoboken and John Cassesa, Fire Chief of the City of Hoboken states as follows:

Preliminary Statement

1. This is an action under the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-6, and the common law right of access to records, challenging the City of Hoboken's denial of access to portions of a Financial Disclosure Statement and its failure to give any written reason for that denial of access.

Parties

2. Plaintiff Helen Hirsch is an individual residing at 98 Park Avenue, Hoboken, New Jersey.

3. Defendant City of Hoboken is a political subdivision of

the State of New Jersey.

4. Defendant City Clerk of the City of Hoboken is the Records Custodian for the City of Hoboken.

5. Defendant John Cassesa is Fire Chief of the City of Hoboken. (Ex. B-1.)

**First Count
(Failure to Give Written Reasons)**

6. Plaintiff repeats the allegations stated above as if set forth at length herein.

7. On June 12, 2006, Defendant City of Hoboken received from Plaintiff Hirsch a request for "financial disclosure statements of all elected officials, department heads, attorneys." (Ex. A.)

8. On June 19, 2006, Defendant City Clerk replied to Hirsch's records request, (Ex. A), by supplying Hirsch with redacted Financial Disclosure Statements, including that of Defendant Fire Chief John Cassesa (Ex. B.)

9. The City Clerk did not supply Hirsch with a City of Hoboken Public Records Request Response, which contains a space for giving the reason for record withholding. (Ex. C.)

10. The City of Hoboken did not indicate on Hirsch's request form the basis for the redactions. (Ex. A.)

11. The City's failure to indicate on the request form the specific basis for the redactions violated OPRA, N.J.S.A. 47:1A-5(g).

WHEREFORE, Plaintiff demands judgment against Defendants

City of Hoboken and City Clerk as follows:

A. Declaring that the City of Hoboken and the City Clerk violated OPRA, N.J.S.A. 47:1A-5(g), by failing to indicate in writing the specific basis for the redactions;

B. Enjoining the City of Hoboken and the City Clerk from failing to indicate in writing the specific basis for any redaction or withholding in response to an OPRA records request from Helen Hirsch;

C. Imposing a civil penalty of \$1,000.00 upon the City Clerk;

D. Awarding costs and attorney's fees; and

E. For such other relief as the Court deems equitable and just.

**Second Count
(Denial of OPRA Access)**

12. Plaintiff repeats the allegations stated above as if set forth at length herein.

13. The City of Hoboken and City Clerk denied Hirsch access to portions of the requested Cassesa Financial Disclosure Statement. (Ex. B.)

14. The City of Hoboken and City Clerk's denial of access to the requested record violated OPRA, N.J.S.A. 47:1A-1, -5.

WHEREFORE, Plaintiff demands judgment against Defendant City of Hoboken and City Clerk as follows:

A. Declaring that the City of Hoboken and City Clerk

violated OPRA by refusing to provide access to the Cassesa Financial Disclosure Record in unredacted form;

B. Enjoining the City of Hoboken and City Clerk from failing to provide Hirsch with requested Financial Disclosure Records in unredacted form;

C. Imposing a civil penalty of \$1,000.00 upon the City Clerk;

D. Awarding costs and attorney's fees; and

E. For such other relief as the Court deems equitable and just.

**Third Count
(Denial of Common Law Access)**

15. Plaintiff repeats the allegations stated above as if set forth at length herein.

16. The City of Hoboken and City Clerk's failure to provide Hirsch the Cassesa Financial Disclosure Statement in unredacted form violated the common law right of access to public records.

WHEREFORE, Plaintiff demands judgment against Defendant City of Hoboken and City Clerk as follows:

A. Declaring that the City of Hoboken and City Clerk violated the common law right of access to public records by refusing to provide access to the Cassesa Financial Disclosure Records in unredacted form;

B. Enjoining the City of Hoboken and City Clerk from failing to provide Hirsch with requested Financial Disclosure Records in

unredacted form;

C. Awarding costs; and

D. For such other relief as the Court deems equitable and just.

Designation of Trial Counsel

Plaintiff designates Richard Gutman as trial counsel in this action.

Certification Pursuant to R. 4:5-1(b)

The Plaintiff certifies that the matter in controversy is not the subject of any other action pending in any court or arbitration proceeding and that she is not contemplating any other action or arbitration proceeding regarding the subject matter of this action. Plaintiff is not aware of any other party that should be joined in this action.

Respectfully submitted,

Richard Gutman

September 1, 2006

September 5, 2006

LETTER BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE

The Honorable Carmen Messano, P.J.S.C.
Superior Court of New Jersey
Brennan Courthouse
583 Newark Avenue, 2nd Floor
Jersey City, NJ 07306

Re: Helen Hirsch, Plaintiff,

v.

City of Hoboken, City Clerk of the City
of Hoboken and John Cassesa, Fire Chief
of the City of Hoboken, Defendants.

Docket No.

Civil Action

Dear Judge Messano:

This letter in lieu of formal brief is submitted on behalf of Plaintiff Helen Hirsch in support of her request for an order to show cause.

Statement of Facts

This complaint concerns an Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 to 11, and common law request that Helen Hirsch sent to the Record Custodian of the City of Hoboken. Hirsch requested a copy of the Financial Disclosure Statements for all

elected, official, department heads and attorneys. (Ex. A.)

The Record Custodian (City Clerk) responded by sending Hirsch copies of the Financial Disclosure Statements with all, or nearly all, financial information redacted. He also redacted home addresses. (Ex. B.)

The Record Custodian did not give any written reason for redacting these public records.

ARGUMENT

The Open Public Records Act ("OPRA") favors public access to government records. "Any limitations on the right of access accorded by [OPRA] are construed in favor of the public's right of access." N.J.S.A. 47:1A-1. And the "public agency shall have the burden of proving that the denial of access is authorized by law." N.J.S.A. 47:1A-6.

The Local Government Ethics Law requires the annual filing of a Financial Disclosure Statement by local government officials. N.J.S.A. 40A:9-22.6(a). The Law expressly states, "[a]ll financial disclosure statements filed shall be public records" (emphasis added). N.J.S.A. 40A:9-22.6(c). The Department of Community Affairs, Division of Local Government Services, distributes to all municipal clerks Local Finance Notice 2006-4 about Financial Disclosure Statements that expressly states, "Financial Disclosure Statements are considered public records." <http://www.nj.gov/dca/lgs/lfns/06lfns/2006-4.doc>

Thus, the City of Hoboken Record Custodian's redaction of

financial and other information from the Financial Disclosure Statement was a blatant violation of OPRA and the common law right of access to public records.

In addition, the Record Custodian failed to give any written reason for the redactions. After providing that the official records request "form shall also include . . . space for the custodian to list reasons if a request is denied in whole or in part," OPRA expressly states, "[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefore on the request form and promptly return it to the requestor." N.J.S.A. 47:1A-5f, g. Thus, the Record Custodian's failure to give any written reason for the redactions was another blatant violation of OPRA.

OPRA's requirement that an agency give a specific written basis for its redaction serves several purposes. First, a records requestor cannot effectively challenge a withholding if the requestor is unaware of its legal rationale. In a federal Freedom of Information Act lawsuit, one court stated, "Denial of this information would in all likelihood be a violation of due process." Shermco Industries, Inc. v. Secretary of the Air Force, 452 F.Supp. 306, 317 n.7 (N.D. Tex. 1978), rev'd on other grounds, 613 F.2d 1314 (5th Cir. 1980).

Secondly, nondisclosure of the legal grounds for the withholding results in unnecessary litigation. In those instances in which the agency has a legitimate legal ground for withholding

access, informing the requestor of the legal basis may enlighten the requestor as to why further litigation would be unwarranted and futile. In contrast, if the records requestor is not informed of the legitimate basis for the withholding, he or she may continue to litigate, thereby needlessly burdening the courts, the requestor and the tax-payers who pay the agency's attorney.

Finally, Hirsch is asking pursuant to N.J.S.A. 47:1A-11 for a \$1,000.00 sanction against the City Clerk, as the Records Custodian. Four years after the effective date of OPRA, it should be assumed that all records custodians know that they are required to give a written reason for any redaction or withholding. Moreover, as a government official required to annually file a Financial Disclosure Statement, the City Clerk's knowledge that Financial Disclosure Statements are public records can be assumed.

Respectfully submitted,

Richard Gutman
Attorney for Plaintiff Hirsch