

**FILED**  
JUN 28 2019  
BONNIE J. MIZDOL, A.J.S.C.

THE APPROVAL OF THE COMMITTEE ON OPINIONS

<p>STEVEN WRONKO,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>BOROUGH OF NORTH ARLINGTON AND KATIE MOORE, in her official capacity as Records Custodian for the Borough of North Arlington,</p> <p style="text-align: center;"><i>Defendants.</i></p>
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BERGEN COUNTY

DOCKET NO. BER-L-2744-19

CIVIL ACTION

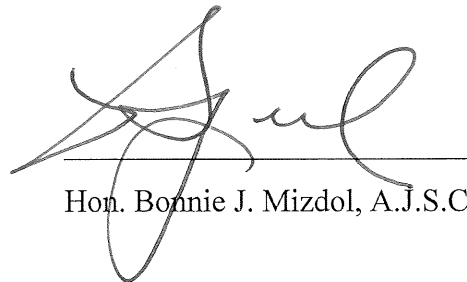
**ORDER**

THIS MATTER having come before the court pursuant to R. 4:67-1 and 2(a) by CJ Griffin, Esq. and Michael J. Zoller, Esq., (Pashman, Stein, Walder, Hayden, P.C.), counsel for plaintiff, Steven Wronko, by Verified Complaint and Order to Show Cause for an Order requiring Defendants, Borough of North Arlington and Katie Moore, Borough Clerk and Records Custodian of the Borough of North Arlington, to provide Plaintiff with copies of certain public records, and upon notice to and opposition having been filed by Randy T. Pearce, Esq., (Pearce Law, LLC) on behalf of the Borough of North Arlington and Katie Moore, and the court having heard oral argument on June 17, 2019; and for the reasons set forth on the record and in the court's written opinion annexed hereto, and for good cause shown,

IT IS on this 28<sup>th</sup> day of June, 2019, **ORDERED:**

1. Defendants shall provide to Plaintiff copies of the requested records of the Borough of North Arlington's Facebook pages, free of a special charge, within ten (10) business days of the date hereof;
2. Plaintiff is the prevailing party under OPRA and is, therefore, entitled to an award of reasonable attorneys' fees and costs under N.J.S.A. 47:1A-6. Counsel shall attempt to agree upon a reasonable quantum of fees. Failing to accomplish same, counsel for plaintiff shall submit a certification of services to the Court within fourteen (14) days of the date hereof and Defendants a response within twenty-one (21) days.

**FURTHER ORDERED** that a copy of this Order is to be served upon all counsel of record within five (5) days of the date of this Order.



Hon. Bonnie J. Mizdol, A.J.S.C.

NOT TO BE PUBLISHED WITHOUT  
THE APPROVAL OF THE COMMITTEE ON OPINIONS

STEVEN WRONKO,

*Plaintiff,*

v.

BOROUGH OF NORTH  
ARLINGTON AND KATIE MOORE,  
in her official capacity as Records  
Custodian for the Borough of North  
Arlington,

*Defendants.*

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
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DOCKET NO. BER-L-2744-19

CIVIL ACTION

**OPINION**

**Argued: June 17, 2019**

**Decided: June 28, 2019**

**Honorable Bonnie J. Mizdol, A.J.S.C.**

CJ Griffin, Esq. & Michael J. Zoller, on behalf of the plaintiff, Steven Wronko, (Pashman, Stein, Walder, and Hayden, P.C.)

Randy T. Pearce, Esq., on behalf of defendants, Borough of North Arlington and Katie Moore, in her official capacity as Records Custodian for the Borough of North Arlington, (Pearce Law, L.L.C.)

## **Introduction**

On April 10, 2019, Steven Wronko (“Plaintiff” or “Wronko”) filed a Verified Complaint and Order to Show Cause against the Borough of North Arlington (“the Borough”) and Katie Moore, in her official capacity as Records Custodian for the Borough (“the Custodian,” collectively, “the Defendants”), alleging violations of the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 (“OPRA”). Plaintiff seeks to compel production of government records from the Borough’s official Facebook pages. The issue presented is whether Defendants may impose a special service charge for the production of such records.

## **Facts**

Plaintiff, Steven Wronko, resides in Spotswood, New Jersey. Defendant, Borough of North Arlington, is a municipal entity in Bergen County, New Jersey. Defendant Katie Moore is the Borough Clerk and the statutory Records Custodian for the Borough.

Plaintiff is an activist who routinely monitors government action. His activism includes investigating government censorship of citizens on social media accounts owned and operated by public agencies and their officials. A major part of these investigations is the filing of OPRA requests to determine whether municipalities or their officials have censored their social media pages.

On March 11, 2019, Plaintiff, under the pseudonym “Mike Roland,” filed the following OPRA request with North Arlington:

I would like a copy of the administrative page for the towns Facebook page that is most current as of March 11, 2019.

I would like a copy of the censored words page for the towns Facebook page that is most current as of March 11, 2019.

I would like a copy of the banned profiles page for the towns police department's Facebook page that is most current as of March 11, 2019.

I would like a copy of the administrative page for the towns police department's Facebook page that is most current as of March 11, 2019.

I would like a copy of the censored words page for the towns police department's Facebook page that is most current as of March 11, 2019.

I would like a copy of the banned profiles page for the towns Facebook page that is most current as of March 11, 2019.

[Exhibit A to Verified Complaint.]

The Borough responded to Plaintiff's OPRA request on March 20, 2019, stating that following a review of the request, they would be charging a special service charge of \$200. Exhibit B to Verified Complaint. The \$200 charge was based upon a quote from INSYNC Municipal Systems, ("Insync"), the Borough's information technology consultant, who determined that it would take two hours to produce the requested documents.

Plaintiff, via e-mail, voiced his objection to the fee that same day, challenging the need for substantial effort and time to produce "a few pieces of paper." Exhibit C to Verified Complaint.

The Borough defended the charge, stating:

Please be advised that N.J.S.A. 47:1A-5(d) allows the Borough to charge fees when the request requires "a substantial amount of manipulation or programming of information technology." The Borough "may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical and supervisory assistance required, or both."

As the proposed cost is supported by a documented price quote and is reasonable based on the labor necessary, it is permitted under N.J.S.A. 47:1A-5(d). As such, please provide payment based on the

quote provided. Upon receipt of such payment, the Borough will be happy to provide the requested records.

[Exhibit D to Verified Complaint.]

To date, the Borough has not released any of the requested documents.

Plaintiff filed this Verified Complaint and Order to Show Cause on April 10, 2019.

Testimony and oral argument were entertained on June 17, 2019. Defendant presented two information technology experts. The first was Keith Guirao (“Guirao”), owner and operator of Maven Media. The second was Michael Licameli (“Licameli”), president of Insync. Plaintiff presented Gavin Rozzi (“Rozzi”), an independent journalist, web developer, and technology professional. Rozzi currently operates Rozzi Media Group, a company that develops and operates a variety of technology platforms and offers consulting services on web development and other technology issues. Additionally, the following documents were admitted into evidence: NA-1Ev., NA-2Ev., NA-3Ev., NA-4Ev., and NA-5Ev.

## Law

### A. OPRA

#### a. Generally

The purpose of OPRA, N.J.S.A. 47:1A-1 to -13, is plainly set forth in the statute: “to insure that government records, unless exempted, are readily accessible to citizens of New Jersey for the protection of the public interest.” Mason v. City of Hoboken, 196 N.J. 51, 57 (2008) (citing N.J.S.A. 47:1A-1). The Act replaced the former Right to Know Law, N.J.S.A. 47:1A-1 to -4 (repealed 2002), and perpetuates “the State’s long-standing public policy favoring ready access to most public records.” Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 36 (App. Div. 2005) (quoting Serrano v. S. Brunswick Twp., 358 N.J. Super. 352, 363 (App. Div. 2003)). To accomplish that objective, OPRA establishes a comprehensive framework for access to public

records. Mason, supra, 196 N.J. at 57. Specifically, the statute requires, among other things, prompt disclosure of records and provides different procedures to challenge a custodian's decision denying access. Ibid.

OPRA mandates "all government records shall be subject to public access unless exempt." N.J.S.A. 47:1A-1. Therefore, records must be covered by a specific exclusion to prevent disclosure. Ibid. The Act defines "government record" as follows:

[A]ny paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

[N.J.S.A. 47:1A-1.1.]

The OPRA framework contemplates a swift timeline for disclosure of government records. Mason, supra, 196 N.J. at 57. Unless a shorter time period is prescribed by statute, regulation or executive order, a records custodian must grant or deny access to a government record "as soon as possible, but not later than seven business days after receiving the request." N.J.S.A. 47:1A-5(i). Failure to respond within seven business days "shall be deemed a denial of the request." Ibid. If the record is in storage or archived, the custodian must report that information within seven business days and advise when the record will be made available. Ibid. Courts have repeatedly found providing redacted documents is also a denial and each redaction must have an exemption. See e.g., Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 148

(App. Div. 2011) (holding the redacted portions of the records must be disclosed as they did not meet the trade secret exemption).

If access to a government record is denied by the custodian, the requestor may challenge that decision by filing an action in Superior Court or a complaint with the Government Records Council (“GRC”). N.J.S.A. 47:1A-6. The right to institute any proceeding under this section, however, belongs solely to the requestor. Ibid. If the requestor elects to file an action in Superior Court, the application must be brought within forty-five days of the denial. See Mason, supra, 196 N.J. at 70 (holding, explicitly, a 45-day statute of limitations applies to OPRA actions). The Act, however, specifically provides “a decision of the [GRC] shall not have value as precedent for any case initiated in Superior Court,” N.J.S.A. 47:1A-7, though such decisions are normally considered unless “arbitrary, capricious or unreasonable, or [violative of] legislative policies expressed or implied in the act governing the agency.” Serrano, supra, 358 N.J. Super. at 362 (citing Campbell v. Dep’t of Civil Service, 39 N.J. 556, 562 (1963)).

In OPRA actions, the public agency bears the burden of proving the denial of access is authorized by law. N.J.S.A. 47:1A-6. As such, an agency “seeking to restrict the public’s right of access to government records must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality.” Courier News v. Hunterdon Cnty. Prosecutor’s Office, 358 N.J. Super. 373, 382–83 (App. Div. 2003). Absent the necessary proofs, “a citizen’s right of access is unfettered.” Ibid. In assessing the sufficiency of the proofs submitted by the agency in support of its claim for nondisclosure, “a court must be guided by the overarching public policy in favor of a citizen’s right of access.” Ibid. If it is determined access has been improperly denied, such access shall be granted, and a prevailing party shall be entitled to a reasonable attorney’s fee. N.J.S.A. 47:1A-6.



b. OPRA Special Service Charge

OPRA provides for a reasonable service charge when production of requested records requires unusual expenditures. N.J.S.A. 47:1A-5(d) provides that:

If a request is for a record: (1) in a medium not routinely used by the agency; (2) not routinely developed or maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

[N.J.S.A. 47:1A-5(d)].

Where production of records requires a substantial amount of manipulation or programming of information technology (“IT”), a reasonable fee is permitted. Otherwise, access to “electronic records and non-printed materials shall be provided free of charge.” N.J.S.A. 47:1A-b(1).

**Analysis**

**A. OPRA**

To trigger OPRA’s disclosure requirements, the records requested must be “government records.” N.J.S.A. 57:1A-1.1 defines a government record as any document or recording made or received by any government entity, or any officer, authority or political subdivision thereof, in the course of his or its official business. There is no dispute that the records being sought meet the statutory definition of government records under OPRA and are subject to production.

**I. Special Service Charge**

OPRA instructs that a special service charge is appropriate in situations where production of records would require substantial manipulation of information technology. N.J.S.A. 47:1A-5(d).

The Borough bears the burden of proving that the imposition of any such charge is justified. This court finds that the Borough has failed to carry that burden.

To impose a special service charge, the Borough must prove that a substantial amount of manipulation or programming of information technology is required. It argues that production of the requested screenshots requires the employment of technical expertise and considerable time, qualifying it for a fee. According to the Custodian, she did not possess the “requisite technical experience and expertise to obtain the requested records, and that, in order to produce the requested records, it was necessary to employ the services of the Borough’s information technology professionals.” Moore Certification at ¶ 4. Defendants enlisted Licameli, who certifies that “in light of the substance of the request...and the Borough’s procedures with regard to access to and maintenance of its Facebook pages, a substantial amount of manipulation of information technology was necessary to completely fulfill the request.” Licameli Certification at ¶ 5. To assist in the production of the requested documents, Insync contracted with Maven Media, LLC (“Maven”), experts in social media. Licameli claims that production of the screenshots requires time and effort to navigate, review and organize. His Certification details the tasks needed to provide the requested screenshots and concludes that “[b]ased on my knowledge and experience of doing this type of research properly and to a professional standard, the quoted price of \$200.00 was actually underestimated in relation to industry standards for the services required.” *Id.* at ¶ 6 & 7.

Plaintiff argues that production of the requested documents does not require a substantial manipulation of information technology and produced a certification from Rozzi, an expert with an extensive background in social media, OPRA and information technology services. See Rozzi Certification. Rozzi challenges Licameli’s claims that significant effort and time are needed to

produce these documents, stating that the information is “readily accessible.” *Id.* at ¶ 8. The Facebook pages at issue can be viewed, copied and printed within a “matter of minutes.” *Ibid.* Rozzi certifies that users of his website, OPRAmachine, “frequently request these same type of Facebook records from other public agencies and they are routinely produced without any charge.” Rozzi Certification at ¶ 20. Based upon the conflicting certifications, the court ordered the expert witnesses to provide testimony on the return date of the Order to Show Cause.

The testifying witnesses all presented credibly. All witnesses were qualified, without objection, in the field of digital media and information technology. While testifying, each witness maintained direct eye contact, provided specificity of detail, and demonstrated the requisite level of competency in their fields.

Defendants’ first witness, Guirao, testified as to the time and effort required to locate and disclose the requested records. In support of his testimony, Guirao presented a video reenactment of the steps required to produce one such record. The video demonstrated how one would identify and secure a screenshot of a Facebook page. The video demonstration lasted approximately twenty-three (23) minutes. Defendants then offered Licamelli’s testimony that because neither he nor the Custodian were capable of responding to the OPRA request, he decided to hire a social media expert. Licamelli testified that the quoted price of \$200 was a reasonable price considering the time expended.

Plaintiff’s witness, Rozzi, challenged the Defendant’s video reenactment, stating that a majority of the tasks demonstrated were outside the scope of the OPRA request. Rozzi testified to the ease of responding to this type of request. Stating that no expertise is needed, Rozzi further testified that if one can administer a Facebook page, one can readily locate and screenshot the pages requested.

The court finds from the certifications and the testimony presented that production of the requested documents does not require a substantial amount of manipulation of information technology, as testified to by Rozzi. It finds the video demonstration an over-exaggeration of the tasks required to respond to this request. Guirao needlessly introduced levels of complexity to the process of taking screenshots of Facebook pages. For example, Photoshop is a graphics editing program available for purchase and used by Guirao to capture the requested screenshots. This program is not required. Guirao mentions that other methods of screenshotting exist. Those methods are free and can be easily used to provide these records to Plaintiff. A simple Google search for “how to take a screenshot” provides the instructions for capturing a screenshot without the need to purchase any programs. In six (6) sentences, Rozzi lays out how one can secure screenshots. Rozzi Certification at ¶ 17. These tasks may be repetitive, but they are simplistic and do not require any expertise in the field of information technology. It is clear to this court that no manipulation of data or technology is required to secure screenshots; ordinary use of a computer can accomplish the task.

Additionally, navigating Facebook and organizing screenshots into folders are not intricate tasks. If an administrator is capable of navigating Facebook, they are capable of locating the requested pages. Facebook is a prominent social media website. Its use is so widespread that the operation and administration of the platform requires minimal technological skill. Further, Facebook publishes easy-to-use “Help Pages” to assist users in navigating the website. Exhibit 3-4 to Rozzi Certification. Municipalities and their officials have adopted the platform for purposes of official government business. North Arlington is one such municipality. See Rozzi Certification at ¶ 15-16 (Borough Facebook pages are frequently updated, sometimes several times per week).

The Custodian argues that “she” does not possess the requisite technical knowledge to obtain records requested under OPRA and, thus, needed to secure professional assistance. See Moore Certification at ¶ 4. Even if the Custodian does not possess the basic level of computer skills necessitated by this request, another Borough employee likely does. The employee who routinely updates Facebook on behalf of the Borough could have attempted to secure the screenshots. No such attempt was made. Rather, the Borough immediately hired IT consultants. They have every right to do so, however, only in limited circumstances does OPRA permit them to shift costs associated with production to Plaintiff. Navigating Facebook and using everyday computer skills is not one of those situations.

In opposition, the Borough details “phases” of work required to produce the documents and defines this work as “a substantial manipulation of information technology.” See Licameli Certification at ¶ 6. The actions taken in the video and listed in Licameli’s certification describe basic Internet navigation and administrative duties, nothing more. See Licameli Certification at ¶ 6. “Navigating Facebook”, “labeling images”, “organizing folders” and “documenting pages” are ordinary tasks that do not require substantial effort. Contra Signature Info. Sols., LLC, supra, (App. Div. Mar. 18, 2016). To hold otherwise would permit the special service charge to be levied in nearly every OPRA request that is submitted.

To comply with Plaintiff’s request, the Borough did not need to compile complicated data or produce documents that they don’t routinely use. Contra Signature Info. Sols., LLC v. Jersey City Mun. Utils. Auth., No. A-1503-14T2, 2016 N.J. Super. Unpub. LEXIS 594, at \*13 (App. Div. Mar. 18, 2016) (holding a special service charge was justified because the OPRA request required defendants to compile data not readily available and provide it in a specific electronic format Defendant did not routinely use, develop or maintain). Rather, production of the requested

documents required the use of ordinary computer skills. See Rozzi Certification at ¶ 15-16. Rozzi notes that production of the screenshots would take no more than a few minutes. Rozzi Certification at ¶ 8. The Supreme Court has held that where it would take no more than two to three minutes of time to produce documents, a substantial amount of manipulation has not occurred. See Paff v. Galloway Tp., 229 N.J. 340, 354 (2017). Here, the production of the screenshots from Facebook aligns with this precedent. Production only requires a few minutes of basic computer skills. Thus, a substantial manipulation of information technology has not occurred.

Even if the court were to accept that production of the requested documents required two hours of time, it is still not the kind of substantial time envisioned by OPRA. OPRA permits a special service charge where a request “involves an extraordinary expenditure of time and effort.” N.J.S.A. § 47:1A-5(c). The Government Records Council has held that a request that only takes a few hours to fulfill is not “extraordinary.” See, e.g., Diamond v. Twp. Of Old Bridge, GRC Complaint No. 2003-15 (Feb. 18, 2004) (holding four (4) hours of time to respond to OPRA request was not “extraordinary”); Carter v. Franklin Fire District No. 1, GRC Complaint No. 2013-281/2013-282/2013-283 (Oct. 28, 2014) (holding eight (8) hours of time to search for emails did not justify a special service charge); Verry v. Borough of South Bound Brook, GRC Complaint No. 2010-105/2010-106 (Dec. 20, 2011) (holding three (3) hours of time to review records was not “extraordinary”).

Lastly, OPRA requests increasingly involve information technology in this digital age. Those hired to serve as an OPRA Records Custodian, thus, must have the requisite skills to reply to requests for government records located on such digital platforms. If a custodian does not have such skills, the municipality has the ability to rely on information technology experts or hire third

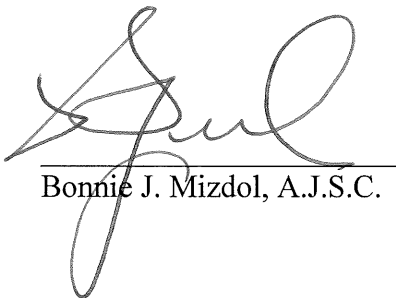
party help. However, shifting costs related to same requires the presence of a substantial amount of manipulation on information technology.

**Conclusion**

For the foregoing reasons, Plaintiff's requests for disclosure under OPRA are granted without the requirement of a special service charge pursuant to N.J.S.A. § 47:1A-5(d). The Court finds (1) producing the responsive records does not require a "substantial amount of manipulation or programming of information technology" and (2) the imposition of a service charge is unlawful.

As Plaintiff is the prevailing party under OPRA and is entitled to an award of reasonable attorneys' fees and costs under N.J.S.A. 47:1A-6, counsel shall attempt to agree upon a reasonable quantum of fees. Failing to accomplish same, counsel for Plaintiff shall submit a certification of services to the Court within fourteen (14) days of the date hereof and Defendants, a response, within twenty-one (21) days.

The appropriate Order has been executed.



Bonnie J. Mizdol, A.J.S.C.