

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
LAWRENCE M. LAWSON
ASSIGNMENT JUDGE



MONMOUTH COUNTY COURT HOUSE
71 MONUMENT PARK
POST OFFICE BOX 1266
FREEHOLD, NEW JERSEY 07728-1266
TELEPHONE (732) 677-4100

July 1, 2013

Walter M. Luers, Esquire
23 West Main Street
Suite 203
Clinton, New Jersey 08809

R. Armen McComber, Esquire
McOmbe & McOmber
54 Shrewsbury Avenue
Red Bank, New Jersey 07701

Brian M. Nelson, Esquire
Archer & Griner
830 Broad Street , Suite B
Shrewsbury, New Jersey 07702

Re: Baum v Board of Trustees of the Free Public Library, et als
Docket No: MON-L-2145-13

Dear Counselors:

Relative to the above captioned matter, enclosed please find the Opinion of this Court.
Counsel are directed to prepare and submit the proper form of order consistent with this Opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence M. Lawson", is written over a large, stylized, cursive flourish.

LAWRENCE M. LAWSON, A.J.S.C.

LML:nr

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NOT FOR PUBLICATION WITHOUT APPROVAL
FROM THE COMMITTEE ON OPINIONS

LINDA S. BAUM	:	SUPERIOR COURT OF NEW JERSEY
	:	
Plaintiff,	:	MONMOUTH COUNTY
	:	LAW DIVISION
	:	
v.	:	DOCKET NUMBER:
	:	MON-L-2145-13
THE BOARD OF TRUSTEES OF	:	
THE FREE PUBLIC LIBRARY	:	OPINION
OF THE TOWNSHIP OF	:	
MIDDLETOWN and	:	
HEIDI BRUNT	:	
	:	
Defendants.	:	

Argued: June 14, 2013
Decided: July 1, 2013

Walter M. Luers, Esq., on behalf of Plaintiff, Linda S. Baum.

R. Armen McOmber, Esq., on behalf of Defendant, The Board of Trustees of the Free Public Library of the Township of Middletown.

Brian M. Nelson, Esq., on behalf of Defendant, Heidi Brunt
LAWSON, A.J.S.C.

This matter comes before the Court pursuant to R. 4:52-1 as an Order to Show Cause, wherein Plaintiff, Linda S. Baum (hereinafter "Plaintiff") filed a verified complaint seeking a declaratory judgment and injunction, pursuant to the Open Public records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA"). Specifically, Plaintiff seeks to obtain an Order enjoining the Defendant, The Board of Trustees of

the Free Public Library of the Township of Middletown (hereinafter the "Library") from responding to an OPRA request made by Defendant, Heidi Brunt, the Municipal Clerk of The Township of Middletown and Custodian of Records for same (hereinafter "Defendant Brunt"). The nature of Defendant Brunt's OPRA request concerns copies of all e-mail and written correspondence concerning "library business" which transpired between Plaintiff and Ms. Susan O'Neal, the Director of the Middletown Library, on diverse dates between January 1, 2012 and May 15, 2013. Plaintiff Baum objects to the Defendant Library's production of the requested communications on the basis that the e-mail correspondence between herself and Director O'Neal was private and not subject to disclosure under OPRA.

The Court has reviewed the moving papers, engaged in colloquy with counsel on June 14, 2013, and reserved decision. The Court now enters the following findings of facts and conclusions of law pursuant to R. 1:7-4.

I. STATEMENT OF FACTS

On June 6, 2013, Plaintiff filed the within Order to Show Cause under both the Declaratory Judgment Act, N.J.S.A. 2A:16-51, et seq. and the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA"). Plaintiff's two-count

verified Complaint seeks judgment against the Defendants as follows:

1. Preliminary and permanent enjoinder of the Library from providing to Defendant Brunt copies of the requested documents;
2. Declaring Plaintiff's right to review and object to the production of the e-mails requested prior to their disclosure to Defendant Brunt;
3. Declaring that Defendant Brunt's OPRA request is not valid or, in the alternative, declaring that the documents sought are not public records within the definition of OPRA or are subject to one of OPRA's exemptions or exceptions;
4. An award of attorney's fees and costs of suit; and
5. For such other relief as the Court deems just and equitable.

A. Background

Middletown Library Director Susan O'Neal routinely conducts official Library business through use of her personal e-mail account. Def. Brunt's Opp. Brief Ex. A. On at least one occasion prior to the subject OPRA request being filed, Director O'Neal was specifically cautioned by Mr. Brock Siebert, the Chairman of the Library Board, against utilizing her personal e-mail to conduct Library business. Chairman Siebert specifically advised Director O'Neal that communications, whether located on her public or private e-mail address, regarding library business could be subject to an OPRA request. Def. Brunt's Opp. Brief, Ex.

B. Despite having been forewarned, Director O'Neal continued to conduct such Library business utilizing her personal Hotmail e-mail account. On May 16, 2013, Defendant Brunt, in her official capacity as the Middletown Township Clerk and Custodian of Records for the Municipality, submitted a formal OPRA request to the Defendant Middletown Library. Pl. Verified Complaint, Par. 6. The OPRA request was made at the behest of Township Committeeman Anthony Fiore¹, and sought copies of the following:

Emails or any type of written correspondence to and from Susan O'Neal from January 1, 2012 through May 15, 2013, to and from Linda Baum this would include work email or private email regarding Library business.

Emails or any type of written correspondence to and from Susan O'Neal from January 1, 2012 through May 15, 2013, to and from Melanie Elminger this would include work email or private email regarding Library business. This would also include any OPRA requests filed by Linda Baum and/or Melanie Eminger².

¹ The Defendant Library submits that this information was not known at the time of the request. Due to the fact that Ms. Brunt had previously acted as the custodian for the Middletown Twp. Library, Counsel for the Library believed that a conflict of interest was present as she was at this time both the requestor seeking records and the custodian tasked with determining what records were subject to disclosure.

² Defendant Brunt's OPRA request contains references to "Melanie Elminger" and "Melanie Eminger." Both misspellings represent clerical errors and refer to a Ms. Melanie Elmiger. A review of the Exhibits submitted by both Plaintiff and Defendant Brunt discloses that Ms. Elmiger is a previous OPRA requestor who has made several such requests to the Defendant Library. Ms. Elmiger is not party to this suit.

Pl. Brief Att. Copy of E-mail OPRA Request. Plaintiff learned of Defendant Brunt's request and obtained a copy of that request. On May 21, 2013, Plaintiff, through counsel, asserted a privacy interest in the e-mails responsive to Defendant Brunt's OPRA request to the Defendant Library. Plaintiff further sought an opportunity to review responsive documents, object to their release, and ultimately preclude their production if Plaintiff and the Defendant Library disagreed on which e-mails were responsive.

On June 5, 2013, the Defendant Library, through counsel, advised Plaintiff's counsel that, subsequent to a complete review of the target e-mail correspondence, it had determined that production of those e-mails responsive to Defendant Brunt's OPRA request was warranted. Plaintiff was further advised that she would not be afforded an opportunity to review and object to the e-mails prior to their release to Defendant Brunt.

Consequently, on June 6, 2013, Plaintiff filed the within Order to Show Cause seeking injunctive relief pursuant to R. 4:52, to enjoin the Defendant Library from releasing the requested communications to Defendant Brunt. The alleged basis of Plaintiff's objection is that the e-mails constitute private correspondence, not government

records subject to disclosure under OPRA. Plaintiff argues that she has no relationship with the Library, nor is she an agent of the Library in any respect. Plaintiff further argues that although the e-mails exchanged between Director O'Neal and herself concerned the Library, they were: (1) not created, sent, or received in the course of the official business of the Library; (2) exchanged between Plaintiff and Director O'Neal's private e-mail addresses; and (3) the thoughts and work product of Plaintiff, not public records subject to production under OPRA.

II. APPLICABLE LAW

In Crowe v. DeGioia, the Supreme Court established a four-part test for determining whether an applicant is entitled to preliminary injunctive relief. 90 N.J. 126 (1982). First, an application for preliminary injunctive relief should be granted only "when necessary to prevent irreparable harm." Id. at 132. Second, the legal right underlying the applicant's claim must be settled as a matter of law. Id. at 133. Third, the applicant is required to "make a preliminary showing of a reasonable probability of ultimate success on the merits." Ibid. Finally, the court must balance the resulting hardship to the parties in granting or denying preliminary injunctive relief. Id. at 134. Additionally, there must be clear and

convincing proof of each factor in order to grant the injunction. McKenzie v. Corzine, 396 N.J. Super. 405, 413 (App.Div.2007); Am. Employers' Ins. Co. v. Elf Atochem N.A., Inc., 280 N.J. Super. 601, 610 n. 8 (App. Div. 1995).

a. Irreparable Harm

An applicant for a temporary or preliminary injunction must be able to demonstrate that immediate, substantial and irreparable injury is likely if the requested interlocutory relief is not granted. See Crowe, supra, 90 N.J. at 132. Harm is generally considered irreparable if the applicant has no adequate remedy at law. Ibid.; Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997); Delaware River and Bay Authority v. York Hunter Const., Inc., 344 N.J. Super. 361, 365 (Ch. Div. 2001). In essence, an interlocutory injunction is intended "to prevent some threatening irreparable mischief." Outdoor Sports Corp. v. American Fed'n of Labor, Local 23132, 6 N.J. 217, 230 (1951). An irreparable injury may indeed be one where defendant's wrongful acts contribute to "destroying a complainant's business, custom and profits. . . " Community Hosp. Group, Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C., 384 N.J. Super. 251, 255 (App. Div. 2006) (citations omitted).

In the present matter, Plaintiff avers that she is politically active in the Township of Middletown, having previously run for elected office, and anticipating doing so in the future. Plaintiff certifies that the e-mail correspondence has "absolutely nothing to do with the official business of the Library" and does not relate to public operations. Plaintiff further alleges that, if disclosed, the contents of those e-mail communications could "be used against [her] in the political arena." During oral argument, Counsel for the Defendant Library expressed that absent an injunction from this Court the Defendant Library would produce the responsive correspondence to Defendant Brunt in accordance with its duties under OPRA. Conventional wisdom dictates that once disclosed, there would be no meaningful control over dissemination of the contents of the subject e-mail correspondence. There being no adequate remedy available for damage to Plaintiff's reputation, which is alleged to be in jeopardy, it is manifest that Plaintiff would incur immediate and irreparable harm. Thus, the first Crowe factor for injunctive relief weighs in favor of this Court issuing the injunctive relief requested. However, generally all the Crowe factors must weigh in favor of injunctive relief, thus the analysis next turns to the second factor.

See McKenzie v. Corzine, 396 N.J. Super. 405, 414 (App.Div.2007).

b. Settled as a Matter of Law

Temporary relief may be granted where the underlying legal claim is settled as a matter of law. Crowe, supra, 90 N.J. at 133. However, a preliminary injunction should not be issued where material facts are in dispute. Id. In the present matter, Plaintiff asserts a general privacy interest in the subject e-mail communications, some of which may be responsive to Defendant Brunt's OPRA request. While there is relevant case law which recognizes a third-party's right to intervene, such a right has only been recognized in certain instances where a legitimate privacy concern has been implicated. See Burnett v. County of Bergen, 198 N.J. 408 (2009); see also Gill v. N.J. Dep't of Banking and Insurance, 404 N.J. Super. 1 (App.Div.2008). Therefore, as a threshold matter the analysis must shift to Plaintiff's stated bases for asserting a privacy interest.

Under OPRA, 'government records' must be readily accessible for inspection, copying, or examination by the citizens of New Jersey. See N.J.S.A. 47:1A-1. The Statute directs that "all government records shall be subject to public access unless exempt" and that "any limitations on the right of access...shall be construed in favor of the

public's right of access." Id. (Emphasis added). OPRA defines "governmental records," in relevant part, as "any...information stored or maintained electronically...that has been made, maintained or kept on file in the course of his or its official business by any officer...or that has been received in the course of his or its official business by any such officer." Ibid. Therefore, the e-mails between Plaintiff and Director O'Neal discussing library operations constitute government records under OPRA and must be made readily accessible for inspection, copying, or examination by records requestors, unless exempted by one of the twenty-four (24) specific exemptions from disclosure. The Legislation also tasks public agencies with safeguarding from public access a citizen's personal information with which it has been entrusted when disclosure would violate that citizen's reasonable expectation of privacy. In such instances the Court has directed that the interests, public access and the citizen's reasonable expectation of privacy should be balanced. See Burnett, supra, 198 N.J. 408 (2009); N.J.S.A. 47:1A-1.

Here, Plaintiff states that the e-mail communications requested by Defendant Brunt "contain [her] thoughts and mental impressions about the Library's operations... information and data [] collated through many hours of

research... personal opinions and political views" and were "not intended for public disclosure." Plaintiff further articulates that the e-mails were: (1) not created, sent, or received in the course of the official business of the Library; (2) exchanged between Plaintiff and Director O'Neal's private e-mail addresses; and (3) the thoughts and work product of Plaintiff, not public records subject to production under OPRA. Lastly, Plaintiff alleges that the OPRA request is not a *bona fide* OPRA request seeking public information, but rather a veiled attempt to gain access to private e-mails that may be used against her in the political arena. Based upon the aforementioned reasons, Plaintiff requests that this Court order the Defendant Library to provide Plaintiff the opportunity to review and object to the particular e-mails that it intends to disclose prior to the Defendant Library's dissemination of said records.

First, though Plaintiff genuinely did not intend for the subject e-mails to become public, such is not an appropriate consideration upon which to establish a legitimate privacy concern. Furthermore, it is well-established that, generally, the court does not consider the purpose behind OPRA requests. See Michelson v. Laddie Wyatt and the Cty. of Plainfield, 379 N.J. Super. 611, 620

(App.Div.2005); see also Irval Realty, Inc. v. Bd. of Pub. Util. Comm'rs, 61 N.J. 366, 372-73 (1972) (discussing the showing required under the Right to Know Law and common law). Consequently, the purpose of Defendant Brunt's OPRA request, whether a veiled attempt to gain access to private emails or to serve a more virtuous cause, is immaterial to this issue.

Secondly, Plaintiff's asserted privacy interest appears to be fashioned from both the Court's holding in Burnett, supra, 198 N.J. 408 (2009) and the Appellate Division's holding in Gill, supra, 404 N.J. Super. 1 (App.Div.2008). Relying heavily upon the abovementioned decisions, Plaintiff gleans that she is entitled to object to, review and ultimately prohibit the disclosure of e-mail correspondence between Plaintiff and Director O'Neal regarding "Library operations." However, such a right is neither statutorily provided for nor manifestly appropriate in this instance. Furthermore, the respective circumstances present in both Burnett and Gill are quite distinguishable from those attendant facts of the present matter. In Burnett, the Court held that requested land title records could be disclosed after redaction of individual social security numbers. In arriving at this conclusion, the Court engaged in a balancing of two

competing provisions of OPRA, namely N.J.S.A. 47:1A-1§1 (the "privacy clause") and N.J.S.A. 47:1A-5(a)§5, which allowed for disclosure of social security numbers contained in a record required by law to be made, maintained or kept on file by a public agency unless otherwise prohibited by law. To balance these established interests the Court adopted the seven (7) factors outlined in Doe v. Poritz, 142 N.J. 1, 82-86 (1995). Notably, the Court in Burnett stated that "when legitimate privacy concerns exist that require a balancing of interests and consideration of the need for access, it is appropriate to ask whether unredacted disclosure will further the core purposes of OPRA: to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." Burnett, supra, 198 N.J. at 435 (2009) (Emphasis added).

In Gill, a dispute arose wherein the Government Records Council's ("GRC") was presented with opposition to the release of documents from both the documents' custodian, the New Jersey Department of Banking and Insurance ("DOBI"), as well as the entity that prepared the documents, GEICO. At issue in that case, as is here, was whether the requested documents qualified as government records subject to public disclosure. However, in Gill the

records' accessibility hearing was statutorily required. Importantly, the event which initiated the entire process ultimately necessitating the hearing was the prior determination of the DOBI, the records custodian, to withhold documents it deemed to contain proprietary information, from the requestor, Senator Gill. Only then could Senator Gill file a complaint with the GRC for DOBI's failure to produce the requested documents, thus requiring the GRC to conduct a record's accessibility hearing. It is at this stage that the Appellate Division ruled that GEICO should have been permitted, on motion, to intervene to protect its proprietary interests from disclosure. See Gill, supra, 404 N.J. Super. at 10-11; N.J.S.A. 47:1A-7(e); N.J.A.C. 5:105-2.7; N.J.A.C. 1:1-16.1(a). Thus, the act which ultimately enabled GEICO to intervene was the prior determination by the records custodian. Here, Plaintiff seeks to preemptively restrain the Defendant Library from satisfying a valid OPRA request. Furthermore, DOBI and more specifically, GEICO's opposition to disclosure was based upon the privacy interests, i.e. the proprietary information, implicated. The requestor in Gill was seeking highly confidential, proprietary commercial and financial information, exempted from the definition of "government records" under OPRA. See N.J.S.A. 47:1A-1.1 (stating that

government records for purposes of OPRA do not include "trade secrets and proprietary commercial or financial information obtained from any source"). In conducting the record's accessibility hearing the GRC was required to consider, *inter alia*, the nature and extent of the party requesting intervention's interest in the outcome of the case. The Appellate Division found that the GRC did not analyze such considerations when it denied GEICO's motion to intervene.

In the present matter, unlike the social security numbers and other personal identifiers implicated in Burnett, Plaintiff's bald assertion of a privacy interest in the responsive e-mail correspondence is neither manifest nor is her asserted privacy interest based upon a recognized exemption under OPRA. Rather, Plaintiff's objection to the proposed production of the responsive communications is predicated upon a general assertion that the communications constitute "private correspondence" and thus are not public records. Such an unsubstantiated claim does little if anything for Plaintiff's contention that intervention is necessary prior to disclosure, or even further, required as a matter of right. Furthermore, unlike GEICO, the third-party intervenor in Gill, Plaintiff has no statutory right to intervene. Thus, before this

Court could even entertain the notion of engaging in a balancing of the competing interests, public access and Plaintiff's reasonable expectation of privacy, Plaintiff must first substantiate that she, in fact, has a reasonable "privacy interest."

Additionally, in Burnett, supra, there existed a strong public interest in safeguarding social security numbers against the increased risk of identity theft that the proposed dissemination via a centralized computer database would pose. Noticeably, in the present matter no such public interest is involved. To the extent that Plaintiff argues that a "chilling" effect may occur if the subject e-mails are disclosed, such is unfounded and unsupported by the record before this Court. Rather, Plaintiff's asserted privacy interest in the subject e-mail communications is exclusive to her person and appears to be singularly motivated by Plaintiff's apprehension about the potential impact disclosure could have on her within the community. Again, while Plaintiff's concern appears genuine, such is not a material consideration in determining whether the subject e-mails are subject to disclosure under OPRA.

Ultimately, Plaintiff's asserted privacy interest in the subject e-mail correspondence, upon the aforementioned

bases is untenable, as it is unsupported by the facts and relevant case law involved in this matter. As aforementioned, Plaintiff chose to engage in e-mail correspondence concerning "library operations" with Ms. Susan O'Neal, the Director of the Middletown Library. Pl. Baum's Certification, Para. 4 ("[t]hese e-mails contain my thoughts and mental impressions about the *Library's* operations.") (Emphasis added). Though Plaintiff asserts that the "emails to Ms. O'Neal were strictly private and not intended for public disclosure," such is not a relevant consideration when determining whether correspondence constitutes a public record. The e-mail communications do not fall within one of the noted exemptions to disclosure under OPRA. Furthermore, Defendant Brunt's OPRA request is limited to correspondence "regarding Library business" and Plaintiff's OPRA requests to the Library. As aforementioned, OPRA defines government records as any information stored or maintained electronically that has been received in the course of official business by any officer of a public agency. Therefore, the only documents that the Defendant should produce are those documents discussing Library operations, thereby constituting public records as defined under OPRA.

With regard to Plaintiff's second contention that the e-mail communications' occurred between private e-mail addresses, the Government Records Council, has previously dealt with issues precisely on point which this Court now adopts. In Meyers v. Bor. of Fairlawn, GRC Complaint No. 2005-127 (August 2006), the Government Records Council ("GRC") held that the definition of a government record is not restricted by the location of the record. In that case, the Mayor utilized his home computer/personal e-mail to communicate with various individuals regarding Borough business. In Seerey v. Upper Pittsgrove Twp., GRC Complaint No. 2003-38, the Council held that, "Requiring material to be made, maintained, kept or received "in the course of official business" by an officer or official does not mean that a record must be generated or received during regular office hours or official meetings. Nor does a document become a government record only if the sender intends it to be." Consequently, for the foregoing reasons Plaintiff's contention concerning the location of the e-mails between private e-mail addresses does not advance her assertion of a privacy interest.

Plaintiff's third argument upon which her asserted general privacy interest rests, is that the e-mail communications constitute her thoughts and work product.

Plaintiff's argument is again predicated on her own status as a private citizen. However, as previously discussed, the relevant status is that of the agent of the Library, namely Director O'Neal. In her capacity as Director of the Middletown Township Library, Ms. O'Neal engaged in, i.e. received, made, maintained and kept on file, e-mail correspondence relating to Library operations with Plaintiff. The very fact that Plaintiff sought to engage in communications concerning Library operations, specifically with Ms. O'Neal, underscores that Ms. O'Neal was acting in her official capacity as Director of the Middletown Township Library.

Lastly, with regard to the second Crowe factor, Plaintiff argues that, even if the merits of Plaintiff's case are questionable, the Court should still issue temporary restraints to maintain the *status quo*. However, as aforementioned, OPRA provides that government records must be made readily accessible for inspection, copying, or examination by records requestors, unless exempted by one of the twenty-four (24) specific exemptions from disclosure. Furthermore, under OPRA, "[i]f the custodian of a government record asserts that part of a particular record is exempt from public access...the custodian shall delete or excise from a copy of that record that portion

which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record." N.J.S.A. 47:1A-5(g) (Emphasis added). OPRA defines the "custodian" as "in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be." In the present matter, it is unclear whom the Library's "custodian" is, as both the Municipal Clerk and in this instance the requestor, Defendant Heidi Brunt, and the Library's Director Susan O'Neal, have at times filled OPRA requests. However, this Court need not reach the issue of who is the official custodian of the Defendant Library records, as it is manifest that nowhere in the rule is it stated or even suggested that the record custodian is a third-party intervenor, as Plaintiff's argument suggests. OPRA tasks the records custodian with the responsibility of disseminating the record(s) requested and redacting any portion of that record that he or she believes should be protected from public. Therefore, when considering Plaintiff's claim of a privacy right not statutorily provided for and relief not previously recognized by any court, it appears that it is the Defendants Library and Brunt whom are attempting to proceed under the *status quo*,

i.e., providing responsive e-mail correspondence between a private citizen and the Director of the Middletown Township Library regarding Library operations, pursuant to a valid OPRA request.

Consequently, Plaintiff has failed to assert a legitimate basis for her assertion of a privacy interest in the records sought by Defendant Brunt. Strict adherence to the Court's ruling in Burnett requires a legitimate privacy interest to be asserted prior to the court engaging in a balancing test. Absent an applicable, statutorily recognized exemption or a basis supported by relevant case law and substantiated by the attendant facts of the matter, no such balancing should occur. To do otherwise would be contrary to the established legislative principles and would undercut the entire stated purpose of OPRA. See N.J.S.A. 47:1A-1§1 (any limitations on the public's right of access...shall be construed in favor of the public's right of access; all government records shall be subject to public access unless exempt from such access"). Furthermore, substituting the Court's determination for that of a designated records custodian would have a deleterious effect on the efficiency of an already burdened judiciary. Consequently, the Court finds that Plaintiff has neither demonstrated a legitimate privacy concern which

would implicate OPRA's privacy clause, nor substantiated the general right of a third-party to intervene absent a showing of a reasonable expectation of privacy. Accordingly, the second Crowe factor, i.e. the underlying claim is settled as a matter of law, does not weigh in favor of this Court ordering the injunctive relief sought. Crowe, supra, 90 N.J. at 133.

c. Likelihood of Success on the Merits

For injunctive relief to issue, a plaintiff is generally required to establish a likelihood of success on the merits. Crowe, supra, 90 N.J. at 133. To effectuate an Order for temporary restraints, a plaintiff should make a preliminary showing of reasonable probability of ultimate success on the merits. This requirement is "tempered by the principle that mere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the status quo." Ibid.

As aforementioned, OPRA's privacy clause specifies that public agencies have an obligation to safeguard from public access a citizen's personal information when disclosure would violate that citizen's reasonable expectation of privacy. However, based upon the relevant case law, and the facts and circumstances surrounding the e-mail correspondence, this Court finds that Plaintiff did

not have a legitimate or reasonable expectation of privacy. Therefore, it is unlikely that Plaintiff would have success on the merits underlying her complaint.

d. Balancing of Hardships

Lastly, in order to be afforded injunctive relief, plaintiffs must demonstrate that if the requested relief is not granted, the harm that will befall plaintiff will outweigh any harm to defendant. See Crowe, supra, 90 N.J. at 134. When the public interest is involved, the "courts, in the exercise of their equitable powers, 'may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.'" Waste Mgmt. of N.J., Inc., supra, 399 N.J. Super. at 520-21 (quoting Yakus v. United States, 321 U.S. 414, 441 (1944) (internal quotations omitted)).

Here, the balance of equities favors the Defendants. On the one hand, Plaintiff argues that if temporary restraints are not issued she will incur irreparable harm. Conversely, the Defendant Library and Ms. Brunt contend that it is the sole responsibility of the Library's custodian of records, who is held liable for civil penalties and/or enhanced legal fees in the event that the disclosure of public government records is unduly delayed

or denied. See N.J.S.A. 47:1A-11(a) (stating that any public official, officer, employee or custodian who knowingly and willfully violates OPRA shall be subject to a civil penalty of \$1,000.00 and more for subsequent violations). Furthermore, such a delay represents a significant impediment to the public's right to ready access to public government records. Lastly, as Defendant Brunt argues, ultimately the Township of Middletown and thus the tax payers of Middletown could be required to pay the legal fees of the aggrieved requestor whose OPRA request was improperly delayed or denied upon a showing that the requester's legal action was the catalyst for the release of the records. See Teeters v. Div. of Youth & Family Services, 387 N.J. Super. 423 (App.Div.2006). Thus, the entrance of temporary restraints in this instance would be inappropriate since the harm that may potentially befall Plaintiff does not outweigh the liability that the Defendant Library, the custodian, and ultimately the public currently face if the clearly warranted disclosure is not promptly made. Consequently, the fourth Crowe factor, a balancing of the equities, does not warrant the entrance of temporary restraints.

III. CONCLUSION

Based on the aforementioned reasons, Plaintiff's Order to Show Cause seeking a declaratory judgment and an Order for temporary restraints pursuant to R. 4:52-1 is hereby DENIED. Mr. McOmber is directed to prepare an Order in accordance with this decision within 10 days of receipt of the decision.