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Attorney for Plaintiff Union County Watchdog Association

UNION COUNTY WATCHDOG ASSOCIATION	:	SUPERIOR COURT OF NEW JERSEY
	:	UNION COUNTY: LAW DIVISION
<i>Plaintiff,</i>	:	
	:	VERIFIED COMPLAINT
v.	:	
	:	Docket No.:
THE COUNTY OF UNION	:	
<i>Defendant,</i>	:	

Plaintiff, Union County Watchdog Association (UCWA) by and through its attorney, Richard J. Brightman, Esq., 6-12 North Union Avenue, Suite 10, Cranford, New Jersey 07016, complains of the Defendant, County of Union and says:

COUNT ONE

1. The UCWA is a nonpartisan, nonprofit 501(c)3 organization dedicated to monitoring the activity of Union County Government and advocating change to eliminate waste, corruption and incompetence.
2. The County of Union is a public agency as defined under the Open Public Records Act (OPRA) codified at N.J.S.A. 47:1A-1 *et seq.*
3. The UCWA's mission is to make county government more transparent by gaining access to public records and being a public resource for information.

4. As part of its mission, Plaintiff established a procedure to obtain, on a monthly basis, from the Union County government an electronic copy of its check registries for the previous month.
5. In December of 2005 Plaintiff paid the County of Union a service fee of \$216.00 to convert the check registry into an electronic format thereby enabling the check registry to be transmitted to the public. The Plaintiff posts the check registry on its web site free of charge permitting the public free access to the check registry. In January 2006 Plaintiff paid a service fee of \$61.16 to convert the hand check registry into an electronic format enabling the hand check registry to be transmitted to the public. As with the check registry, the Plaintiff posts the hand check registry on its web site free of charge permitting the public free access to the hand check registry. The County of Union does not publish either check registry for free public access. Because the UCWA paid the above service fees the public at large can now obtain an electronic copy of the county's check registries through OPRA from the County Clerk.
6. Upon receipt of the electronic check registries, the volunteer staff of Plaintiff selects a few dozen expenditures, such as catering bills, upper management reimbursements, etc. and requests copies of the bills and receipts that support those payments for further inspection.
7. For the three week period in question, 3/14/07 – 4/3/07, there were 1,176 entries in the County's check register, and of those, Plaintiff selected 25

entries for further inspection and 7 entries from the County's hand check registry. See Exhibit A attached hereto.

8. On April 16, 2007 Plaintiff submitted a records request, pursuant to the Open Public Records Act, for an on-site inspection of the 25 vouchers marked on Exhibit A. See Exhibit B attached hereto.

9. On April 16, 2007, the County's custodian responded:

“Please be advised that the county is aware that bills and contracts are considered immediately accessible under the OPRA. However, due to the voluminous nature of the requests, a response will be provided as quickly as possible within the timeframe prescribed by law.” See Exhibit C attached hereto.

10. On April 20, 2007 the clerk responded:

“This e-mail constitutes a formal and complete response to your OPRA request of April 16, 2007 for all bills and receipts relative to forty-two (42) vouchers. Please be advised that in accordance with the OPRA, the County will be imposing a special service fee to process your request. An intern in the department of Finance (hourly wage \$8.00) will require approximately seven (7) hours to retrieve and compile the documents which would be responsive to your request, for a total special service fee of \$56.00.” See Exhibit D.

11. N.J.S.A. 47:1A-5(e) provides that “Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations

agreements and individual employment contracts, and public employee salary and overtime information.”

12. OPRA only permits the assessment of a “special service charge” in two (2) circumstances. N.J.S.A. 47:1A-5(c) permits a “special service charge” “Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a **special service charge** that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies;”

N.J.S.A. 47:1A-5(d) permits the assessment of a “special service charge” for converting data from the medium maintained by the custodian of the public agency to the medium requested. To quote N.J.S.A. 47:1A-5(d): “A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. 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.

13. The Defendant County of Union has violated OPRA by conditioning access to public records on the payment of a “special service charge.” N.J.S.A. 47:1A-5(c) permits a special service charge only when the document “is such as that the record cannot be reproduced by ordinary copying equipment” or “involves an extraordinary expenditure of time and effort.” N.J.S.A. 47:1A-5(d) permits the charge only when “the public agency does not maintain the record in the medium requested.” Neither N.J.S.A. 47:1A-5(c) nor N.J.S.A. 47:1A-5(d) permits the assessment of a special service charge. First and foremost, Plaintiff only asked to inspect the records and did not ask for a copy or request the documents be provided in a medium other than the medium the documents are kept by the custodian. Even if Plaintiff requested copies, the records can be readily reproduced on standard copying equipment. Second, the County of Union is unable to support the claim that access to these records requires an “extraordinary expenditure of time and effort.” The County of Union must maintain and grant immediate access to these records pursuant to N.J.S.A. 47:1A-5(e). At the time of the OPRA request only one month had passed

since the vouchers were issued. Further, Plaintiff sought to inspect bills and receipts for 32 vouchers out of the 1,176 issued over a three week time period. It is the County of Union's responsibility to maintain its records in such a manner as to comply with N.J.S.A. 47:1A-5(e). To accept the County of Union's claim to a "special service charge" to produce the documents requested by Plaintiff would eviscerate N.J.S.A. 47:1A-5(e). The County of Union failed to establish sufficient justification for the unlawful denial of access to government records and has violated OPRA.

WHEREFORE, the Plaintiff demands judgment as follows:

- a) Declaring the "special service charge" of \$56 in violation of the Open Public Records Act;
- b) Compelling the County of Union to grant immediate access to the government records requested by Plaintiff without the assessment of the "special service charge;"
- c) Awarding costs of suit and a reasonable attorney's fee; and
- d) For such other relief as the Court deems equitable and just.

The Law Office of Richard J. Brightman
Attorney for Plaintiff, Union County
Watchdog Association

Richard J. Brightman

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

I certify that to the best of my knowledge the matter in controversy herein is not the subject of any other action in any court or arbitration proceeding and that there are no other individuals or entities that should be joined as parties.

Richard J. Brightman, Esq.

VERIFICATION

Tina Renna, of full age, upon his Certification says:

1. I am the President of the Union County Watchdog Association.
2. I have reviewed the foregoing Verified Complaint and certify that all allegations contained therein are true and correct except for those on information and belief.

Tina Renna

Dated: