

1. This is an action brought pursuant to the Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1 to -13, and the common law right of access, seeking the disclosure of public records improperly withheld from Plaintiffs by Defendants.

2. This action arises out of Defendants’ improper refusal to produce records sought by Plaintiffs relating to Defendants’ conduct in terminating a professor for debating the tactics of the “Black Lives Matter” social movement on national television. Plaintiffs seek records from Defendants to evaluate claims by Essex County College’s leadership that they were “required” to terminate the professor following her appearance on a prime-time Fox News television program, during which she argued in favor of positions taken by advocates of the Black Lives Matter movement. Despite repeatedly indicating the intent to produce records responsive to Plaintiffs’ requests, Defendants have refused to share any such records, nor have they produced records concerning their purported efforts to comply with OPRA, all in violation of OPRA.

PARTIES AND JURISDICTION

3. Plaintiff the Foundation for Individual Rights in Education (“FIRE”) is a nonprofit and nonpartisan organization dedicated to defending the civil liberties of students and faculty at institutions of higher education. FIRE’s principal office is located at 510 Walnut Street, Suite 1250, Philadelphia, Pennsylvania 19106.

4. Plaintiff Sarah McLaughlin is employed full-time by FIRE as a senior program officer within FIRE’s Individual Rights Defense Program (“IRDP”), which advocates for the defense and preservation of rights established by, among other things, the First Amendment to the Constitution of the United States of America.

5. Plaintiff Joseph Cohn is FIRE’s legislative and policy director. At all times relevant during this action, Cohn has been a resident and citizen of the State of New Jersey.

6. Defendant Essex County College (“Essex”) is a public two-year college located in Essex County, New Jersey, with its principal campus located at 303 University Avenue, Newark, New Jersey 07102. Essex is a public agency subject to the requirements of OPRA and the common law right of access. See N.J.S.A. 47:1A-1.

7. Defendant Karen Bridgett is an associate director in the Human Resources Department of Essex County College. On information and belief, Bridgett is the custodian of records for Essex County College. Bridgett is named herein in her official capacity.

8. The actions of the Defendants constitute denials of access to government records which may be challenged by way of a summary action to this Court pursuant to N.J.S.A. 47:1A-6.

BACKGROUND

9. On June 6, 2017, Lisa Durden appeared in a segment on the Fox News program “Tucker Carlson Tonight.” Durden debated Carlson about whether it was appropriate for a Black Lives Matter group to hold an event that excluded white people. On information and belief, Durden was not a member of the group holding the event and appeared on Carlson’s show only to engage in a debate about the controversy.

10. At the time of her appearance, Durden was employed as an adjunct professor at Essex. However, upon information and belief, her relationship with Essex was not mentioned during her appearance on the program.

11. On June 8, two days after Durden’s appearance, Essex suspended Durden and subsequently terminated her employment.

12. On June 23, Essex president Anthony E. Munroe issued a statement about the matter, declaring that Essex “affirms its rights to select employees who represent the institution appropriately,” and that “[w]hen the administration receives an outpouring of concern regarding

our student body, it is [the administration's] responsibility to investigate those concerns." The statement acknowledged that Durden "was in no way claiming to represent the views and beliefs of the College," but it cited a "potential impact on students" as necessitating the investigation and termination of Durden. In addition to releasing the text of this statement, Munroe also recorded a video of himself reading the statement that was posted to the college's YouTube channel.

13. Munroe's June 23 statement also asserted that Essex was "immediately inundated with feedback from students, faculty and prospective students and their families expressing frustration, concern and even fear that the views expressed by a College employee . . . would negatively impact their experience on campus." A true and correct copy of the text of Munroe's June 23 statement, as posted on Essex's website, is attached as Exhibit 1.

14. Essex's termination of Durden over her commentary on issues of public importance raises concerns regarding the college's commitment to academic freedom and obligations under the First Amendment to Constitution of the United States of America. Because such issues are central to FIRE's mission and to the public interest, FIRE made a concerted effort to learn as much as possible about the circumstances and college administrators' actions surrounding Durden's termination.

THE REQUESTS AND THE FIVE EXTENSIONS OF TIME TO RESPOND

15. On July 13, 2017, Plaintiff McLaughlin sent a request (inadvertently dated July 12) on behalf of FIRE to Essex using the form provided by Essex for public records requests. A true and correct copy of this request is attached as Exhibit 2 ("First Request"). The request sought:

- a. Records comprising, reflecting, or referencing the "feedback" Munroe referred to in his June 23 statement.

- b. Emails or communications sent or received by Essex's administrators and referencing Durden over a five-day period, June 5 to 9.¹

16. On July 31, Plaintiff McLaughlin sent a second request, noting that Essex had not responded to the first request. This second request again sought the same categories of documents sought in the July 13 request. A true and correct copy of this request is attached as Exhibit 3 ("Second Request"). Because Defendants later acknowledged the First Request, as described below, this second request became superfluous.

17. On August 4, Marieke Tuthill Beck-Coon, Esq., ("Beck-Coon") FIRE's director of litigation, sent a letter to Essex, with copies sent to Essex president Anthony Munroe and general counsel Joy Tolliver, attaching the First Request and Second Request. Beck-Coon's letter observed that Essex had failed to respond to Plaintiff McLaughlin or FIRE within the time permitted by OPRA. Beck-Coon asked Essex to respond by August 11. A true and correct copy of Beck-Coon's August 4 letter is attached as Exhibit 4.

18. On August 14, Defendant Bridgett emailed Beck-Coon and Plaintiff McLaughlin. Bridgett acknowledged receipt of the First Request and the August 4 letter. This was the first time Essex or its records custodian responded to any of Plaintiffs' OPRA requests. Defendant Bridgett, on behalf of Essex, sought an extension of twenty business days, to September 15, to respond to two categories of records, described above in Paragraph 15, requested in the First Request. On August 21, Beck-Coon granted the requested extension on behalf of Plaintiff McLaughlin and FIRE. A true and correct copy of this email exchange is attached as Exhibit 5.

¹ The First Request also sought two additional categories of documents. On August 14, Essex belatedly provided statutory objections to these categories. Plaintiffs do not contest these objections and have abandoned these two categories of requests.

19. On September 13, Defendant Bridgett sought by email a second extension, to September 29, to respond to the First Request. On September 14, Beck-Coon granted the second requested extension on behalf of Plaintiff McLaughlin and FIRE. A true and correct copy of this email exchange is attached as Exhibit 6.

20. On September 29, Defendant Bridgett sought by email a third extension, to October 20, to respond to the First Request. On October 3, Beck-Coon granted this third extension request on behalf of Plaintiff McLaughlin and FIRE, but stated that Plaintiffs would not grant additional extensions beyond October 20. On October 3, Bridgett emailed Beck-Coon acknowledging consent to this extension. A true and correct copy of this email exchange is attached as Exhibit 7.

21. On October 11, Plaintiff McLaughlin sent a third OPRA request to Essex. A true and correct copy of this request is attached as Exhibit 8 (“Third Request”). The Third Request sought “processing notes” concerning the First Request and records relating to Essex’s efforts to locate records responsive to the First Request.

22. On October 20, Defendant Bridgett sought by email a fourth extension, to October 27, to respond to the First Request. A true and correct copy of this email is attached as Exhibit 9. Plaintiffs did not respond to this fourth extension request.

23. On November 3, Essex general counsel Joy Tolliver (“Tolliver”) called Beck-Coon and explained that Essex was having difficulty responding timely to OPRA requests. Later that day, Tolliver sent an email to Beck-Coon memorializing the conversation, stating that, “due to lack of personnel to assist with an inundation of OPRA requests, [Essex’s] Records Custodian has required additional assistance and time to respond to OPRA requests.” Tolliver stated: “It is anticipated that the College can provide a response to your request by Monday, November 20, 2017.” This was the fifth extension sought by Essex.

24. On November 3, Beck-Coon emailed Tolliver granting an extension regarding “our outstanding OPRA requests” on behalf of Plaintiff McLaughlin and FIRE to November 20, 2017. A true and correct copy of this email exchange is attached as Exhibit 10.

25. Defendants did not provide records in response to Plaintiffs’ requests on or before November 20, 2017, and have not provided a response or otherwise communicated with Plaintiffs as of the date of filing this verified complaint. Essex did not seek a sixth extension to the First Request or a second extension to the Third Request.

26. On December 19, with no communication from Defendants since November 3, Beck-Coon again emailed Tolliver. Beck-Coon noted Defendants’ failure to respond, requested production of records by December 22, supplemented the request by adding Plaintiff Cohn as a requestor, and noted that the requested records were also pursued under New Jersey’s common law right of access. A true and correct copy of Beck-Coon’s December 9 email is attached as Exhibit 11.

27. Essex has not provided any records responsive to the First Request or the Third Request as of the date of filing this verified complaint.

FIRST COUNT
(Denial of OPRA Access as to the First Request)

28. Plaintiffs hereby repeat and reallege the allegations in the preceding paragraphs as if set forth in full herein.

29. On July 13, 2017, Plaintiffs issued a request under OPRA to Defendants. Exhibit 2.

30. N.J.S.A. 47:1A-5(g) states: “A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record.” N.J.S.A. 47:1A-5(i) requires custodians to grant access to the records or deny the request “as soon as possible, but not later than

seven business days after receiving the request.” Per N.J.S.A. 47:1A-5(i), a custodian’s failure to respond is “deemed a denial of the request.” In the event that a request might “substantially disrupt agency operations,” N.J.S.A. 47:1A-5(g) provides that the custodian may deny access only “after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.”

31. By agreement of the parties, Defendants were to respond and produce responsive records on or before November 20, 2017. Defendants have failed to promptly provide access to the requested records in violation of N.J.S.A. 47:1A-5(g) and 47:1A-5(i).

SECOND COUNT
(Denial of OPRA Access as to the Third Request)

32. Plaintiffs hereby repeat and reallege the allegations in the preceding paragraphs as if set forth in full herein.

33. On October 11, 2017, Plaintiffs issued a request under OPRA to Defendants Essex County College and Karen Bridgett. Exhibit 8.

34. By agreement of the parties, Defendants were to respond and produce responsive records on or before November 20, 2017. Defendants have failed to promptly provide access to the requested records in violation of N.J.S.A. 47:1A-5(g) and 47:1A-5(i).

THIRD COUNT
(Failure to Give Written Reasons for Denial of the First Request)

35. Plaintiffs hereby repeat and reallege the allegations in the preceding paragraphs as if set forth in full herein.

36. Defendants have not returned the July 13, 2017, request form setting forth any specific basis for any inability to comply with the request, and failed to produce any records responsive to the request by the date agreed upon by the parties.

37. Defendants' failure to indicate a specific basis is in violation of N.J.S.A. 47:1A-5(g), which mandates that a custodian who is "unable to comply with a request for access" to public records "shall indicate the specific basis therefor on the request form and promptly return it to the requestor."

FOURTH COUNT
(Failure to Give Written Reasons for Denial of the Third Request)

38. Plaintiffs hereby repeat and reallege the allegations in the preceding paragraphs as if set forth in full herein.

39. Defendants have not returned the October 11, 2017, request form setting forth any specific basis for any inability to comply with the request, and failed to produce any records responsive to the request by the date agreed upon by the parties.

40. Defendants' failure to indicate a specific basis on which they are unable to comply with Plaintiffs' request for access is in violation of N.J.S.A. 47:1A-5(g).

FIFTH COUNT
(Denial of Common Law Access as to the First and Third Requests)

41. Plaintiffs hereby repeat and reallege the allegations in the preceding paragraphs as if set forth in full herein.

42. The public enjoys a common law right of access to public records generated or maintained by public agencies. See, e.g., Keddie v. Rutgers, 148 N.J. 36 (1997); S. Jersey Publ'g Co. v. N.J. Expressway Auth., 124 N.J. 478 (1991).

43. Defendants generate, maintain, or have received the requested public records that are "necessary to be kept in the discharge of a duty imposed by law" (among other possible qualifying conditions). Nero v. Hyland, 76 N.J. 213, 222 (1978).

44. There is a strong public interest in favor of disclosing the requested records, and no overriding, countervailing interest in maintaining their confidentiality.

45. Plaintiffs and the public alike have an interest in knowing the circumstances under which Defendants claimed it was necessary to terminate a professor as a result of her constitutionally protected speech concerning a matter of widespread public interest and importance.

46. Accordingly, Defendants' failure to disclose the requested public records violated Plaintiffs' common law right of access to public records.

47. The interests of both Plaintiffs and the public have been damaged, and continue to be damaged, by Defendants' actions.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants Essex County College and Karen Bridgett as follows:

- A. Declaring Defendants in violation of OPRA and the common law right of access in failing to provide access to the records requested by Plaintiffs;
- B. Declaring Defendants in violation of OPRA in failing to indicate a specific basis for their refusal, failure, or inability to comply with the requests made by Plaintiffs;
- C. Compelling Defendants to immediately provide access to all of the requested records;
- D. Maintaining jurisdiction over this action until Defendants come into compliance with this Court's directives and orders;
- E. Granting attorney's fees and costs of suit pursuant to N.J.S.A. 47:1A-6; and

F. Providing such other relief as the Court deems equitable and just.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Bruce S. Rosen, Esq. is hereby designated as trial counsel for Plaintiffs Sarah McLaughlin, Joseph Cohn, and the Foundation for Individual Rights in Education, in the above matter.

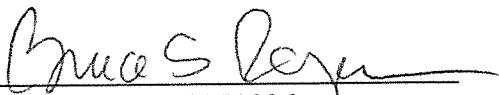
CERTIFICATION PURSUANT TO R. 4:5-1(b)

I hereby certify pursuant to R. 4:5-1, New Jersey Court Rules, that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is any such action or proceeding presently contemplated. I further certify that I am not aware of any other parties who should be joined in this action.

Respectfully submitted,

McCUSKER, ANSELMINI, ROSEN,
& CARVELLI, P.C.
210 Park Avenue, Suite 301
Florham Park, New Jersey 07932

*Attorneys for Plaintiffs Sarah McLaughlin, Joseph
Cohn, and the Foundation for Individual Rights in
Education*

By: 
Bruce S. Rosen 018351986

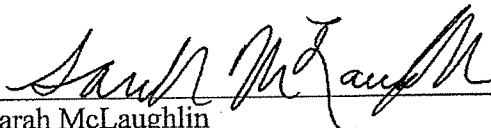
Dated: 1/3/18

VERIFICATION OF SARAH MCLAUGHLIN

Sarah McLaughlin, of full age, hereby certifies the following:

1. I am a Plaintiff in this matter.
2. I am a senior program officer within the Individual Rights Defense Program of the Foundation for Individual Rights in Education.
3. I have reviewed the allegations contained in the foregoing verified complaint and the brief. The allegations are true and correct to the best of my personal knowledge.
4. I have reviewed the documents attached to the foregoing verified complaint. These documents are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents.
5. 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.

1/3/18
DATED



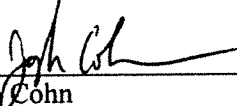
Sarah McLaughlin
Senior Program Officer
Individual Rights Defense Program
Foundation for Individual Rights in Education

VERIFICATION OF JOSEPH COHN

Joseph Cohn, of full age, hereby certifies the following:

1. I am a Plaintiff in this matter.
2. I am the Foundation for Individual Rights in Education's legislative and policy director.
3. I am a resident and citizen of the State of New Jersey. I have resided in New Jersey since 2008.
4. I have reviewed the allegations contained in the foregoing verified complaint and the brief. The allegations are true and correct to the best of my personal knowledge.
5. I have reviewed the documents attached to the foregoing verified complaint. These documents are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents.
6. 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.

1-3-18
DATED



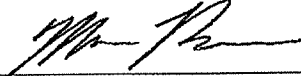
Joseph Cohn
Legislative and Policy Director
Foundation for Individual Rights in Education

VERIFICATION OF MARIEKE TUTHILL BECK-COON

Marieke Tuthill Beck-Coon, Esq., of full age, hereby certifies the following:

1. I am the director of litigation for the Foundation for Individual Rights in Education. I am authorized to act on behalf of the Foundation for Individual Rights in Education, Plaintiff, in this matter.
2. I have reviewed the documents attached to the foregoing verified complaint. These documents are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents.
3. 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.

1/3/18
DATED



Marieke Tuthill Beck-Coon, Esq.
Director of Litigation
Foundation for Individual Rights in Education