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January 26, 2023

Via E-Mail (ryan@upperschools.org)

Laurie Ryan, Custodian of Records  
Upper Township School District  
525 Perry Road  
Petersburg, NJ 08270

Re: Cape May County Herald's Dec. 20, 2022 OPRA Request

Dear Custodian Ryan:

This firm represents the Cape May County Herald and its reporter, Shay Roddy. On December 20, 2022, Shay filed a request pursuant to OPRA and the common law right of access, seeking, among other things, "A copy of any severance agreement reached between the district and Vincent Palmieri." Although we appreciate that you have produced a copy of the November 21, 2022 separation agreement, we strongly believe the agreement is over-redacted. Please consider this our formal objection to your response and attempt to resolve this matter without litigation. Additionally, this letter includes a new request for additional documents that we ask you to fulfill.

**A. Objections to Redactions to the Palmieri Agreement**

Although OPRA exempts personnel records, it requires disclosure of "an individual's name, title, position, salary, payroll record, length of service, **date of separation and the reason therefore**, and the amount and type of any pension received[.]" N.J.S.A. 47:1A-10 (emphasis added). In Libertarians for Transparent Gov't v. Cumberland County, 250 N.J. 46 (2022), the New Jersey Supreme Court held that this meant that any personnel record containing this information must be produced in redacted form.<sup>1</sup>

Although you have attempted to comply with Libertarians, you have failed to fully comply because you have redacted material that constitutes the "reason" for Palmieri's separation and other core terms of the agreement. In fact, you have redacted so much information from the agreement that it does not provide very basic details to the public. If one were to read the agreement in isolation, one would think that Palmieri is still serving as a superintendent and that he must report to work daily until

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<sup>1</sup> Another provision of N.J.S.A. 47:1A-10 states that the "personnel or pension records of any individual shall be accessible when required to be disclosed by another law." Another law does require disclosure of this agreement: N.J.S.A. 47:1A-5(e), which states that contract, including individual employment contracts, must be immediately accessible to the public. Given the factual and procedural context in Libertarians, the Supreme Court expressly stated that it did not need to reach that provision, but it nonetheless applies in this case. N.J.S.A. 47:1A-5(e) gives the public the right to see the contractual terms that public agencies makes with other parties.

December 31, 2024, the effective date of his resignation. However, based on separate communications that have gone out to the school community and other publicly known information, Palmieri actually stopped working for the District at the end of 2022 and there is an interim superintendent. The agreement fails to tell the public the reason for Palmieri's separation or provide sufficient information so that the public can understand why the District has decided to pay him *more than \$300,000* to leave his position almost immediately.

An employee's "reason" for separation means more than simply telling the public that Palmieri has an effective resignation date of December 31, 2024. It means telling the public the *real* reason for the separation, as well as the full terms of the deal. In Libertarians, the "reason" for separation was that the corrections officer had admitted to engaging in non-consensual sex acts with an incarcerated woman but was then allowed to retire in good standing with only a partial forfeiture of his pension. After the agency lied and said that the corrections officer was "terminated" for misconduct, the Court ordered disclosure of the redacted agreement to ensure that the public was not "left with incomplete or incorrect information." 250 N.J. at 59. In other words, in that case the public knew exactly what the corrections officer had done and why the agency entered into a separation agreement with him—*i.e.* the "reason for separation."

The Libertarians case is not the first time the New Jersey Supreme Court has addressed employee separation agreements and an agency's requirement to tell the public about a public employee's "reason" for separation and the terms of the separation agreement. As the Court noted in Libertarians, N.J.S.A. 47:1A-10 mirrors Executive Order No. 11 (Nov. 15, 1974), which also required disclosure of an employee's "reason" for separation. Applying that provision, the Court held in South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478 (1991), that "date of separation" and "the reasons therefor" means that a public agency must disclose the substantive reason an employee separated from employment and that simply stating "resigned" or "terminated" is insufficient as a matter of law when there are actually more details than that to the separation.

In South Jersey Publishing, it had been reported that several employees of the Expressway Authority were under scrutiny for misusing government credit cards, including Executive Director Donald Vass. Id. at 484. In response to media reports, the Authority investigated. After the investigation concluded, the Authority held an executive session meeting to discuss "personnel matters" relating to Vaas. Not long after, the Authority and Vass negotiated a Memorandum of Agreement regarding the terms and conditions of Vaas' separation from employment via a "resignation." The terms of the Agreement became known through a resolution that was passed by the Authority in a public meeting, which stated that Vaas would receive his full salary, pension, and fringe benefits through the end of the year (approximately nine months), as well as compensation for all unused vacation and sick time. Id. at 485.

The Supreme Court interpreted "[EO]11's authorization of disclosure of 'reasons' for 'separation from the government service' **to include the results of the Authority's investigation, as revealed in the executive-session minutes.**" Id. at 496 (emphasis added). The Court further explained:

[T]he public interest in disclosure is intended to **enable the public to make a sound judgment about the reasonableness of the**

**Authority's decision regarding Vass, which authorized the expenditure of public funds to continue his salary and benefits for a substantial period of time after his resignation had become effective. Without disclosure of the reasons for Vass's "voluntary separation" from the Authority, the public cannot intelligently make such an evaluation.**

[Id. at 498 (emphasis added).]

See also Atl. City Convention Ctr. Auth. v. S. Jersey Pub. Co., Inc., 135 N.J. 53, 69 (1994) (concluding public agency must disclose audio of executive session that discussed the performance of the chief officer "if the tapes were necessary to determine the 'reasons for the earlier discharge'").

Here, the District has largely kept the public in the dark about why agreed to let Palmieri "resign" and pay him more than \$300,000 for two years of services that he will not be performing. That far exceeds the "substantial period" of time the agency paid the employee in South Jersey Publishing and, just as in that case, the public deserves to know more so that it can ascertain whether the District's deal with Palmieri was reasonable. The District's recent statement that Palmieri had uncapped sick/pay time and tenure rights as a principal might explain how he had more financial bargaining power in this separation, but it does not explain the reason for his departure and why the District felt it was important to "end the relationship" almost immediately (rather than having him perform his services until the end of the contract). The District's statement that Palmieri agreed to less than what he was entitled to also suggests that the District too had bargaining power and there is conduct on his part that he does not want disclosed and that he was willing to take less of a payout in exchange for secrecy regarding his reason for separation. OPRA does not permit such secrecy, however—the public is entitled to know the real reason for his separation and merely disclosing that he "resigned" is insufficient as a matter of law.

Although we believe that OPRA requires you to remove the redactions, we ask that you also consider the Herald's interest under the common law right of access. Even if you believe the redacted material constitutes exempt information, the public clearly has a strong interest in knowing more about Palmieri's separation from employment and why he is walking away with a huge payout that will cost the public more than \$300,000. The public's right to know far trumps any confidentiality interest and thus access should be granted under the common law.

Put simply, please tell the public the full details of what happened and why the District wanted to rid itself of Palmieri so much that it was willing to pay him to go away, and why Palmieri was willing to agree to these terms. If he engaged in misconduct, the public should know. If someone else engaged in misconduct and he is being paid to keep it a secret, the public should know. If there was no misconduct, then simply detailing the full terms of the agreement would be non-controversial. Regardless, all this information is required to be disclosed pursuant to N.J.S.A. 47:1A-10.

Our sincere hope is that we can resolve this matter without litigation. Kindly let us know your position by Friday, January 27, 2023.

**B. New Records Request**

Please accept this new records request on behalf of the Cape May County Herald and Shay Roddy. Pursuant to OPRA and the common law right of access, please produce the following:

1. All Executive Session minutes of the Board of Education for August, September, October, November, and December of 2022.

Please note, consistent with South Jersey Publishing, my clients are seeking to learn more about Vincent Palmieri's reason for separation from employment and the terms of his separation agreement. The Court in South Jersey Publishing made it clear that such closed-door discussions must be disclosed so that the public can see the deliberations and decision. 148 N.J. at 493-94 ("In our view, it would be anomalous to interpret [OPMA], enacted by the Legislature to enhance the public's access to and understanding of the proceedings of governmental bodies, in a manner that foreclosed the public's right to obtain material and information vital to its ability to evaluate the wisdom of governmental action."). See also Payton v. New Jersey Tpk. Auth., 148 N.J. 524 (1997) (compelling disclosure of agency's internal investigation into discrimination and harassment and noting that OPMA requires disclosure of executive session minutes consistent with South Jersey Publishing).

Due to the Board's secrecy and failure to comply with the Open Public Meetings Act by properly noticing the public that Palmieri's employment or his separation agreement would be discussed, my clients are not able to identify which particular month the Executive Sessions occurred. Thus, we are seeking the Executive Session minutes for each of these months. If you are able to tell us that there were no discussions regarding Palmieri in a certain month, then my clients will likely withdraw that portion of the request.

We look forward to your prompt response.

Sincerely,

/s/ CJ Griffin, Esq.