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<p>MAPLIGHT A NJ NON PROFIT CORPORATION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>STATE OF NEW JERSEY, OFFICE OF THE GOVERNOR, NEW JERSEY STATE ARCHIVES, JOSEPH R. KLETT in his official capacity as Executive Director and Records Custodian of the New Jersey State Archives, and CHRIS CHRISTIE in his individual capacity,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MERCER COUNTY</p> <p>DOCKET NO. _____</p> <p>CIVIL ACTION</p> <p>VERIFIED COMPLAINT</p>
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Plaintiff, MapLight A NJ Non Profit Corporation, says by way of verified complaint:

PRELIMINARY STATEMENT

1. This is an action alleging violations of the Open Public Records Act, *N.J.S.A. 47:1A-1*, et seq. (“OPRA”) and the common law right of access to government records. Plaintiff alleges that he was unlawfully denied access to emails within the Office of the Governor that are within the physical possession of private lawyers for Defendant Chris Christie.

THE PARTIES

2. Plaintiff is a duly incorporated domestic 501(c)(3) non-profit corporation. Plaintiff’s principal place of business is 2223 Shattuck Avenue, Berkeley, California.

3. Defendant State of New Jersey is a public entity duly created and authorized pursuant to the laws of the State of New Jersey and the United States of America. The State of New Jersey is a “public agency” within the meaning of N.J.S.A. 47:1A-1.1. New Jersey’s principal place of business is 125 West State Street, Trenton, New Jersey.

4. Defendant Office of the Governor is a division, department or office within the State of New Jersey, and is a “public agency” within the meaning of N.J.S.A. 47:1A-1.1. The principal place of business of the Office of the Governor is 125 West State Street, Trenton, New Jersey.

5. Defendant New Jersey State Archives is a division, department or office within the State of New Jersey, and is a “public agency” within the meaning of N.J.S.A. 47:1A-1.1. The principal place of business of the State Archives is 225 West State Street, Trenton, New Jersey.

6. Defendant Joseph R. Klett is the Executive Director of the New Jersey State Archives. On information and belief, Klett is a “custodian of a government record” within the meaning of *N.J.S.A.* 47:1A-1.1. He is sued in his official capacity.

7. Governor Chris Christie is the former governor of the State of New Jersey and, through his law firm Chiesa Shahanian & Giantomasi, PC, has possession and control over all electronic records generated by the Office of the Governor during his terms of office. Based on those facts, Christie is a “custodian of a government record” within the meaning of *N.J.S.A.* 47:1A-1.1. On information and belief, Christie resides in Mendham, New Jersey.

JURISDICTION AND VENUE

8. This court has subject matter jurisdiction pursuant to *N.J.S.A.* 47:1A-6 and the common law.

9. Venue is properly laid pursuant to *R. 4:3-2(a)(2)* in that more than one of the defendants are the State of New Jersey or a department or division of the State of New Jersey.

FACTUAL ALLEGATIONS

10. Plaintiff is a 501(c)(3) non-profit corporation that is dedicated to exposing the influence of money on politics. MapLight's approach is three-fold: to illuminate how money influences politics; to advance reforms that nurture a more responsive, accountable and representative democracy; and to empower voters with the facts so that voters may make educated choices.

11. Pursuant to the Destruction of Public Records, Law, N.J.S.A. 47:3-15, et seq., and other applicable authorities, Defendants have an obligation to preserve all public records created, sent or received by public officials.

12. Defendant New Jersey State Archives is responsible for archiving, storing, and making available to the public the records of Governors who have left office.

13. Pursuant to what the Office of the Attorney General has described as a "longstanding practice," prior to leaving office, each Governor issues a "letter directive" to the New Jersey State Archives that directed the manner in which the State Archives archived and made available to the public the former Governors' records.

14. The letter directives are not executive orders and do not have the force of law.

15. The letter directives are not one of the laws or authorities recognized by OPRA in *N.J.S.A. 47:1A-1* or *N.J.S.A. 47:1A-9* that can create an exemption.

16. With respect to outgoing Governors prior to Christie, the directives exempted from access a series of categories of records that would, in general, be exempt from access under OPRA or other laws. Outgoing governors also designated certain records as “privileged” or “confidential.” Requests by the public for these records that were so marked would initiate a review process by the Governor or their designee. The Governor or their designee would review the requested records that were designated as “privileged” or “confidential” and would decide whether to assert or waive the privilege.

17. The outgoing Christie Administration departed from this practice in at least one significant respect. During the course of the Christie Administration, the Office of the Governor employed approximately 150 employees, who generated an unknown number of emails and electronic communications. Pursuant to a November 1, 2017 Memorandum from First Assistant Attorney General Peter Slocum to the Governor’s Chief Counsel James DiGiulio (“Slocum Memorandum”), the outgoing Administration decided to designate all emails and electronic records of the Office of the Governor as “privileged” or “confidential.” The emails and electronic records are maintained by the New Jersey Office of Information Technology, but the public may not access those records without prior review and approval by Defendant Christie or his private law firm.

18. Pursuant to the new procedure created by the Slocum Memorandum, if any person requested access to emails or electronic records held by the Office of the Governor during the Christie Administration, the State’s Office of Information Technology would conduct a review for responsive records and retrieve them. The results of the search would then be provided to counsel for Defendant Christie, who would in turn determine whether the responsive records were privileged.

19. This procedure raises at least two troubling issues. First, contrary to the public's presumption of access to all public records enshrined in OPRA, the procedure designates all emails and electronic documents as "confidential" without reviewing any of them. Second, the sole discretion to grant or deny access to records is bestowed upon a private citizen (Christie) and his private law firm. The records are never reviewed by anyone employed by the State or who owes a fiduciary duty to the State.

20. This case presents an OPRA request that was denied by the Defendants utilizing the procedure set forth in the Slocum Memorandum.

21. In connection with his reporting and research, on March 27, 2018, MapLight reporter Andrew Perez submitted an OPRA request to the Division of Archives and Records Management in which he asked for copies of the following records: (1) all emails exchanged from February 1, 2017 to January 15, 2018 between officials in the Governor's office and employees of Kushner Companies and (2) all emails exchanged from February 1, 2017 to January 15, 2018 between officials in the Governor's office and the New Jersey Economic Development Authority relating to the Kushner Companies, One Journal Square, and 1 Journal Square. With respect to Item 1, Plaintiff requested that the domain names @kushnercompanies.com and @kushner.com be searched, as well as any other email address "used by Kushner Companies." With respect to Plaintiff's reference to "officials in the Governor's office," Plaintiff stated that term should be understood "to include: Gov. Chris Christie, Amy Cradic, James DiGiulio, David M. Reiner, Amanda DePalma, Ray Brandes, Jennifer Duffy, and John Spinello."

22. On April 5, 2018, Defendant Klett responded to Plaintiff's OPRA request and asked for a two-week extension of time to respond, until April 17, 2018.

23. Plaintiff responded via email that same day by thanking Defendant Klett and asking for a privilege log “if your office believes any of the materials we’ve requested should be exempt from disclosure[.]”

24. On April 18, 2018, Defendant Klett requested another extension until April 27, 2018.

25. On April 26, 2018, Defendant Klett requested an additional extension through May 4, 2018.

26. In response, on April 26, 2018, Plaintiff acknowledged the request for the extension and asked, a second time, that they be provided with a privilege log in the event the State withheld any records.

27. On April 27, 2018, Defendant Klett responded by writing in an email that “I did convey that request to the Attorney General’s Office.”

28. On May 11, 2018, Defendant Klett provided a formal response to Plaintiff’s OPRA request. Defendant Klett wrote that there was “some question as to which State government entity is the custodian of records of former Governor Christie not yet accessioned into the State Archives. This includes the electronic records held by the New Jersey State Office of Information Technology.” Klett also wrote that the New Jersey Office of Information Technology had searched for responsive records “using the keywords and search parameters that you provided.” The results of the search were reviewed by Governor Christie’s private law firm, Chiesa Shahnian & Giantomasi, PC. Defendant Klett provided a May 3, 2018 letter from that Firm regarding the results of its review. The letter is from former New Jersey Attorney General Jeffrey S. Chiesa. In contrast to Defendant Klett’s statement, the May 3, 2018 letter states that his Firm, not the Office of Information Technology, conducted the search for

electronic records. The letter stated that the Firm had identified documents responsive to the first part of Plaintiff's OPRA request and had not identified any documents responsive to Plaintiff's second OPRA request. Chiesa wrote that the responsive documents were "not subject to release under the 'executive privilege' provisions of N.J.S.A. 47:1A-9(b)."

29. Defendants' interest in non-disclosure does not outweigh plaintiff's interest in disclosure.

COUNT I: VIOLATION OF OPRA

30. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-29.

31. Defendants have violated OPRA by not providing plaintiff copies of the requested documents.

COUNT II: VIOLATION OF THE COMMON LAW RIGHT OF ACCESS

32. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-31.

33. Plaintiff has a common law right of access to copies of the requested documents.

34. Plaintiff has a legitimate private interest and wholesome public interest in the requested records.

35. Defendant has no legitimate interest in maintaining the secrecy of the requested records. Therefore, Defendants have violated plaintiff's common law right of access.

WHEREFORE, Plaintiff respectfully requests that this court enter judgment against the Defendants:

A. Ordering the Records Custodian of the Defendants to search for and review responsive records, to certify to the search for responsive records performed by them, and to conduct additional searches for responsive records if no search was performed or if the search performed was deficient;

B. Ordering the Defendants to provide to Plaintiff copies of all emails that were responsive to Plaintiff's OPRA request for all emails exchanged from February 1, 2017 to January 15, 2018 between officials in the Governor's office and employees of Kushner Companies;

C. Awarding plaintiff costs and reasonable attorneys' fees; and

D. For such other or further relief as the court deems just and equitable.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

CERTIFICATION PURSUANT TO R. 1:38-7(B)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future.

VERIFICATION

Daniel G. Newman, of full age, certifies as follows:

1. I am the President of the Plaintiff in “MapLight A NJ Non Profit Corporation v. State of New Jersey, *et al.*” All of the facts stated in the verified complaint to which this Verification is attached are true, and as to those facts that are alleged on information and belief, I believe those facts to be true.

2. 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.



Daniel G. Newman

Dated: June 13, 2018