



ARCHER & GREINER, P.C.
ATTORNEYS AT LAW

SUSAN S. HODGES
Also Member of Pennsylvania Bar

ONE CENTENNIAL SQUARE
HADDONFIELD, NJ 08033-0968
856-795-2121
FAX 856-795-0574

Email Address:
shodges@archerlaw.com

Direct Dial:
(856) 354-3076

www.archerlaw.com

March 22, 2010

VIA E-MAIL ONLY
Mr. James Barber
City Manager
City of Brigantine
1417 West Brigantine Avenue
Brigantine, NJ 08203

RE: Sexual Harassment Investigation Report

Dear Mr. Barber:

On February 19, 2010, Captain Ray Cox of the City of Brigantine Police Department ("Department") filed a sexual harassment complaint on behalf of [redacted] [an] employee of the Department. By way of this complaint, Captain Cox, on behalf of [redacted] alleged that she had been subjected to harassment based on her sex by Police Chief James Frugoli ("Chief Frugoli") in violation of Brigantines policies, rules and regulations.

1. Investigation Background

I have been engaged to conduct an investigation pursuant to and in accordance with Brigantine's Harassment in the Workplace policy/order number 2007-022. The only direction given by the City has been to conduct a fair and impartial investigation in accordance with the guidelines of the Police Department's policies, and to issue a formal written report of our factual findings and conclusions.

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PRINCETON OFFICE
700 Alexander Park
Suite 102
Princeton, NJ 08540
P 609-533-3700
F 609-533-0051

FLEMINGTON OFFICE
Plaza One
1 State Route 12, Suite 201
Flemington, NJ 08822-1722
P 908-788-9700
F 908-788-7834

PHILADELPHIA OFFICE
One Liberty Place - 32nd Floor
1650 Market Street
Philadelphia, PA 19103-7193
P 215-963-3300
F 215-963-9999

WILMINGTON OFFICE
300 Delaware Avenue
Suite 1370
Wilmington, DE 19801
P 302-777-4350
F 302-777-4352

GEORGETOWN OFFICE
9 East Market Street
P.O. Box 977
Georgetown, DE 19947
P 302-858-5151
F 302-858-5161

NEW YORK OFFICE
2 Penn Plaza
Suite 1300
New York, NY 10119
P 212-292-4988
F 212-610-4568

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Prior to interviewing any witnesses, I requested copies of all written complaints or statements that had been submitted in this matter as well as any applicable policies. I reviewed Order numbers 2007-018 (Standards of Conduct), 2007-022 (Harassment in the Workplace) and 2009-004 (Internal Affairs). We received and reviewed the internal Investigative Chronology for this matter, including Internal Affairs reports IA-2010-001 from Captain Ray Cox and Captain John Stone, as well as the Initial Complaint by Captain Ray Cox dated February 22, 2010. I also received and reviewed the February 4, 2010 e-mail from Chief James Frugoli announcing his retirement, and two March 1, 2010 text messages from [REDACTED] saved on Captain Stone's cell phone.

During the course of this investigation, I interviewed, separately, the following individuals: Complainant, Captain Ray Cox; [REDACTED] the employee alleged to have been harassed; Respondent, Chief James Frugoli; Patrolman Chris Powell; Detective Ralph Spina; Captain John Stone; Lieutenant James Bennett; Patrolman Richard Casamento; civilian Jolyn Gilligan; Lieutenant Thomas Greutz (retired); Lieutenant Ceann Hingston; former Police Chief Arthur Gordy; and Captain Joe Chiarolanza (retired). Prior to each interview, I informed each interviewee of the following:

- No interviewee would be retaliated against for participating in the investigation.
- Each interviewee was permitted to have a support person accompany him or her to the interview. No interviewee chose to be accompanied by a support person. I note that that although [REDACTED] informed me that while she had consulted an attorney, she also chose to attend the interview without representation.
- Any information regarding the Complaint and investigation was to be treated as confidential and should not be shared with any co-workers.
- The investigation was being conducted by Susan Hodges as an independent fact finder who could not provide any legal advice to them.
- Although the interviewee was not under oath, truthfulness was expected.
- The investigator would provide a written report to the City Manager summarizing her findings of fact and conclusions. The City Manager would then verbally inform the Complainant (including [REDACTED] and the Respondent of the investigator's relevant findings and confirm this information in writing.
- Each interviewee acknowledged that he or she understood and would abide by these guidelines. In addition, each interviewee acknowledged being aware of and familiar with the City's relevant policies and procedures.

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Interview of [REDACTED]

I interviewed [REDACTED] on March 11, 2010 at 2:00 p.m.. This interview was conducted, at the request of [REDACTED] at the offices of Archer & Greiner, as she indicated she was uncomfortable meeting with me at the City Complex.

[REDACTED] has been an employee for the City of Brigantine for ten years. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] stated that she was not comfortable with the situation and that she did not want to file a complaint against Chief Frugoli. However, she stated that Chief Frugoli has been harassing her for some time, but that she had no intention of filing a complaint, particularly since she thought he had planned to retire this spring. She stated that Chief Frugoli had announced his retirement in early February, and she was so happy because she would not have to "put up" with him anymore. However, when she found out that he had decided not to retire, she broke down and started crying. She stated that this occurred [REDACTED], in front of Captain Cox and Detective Ralph Spina. She indicated that Captain Cox seemed confused as to why she was so upset, and that she explained by saying something to the effect of, "you know how he treats me and the things he does." During her interview that she stated that Captain Cox told her that he was unaware of her concerns, which she then described to him in further detail. Captain Cox then stated her that he would have to "do something" about her complaints.

Specifically [REDACTED] described the following incidents of harassment.

She indicated that Chief Frugoli has made inappropriate comments to her. She indicated that one time (when Chief Frugoli was still a lieutenant) she said she had a kink in her neck, to which Chief Frugoli replied, "A hot oil massage would cure that." She indicated that he said it in a suggestive tone which made her uncomfortable.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

She stated that Chief Frugoli often refers to her as "babe," "honey," "sweet lips", and "sugar lips." She further related that on one occasion a few months ago he introduced her to two outside vendors as [REDACTED]. She reported that she was humiliated by this, particularly because he did it in front of outsiders. [REDACTED] stated that Detective Spina, Officer

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Powell, Lieutenant Hingston, Lieutenant Bennett and Lieutenant Grentz could corroborate these examples.

[REDACTED] also described how Chief Frugoli regularly stands too close to her, so close that she can sometimes feel his breath on her neck or that she has to move her pelvis to avoid contact with the Chief. She related that this past January, [REDACTED] She was leaning over the table working on the reports and the Chief came in and got right behind her so that she had to move her pelvis forward to avoid contact with him. She stated that Detective Spina noticed the Chief standing particularly close to her, and came into the room, which caused the Chief to move away from her. Detective Spina stayed in the room with her until the Chief left, at which point she thanked him for coming in the room.

[REDACTED] stated that she feels like the Chief is stalking her and that she feels like whenever she turns around, the Chief is right behind her. She identified Jolyn Gilligan, Officer Powell, Captain Stone and Detective Spina as individuals who could corroborate the fact that the Chief often stood uncomfortably and inappropriately close to her.

[REDACTED] also described an incident in which she was bending over working on some papers when the Chief came in the room and made a comment that it looked like she "had pennies on her ass." She indicated she was wearing a belt that had copper on it. [REDACTED] indicated that the Chief's comment made her uncomfortable because it meant he was looking at her behind. She stated that she immediately stood up and fixed her shirt. She stated that Detective Spina was present when the Chief made this comment.

[REDACTED] also described an incident which she stated took place a few years ago when the Chief was still a Captain. She stated that he walked past her while she was in the detective unit and that he swatted her on her behind and kept on walking. She said that she was in shock and that she exclaimed to Lieutenant Grentz, "What the hell was that?" (or something to that effect) to which Lieutenant Grentz replied, "Do you want to make a complaint?" [REDACTED] told Lieutenant Grentz that she did not want to make a complaint.

[REDACTED] also said that approximately three weeks prior to our interview that she was helping Captain Stone with his resume at her desk. According to [REDACTED] Captain Stone was applying for the Chief's position, since the Chief had announced his retirement. She stated that Chief Frugoli came in and stood right behind her and stuck his finger in her ear. She said she just ignored it because the Chief did not remain next to her as Captain Stone was also present. [REDACTED] stated that she did not know if Captain Stone saw Chief Frugoli put his finger in her ear.

[REDACTED] also stated that the Chief "singles her out." As an example, she said that the Chief requires her to call or text him directly if she is going to be out of work. She believes that she is the only individual from whom the Chief requires a personal call or text in the event of lateness or absence. She said she was not required to do this with the prior Chief or before approximately September of 2009. [REDACTED] indicated that she thinks the Chief has issues with power and control. She further believes Chief Frugoli has "ramped up" his "control" issues with

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her and thinks that it may have to do with [REDACTED]
[REDACTED]

[REDACTED] reported to me that she is extremely concerned about retaliation and that is why she never reported any of the above incidents or filed a complaint against Chief Frugoli. She said that the Frugoli family "owns this town" and that she was afraid to complain because Chief Frugoli holds "grudges." She further stated that she is afraid to continue working for Chief Frugoli because of this investigation.

[REDACTED] also mentioned that she was concerned because when she spoke to the City Manager that his response was, "It's not that I don't believe you, but I find it hard to believe." She also indicated that the City Manager said he "didn't have a lot of options - I can't transfer the Chief a [REDACTED]

[REDACTED] stated that she has already spoken to an employment attorney but that she had declined his offer to attend the investigatory interview. She further stated that she did not want to file a lawsuit, that she just wanted the harassment to stop.

Interview with Captain Cox

Captain Ray Cox is one of two Captains within the City of Brigantine Police Department. I interviewed Captain Cox at the Brigantine municipal building on March 12, 2010. He previously provided a written summary of the manner in which [REDACTED] revealed her complaints to him, a copy of which is attached. He also stated that in accordance with Department policy, he had first referred this matter to the Atlantic County Prosecutor's Office, who ultimately referred it back to the City Manager for handling since they determined it was not a criminal matter.

During the interview, Captain Cox confirmed the information contained in his written report. Specifically, Captain Cox confirmed that on February 16, 2010, upon learning that Chief Frugoli was no longer planning on retiring, [REDACTED] broke down. In so doing, she stated that Chief Frugoli touches her and makes inappropriate comments. She stated to him that Chief Frugoli also stands so close to her that she feels uncomfortable. She also stated that the Chief referred to her as his [REDACTED] to two outside contractors.

[REDACTED] also told Captain Cox that Chief Frugoli once commented that she looked like she had "pennies on her ass" referring to a belt she was wearing that had copper on it. She told Captain Cox that Detective Spina was present while [REDACTED] was confiding these matters and also confirmed that Detective Spina told him he had been present when the Chief made the comment about the pennies.

Captain Cox also confirmed that [REDACTED] stated that when she was doing the end of year reports this January, Chief Frugoli was basically standing on top of her. Detective Spina was

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present while [REDACTED] relayed this incident to Captain Cox, confirmed that he was present and that it had occurred as described by [REDACTED]

Captain Cox also confirmed that [REDACTED] stated that approximately three years ago when the Chief was a Captain he slapped her on the behind. She told Captain Cox that Lieutenant Grentz was present when this occurred.

Captain Cox confirmed that he told [REDACTED] that he would have to take action on her complaints as an Internal Affairs officer. She told him that she did not want him to do anything because she was afraid the Chief would retaliate against her. Captain Cox also confirmed that [REDACTED] believed that the Chief was upset because she had filed a lawsuit against the City of Brigantine on behalf of her daughter who had been in a car accident involving a city ambulance.

Captain Cox also confirmed that [REDACTED] told him that she was required to text or call Chief Frugoli every morning with her schedule. He stated that he did not know why the Chief required her to do that, and that it was not normal departmental procedure. Captain Cox stated that the normal procedure would be to simply call the officer in charge for the day. [REDACTED]

Captain Cox stated that [REDACTED] also informed him that the Chief would refer to her as "Hot Lips" or "Sweet Lips".

Captain Cox further stated that on Monday, March 1, 2010, when [REDACTED] saw Chief Frugoli enter the station, she panicked and [REDACTED]. Captain Cox stated that [REDACTED] told him that she had texted Captain Stone on his cell phone at that time. Captain Cox confirmed that Captain Stone had saved the text message from [REDACTED] on his cell phone, that he had reviewed the message and that it confirmed [REDACTED] account.

Captain Cox stated that he was unaware of the harassment allegations until February 16, 2010, when [REDACTED] broke down upon learning of the Chief's decision not to retire. He confirmed that Captain Stone had received similar complaints from [REDACTED] on February 17, 2010. He advised that both he and Captain Stone believed [REDACTED] wanted to complain, but did not formally do so because she was afraid of retaliation.

Interview with Patrolman Chris Powell

I interviewed Patrolman Powell at the Brigantine municipal building on March 12, 2010. Patrolman Powell stated that he has known [REDACTED] for about three years. He stated that he could tell she was physically upset when she learned Chief Frugoli had decided not to retire. He also stated that Chief Frugoli would make inappropriate gestures and comments about [REDACTED] breasts. He further stated that Chief Frugoli would make sexually oriented comments, for example, he said that Chief Frugoli once commented about [REDACTED] behind when she was

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bent over. He confirmed that he has seen the Chief "stand too close" to [REDACTED]. For example, he stated that if she were bent over a file, the Chief would basically stand on top of her.

Patrolman Powell stated that he had recommend that [REDACTED] speak to Captain Cox about this issues, but that [REDACTED] said she did "not want to make any trouble."

Patrolman Powell stated that he thinks the Chief is demeaning to women, and supported this comment by stating that the Chief regularly berates female police dispatchers by yelling at them.

Interview with Detective Ralph Spina

I interviewed Detective Spina at the Brigantine municipal building on March 12, 2010. [REDACTED] He said that when [REDACTED] was preparing [REDACTED] reports [REDACTED] he saw the Chief standing so close to her that he was sure she could feel his breath. He stated that when he saw this, he went into the room and waited there until the Chief left. He confirmed that [REDACTED] thanked him and said "I can't stand it."

Detective Spina also stated that on another occasion [REDACTED] came out of her office practically in tears. When he asked her what was wrong [REDACTED] told him that he just called her "luscious" and that she was humiliated.

Detective Spina also said that on one occasion, the Chief had improperly commented on [REDACTED] attire when he stated that it looked like she had pennies on her "ass."

Detective Spina confirmed that he has heard the Chief grunt when [REDACTED] walks past him. He also stated that when [REDACTED] goes into the Chief's office [REDACTED] that the Chief leans back in his chair and stares at her in an inappropriate way. He stated that the Chief sometimes sticks his tongue out and flickers it in a sexual way when either [REDACTED] or [REDACTED] walk by him at the office.

He also said that he had heard about an occasion when the Chief slapped [REDACTED] on the behind, but he was not present when that occurred. He said he believed Lieutenant Grentz, now retired, was present when this occurred.

Detective Spina stated that the Chief require [REDACTED] to text him personally any time she goes anywhere. He stated that this was not normal departmental procedure. He said that the Chief is "possessed with power," and referred to Brigantine as "Frugolville."

Interview with Captain Stone

I interviewed Captain Stone at the Brigantine municipal building on March 12, 2010. Captain Stone has been the acting Chief during the past month or so while Chief Frugoli was out

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on a medical leave. He confirmed that [REDACTED] came to his office on February 17, 2010 and after some idle conversation, began to tear up and become visibly shaken. He confirmed that she told him that she "couldn't take it anymore," referring to Chief Frugoli. Captain Stone said [REDACTED] said that she thought he was retiring and that she would be fine.

Captain Stone confirmed that [REDACTED] told him that she is tired of Chief Frugoli making her text him every day and further told him that Chief Frugoli makes inappropriate comments to her.

Captain Stone said that he was unaware this was happening, but did confirm that he has seen the Chief stand particularly close to [REDACTED] at the office, particularly at the fax machine. He also said that the Chief sometimes stares or leers at [REDACTED] when they are not looking.

Captain Stone remembers when [REDACTED] Chief Frugoli came in and hugged her, and Captain Stone said he could see that [REDACTED] was visibly uncomfortable when this occurred.

Captain Stone stated that he discussed the above with Captain Cox and that they agreed that they would have to report this to the Atlantic County Prosecutors Office. He stated that he discussed this with [REDACTED] on Friday, February 19, 2010, at which time [REDACTED] expressed concern of retaliation.

Interview with Lieutenant James Bennett

I interviewed Lieutenant Bennett at the Brigantine municipal building on March 12, 2010. Lieutenant Bennett is in his 19th year with the Brigantine Police Department. He stated that he knows the complainant from working with her.

Lieutenant Bennett stated that he remembered when [REDACTED] told him that the Chief introduced her to two outside vendors (he believes it was Jim Foley and Tim Sage) as his [REDACTED]. He said he could tell that it really bothered her. He said he thought she was more upset because the Chief said that to "outsiders" and that is why it made her so upset.

Lieutenant Bennett did not have any other relevant information.

Interview with Patrolman Richard Casamento

I interviewed Patrolman Casamento at the Brigantine municipal building on March 12, 2010. Lieutenant Casamento has been with the Brigantine Police Department for 9 years. He confirmed that [REDACTED] has complained to him on more than one occasion about Chief Frugoli. He did not have any specific examples, but said it was just "run of the mill sexual harassment." He stated that lately, she had only expressed dissatisfaction about the Chief's professionalism.

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Patrolman Casamento said that Brigantine is a small town and that anybody that says anything against the Frugoli's is "done."

Interview with Jolyn Gilligan

I interviewed civilian Jolyn Gilligan at the Brigantine municipal building on March 12, 2010. Ms. Gilligan has been with the Brigantine Police Department for about 4 ½ years. She is the police records secretary. She stated that a few years ago [REDACTED] confided in her that [REDACTED]. She also remembered a time when [REDACTED] appeared visibly upset because she told Ms. Gilligan that the Chief had referred to her as [REDACTED]. She also heard from [REDACTED] that he had slapped her on the behind, but she was not present and did not see that occur. Ms. Gilligan also confirmed that [REDACTED] once told her a story about the Chief commenting about "pennies on her ass." She also stated that [REDACTED] told her that recently the Chief put his finger in her ear. She further stated that [REDACTED] was crying when she found out the Chief was not going to retire.

Ms. Gilligan said she has noticed that the Chief stands very close to [REDACTED] and that he has made it clear that [REDACTED] has to answer to him. [REDACTED]. She said she is only required to report to Captain Cox, the head of the detective bureau, but that for some reason, [REDACTED] is required to report to the Chief. Ms. Gilligan stated that she can see that the Chief makes [REDACTED] uncomfortable. She stated that the Chief actually complements [REDACTED] a lot, but then he is really hard on her. She said she does not understand why he does that, and that it just "doesn't flow."

Ms. Gilligan said the Chief does not make her uncomfortable in a sexual way, but said she is intimidated by him.

Phone Interview with Retired Lieutenant Thomas Grentz

I interviewed Lieutenant Grentz via telephone from the Brigantine municipal building on March 12, 2010. Lieutenant Grentz retired from the Brigantine Police Department in January, 2009. He confirmed that he witnessed Chief Frugoli "smack" [REDACTED] on the "butt" a few years ago. Lieutenant Grentz believes the Chief was either a Captain or a Lieutenant at the time this occurred. He said [REDACTED] looked at him and said, "what the (expletive) was that?" He believes he replied, "did that just happen?" Lieutenant Grentz stated he then too [REDACTED] aside and asked her if she wanted to pursue anything against Chief Frugoli. He stated that [REDACTED] declined to do so.

Other than the above incident, Lieutenant Grentz stated that [REDACTED] never complained to him about Chief Frugoli. The only other thing Lieutenant Grentz remembered was a time when the Chief said, "way to go babe," to [REDACTED]. He believe [REDACTED] was standing by a shredding machine when this occurred.

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Phone Interview with Lieutenant Ceann Hingston

I interviewed Lieutenant Hingston via telephone from the Brigantine municipal building on March 12, 2010. Lieutenant Hingston is the only female Lieutenant with the Brigantine Police Department. She has been with the City of Brigantine for 20 years. She stated that [REDACTED] would come to her office at times, shut the door, and "vent" about Chief Frugoli. She stated that she would ask [REDACTED] if she wanted to "take it further," but that [REDACTED] would always say no. She confirmed that Chief Frugoli refers to [REDACTED] as "sugar lips" "honey" and "babe" and that he "invades her space." She confirmed that [REDACTED] told her that the Chief introduced her as [REDACTED] some time this past summer and she remembered [REDACTED] was very upset by this.

Lieutenant Hingston indicated that she believes the Chief's behaviors are escalating because lately it had become almost a weekly occurrence that [REDACTED] would complain to her. She also indicated that she is only in the office about two days per week.

Lieutenant Hingston stated that she is gay and that the Chief doesn't bother her. She also indicated that she has seen the Chief stare inappropriately at Jolyn Gilligan.

Finally, Lieutenant Hingston stated that "people were dancing in their offices" when the Chief announced he was retiring.

Phone Interview with Retired Chief Arthur Gordy

I interviewed Chief Gordy via telephone from the Brigantine municipal building on March 12, 2010. Chief Gordy retired from the Brigantine Police Department approximately two years ago. [REDACTED] He stated that when she called him back, she confided in him and told him about the things Chief Frugoli was doing. He also stated that [REDACTED] told him about the incident when Chief Frugoli slapped her on the behind and called her [REDACTED] He said [REDACTED] did not indicate there was any regular touching or grouping, but she did say that she was always uncomfortable around Chief Frugoli.

Chief Gordy said that [REDACTED] had raised these types of concerns with him when he was the Chief and that he offered her the chance to file a complaint, but that [REDACTED] declined. The only specific incident he could remember was a time when [REDACTED] had come to him crying, but he did not remember what it was about, although he believed it was about Chief Frugoli.

Chief Gordy spoke to [REDACTED] recently as well, and said she told him Chief Frugoli had put his finger in her ear. Chief Gordy stated that he told her to go to one of the Captains, but that

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[REDACTED] was afraid to because she thought they were friends. He also told her to go to the City Manager. Mr. Gordy stated that he also spoke to the City Manager and told him that he would back up [REDACTED] story.

Phone Interview with Retired Captain Joseph Chiarolanza

I interviewed Captain Chiarolanza via telephone from the Brigantine municipal building on March 12, 2010. Captain Chiarolanza retired in January, 2009. He did not remember any specific incidents regarding Chief Frugoli and [REDACTED]. However, he said that Chief Frugoli would undress her with his eyes and leer at her. When asked why the Chief would do this, Captain Chiarolanza said, "that was Jimmy." He also stated that he and Lieutenant Grentz had a bet about how long it would take before someone filed a complaint against Chief Frugoli. He said the bet was that it would take less than six months.

Interview with Chief James Frugoli

I interviewed Chief Frugoli at the Brigantine municipal building on March 16, 2010. Chief Frugoli has been with the Brigantine Police Department for 27 years. Before asking him any questions about the allegations, Chief Frugoli said he "hasn't made many friends since he became Chief." He said he just wants to make people accountable. He stated that he thinks this is part of a plan to get him to leave. He said if he leaves, Captain Stone will likely become Chief and then he will retire and Captain Cox will become the next Chief. He also stated that [REDACTED] is friends with both Captain Stone and Captain Cox.

Chief Frugoli indicated that two days after he took over as Chief [REDACTED] complained that he was trying to take away her flex time. He stated that he met with her, and told her that he was not trying to take away her flex time, but that, as the new Chief, he had to be accountable. As such, he stated her that he wanted her to put her time in the computer so that there would be a record of the hours she had worked.

[REDACTED]

[REDACTED] Later in the summer of 2009, he noticed that [REDACTED] was not at work, so he asked Captain Stone where she was. Captain Stone did not know, so Chief Frugoli called her and told her he was alright with her working flex time, but asked her to let him know or put it in the computer. Chief Frugoli indicated that he trusted [REDACTED] because she was a good employee and always got her work done, but that he had to be accountable. He said after that, she would text time and tell him where she was. Chief Frugoli indicated that he did not direct her to text him, only to notify him in some way. Chief Frugoli believes that [REDACTED] has a problem with the accountability that he requires. He also indicated that he would be amenable to her advising Captain Stone of her schedule, rather than him.

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Chief Frugoli further stated that he received a pin message on his phone on July 9, 2009. He stated that it said something to effect of "Watch your back. We are looking at you. Be careful." He stated that he turned the message in to the IT person at the City and that they subpoenaed his phone records, but that they could not determine the source of the message. He stated that he reported this to Jim Barber, the City Manager. Chief Frugoli provided this information to me and indicated that he believes this is all part of a scheme to get rid of him.

As to the specific allegations, Chief Frugoli denies ever harassing [REDACTED]. He denied that he ever intentionally stands uncomfortably close to her. In fact, he indicated that the location of the fax and copy machine make it difficult for anyone to stand there and not be "too close." He denied ever slapping her on the behind, and denied sticking his finger in her ear. He also said he did not remember ever doing any thing like what was being alleged. Chief Frugoli denied standing over her while preparing the end of year reports in January. He also denied ever [REDACTED] or using the terms "honey" or "babe" or "sweet lips" when addressing her. [REDACTED]

[REDACTED] He also did not remember making any comment about her clothes, specifically the "pennies on the ass" comment. Chief Frugoli indicated that none of these allegations were true and said it was not "his character" to act in such a way. He specifically asked me if there were witnesses to any of these incidents and asked who those witnesses were.

Chief Frugoli steadfastly denied all of the allegations. He said he would never act this way and that he wanted to sit down with [REDACTED] and assure her that there would be no retaliation. He also stated that no one has filed a complaint against him in 27 years. He said he just wants to finish out his contract and retire. Chief Frugoli did indicate that he plans to retire at the end of the year.

Findings of Fact

While Chief Frugoli has denied all of the allegations, I find the following allegations were specifically corroborated:

1. [REDACTED] stated that Chief Frugoli slapped her on her behind a few years ago. Lieutenant Grenz confirmed that he witnessed Chief Frugoli slap [REDACTED] on her behind.
2. [REDACTED] stated that Chief Frugoli often stands inappropriately close to her, so close that sometimes she has to move her pelvis to avoid contact with him. She said that [REDACTED] Chief Frugoli stood right behind her when she was bending over the table such that she had to move her pelvis forward to avoid touching him. She said that Detective Spina witnessed this, and that he actually came into the room and stayed until Chief Frugoli left the room. Detective Spina confirmed that he saw Chief Frugoli standing so close to [REDACTED] that he decided to walk into the room, staying until Chief Frugoli left. He indicated that [REDACTED] actually thanked him for doing so. Patrolman Powell, Captain Stone and Ms. Gilligan each

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independently confirmed that they had witnessed Chief Frugoli standing inappropriately close to [REDACTED] on numerous occasions.

3. [REDACTED] stated that Chief Frugoli makes inappropriate comments to her. [REDACTED] also stated that on one occasion, Chief Frugoli said that it looked like [REDACTED] had "pennies on her ass" referring to a belt that she was wearing. Detective Spina confirmed that he was present when this occurred and that Chief Frugoli inappropriately commented that it looked like [REDACTED] had "pennies on her ass."

4. [REDACTED] stated that Chief Frugoli would call her "babe," "honey," "sugar lips" or "sweet lips." Lieutenant Grentz confirmed that he heard Chief Frugoli call [REDACTED] "babe." In addition, although not independently witnessed, Chief Frugoli's use of inappropriate names or references were corroborated to the extent that contemporaneous with the event, [REDACTED] expressed her dissatisfaction to Lieutenant Hingston. Lieutenant Hingston said that [REDACTED] had confided in her numerous times that Chief Frugoli had referred to her as "sugar lips," "honey" and "babe."

5. [REDACTED] She said she was humiliated and embarrassed by this. She said she thought Lieutenant Bennett was present when this occurred. Lieutenant Bennett said he was not present when this occurred, but that he was there when [REDACTED] came inside right after the alleged comment had been made, and he said [REDACTED] told him what the Chief had said, and that he could tell that [REDACTED] was upset. Although there is some dispute about whether Lieutenant Bennett was actually present when this allegation occurred, I find that his contemporaneous recollection of [REDACTED] reaction is sufficient to corroborate this allegation.

6. Although not alleged by [REDACTED] some individuals interviewed said that Chief Frugoli makes inappropriate comments and gestures about [REDACTED]. Specifically, Patrolman Powell stated that he has seen Chief Frugoli make inappropriate gestures and comments about [REDACTED] breasts. He also said that Chief Frugoli has made comments about [REDACTED] behind. Captain Chiarolanza said that Chief Frugoli "undresses" [REDACTED] with his eyes, and that he leers at her. Detective Spina said that sometimes, Chief Frugoli will grunt when [REDACTED] walks by. He also stated that Chief Frugoli stares at her in a leering fashion. Detective Spina also said that sometimes Chief Frugoli will stick his tongue out and flicker it in a sexual manner when [REDACTED] or Ms. Gilligan walk by. Chief Frugoli denied ever doing so. Although Chief Frugoli admitted that he appreciates an attractive woman, he said he would never act in such an inappropriate way. He said that was not within his "character." I find these allegations to be sufficiently substantiated based on the credibility of the witnesses and the fact that these allegations were raised independently by the witnesses during the interviews.

7. [REDACTED] said that Chief Frugoli "singles her out" By way of example, she said that Chief Frugoli requires her to text him whenever she is going to be out of the office. She said she is the only person who is required to do this. Captain Cox, Captain Stone and Detective Spina confirmed that [REDACTED] is the only person who is required to call Chief Frugoli when they are going to be out of the office. Captain Cox, Captain Stone and Detective Spina each indicated

March 22, 2010

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that this is not normal departmental procedure. Detective Spina also indicated that he believes Chief Frugoli does this because the Chief is "possessed with power." Chief Frugoli admitted that he requested that [REDACTED] let him know when she is going to be out of the office. However, he said he never required her to text or call him. In fact, Chief Frugoli said he told her that she could note her absence in the computer. Chief Frugoli indicated that he was concerned about accountability and that even though the prior Chief did not require that [REDACTED] provide much documentation about her absences, that he felt he needed to have some information because as the Chief, he would be the one who had to be accountable for her time. Chief Frugoli also indicated that he trusted [REDACTED] and that she was a good employee. [REDACTED]

[REDACTED] Only to the extent that [REDACTED] was required to contact Chief Frugoli regarding her schedule, this allegation is substantiated, based on Chief Frugoli statement that he did ask [REDACTED] to contact him regarding his schedule.

I find that the following factual allegations were not sufficiently corroborated.

1. [REDACTED] stated that Chief Frugoli made a comment about a hot oil massage "curing" her sore neck. There were no independent witnesses to corroborate this allegation.
2. [REDACTED] also stated that Chief Frugoli told her that he expected the same "service" as the previous Chief. She stated his tone suggested something other than work. There were no independent witnesses to corroborate this allegation.
3. [REDACTED] also stated that Chief Frugoli had recently stuck his finger in her ear while she was standing at a desk with Captain Stone. Captain Stone did not corroborate this allegation. Although Chief Gordy confirmed that [REDACTED] told him this, it was not contemporaneous with the event and thus I do not find that to be sufficient to substantiate this allegation.
4. [REDACTED] stated that on one occasion, Chief Frugoli inappropriately suggested that she come with him to a seminar in Florida. There were no independent witnesses to this event, however, Jolyn Gilligan confirmed that [REDACTED] had previously told her that the Chief had made a comment about the Chief had jokingly suggested that [REDACTED] come to Florida with him for a seminar. However, Ms. Gilligan was unclear about when [REDACTED] told her this, and since she could not place it contemporaneous with the alleged statement, I do not find Ms. Gilligan's recollection to be sufficient to substantiate this allegation.

March 22, 2010

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Conclusion

I conclude that there was a violation of the Brigantine Police Department Policy on Harassment in the Workplace, in that Chief Frugoli made offensive or derogatory comments based on [REDACTED] sex. Specifically, I conclude that he slapped her on her behind, and inappropriately commented that it looked like she had "pennies on her ass." I find that Chief Frugoli would inappropriately refer to [REDACTED] and "honey," "babe" or "Sugar Lips." I also find that Chief Frugoli inappropriately introduced [REDACTED]. I find that Chief Frugoli would stand uncomfortably close to [REDACTED] for no appropriate reason.

As to the allegation regarding the requirement that [REDACTED] call Chief Frugoli regarding her schedule, although I find this allegation to be substantiated factually, I do not find that it was done in violation of the department policy on harassment in the workplace. [REDACTED]

In addition, there was a violation of the Brigantine Police Department policy to the extent that many of these allegations were known to members of the police force, who failed to report them. Although [REDACTED] indicated that she did not want to file a report against Chief Frugoli, it is the responsibility of a supervisor to report any claim of harassment in the workplace.

I appreciate the opportunity to assist you with this investigation. Should you have any questions regarding my investigation or factual findings, please do not hesitate to contact me.

Very truly yours,

ARCHER & GREINER
A Professional Corporation

By: _____

SUSAN S. HODGES

ssh/

FEB 25 2011

_____ :
 JOHN PAFF, :
 Plaintiff, :
 v. :
 CITY OF BRIGANTINE, :
 Defendant. :
 _____ :

NELSON JOHNSON, J.S.C.
 SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION, CIVIL PART
 ATLANTIC COUNTY
 DOCKET NO. ATL-L-5038-10
 Civil Action
ORDER

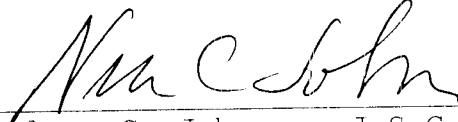
This matter being opened to the Court by Richard Gutman, attorney for Plaintiff John Paff, by way of order to show cause, on notice to Timothy Patrick Maguire, of Maguire & Maguire, P.C., attorney for Defendant City of Brigantine, and the Court having considered the papers submitted by the parties, and for good cause appearing,

IT IS on February 25, 2011, 2011 ORDERED as follows:

1. The City of Brigantine within 45 days of service of this order shall grant Paff access to the requested Investigative Report without the identity of the alleged victim and other witnesses; *As per the Court's Memorandum of even date, the Hodge's Report (as redacted) is released.*
2. If the City of Brigantine has not yet granted Paff access to the Agreement, the City of Brigantine within 1 business day of service of this order upon it shall grant Paff access to the requested Agreement without the identity of the alleged victim;
3. John Paff shall submit any bill of costs and petition

for attorney's fees within 20 days of service of this order; and

4. John Paff shall serve a copy of this order upon the City of Brigantine within 10 days of the date of service of this order upon John Paff.



Hon. Nelson C. Johnson, J.S.C.

Opposed

Unopposed



SUPERIOR COURT OF NEW JERSEY

FILED
FEB 25 2011
NELSON C. JOHNSON, J.S.C.

NELSON C. JOHNSON, J.S.C.

1201 Bacharach Boulevard
Atlantic City, NJ 08401-4527
(609) 594-3384

MEMORANDUM OF DECISION ON MOTION
Pursuant to Rule 1:6-2(f)

TO: Richard Gutman, Esquire
55 Warfield Street
Montclair, New Jersey 07043
Attorney for Plaintiff

Timothy P. Maguire, Esquire
Maguire & Maguire
200 Jackson Avenue
Northfield, New Jersey 08225
Attorney for Defendant

RE: Paff vs. City of Brigantine

DOCKET NO. ATL-L-5038-10

NATURE OF MOTION(S): Plaintiff's OPRA Request

HAVING CAREFULLY REVIEWED THE MOVING PAPERS AND ANY RESPONSE FILED, I HAVE RULED ON THE ABOVE CAPTIONED MOTION(S) AS FOLLOWS:

Gentlemen:

I am writing to you with reference to the above-captioned matter. Please forgive my delay in not getting back to you sooner. My docket is very full. I have reviewed the report prepared by Susan S. Hodges, Esquire, dated March 22, 2010 ("the Hodges report").

The City and its Solicitor are to be commended for moving promptly to retain independent legal counsel when this matter was brought to their attention. It's obvious from the nature of the charges and the corroborated statements that most of what transpired between Chief Frugoli and the victim was known by most people within the Department.

The pleadings filed with the Court, together with the argument of counsel at the hearing on January 27, 2011, provides the Court with a sufficient basis for ruling on Plaintiff's request for release of the Hodges report. Having considered the arguments of counsel, both written and oral, the Court makes the following Findings of Fact:

Findings of Fact

1. James Frugoli (“the Chief”) was a member of the Brigantine Police Department (“Brigantine P.D.”) for approximately 27 years prior to his retirement. At the time of his retirement he was Chief of Police.
2. On December 16, 2009, as a result of an inquiry made by the Chief, the City Manager wrote to him advising of his entitlement to “terminal leave and severance pay” effective January 1, 2010.
3. On February 4, 2010, the Chief transmitted an email to all members of the Brigantine P.D. officially announcing he would retire sometime in either March or April, 2010.
4. Pursuant to the Chief’s plan to retire, he filed an application for retirement with the N.J. Division of Pensions and Benefits which provided for his retirement effective April 1, 2010. Said application for retirement was confirmed by the Division under its cover of letter to the Chief dated February 16, 2010.
5. Thereafter, at a point in time known only to the Chief, he began having second thoughts regarding his retirement date. Word of his indecision quickly spread throughout the Police Department that the Chief was contemplating delaying his retirement.
6. As confirmed in the Hodges report, the Chief’s indecision caused the victim substantial emotional distress.
7. On or about February 22, 2010 (apparently within 10 days following the Chief’s reconsideration on retirement), Captains Cox and Stone of the Brigantine P.D. conferred, apparently following discussions with the victim, and determined that an “Internal Affairs Complaint” should be referred to the Atlantic County Prosecutor’s Office alleging sexual harassment against the victim by the Chief.
8. On March 8, 2010, the Brigantine P.D. was advised by the Atlantic County Prosecutor’s Office that it had no interest in pursuing the allegations.
9. Thereafter, upon the advice of the City Solicitor, the City retained the services of Susan Hodges, Esquire, to conduct an investigation to determine whether or not sexual harassment had occurred by the Chief upon the victim.
10. Ms. Hodges undertook the assignment promptly and professionally, and on March 22, 2010, she issued a 15-page report detailing her investigation: making specific findings of fact and opining, based upon her expertise as an employment attorney, that various factual allegations of the victim were, and were not, sufficiently collaborated. Her report

concludes that there was a violation of the Brigantine Police Department Policy on Harassment in the Workplace.

11. The Hodges report is not a “government record” as defined by N.J.S.A. 47:1A-1.1 because it is “... information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with the public employer or with any grievance filed by or against an individual ...”. Accordingly, the Hodges report is exempt from disclosure by the plain meaning of the statute.
12. Notwithstanding the preceding Finding of Fact, the Court finds that the Hodges report is a common law public record. The right to access common law records was expressly preserved by the Legislature upon adoption of the OPRA at N.J.S.A. 47:1A-1 Legislative Findings, wherein the Legislature stated,

Nothing contained in [OPRA] as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including, but not limited to, criminal investigatory records of a law enforcement agency.

13. The Plaintiff has the requisite standing to pursue the Hodges report.

Because the Hodges report is a common law public record, the Court must balance the competing interests, namely, a citizen’s right to know the contents of the Hodges report versus the rights of the individuals named therein to keep such information confidential, free from view by the public.

Analysis and Ruling

The Court begins its discussion by noting that had the Legislature wished to supplant and replace the common law right to know through its enactment of the OPRA, it would have done so. To the contrary, it made it expressly clear that nothing in the OPRA destroys a citizen’s common law right of access to any public record. The reason for this is obvious. New Jersey’s Courts have had a long-standing commitment to insuring the public’s right of access to records generated by people in government.

In addition to the exemption of the common law from the OPRA, the Court also receives direction from the Legislative intent of the Legislature as expressed in the Open Public Meetings Act at N.J.S.A. 10:4-7 Legislative Findings and Declarations, where the Legislature pronounced it to be the public policy of New Jersey that, “secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a Democratic society.” The Legislature continued, stating that it was the policy of the State to insure the right of citizens to attend all meeting of public bodies.

Only in those circumstances where otherwise the public interests would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

As noted by Justice O'Hern speaking for the Supreme Court in South Jersey Pub. Co. vs. N.J. Expsrwy. Auth., 124 N.J. 478 (1991), at 488.

In its balancing, a Court may find it necessary to compel production of the sought-after records and conduct an *in camera* review thereof. It may, indeed, decide to release the records in a redacted form, editing out any privileged or confidential subject matter, as appropriate. [citation omitted] A mere summary of the record is inadequate, however, where a more complete record reflecting the underlying facts is available and the plaintiff's need therefore outweighs any threat disclosure may pose to the public or private interest.

The Court is confident that the victim's interests in confidentiality can be preserved via redactions. With regard to the Chief or the City's need for confidentiality, or for that matter anyone else who was interviewed by Attorney Hodges, the Court believes when placed on the scale of justice, their interests are outweighed by those of the Plaintiff.

Again, as noted by the Court in South Jersey Publishing, at 498:

In balancing those interests, the Court will recognize that the public interests in disclosure is intended to enable the public to make a sound judgment about the reasonableness of [government's] decision regarding [Chief Frugoli] ...

The Court finds that the City's reliance upon Executive Order #26 is misplaced. Executive Order #26 does not come into play because: (a) the provision relied upon by the City is limited on its face to records undertaken pursuant to specific state procedures; and (b) the provision relied upon by the City expressly indicates that it is an OPRA exemption. Accordingly, Executive Order #26 is not a general prohibition nor can it have any impact upon a citizen's common law right of access to public records.


As for the City's concern that release of the Hodges report could have a "chilling effect" on victims coming forward to pursue sexual harassment claims in the future, the Court does not find that persuasive. As noted by the Appellate Division in Asbury Park Press vs. Co. of Monmouth, 406 N.J. Super 1 (App. Div. 2009):

No Legislative pronouncement, however, points to concern about a chilling effect as the primary policy reason for the statutory exclusion. Public disclosure of settlements [or reports such as the Hodges report] may, in fact, encourage other victims to come forward. The Legislative

purpose was more likely protection of the privacy of all parties involved in an internal sexual harassment complaint, not just the privacy of victims.

In summary, when balancing the competing interests in light of the New Jersey common law, the Court is satisfied that the Plaintiff is entitled to access to the Hodges report. The Court has redacted portions of the report because of the need to maintain the confidentiality of the victim. The report, as redacted has been forwarded to both Messrs. Gutman and Maguire.

An appropriate Order has been entered. Conformed copies accompany this Memorandum of Decision.



NELSON C. JOHNSON, J.S.C.

Date of Decision: 2/25/11