

Olivencia, Mildred

From: [REDACTED]
Sent: Wednesday, October 14, 2015 12:23 PM
To: Olivencia, Mildred
Cc: Torres-Rojas, Genara; Van Duyne, Sheree; Ng, Danny
Subject: Freedom of Information Online Request Form

Information:

First Name: John
Last Name: Paff
Company: none
Mailing Address 1: [REDACTED]
Mailing Address 2:
City: [REDACTED]
State: [REDACTED]
Zip Code: [REDACTED]
Email Address: [REDACTED]
Phone: [REDACTED]
Required copies of the records: Yes

List of specific record(s):

1. Settlement agreement that resolved Hannah Shostack v. Port Authority, Federal Case No. 2:11-cv-00177. 2. The Open Public Records Act OPRA request form adopted by the Authority in accordance with N.J.S.A. 47:1A-5f. 3. The writing that memorializes the Authority's formal action through which the Open Public Records Act OPRA custodian was officially designated in accordance with N.J.S.A. 47:1A-1.1.

December 16, 2015

Mr. John Paff
[REDACTED]

Re: Freedom of Information Reference No. 16400

Dear Mr. Paff:

In response to your request of October 14, 2015 seeking three items, The Port Authority of New York and New Jersey (Port Authority) is providing you with the attached settlement agreement that resolved *Hannah Shostack v. Port Authority of New York and New Jersey*, Civil Action No. 11-0177, which is responsive to Item #1 of your request.

The Port Authority does not possess records that are responsive to Items #2 and #3 of your request, seeking “[t]he Open Public Records Act OPRA request form adopted by the Authority in accordance with N.J.S.A. 47:1A-5f” and “[t]he writing that memorializes the Authority’s formal action through which the Open Public Records Act OPRA custodian was officially designated in accordance with N.J.S.A. 47:1A-1.1.”

The Port Authority’s obligations pursuant to the bi-state legislation, Chapter 12 of the Laws of New York of 2015 and Chapter 64 of the Laws of New Jersey of 2015, which refer to both the Open Public Records Act (N.J. OPRA) and the New York Freedom of Information Law (N.Y. FOIL), have been under close review by the agency. It is anticipated that at the next meeting of the Board of Commissioners of the Port Authority, the Board will vote on an action to implement policy measures consistent with the agency’s procedural obligations under this bi-state legislation. The bi-state legislation, a copy of which is appended hereto, deems the Port Authority an “agency,” as defined by N.Y FOIL, and a “public agency,” as defined by N.J. OPRA.

Sincerely,


Karen Eastman
Secretary

Enclosure

Cc: C.J. Griffin, Esq., Pashman Stein
Samuel A. Rosado, Esq., New Jersey Government Records Council

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into by and between Hanna Shostack ("Plaintiff") and the Port Authority of New York and New Jersey ("the Port Authority") (collectively referred to as "the parties").

WHEREAS Plaintiff filed an action entitled Hannah Shostack v. Port Authority of New York and New Jersey, bearing Civil Action No. 11-0177 (the "Action"), currently pending in the United States District Court, District of New Jersey (the "Court"), asserting certain claims arising out of Plaintiff's employment with the Port Authority; and

WHEREAS the Port Authority denies the allegations raised in the action and denies any wrongdoing against the Plaintiff; and

WHEREAS the parties desire to resolve amicably any and all issues raised in the Action and all other potential claims, disputes and other matters between them; and

WHEREAS, this Agreement is made as a compromise between Plaintiff and the Port Authority for the complete and final settlement of any and all of Plaintiff's claims, actions, causes of action, suits, debts, damages, judgments, attorneys' fees and demands whatsoever, whether mature or unmatured, whether at law or in equity, whether before a local, state or federal court or local, state or federal administrative agency or commission, whether alleged in the Action or otherwise, and whether now known or unknown (hereinafter "Claims") against any Released Party, as hereafter defined.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties agree as follows:

1. Settlement Payment.

- a. The Port Authority agrees to pay to Plaintiff the gross sum of Two-Hundred and

Seventy-One Thousand Dollars (\$271,000.00) in complete satisfaction of any and all Claims Plaintiff has or claims to have against the Released Parties, as hereafter defined, including but not limited to any Claim Plaintiff may have for attorneys' fees (the "Settlement Payment"). The Port Authority shall use its best efforts to issue the Settlement Payment within fifteen business days after the Port Authority's receipt of an executed Agreement from Plaintiff. The Settlement Payment shall be issued in one check made payable to "Szaferman, Lakind as attorneys for Hannah Shostack" and delivered to Daniel Sweetser, Esquire.

b. Plaintiff acknowledges that she has received all wages, benefits and all other payments to which she was entitled by virtue of her employment with the Port Authority. Plaintiff agrees that she will not seek anything further from any Released Party, as hereafter defined, except as set forth in this Agreement, including, but not limited to, any other payment of any kind whatsoever. The Port Authority's obligation to make the Settlement Payment shall be discharged upon the receipt by Plaintiff's counsel, at his designated address, of a valid check representing the Settlement Payment. Plaintiff specifically acknowledges and agrees that the Settlement Payment is money to which Plaintiff is otherwise not entitled except by signing this Agreement.

c. The Parties each agree to bear their own costs to date incurred in connection with all matters relating to the Action and the Claims being settled and released by Plaintiff, including, but not limited to, attorneys' fees.

2. Tax Liabilities.

a. Plaintiff shall be solely responsible for the payment of all federal, state, and/or local taxes (whether based on income, gross receipts or otherwise) (collectively referred to as "Taxes") by or subject to imposition upon Plaintiff as a result of this Agreement.

b. Plaintiff agrees and acknowledges that the Port Authority, its counsel, the Released Parties, as hereafter defined, and their counsel, have made no representations regarding the tax consequences, if any, of this Agreement. Plaintiff additionally agrees to defend, indemnify, and hold the Port Authority and the Released Parties, as hereafter defined, harmless from and against any claim or assessment by any federal, state, or local governmental agency for any Taxes that are required of the Port Authority by any government agency at any time as the result of payment of the consideration specified in paragraph 1 of this Agreement.

3. Plaintiff's Release and Waiver of Claims

a. "Released Parties" means the Port Authority, its Commissioners, officers, agents and employees; the Port Authority's parents, subsidiaries, affiliates, divisions, partners, predecessors, insurance carriers, and bondholders; current and former directors, officers, employees, attorneys, agents, and contractors of these entities; employee pension or welfare benefit plans of these companies; and current and former trustees and administrators of these plans.

b. Plaintiff hereby releases the Released Parties from all claims and rights that Plaintiff has against any and all Released Parties. This releases all claims, including those of which Plaintiff is not aware and those not mentioned in this Agreement. This releases all claims for attorneys' fees, costs, and interest. This release applies to claims and rights resulting from anything that has happened up to now. This release does not apply to claims arising under or after the date of this Agreement.

c. Plaintiff specifically releases and forever discharges any and all claims, controversies, suits, liabilities, actions and/or causes of action of any nature whatsoever that she

has and/or that she asserted or could have asserted in the Action, and any and all claims, rights, controversies, suits, liabilities, actions and/or causes of action of any nature whatsoever that she has and/or that she asserted or could have asserted arising from or relating to Plaintiff's employment or other relationship with the Released Parties.

d. Plaintiff represents and warrants that, other than the Action, there are no pending or outstanding administrative or judicial proceedings, charges, complaints, claims or actions against the Port Authority or any of the Released Parties to which Plaintiff is a party or which are maintained on behalf of Plaintiff. Plaintiff acknowledges that the Port Authority relies upon this representation and warranty in agreeing to enter into this Agreement.

4. Binding Effect. This Agreement is binding upon and shall inure to the benefit of anyone who succeeds to the rights, interests or responsibilities of the parties. Plaintiff makes the releases contained in this Agreement for the benefit of the Released Parties and all who succeed to their rights, interests, or responsibilities.

5. Stipulation of Dismissal. Plaintiff agrees that within five (5) days of the Settlement Payment, Plaintiff will file a Stipulation of Dismissal with Prejudice with the Court.

6. Confidential Information. Plaintiff acknowledges that she may have had access to and possession of the Port Authority's attorney-client privileged information, attorney work product, trade secrets, proprietary information, and/or other confidential business information belonging to the Port Authority ("Confidential Information"). Plaintiff shall not disclose any Confidential Information to any third person unless required by law. Plaintiff further agrees that she shall not use any Confidential Information for her personal benefit or for the benefit of any other employer, client, or other principal.

7. Non-Disparagement. Plaintiff agrees not to disparage or make any disparaging remark or send to any person any disparaging communication concerning the Port Authority or any of the Released Parties. Nothing in this paragraph is intended to preclude Plaintiff from testifying truthfully if compelled by legal or administrative process to testify as a witness in any legal proceeding.

8. Confidentiality of Agreement. Plaintiff shall not directly or indirectly disseminate the terms of this Agreement to any person or entity not a party to this Agreement, except (a) by written agreement of the parties, (b) pursuant to a valid court order or subpoena, (c) as required by law, or (d) as otherwise provided in this paragraph. Plaintiff may disclose the terms of this Agreement to her attorneys and financial advisors, provided she first advises them that the terms must not be further disclosed. Without limiting the generality of the foregoing, neither Plaintiff, her attorneys, nor anyone acting on her behalf, will respond to or in any way participate in or contribute to any discussion, public or private, notice or other publicity concerning, or in any way relating to, the Action, its substance, the fact that it was filed, or the execution or the terms and conditions of this Agreement. In the event that Plaintiff's attorneys or anyone else acting on her behalf discloses the terms and conditions of this Agreement or the claims and matters asserted and/or involved in the Action, Plaintiff agrees that it shall constitute a violation of this Agreement by Plaintiff herself.

9. Request or Subpoena. If Plaintiff receives a request or subpoena seeking production or disclosure of Confidential Information or the terms of this Agreement, she shall provide advance written notice of such compelled disclosure to the Port Authority within sufficient time in order to afford the Port Authority and/or any of the Released Parties an opportunity to evaluate its and/or their legal rights and take such action as they consider to be appropriate to protect the interests of the Port Authority and/or any of the Released Parties. Such notice shall be in the form of a letter, which will include a copy of the

subpoena or other court process and this Agreement, sent via certified mail to Darrell Buchbinder, General Counsel, the Port Authority of New York and New Jersey, 225 Park Avenue South, New York, NY 10003.

10. Enforceability. If a court rules that any provision of this Agreement is not enforceable in the manner set forth in this Agreement, that provision should be enforceable to the maximum extent possible under applicable law and should be reformed accordingly. If a court rules that any provision of this Agreement is invalid or unenforceable, that ruling shall not affect the validity or enforceability of the other portions of this Agreement, which shall continue in full force and effect.

11. Non-waiver. In the event either party violates any provision of this Agreement, the failure of the other party to enforce any of its rights at that time shall not constitute a waiver by the other party to enforce any provision of this Agreement at any time.

12. Compromise. This Agreement is the result of a compromise and is made solely to avoid the expenses of litigation. It shall not be construed as an admission of liability or wrongdoing on the part of the Port Authority or any of the Released Parties. The Port Authority and the Released Parties expressly deny any liability to or wrongdoing against Plaintiff. Plaintiff specifically recognizes and agrees that she shall not be considered a prevailing party for any purpose.

13. Entire Agreement. This Agreement is the entire agreement between Plaintiff and the Port Authority. It supersedes any existing oral or written agreements with respect to Plaintiff's employment with and termination of employment from the Port Authority. No representations regarding the Released Parties' relationship with Plaintiff or any obligations to Plaintiff, have been made, or survive, except as set forth in this Agreement. The parties

agree that this Agreement shall not be subject to any claims of mistake of fact, that it expresses a full and complete settlement regardless of the adequacy or inadequacy of the payment amount, that it is intended to avoid further dispute and litigation, that it is to be final and complete, and that it may be specifically enforced in court without further instruments or testimony. The parties agree that there is absolutely no agreement or reservation not clearly expressed herein, that the consideration paid herein is all that Plaintiff and her counsel are ever to receive and that the execution hereof is with the full knowledge that this release covers all possible claims against the Port Authority and any Released Party.

14. Amendment. This Agreement cannot be amended, except by a written document signed by the party against whom enforcement of any such amendment is sought.

15. Legal Counsel. Plaintiff has consulted with an attorney before signing this Agreement.

16. Full Understanding. Plaintiff has read this Agreement carefully, fully understands the meaning of its terms, and is signing this Agreement knowingly and voluntarily.

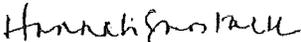
17. No Assignment. Plaintiff may not assign this Agreement or any rights under this Agreement, except by will or by operation of the laws of intestate succession.

18. Breach of Agreement; Remedies. If Plaintiff violates a provision of this Agreement, in addition to any other rights the Port Authority may have as provided in this Agreement, the Port Authority shall have the right to (a) injunctive or other equitable relief prohibiting further violations of this Agreement, and (b) all other legal and equitable relief available under the law.

19. Governing Law. The Parties agree that the United States District Court for the District of New Jersey shall have exclusive jurisdiction over any action to enforce this

Agreement and that such action must be filed with that Court. This Agreement shall be interpreted in accordance with the laws of the State of New Jersey, without regard to its principles of conflicts of law. This Agreement has been jointly drafted and no provision shall be construed against a party because that party or its attorneys drafted that provision.

IN WITNESS WHEREOF, the Parties signify their entry into this Agreement by signing below.


HANNAH SHOSTACK

Date: 4/27/12

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

By: 
Paula T. Dow
First Deputy General Counsel

Date: 6/29/12

CHAPTER 64

AN ACT concerning public access to certain Port Authority of New York and New Jersey records and supplementing chapter 1 of Title 32 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The Governor is authorized to enter into a supplemental compact or agreement, on behalf of the State of New Jersey, with the State of New York amending the compact of April 30, 1921, between the states of New York and New Jersey, as amended and supplemented, creating the Port Authority of New York and New Jersey as set forth in section 2 of P.L.2015, c.64 (C.32:1-6.4).

C.32:1-6.4 Port Authority deemed "agency," "public agency."

2. Notwithstanding any law to the contrary, the Port Authority shall be deemed an "agency" and treated as such under the laws of New York, for all purposes under articles 6 and 6-A of the Public Officers Law, and shall be deemed a "public agency" and treated as such under New Jersey, P.L.1963, c.73 (C.47:1A-1 et seq.), pertaining to the disclosure of government records.

C.32:1-6.5 Severability.

3. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

4. The Governor is authorized to apply, on behalf of the State of New Jersey, to the Congress of the United States for its consent and approval to the amendments to this compact or agreement provided in section 2 of P.L.2015, c.64 (C.32:1-6.4), but in the absence of such consent and approval, the Port Authority of New York and New Jersey referred to in such supplemental compact or agreement shall have all of the powers which the State of New York and the State of New Jersey may confer upon it without the consent and approval of Congress.

5. This act shall take effect upon the enactment into law by the State of New York of legislation having an identical effect as this act, but if the State of New York has already enacted such legislation, this act shall take effect immediately.

Approved June 26, 2015.

S1698-A RANZENHOFER Same as A 2737 Paulin (MS)
ON FILE: 02/03/15 Port Authority of New York and New Jersey
TITLE....Relates to the port authority of New York and New Jersey deemed an agency;
repealer
01/14/15 REFERRED TO RULES
01/21/15 ORDERED TO THIRD READING CAL.30
02/02/15 AMENDED ON THIRD READING (T) 1698A
02/09/15 PASSED SENATE
02/09/15 DELIVERED TO ASSEMBLY
02/09/15 referred to ways and means
03/02/15 substituted for a2737
03/02/15 ordered to third reading rules cal.6
03/02/15 passed assembly
03/02/15 returned to senate
03/06/15 DELIVERED TO GOVERNOR
03/13/15 SIGNED CHAP.12

LAWS OF NEW YORK, 2015

CHAPTER 12

AN ACT to amend chapter 154 of the laws of 1921, relating to the port authority of New York and New Jersey, in relation to the port authority deemed an agency; and to repeal article XV-B of section 1 of chapter 154 of the laws of 1921, relating to the port authority of New York and New Jersey, in relation to the records of the port authority

Became a law March 13, 2015, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article XV-B of section 1 of chapter 154 of the laws of 1921 relating to the port authority of New York and New Jersey is REPEALED and a new article XV-B is added to read as follows:

ARTICLE XV-B

Notwithstanding any law to the contrary, the port authority shall be deemed an "agency" and treated as such under the laws of New York, for all purposes under articles six and six-A of the public officers law, and shall be deemed a "public agency" and treated as such under New Jersey, P.L. 1963, c. 73 (C.47:1A-1 et seq.), pertaining to the disclosure of government records.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with this act, but if the state of New Jersey shall have already enacted such legislation, this act shall take effect immediately. The chairman of the port authority shall notify the legislative bill drafting commission upon the enactment into law of such legislation by both such states in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provision of section 44 of the legislative law and section 70-b of the public officers law.

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

CHAP. 12

2

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOHN J. FLANAGAN
Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly