

PAUL J. FISHMAN
United States Attorney
KAREN D. STRINGER
Assistant US Attorney
970 Broad Street, Suite 700
Newark, NJ 07102
Tel. 973-645-2783
Fax. 973-297-2010
email: Karen.Stringer@usdoj.gov

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DANIEL GOLDEN and TRACY LOCKE, <i>Plaintiffs,</i> v. NEW JERSEY INSTITUTE OF TECHNOLOGY and CLARA WILLIAMS, in her capacity as Custodian of Records for the New Jersey Institute of Technology, <i>Defendant/Third-Party Plaintiffs,</i> v. FEDERAL BUREAU OF INVESTIGATION, <i>Third-Party Defendant.</i>	HON. <i>Civil Action No.</i> NOTICE OF REMOVAL
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Pursuant to 28 U.S.C. § 1442(a)(1), third-party defendant Federal Bureau of Investigation (“FBI”) removes this action to the United States District Court for the District of New Jersey. In support, the FBI states as follows:

1. On or about September 11, 2015, Plaintiffs Daniel Golden and Tracy Locke (“Plaintiffs”) filed a Verified Complaint at the Superior Court of New Jersey, Essex County, Law Division against the New Jersey Institute of Technology and Clara Williams in her capacity as

Custodian of Records for the New Jersey Institute of Technology. A copy of the Verified Complaint is attached as Exhibit A.

2. In their complaint Plaintiffs allege, *inter alia*, that Defendant New Jersey Institute of Technology (“NJIT”) unlawfully refused to provide access to government records requested by Plaintiffs under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 *et seq.*, (“OPRA”). Plaintiffs allege that NJIT’s failure to provide access to certain records violated both OPRA and the New Jersey’s common law right of access. Plaintiffs sought relief by way of summary action pursuant to New Jersey Rule 4:67-1(a) based on the facts set forth in the Verified Complaint. The Superior Court signed an order to show cause on September 17, 2015. A copy of the order to show cause is attached as Exhibit B.

3. Per NJIT’s request, the briefing schedule and return date on Plaintiffs’ order to show cause were adjourned. Confirmation of the adjournment is attached as Exhibit C.

4. On November 13, 2015, NJIT filed a timely answer and counterclaim to Plaintiffs’ verified complaint, opposed Plaintiffs’ order to show cause, and filed a third-party complaint against the FBI.

5. The United States Attorney’s Office for the District of New Jersey first received a copy of the third-party complaint on November 13, 2015. A copy of the Answer, Counterclaim and Third-Party Complaint is attached as Exhibit D.¹

6. In the Third-Party complaint, Defendant and Third-Party Plaintiff NJIT alleges that it withheld and/or redacted certain documents at FBI’s request in response to Plaintiffs’ request for documents, and, therefore, that it is entitled to be indemnified by the FBI for all

¹ NJIT voluntarily dismissed its counterclaim on or about December 2, 2015. A copy of NJIT’s stipulation of dismissal of the counterclaim is attached as Exhibit E.

attorneys' fees and costs incurred in defending the lawsuit.

7. Pursuant to 28 U.S.C. § 1442(a)(1), a civil action commenced in a state court may be removed to federal district court if the suit involves a claim against

[t]he United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

8. This action may be properly removed pursuant to 28 U.S.C. § 1442(a)(1), because it involves a civil action against the FBI -- an agency of the United States. *See* 28 U.S.C. § 1442(a)(1).

9. Less than thirty days have elapsed since the FBI was first provided with notice of the Third-Party Complaint. Accordingly, removal of this action complies with the requirements of 28 U.S.C. § 1446(b).

10. Consent of the parties is not required to perfect this removal. *See* 28 U.S.C. § 1446(b)(2)(A) (requiring consent only for removals pursuant 28 U.S.C. § 1441(a)).

11. A copy of this Notice of Removal will be filed with the Clerk of the Superior Court of New Jersey, Law Division, Essex County. Copies of the Notice of Removal will also be served on all parties that have appeared in the action in accordance with 28 U.S.C. § 1446(d).

12. The FBI does not concede that it is or was subject to the jurisdiction of the Superior Court of New Jersey, Law Division, Essex County or that it is a proper party to this litigation.

THEREFORE, in accordance with 28 U.S.C. §§ 1442(a)(1), the above-captioned action brought in the Superior Court of New Jersey, Law Division, Essex County, Docket No. ESX-L-6392-15, is hereby removed to the United States District Court for the District of New Jersey for further proceedings.

PAUL J. FISHMAN
United States Attorney

Dated: December 11, 2015

By: /s/ Karen D. Stringer
KAREN D. STRINGER
Assistant United States Attorney