

JOHNSON & BERTMAN
Attorneys at Law
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P. O. Box 151
Hammonton, NJ 08037-0151
(609) 567-9300

Attorneys for Plaintiff, *The Press of Atlantic City*

THE PRESS OF ATLANTIC CITY,	:	SUPERIOR COURT OF NEW JERSEY
A Newspaper Owned and Operated	:	LAW DIVISION
by South Jersey Publishing Company,	:	ATLANTIC COUNTY
Inc.	:	
	:	Docket No.:
<i>Plaintiff,</i>	:	
	:	
Vs.	:	<u>Civil Action</u>
	:	
GREATER EGG HARBOR	:	
REGIONAL HIGH SCHOOL	:	VERIFIED COMPLAINT
DISTRICT,	:	
	:	
<i>Defendant.</i>	:	

The Press of Atlantic City, having its principal place of business at 1000 W. Washington Avenue, Pleasantville, New Jersey 08232, states by way of Complaint:

COUNT ONE

1. *The Press of Atlantic City* (hereinafter "*The Press*") is a daily newspaper owned and operated by South Jersey Publishing Company, Inc., a Pennsylvania Corporation doing business lawfully in New Jersey and maintaining offices at both Washington Avenue and Devins Lane in the City of Pleasantville.

2. *The Press* publishes a daily newspaper circulated throughout the Greater Southern New Jersey Region and Atlantic and Cape May Counties. *The Press* has a daily readership of approximately 80,000 and a Sunday readership of approximately 100,000. *The Press* is one of

the principal daily newspapers circulated in Atlantic and Cape May Counties and regularly reports on events involving the Defendant, Greater Egg Harbor Regional High School District.

3. As a recipient of the rights guaranteed newspapers by the First Amendment to the United States Constitution, *The Press* has the right and responsibility to report on all newsworthy items affecting its readers. In particular, *The Press* makes it part of its responsibilities to report on the activities of the Defendant, Greater Egg Harbor Regional High School District.

4. The Defendant, Greater Egg Harbor Regional High School District (hereinafter "GEHR") is a School District organized and existing under the laws of New Jersey, in particular, Title 18A of New Jersey Statutes.

5. The Defendant is a "public agency" as defined by N.J.S.A. 47:1A-1.1 and is a "public body" as defined by N.J.S.A. 10:4-8(a).

6. All of the Defendant's meetings, decisions, actions and business are subject to the requirements of the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA") and the requirements of the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-1 et seq. ("OPMA").

7. As set forth in the Certification of *The Press* staff reporter, John Froonjian, GEHR has failed and refused to comply with the provisions of N.J.S.A. 47:1A-5d and is defying the intent of both the OPRA and the OPMA by its refusal to provide the agenda of School Board meetings of GEHR to Mr. Froonjian in a convenient form.

8. The School Board's meetings agenda is a "government record" as defined by OPRA at N.J.S.A. 47:1A-1.1. Mr. Froonjian has requested that 24 hours in advance of a regularly-

scheduled meeting that the published agenda be e-mailed or faxed to him, or any requesting reporter of *The Press*.

9. In making his request, Mr. Froonjian and *The Press* rely upon that portion of the OPRA at N.J.S.A. 47:1A-5d which reads, in pertinent part:

A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium.

Additionally, Plaintiff relies upon the declaration of public policy articulated by the Legislature at N.J.S.A. 47:1A-1, Legislative Findings, which reads, in part:

government records shall be readily accessible for inspection, copying or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded by P.L. 1963, c. 73 (C. 47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access.

10. In addition to the OPRA, *The Press* relies upon the Legislative Findings and declarations contained in the OPMA at N.J.S.A. 10:4-7 which states, in pertinent part:

... [it is] the public policy of this State to insure the right of its citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way ...

The Press' request for GEHR's agenda to be either e-mailed or faxed is a reasonable one seeking no more than "adequate advance notice".

11. As set forth in Mr. Froonjian's Certification, *The Press* alleges, upon information and belief that the agendas of the School Board meetings of GEHR are created and maintained in its computer system and that GEHR has both the capability to e-mail or fax its agenda. There is nothing impeding GEHR from e-mailing or faxing its agenda to Mr. Froonjian in advance of School Board meetings except its refusal to do so.

12. Mr. Froomjian requests the right to receive copies of the regular meeting School Board agendas in advance of a public meeting in order that *The Press* may make an informed decision whether to assign a reporter to cover the meeting. GEHR's refusal to e-mail or fax the agenda violates both the spirit and letter of the OPRA and OPMA.

13. Absent an Order of this Court compelling GEHR to comply with the requirements of the OPRA, *The Press* will be denied the right to gain convenient access to an informative government record in the medium requested, such record being essential to the efficient performance of *The Press'* duties to its readers.

WHEREFORE, *The Press of Atlantic City* demands Judgment against the Defendant, Greater Egg Harbor Regional High School District, as follows:

- (a) Declaring that the Defendant, Greater Egg Harbor Regional High School District, has violated N.J.S.A. 47:1A-5d.
- (b) Ordering the Defendant to permit *The Press* and its reporters to access government records of the School District and provide a copy thereof in the medium requested in each instance where the Defendant maintains the government record in that medium.
- (c) For an Order continuing the jurisdiction of the Court with regard to future actions of the Plaintiff to insure compliance with the Open Public Records Act.

COUNT TWO

14. Plaintiff, *The Press of Atlantic City*, repeats and realleges the allegations contained in Count One of this Complaint as if same were set forth at length herein.

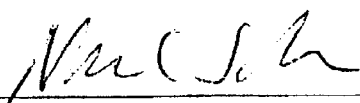
15. As noted by the Certification of John Froomjian, *The Press* made repeated good faith efforts to secure the requested government record prior to instituting this litigation. But for the Defendant's refusal to comply with the requirements of N.J.S.A. 47:1A-5d, this litigation would not have been necessary.

16. Pursuant to N.J.S.A. 47:1A-6, *The Press*, as a "requestor" is entitled to reasonable attorneys fees incurred in bringing this action.

WHEREFORE, *The Press of Atlantic City* demands Judgment against the Defendant, Greater Egg Harbor Regional High School District, as follows:

- (a) An Order compelling the Defendant to reimburse *The Press* for its attorney fees and costs of suit.

Dated: January 24, 2005



NELSON C. JOHNSON, ESQUIRE
Attorney for Plaintiff

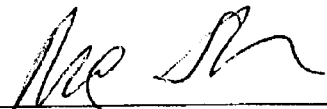
CERTIFICATION PURSUANT TO RULE 4:5-1

I, Nelson C. Johnson, Esquire, attorney for Plaintiff, *The Press of Atlantic City*, in the within action, certify that:

1. At this time, the matter in controversy is not the subject of another pending or contemplated court action or arbitration.

2. As far as I know, there is no other action or arbitration proceeding contemplated.

Dated: January 24, 2005



NELSON C. JOHNSON, ESQUIRE
Attorney for Plaintiff

JOHNSON & BERTMAN

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219 North White Horse Pike
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Attorneys for Plaintiff, *The Press of Atlantic City*

THE PRESS OF ATLANTIC CITY,	:	SUPERIOR COURT OF NEW JERSEY
A Newspaper Owned and Operated	:	LAW DIVISION
by South Jersey Publishing Company,	:	ATLANTIC COUNTY
Inc.	:	
	:	Docket No.:
<i>Plaintiff,</i>	:	
	:	
Vs.	:	<u>Civil Action</u>
	:	
GREATER EGG HARBOR	:	
REGIONAL HIGH SCHOOL	:	CERTIFICATION OF
DISTRICT,	:	JOHN FROONJIAN
	:	
<i>Defendant.</i>	:	

John Froonjian certifies and says:

1. I am a staff reporter employed with *The Press of Atlantic City*. I am assigned to special investigative reports. I work as a team with staff reporter, Michael Diamond. Mike and I investigate and report on the affairs of government at every level in New Jersey.

2. The affairs of school districts are particularly important to our readers. The Defendant, Greater Egg Harbor Regional High School District, ("GEHR") is one of the larger school districts in the Greater Atlantic County Region. There are many newsworthy events arising out of the District's operations.

3. On November 8, 2004, staff reporter Regina Schaffer requested GEHR Superintendent, Adam Pfeffer, to fax her a copy of the agenda for a GEHR Board of

Education meeting to be held that night. He refused and told Ms. Schaffer that she could only obtain a copy if she came in person to his office.

4. Later the same day, November 8th, *Press* reporter, Diane D'Amico, who is assigned to the "education beat" called Mr. Pfeffer and inquired about the agenda. He advised her that it's his policy "not to generate a lot of paperwork".

5. On November 12th, I telephoned Mr. Pfeffer. When I asked why he would not fax an agenda, he responded "Who would pay for it?" I advised him *The Press* would pay for the cost of sending a fax to our office. He then advised me it was not his policy to fax such items. I asked if there was a written policy, and he said there was not. He told me the agenda was generated and sent to Board members 48 hours in advance of a Board meeting, usually on Friday for a Monday meeting.

6. Mr. Pfeffer told me he wanted our reporters to personally pick up agendas because he wanted to encourage coverage of Board meetings. I informed him that reporters cover a number of competing interests in any given day and that their stories must be prioritized. I explained that receiving an agenda in advance of the meeting would help reporters and editors to plan coverage of potential news stories. I told him that in my opinion, his "policy" of not providing agendas actually discouraged coverage, contrary to his stated goal of encouraging it.

7. I asked Mr. Pfeffer if the Board agenda was prepared on a computer. He informed me that it was. I told him that the Open Public Records Act allows people requesting access to government records to obtain them in any format in which they are available. I asked that the meeting agendas be e-mailed to our reporter. Mr. Pfeffer hesitated

and said he would discuss it with his policy committee. I offered to send him excerpts of the OPRA that I thought were pertinent and later that day I did.

8. I called Mr. Pfeffer's office back on or about November 30th. He was unavailable. I called again on December 3rd and spoke with him. He advised me that he would continue his policy of not faxing the meeting agendas and, further, that he would not e-mail the agendas to us.

9. I wish to advise the Court that I have personal knowledge, through discussion with reporter Diane D'Amico, that Mr. Pfeffer has faxed copies of public records to her through *The Press'* newsroom fax machine. In particular, Mr. Pfeffer had faxed a copy of the District's school bus contract to Ms. D'Amico.

10. During a December 3rd telephone conversation, I asked Mr. Pfeffer why his policy against faxing or e-mailing public records was not applied equally to everyone. He said that he "will fax" documents to education writer D'Amico "because I like the way she works with us." He then expressed displeasure at the way unspecified "other reporters" over the years had reported on board matters, claiming some had written inaccuracies.

11. I know that Mr. Pfeffer and the Greater Egg Harbor Regional High School District have e-mail capability because the superintendent invites the public to e-mail him over the Internet. A link to e-mail Mr. Pfeffer at the address Apfeffer@geh.nj.k12us.com is provided on the superintendent's web page at <http://www.gehrhsd.net/superintendent.htm>.

12. Attached hereto as Exhibit A is a letter from Nelson C. Johnson, Esquire, attorney for *The Press* to Louis J. Greco, Esquire, attorney for GEHR. Said letter is self-explanatory. That letter was followed up by a second letter (Exhibit B) dated December 20, 2004, said letter being sent directly to the School Board members.

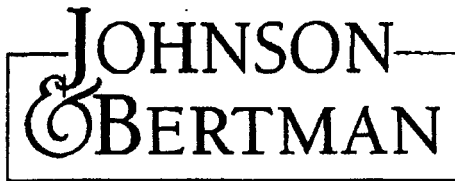
13. Attached hereto as Exhibit C is Mr. Greco's reply of January 6, 2005, advising that GEHR would only make its agenda available to the public "in printed form at the Board of Education offices in Mays Landing".

14. I have reviewed the Verified Complaint prepared by Nelson C. Johnson, Esquire. To the best of my knowledge, all the allegations contained therein are accurate and truthful. I am making this Certification for the purpose of requesting the Court to enter an Order compelling GEHR to comply with its obligations under the OPRA and to permit me to access its agendas and any other government record relevant to reporting on GEHR's activities in the medium requested.

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.

Dated: January 24, 2005


JOHN FROONJIAN



A Partnership of Professional Corporations
Attorneys at Law

December 17, 2004

Louis J. Greco, Esquire
642 Bay Avenue
Somers Point, New Jersey 08244

Re: *The Press of Atlantic City*
Request for School Board Agenda
Our File No.: 10182.167

Dear Lou:

This letter will confirm our recent conversation. I am writing to you in your capacity as attorney for The Greater Egg Harbor Regional High School District ("GEHR"). I represent *The Press of Atlantic City* and staff writer, John Froomjian.

It is my understanding that Mr. Froomjian has had several exchanges with District Superintendent, Adam C. Pfeffer. I am writing in an effort to arrive at an amicable solution addressing both our clients' needs.

The Press would like to receive copies of the regular meeting School Board Agendas in advance of a public meeting in order that an informed decision may be made whether to assign a reporter to cover the meeting. I trust you agree with me that an agenda is a "government record" under the Open Public Records Act ("OPRA").

Apparently, Superintendent Pfeffer is not amenable to providing the agenda to my client via e-mail. As I understand the OPRA in particular, N.J.S.A. 47:1A-5d, *The Press'* reporters are entitled to receive an agenda via e-mail. Said Statute reads in pertinent part:

A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium.

A case under the common law Right to Know Law ("RKL") which I believe is instructive is Higg-A-Rella, Inc. vs. County of Essex, 141 N.J. 35 (1995). In that decision, the New Jersey Supreme Court ruled that a citizen was entitled to access the Essex County tax records via computer tape. Justice Gerobaldi, speaking for the Court in Higg-A-Rella stated, that the Court is "committed to providing citizens with convenient and efficient public access to government information" and further that:

The public's right to access the government information in this technological age presents complicated issues with widespread

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John Bertman+
Nelson C. Johnson
Richard H. Walker, Jr.*
Sheryl A. McGrotty
Paralegal

+Certified by the Supreme Court of
New Jersey as a Civil Trial Attorney
*of Counsel



Attorneys at Law

December 17, 2004

Page 2

ramifications. Resolution of such major policy issues lies more properly with the Legislature at p55.

I believe the Legislature has spoken at N.J.S.A. 47:1A-5d. The Legislative history of the OPRA and the various suggested amendments which preceded Section 5d of OPRA make it clear that there is a very strong commitment to "convenient and efficient public access to government information".

I realize my client's request may not be routine nor consistent with the past requests for information received by GEHR from the public. Nevertheless, I believe both the Courts and the Legislature have made it clear that government must embrace the electronic age and that my client's rights to access government records "in the medium requested" is assured by New Jersey Law.

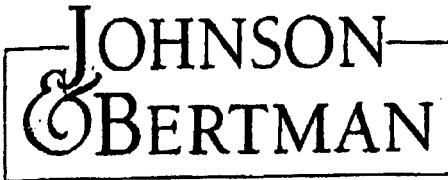
I would appreciate it if you would please confer with your client and advise me if it will be possible for us to avoid an unnecessary confrontation over this matter. Thank you for your kind cooperation.

Sincerely yours,

NELSON C. JOHNSON

NCJ/sam

cc: John Froonjian



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Attorneys at Law

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John Bertman*
Nelson C. Johnson
Richard H. Walker, Jr.*
Sheryl A. McGrotty
Paralegal

December 20, 2004

*Certified by the Supreme Court of
New Jersey as a Civil Trial Attorney
*of Counsel

All School Board Members
The Greater Egg Harbor Regional
High School District
1824 Dr. Dennis Foreman Drive
Mays Landing, New Jersey 08330-2640

Re: *The Press of Atlantic City*
Request for School Board Agenda
Our File No.: 10182.167

Dear School Board Members:

This law firm represents *The Press of Atlantic City* and staff writer, John Froomjian. It is my understanding that Mr. Froomjian has had several exchanges with District Superintendent, Adam C. Pfeffer. I am writing in an effort to arrive at an amicable solution to a difference of opinion which has arisen between Dr. Pfeffer and Mr. Froomjian.

The Press would like to receive copies of the regular meeting School Board Agendas in advance of a public meeting in order that an informed decision may be made whether to assign a reporter to cover the meeting. In my opinion, the School Board's agenda is a "government record" under the Open Public Records Act ("OPRA").

Apparently, Superintendent Pfeffer is not amenable to providing the agenda to my client via e-mail. As I understand the OPRA in particular, N.J.S.A. 47:1A-5d, *The Press'* reporters are entitled to receive an agenda via e-mail. Said Statute reads in pertinent part:

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Attorneys at Law

December 20, 2004

Page 2

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The public's right to access the government information in this technological age presents complicated issues with widespread ramifications. Resolution of such major policy issues lies more properly with the Legislature at p55.

I believe the Legislature has spoken at N.J.S.A. 47:1A-5d. The Legislative history of the OPRA and the various suggested amendments which preceded Section 5d of OPRA make it clear that there is a very strong commitment to "convenient and efficient public access to government information".

I realize my client's request may not be routine nor consistent with the past requests for information received by GEHR from the public. Nevertheless, I believe both the Courts and the Legislature have made it clear that government must embrace the electronic age and that my client's rights to access government records "in the medium requested" is assured by New Jersey Law.

I would appreciate it if you would please confer with your legal counsel, Louis Greco, Esquire, and then permit Mr. Greco and I to discuss the means to avoid an unnecessary confrontation over this matter. Thank you.

Sincerely yours,

NELSON C. JOHNSON

NCJ/sam

cc: Louis J. Greco, Esquire
Adam C. Pfeffer, Ed.D., Superintendent
John Froomjian

LAW OFFICES

Louis J. Greco

CERTIFIED CIVIL TRIAL ATTORNEY



642 BAY AVENUE
SOMERS POINT, NEW JERSEY 08244-2520
(609) 601-0500 • FAX (609) 601-0650

January 6, 2005

Nelson Johnson, Esquire
219 N. White Horse Pike
P.O. Box 151
Hammonton, NJ 08037

RE: Greater Egg Harbor Regional School District

Dear Mr. Johnson;

Your request for access to Board of Education agenda packets via email has been reviewed by the Board of Education. The Board has reached a consensus that no change will be made in their current method of providing agenda materials to the public.

As your client has previously been advised, once the Board agenda has been finalized it is available to the public in printed form at the Board of Education offices in Mays Landing.

Very truly yours;

A handwritten signature in black ink, appearing to be 'L. Greco', written over a horizontal line.

Louis J. Greco, Esquire

Cc: GEHR BOE

EXHIBIT C

JOHNSON & BERTMAN
Attorneys at Law
Bellevue Commons
219 North White Horse Pike
P. O. Box 151
Hammonton, NJ 08037-0151
(609) 567-9300

FILED

MAY 10 2005

Steven P. Perskie, J.S.C.

Attorneys for Plaintiff, *The Press of Atlantic City*

THE PRESS OF ATLANTIC CITY,	:	SUPERIOR COURT OF NEW JERSEY
A Newspaper Owned and Operated	:	LAW DIVISION
by South Jersey Publishing Company,	:	ATLANTIC COUNTY
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	:	Docket No.: ATL-L-430-05
<i>Plaintiff,</i>	:	
	:	
Vs.	:	<u>Civil Action</u>
	:	
GREATER EGG HARBOR	:	
REGIONAL HIGH SCHOOL	:	ORDER
DISTRICT,	:	
	:	
<i>Defendant.</i>	:	

THIS MATTER having been opened to the Court on the Complaint of *The Press of Atlantic City* ("*The Press*") represented by the law firm of Johnson and Bertman, Nelson C. Johnson appearing, and in the presence of Louis J. Greco, Esquire, attorney for the Defendant, Greater Egg Harbor Regional School District ("*GEHR*"); and the Court having reviewed the parties' Pleadings, Legal Briefs, Exhibits, Certifications and considered the oral argument presented to the Court on April 29, 2005; and the Court being satisfied that *The Press* is entitled to the relief provided for hereinafter; and for good cause shown;

IT IS on this 10th day of MAY, 2005,

ORDERED as follows:

(1) The School Board Agenda is a government record. It is hereby adjudged that the failure of GEHR to provide *The Press* with a true copy of its School Board Agenda by means of either facsimile or electronic mail, when initially requested in November of 2004, was a violation of the New Jersey Open Public Records Act ("OPRA"), in particular, N.J.S.A. 47:1A-5d.

(2) The obligation of GEHR arising from N.J.S.A. 47:1A-5, requiring a public agency to provide government records in the "medium requested" contemplates every means reasonably available to the School District. The posting of agendas or other government records on the School District website does not suffice in the event *The Press* or any member of the public requests that an agenda or any other government record be transmitted via facsimile.

(3) GEHR's obligation under the OPRA pertains to all "government records" and GEHR's custodian of records shall, in responding to all future requests for access to government records, comply with the requirements of OPRA.

(4) Pursuant to the provisions of N.J.S.A. 47:1A-6, *The Press* is entitled to reimbursement for reasonable counsel fees and costs of suit. The Court has reviewed the Certification of services provided by Nelson C. Johnson, Esquire, a copy of which was provided to counsel for GEHR. The Court hereby enters an award of counsel fees and costs to *The Press* in the amount of \$4,766.00.

SP **STEVEN P. PERSKIE, J.S.C.**

STEVEN P. PERSKIE, J.S.C.