

MATTHEW S. ROGERS  
ATTORNEY AT LAW  
123 PROSPECT STREET  
RIDGEWOOD, NJ 07451

Tel: (201) 657-3700  
Fax: (201) 857-3599

Email: [msr@mrogerslaw.com](mailto:msr@mrogerslaw.com)  
Website: [www.rnrogerslaw.com](http://www.rnrogerslaw.com)

October 29, 2009

John Paff  
New Jersey Libertarian Party  
P.O. Box 5424  
Somerset New Jersey 08875-5424

Dear Mr. Paff:

As you may be aware, I am counsel to the Village of Ridgewood and am responding to your letter dated October 20, 2009 which was first received via e-mail by Heather Mailander, Acting Village Manager, on October 23, 2009.

In order to properly address the concerns raised in your letter, there are several items which must be stated so that you fully understand the policy of the Village as it pertains to the adoption of minutes of council meetings.

The Village Council regularly meets three (3) times per month, the first Wednesday, second Wednesday and fourth Wednesday. Pursuant to the Open Public Meetings Act, the dates for these meetings are set and adopted at the December public meeting of each year.

The first and fourth Wednesday meetings are work sessions at which meetings no formal or official action is usually taken. The monthly "public meeting" is scheduled each second Wednesday of the month. At this meeting, all official action is taken by way of formal votes on regular municipal business.

It has been and will continue to be the Village's practice to post all adopted meeting minutes on the Village Web-site. As you know, this is an unnecessary task, not required by law or judicial opinion, but undertaken by the Village staff to allow for greater dissemination to the public of the work being done by the Council.

Further, if you have taken the time to review the minutes prepared and adopted by the Village, the minutes are very detailed, more so than most municipalities. This is purposely done so that the work, comments, actions and votes of the Council and the nature of the business conducted by the Council is recorded and memorialized. This has several advantages, the most significant of which is providing the public with substantially more information about the work, comments, actions and voting of the Council. Secondly, the Village has found on several occasions the need to go back to meeting minutes of five, seven and even 10 years prior to determine council action in the past and the reasons for specific action.

The only potential problem that is created by having such detailed minutes is the time it takes to prepare the minutes and for review and adoption by the Council,

However, a policy has been discussed by the Council to establish time lines for the adoption of meeting minutes.

1. Minutes for the first work session (1st Wednesday) and regular public meeting (2nd Wednesday) will be adopted at the next months public meeting (2nd Wednesday). Release of these meetings will happen immediately after adoption by the Council.
2. Minutes for the second work session of each month (4th Wednesday) will be adopted at the public meeting two months hence. These minutes cannot be prepared, disseminated to Council for review and revision and placed on the Agenda within 21 days, which is the maximum time period that would elapse between a fourth Wednesday and a second Wednesday of the next month, These minutes will be released immediately after adoption. The only other option would be to schedule Special Public Meetings for each second work session to adopt the minutes of the second work session of the prior month. This would create an additional set of minutes for the Special Public Session that must be prepared, disseminated, revised and adopted. It would also create additional paperwork to satisfy the notice and agenda requirements for each Special Public Meeting during the second work session. This all takes time.
3. Special Public Meeting minutes for such meetings as Budget Hearings are usually held on days other than regularly scheduled meetings due to availability of Council Members and the extensive amount of time involved in the Budget Hearing process and similar type meetings. These meetings dates are not established and approved at the December public meeting of each year. These are "additional meetings" and are considered an "extra" meeting outside the bid requests for "minute preparation services." They take longer to prepare and are usually prepared within two months of the meeting. Our policy will be to maintain no more than a two month period of time for adoption and immediate release,
4. Closed session meeting minutes will take longer to adopt due to the confidential and protected nature of the items discussed. The recommended policy will be to have the Village Clerk and the Village Attorney review closed session meeting minutes as they are completed and then every six months determine if the content of the minutes, or portions thereof, can be adopted and released to the public. It is unlikely that these minutes can be adopted and released more frequently because many items discussed in Closed Session are ongoing matters such as litigation, COAH issues, personal matters and contract negotiations.

Lastly, as sated above, the Village will continue its practice of posting the adopted minutes on its website. The posting of these minutes shall occur within one week of adoption. This allows for absences and/or vacations of the personnel who perform such posting.

It is the Village's belief that this policy satisfies both statutory and reported case law requirements, The Village has in the past made every reasonable effort to comply with those requirements and remain committed to affording its constituents and the public unfettered access to meeting minutes and notice of the actions and work done by the Council and those who appear before it. By adhering to the above policy, the Village will continue on the path of maintaining transparency in its meetings and satisfying the intent of the legal requirements of meeting minute disclosure.

If you have any questions or concerns, please contact me at your convenience.

Very truly yours,

/s/ Matthew S. Rogers

LAW OFFICES OF MATTHEW S. ROGERS, ESQ., L.L.C.

cc: Heather Mailander  
Village Council



# New Jersey Libertarian Party

Open Government Advocacy Project

*John Paff, Chairman*

*P.O. Box 5424*

*Somerset, NJ 08875-5424*

*Phone: 732-873-1251 - Fax: 908-325-0129*

*Email: [lpsmc@pobox.com](mailto:lpsmc@pobox.com)*

October 20, 2009

Hon. David Pfund, Mayor, and Members of the  
Ridgewood Village Council  
131 N. Maple Ave,  
Ridgewood, NJ 07451

(via e-mail only to [hmailander@ridgewoodnj.net](mailto:hmailander@ridgewoodnj.net) )

Dear Mayor Pfund and Council members:

I write both individually and in my capacity as Chair of the New Jersey Libertarian Party's Open Government Advocacy Project to put you on notice of my intent to sue the Village Council unless it makes immediate and substantial improvements to the time within which its meeting minutes are made publicly available.

Following this letter is:

- a) a draft civil complaint against the Village Council, and
- b) a Brief and Appendix from a similar suit that I filed in Hudson County against the City of Hoboken. (I provide this brief so that you and your Village Attorney can better understand my arguments.)

The thrust of my argument is that even though the Village Clerk, in her October 8, 2009 e-mail, correctly noted that the Government Records Council, in Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51, ruled that unapproved meeting minutes were not subject to disclosure under the Open Public Records Act, that citizens still have a separate right under the Open Public Meetings Act to "prompt" access to meeting minutes, regardless of whether those minutes are approved or unapproved.


I think that if you review this matter with your Village Attorney, you will find that the Ridgewood Council cannot justify its present position—totally suppressing access to public meeting minutes as early as March 11, 2009 (more than seven months ago) and nonpublic meeting minutes from as early as November 5, 2008 (nearly a year ago)—in light of N.J.S.A. 10:4-14's mandate that meeting minutes must be made "promptly available."

I ask that the Council go into executive session during the October 28, 2009 to discuss this matter. So that I know that my concerns are being taken seriously, I need to hear from the Village by no later than the close of business on Friday, October 30, 2009. If

I do not hear from you by then, or if we are not able to agree to a minutes release policy, you I will file my suit without further notice.

Thank you for your attention to this matter. I sincerely hope that we can resolve this matter amicably. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Paff', with a large, stylized flourish above the name.

John Paff

John Paff  
P.O. Box 5424  
Somerset, NJ 08875-5424  
Tel. 732-873-1251  
Email: paff@pobox.com  
Plaintiff

---

JOHN PAFF  
Plaintiff,

vs.

RIDGEWOOD VILLAGE COUNCIL  
Defendant

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:  
:  
: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION, CIVIL PART  
:  
: BERGEN COUNTY  
:  
: DOCKET NO.  
:  
:  
: Civil Action  
:  
: **VERIFIED COMPLAINT**

Plaintiff John Paff, by way of complaint against the Defendant Ridgewood Village Council states as follows:

### **Preliminary Statement**

1. This is an action under the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et. seq., seeking to compel the Ridgewood Village Council to provide Plaintiff with certain public meeting minutes and the nonexempt portions of certain nonpublic (i.e. closed or executive) meetings to which Plaintiff was denied access; and b) permanently enjoining the Ridgewood Village Council, going forward, from failing make the nonexempt portions of the minutes of its future public and nonpublic meetings available to the public within a period of time to be established by this Court.

### **Parties**

2. Plaintiff John Paff (“Plaintiff”) is an individual who resides in Franklin Township, Somerset County, New Jersey and receives mail at P.O. Box 5424, Somerset, NJ 08875.

3. Defendant Ridgewood Village Council is a public body as that term is defined by N.J.S.A. 10:4-8(a).

### **First Count**

4. Plaintiff repeats the allegations stated above as if set forth at length herein.

5. On or about September 30, 2009, Plaintiff submitted a records request to Ridgewood Village, the relevant page from which is attached as Exhibit Page [X], requesting, among other records:

- a. The minutes for each Village Council Meeting to which the public was admitted held on or after July 1, 2008.
- b. The minutes of the Village Council's nonpublic (i.e. Closed or executive session) meetings held on November 5, 2008, August 5, 2009 and August 12, 2009.

6. On or about October 8, 2009, the Ridgewood Clerk sent two e-mailed responses to Plaintiff's request, copies of which are attached as Exhibit Page [X], which informed Plaintiff that access to the following minutes was denied:

- a. Public meetings held on 03/11/09, 03/25/09, 04/22/09 (Special), 04/22/09 (Work Session), 05/06/09 (Special 1), 05/06/09 (Special 2), 05/06/09 (Work Session), 09/09/09 (Special), 09/09/09 (Work Session) and 09/30/09.
- b. Nonpublic meetings held on 11/05/08, 08/05/09 and 08/12/09.

7. The Village Clerk's stated reason for denying Plaintiff access to these minutes, as expressed in her October 8, 2009 e-mail, was:

*[These] Village Council meeting minutes for the time period specified are not yet available, due to the fact that they are in draft form and the Village Council has not yet approved them. Thus, they constitute inter-agency or intra-agency advisory, consultative, or deliberative material and thus are not government records pursuant to the definition of a government record and are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51*

*(August 2006). In addition, because these records are deliberative, they are accorded confidentiality pursuant to In re Readoption of N.J.A.C. 10A:23, 367 N.J. Super. 61, 73-74 (App. Div. 2004), certif. den. 182 N.J. 149 (2004). These draft minutes are also not being released at this time based on the Government Records Council's decision rendered on Complaint No. 2007-271 and Complaint No. 2008-111.*

8. On October 20, 2009, Plaintiff wrote to Defendant and informed it that a) N.J.S.A. 10:4-14 imposes a duty upon them to “promptly” produce both its public meeting minutes and the nonexempt portions of its nonpublic meeting minutes, b) that withholding public meeting minutes from as early as March 11, 2009 and nonpublic meeting minutes from as early as November 5, 2008 when they were requested on September 30, 2009 was not “prompt” and thus in violation of N.J.S.A. 10:4-14, and c) that unless the Village Council significantly modified its minutes release policy, that Plaintiff would bring the present action. A copy of Plaintiff's October 20, 2009 letter, without attachments, is attached as Exhibit [X].

9. **[Reserved to describe the Village's response or non-response to Plaintiff's October 20, 2009 letter.]**

**WHEREFORE**, Plaintiff demands judgment:

A. Ordering Defendant Ridgewood Village Council to promptly disclose to Plaintiff the public meeting minutes identified in ¶6a of this Complaint

B. Ordering Defendant Ridgewood Village Council to promptly disclose to Plaintiff the nonexempt portions of the nonpublic minutes identified in ¶6b of this Complaint

C. Fixing a period of time within which Defendant Ridgewood Village Council, after it meets in a future public session, must make the minutes of that public meeting available to the public.

D. Fixing a period of time within which Defendant Ridgewood Village Council, after it meets in a future nonpublic session, must make the nonexempt portions of the minutes of that nonpublic meeting available to the public.

E. Permanently enjoining Defendant Ridgewood Village Council, going forward, from violating the time period fixed in accordance with ¶¶ C and D above.

F. If a permanent injunction is deemed too harsh a remedy, another less drastic remedy, crafted by the Court under the authority of N.J.S.A. 10:4-16.

G. Awarding Plaintiff his costs.

H. Such other relief as the Court deems equitable and just.

#### **Certification Of No Other Actions**

Pursuant to R.4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Dated:

\_\_\_\_\_  
John Paff  
Plaintiff



## VERIFICATION

I, John Paff, hereby certify and say as follows:

1. I am the plaintiff in this lawsuit.
2. I have personal knowledge of the facts alleged in the Verified Complaint and

Brief in this matter.

3. The factual allegations of the Verified Complaint and Brief are true.

4. All documents attached to the Verified Complaint and Brief are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner.

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:

\_\_\_\_\_  
John Paff

## CERTIFICATION OF SERVICE

On **[Date]**, I sent an exact copy of that which was filed in this action upon the Ridgewood Village Council by **[details of service]**.

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:

\_\_\_\_\_  
John Paff

John Paff  
P.O. Box 5424  
Somerset, NJ 08875-5424  
Tel. 732-873-1251  
Email: paff@pobox.com  
Plaintiff

---

JOHN PAFF	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	HUDSON COUNTY
vs.	:	DOCKET NO.
	:	
HOBOKEN CITY COUNCIL	:	Civil Action
Defendant	:	
	:	

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**LETTER BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE**

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Appendix

February 13, 2009 Order issued in Paff v. Keyport Borough Council et al, Monmouth County, Docket No. L-3317-07 (Hon. Lawrence M. Lawson, A.J.S.C.)..... 1a

July 18, 2008 Order issued in Paff v. Dover Township Council, Ocean County, Docket No. L-2165-07 (Hon. Vincent J. Grasso, A.J.S.C.)..... 4a

June 26, 2009 Order issued in Paff v. Absecon Custodian et al, Atlantic County, Docket No. L-3392-08 (Hon. Steven P. Perskie, J.S.C.)..... 6a

Statement of Facts

Plaintiff requested (Exhibit Page<sup>1</sup> 1) the Hoboken City Council’s three most recent nonpublic (i.e. “closed” or “executive”) meeting minutes that could be disclosed in whole or part. The Hoboken City Counsel responded (Exhibit Page 2) that the most recent nonpublic meetings for which even redacted minutes could be disclosed were held on December 19, 2007, August 13, 2008 and September 3, 2008 (Exhibit Page 2). When Plaintiff protested (Exhibit Pages 3 and 4) that Hoboken’s refusal to produce redacted minutes of more recent nonpublic meetings violated N.J.S.A. 10:4-14, Counsel responded (Exhibit Page 5) that a) the Council met in nonpublic sessions on November 5, 2008, December 17, 2008, January 7, 2009 and June 3, 2009 and b) not even redacted versions of those nonpublic meetings were presently able to be publicly disclosed.

Argument

**Point 1: By completely suppressing its past nonpublic meeting minutes the Hoboken City Council violated the Senator Byron M. Baer Open Public Meetings Act.**

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<sup>1</sup> “Exhibit Page” refers to the Exhibits attached to the Verified Complaint.

Hoboken’s apparent position is that the law permits it to entirely suppress its Council’s closed session minutes as long as *any* of the items discussed during those meetings remain unresolved. See, Exhibit Page 5. Based on this faulty premise, Hoboken refused to disclose to Plaintiff even redacted minutes from a nonpublic meeting held nearly ten months ago—on November 5, 2008—as well as for the nonpublic meetings held after that date.

N.J.S.A. 10:4-14 requires that “reasonably comprehensible minutes of all [a body's] meetings . . . shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with [N.J.S.A. 10:4-12b].” (Emphasis supplied.). The Supreme Court has interpreted this provision to require prompt availability of meeting minutes even when the public body, in accordance with the Open Public Meetings Act, has met in nonpublic session. South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, 493-494 (1991).

In order to guard against the premature release of sensitive material, the Supreme Court ruled that when full disclosure of nonpublic minutes would imperil a legitimate governmental interest or violate a person’s privacy, the public body must balance the public’s right to disclosure against the need for secrecy and then, when appropriate, redact from the minutes the “specific information that would undermine the [N.J.S.A. 10:4-12] exception.” Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 556-57 (1997).

At Page 557, the Payton Court stated:

We believe that only the unusual case will justify total suppression of the minutes of a closed session; such a case would require great harm to the public interest underlying the exception

from even minimal disclosure as well as a negligible interest in disclosure.

In the vast majority of cases in which full disclosure would have an adverse impact on the purpose of the particular exception, other methods of maintaining confidentiality can be achieved, such as redacting the specific information that would undermine the exception. We stress, however, that, given the Legislature's strongly stated intent to effectuate broad public participation in the affairs of governmental bodies, few cases will require even partial nondisclosure.

On the present record, it is not reasonable to conclude that the nonpublic meetings held by the Hoboken Council on November 5, 2008, December 17, 2008, January 7, 2009 and June 3, 2009 are each an "unusual case" for which entirely suppressing the minutes is justified. It is much more reasonable to conclude that there are some nonexempt portions of those minutes that could be publicly disclosed without jeopardizing any vital governmental interest.

As a temporary restraint, Plaintiff has proposed that the Council be required, going forward, to produce, upon request, the nonexempt portions of its November 5, 2008, December 17, 2008, January 7, 2009 and June 3, 2009 nonpublic meetings in accordance with the provisions of the Open Public Records Act.

**Point 2: A time period must be established within which citizens can expect the Hoboken Council to produce the nonexempt portions of its nonpublic meeting minutes.**

As stated in Point 1, N.J.S.A. 10:4-14 requires public meeting minutes and the nonexempt portions of nonpublic meeting minutes, to be made "promptly available to the public."

Not only must minutes be "promptly available," the definition of "prompt" must be

made known to the public so that citizens can accurately predict when the minutes of a given meeting will be available for their review. Matawan Regional Teachers Association v. Matawan-Aberdeen Regional Board of Education, 212 N.J. Super. 328, 333 (Law Div. 1986). ("A standard for publication . . . must be made known so that it can be enforced . . .") So the question confronting the Court is: "What is a reasonable time period within which the Hoboken Council, going forward, must produce the nonexempt portions of its nonpublic meeting minutes?"

What is considered "prompt" may vary from one public body to another. The Matawan Court, at page 333, suggested five factors that should be considered when deciding what "prompt" means. After considering those factors, the Matawan Court found that the Matawan school board's minutes, in order to be promptly available as required by the Open Public Meetings Act, must be available within two weeks after any regular meeting. Id. at 330-31.

Plaintiff is aware of only three New Jersey cases where courts have decided how "promptly" the nonexempt portions of nonpublic meetings must be made publicly available. The Orders from these three unpublished cases are include in the Appendix

The Keyport and Absecon courts both ruled that the nonexempt portions of a nonpublic meeting's minutes must be made public within thirty days after the meeting or prior to the next scheduled meeting, whichever comes first. (See, ¶ 2 of Keyport Order, Appendix Page 1 and Absecon Order, Appendix Page 6). The Dover court held that the nonexempt portions of a nonpublic meeting's minutes need to be made public with thirty days after the meeting. (See, Dover Order, Appendix Page 4)

As a temporary restraint, Plaintiff has proposed that the Hoboken Council be required, going forward, to abide by a schedule for release of its nonpublic minutes identical to that ordered in Keyport and Absecon.

**Point 3: This matter may proceed by Order to Show Cause instead of by Summons.**

The right to employ an order to show cause as initial process is limited to certain actions, including those seeking injunctive relief brought under R.4:52-1. Solondz v. Kornmehl, 317 N.J. Super. 16, 20 (App. Div. 1998).

N.J.S.A. 10:4-16 permits "any person, including a member of the public" to apply for "injunctive orders . . . to insure compliance with the Senator Byron M. Baer Open Public Meetings Act" and states that "the court shall issue such orders and provide such remedies as shall be necessary to insure compliance with the provisions of this act."

The provisions of N.J.S.A. 10:4-16 "can be invoked to question meetings even when no action is taken, but where some violation of OPMA has occurred, such as inadequate notice, or exclusion of all or some part of the public; or *not keeping minutes or making them promptly available.*" Loigman v. City Council of Tp. of Middletown in County of Monmouth, 308 N.J. Super. 500, 503 (App.Div.1998). (Emphasis supplied.)

Thus, employing an order to show cause as initial process is proper in this case.

**Point 4: Showing a statutory violation, without more, satisfies Plaintiff's burden of proving eligibility for both temporary and permanent injunctive relief.**

In Matawan, supra, at 335, the Court held that plaintiffs seeking injunctions to remedy Open Public Meetings Act violations "need not show irreparable harm to be entitled

to injunctive relief." The Court went on to state that "[w]here injunctions are creatures of statute, all that need be proven is a statutory violation" and that "[v]iolation of the statutory mandate constitutes irreparable public injury *per se*."

In this case, Plaintiff has shown that the Hoboken City Council has violated N.J.S.A. 10:4-14 by failing to publicly disclose the nonexempt portions of its nonpublic meetings held nearly ten months ago. Accordingly, a statutory violation has occurred and injunctive relief, both temporary and permanent, ought to issue.

**Point 5: Plaintiff should be awarded his costs.**

R.4:42-8(a) states:

Unless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party.

The definition of a "prevailing party" was discussed by the Appellate Division in African Council v. Hadge, 255 N.J. Super. 4, 11 (App. Div. 1992). Although the case dealt with a federal civil rights counsel fee claim, the logic set forth by the African Council court should also apply here:

Singer v. State adopted a two-pronged test for determining when one is a prevailing party for purposes of Section 1988 counsel fee awards. Singer requires a party to "demonstrate that his [her] lawsuit was causally related to securing the relief obtained; a fee award is justified if plaintiffs' efforts are a 'necessary and important' factor in obtaining the relief" and "plaintiff must establish that the relief granted had some basis in law." (internal citations omitted)

The present litigation, if successful, will cause a substantial change to the timeliness of the Hoboken Council's disclosure of its nonpublic meeting minutes. If successful, Plaintiff should be declared the "prevailing party" because his lawsuit was both "causally related"



and a “necessary and important factor” in obtaining the desired relief and because the relief granted has a basis in law. Id.

Once it has been established that Plaintiff is the "prevailing party," costs ought to be "allowed as of course." R.4:42-8(a). In Gallo v. Salesian Soc., Inc., 290 N.J. Super. 616, 660 (App. Div. 1996) the Appellate Division stated:

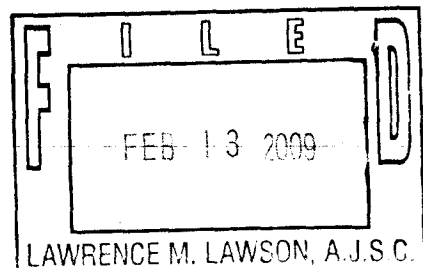
R 4:42-8(a) provides: "Unless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party." The judge here expressly found that plaintiff was a prevailing party. He should have awarded her costs "as of course" under the rule.

Finally, denial of costs in this instance would profoundly chill Plaintiff's willingness, and that of other interested citizens, to bring suits, such as this one, that seek to benefit the public interest. The salutary public policy behind statutes such as the Open Public Meetings Act would be frustrated if citizens were dissuaded enforcing it.

Respectfully,

John Paff

**WISNIEWSKI & ASSOCIATES, LLC**  
17 Main Street  
Sayreville, New Jersey 08872  
(732)651-0040  
Attorneys for Defendant, BOROUGH OF KEYPORT  
Our File No.: 152.10313



**JOHN PAFF**

**Plaintiff(s)**

**vs.**

**KEYPORT BOROUGH COUNCIL and  
VALERIE T. HEILWEIL**

**Defendant(s)**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MONMOUTH COUNTY  
DOCKET NO. L-3317-07**

**CIVIL ACTION**

**ORDER**

This matter having brought before the Court by John Paff, Plaintiff and tried before the Honorable Lawrence M. Lawson on August 12, 2008; by John Paff, Pro Se and Eric M. Winston, Esq. of Wisniewski and Associates, LLC on behalf of the Defendants Keyport Borough Council and Valerie T. Heilweil, and the Court having considered the Trial Briefs and Oral Argument presented by the parties and having issued a written Opinion on December 8, 2008.

It is on this 13 day of Febur, 2009 :

1) **DECLARED** that the Defendants violated *N.J.S.A. 10:4-14* by not making the minutes of the Keyport Borough Council's April 10, 2007 and May 21, 2007 public meetings and the Keyport Borough Council's March 6, 2007, April 10, 2007, April 24, 2007, May 1, 2007 and May 21, 2007 nonpublic (i.e. executive or closed) meetings publicly available promptly.

2) **ORDERED** that the minutes of both public and nonpublic meetings of Defendant Keyport Borough Council shall be available to the public within thirty (30) days of the last held meeting or prior to the next scheduled meeting, whichever occurs

first.

3) **ORDERED** that nonpublic meeting minutes may be redacted as necessary.

4) **DECLARED** that the Defendant Keyport Borough Council's April 10, 2007 nonpublic discussion of "Loitering of Day Workers" and its April 24, 2007 nonpublic discussion of "Proposed Ordinance – Smoking in Motor Vehicles with Children" and "K. Hovnanian" fell within the "anticipated litigation" exception of *N.J.S.A. 10:4-12(b)(7)* and thus did not violate the Senator Byron M. Baer Open Public Meetings Act.

5) **DECLARED** that the Defendant Keyport Borough Council's April 10, 2007 nonpublic discussion regarding "the need to find someone on a three-man shift" and its April 24, 2007 nonpublic discussion of a general question concerning Class I and Class II Specials fell within the "personnel" exception of *N.J.S.A. 10:4-12(b)(8)* and thus did not violate the Senator Byron M. Baer Open Public Meetings Act.

6) **DECLARED** that the first redaction within Paragraph 3 of the Keyport Borough Council's September 19, 2006 nonpublic meeting minutes (i.e. the redacted word between "Police Officers who become" and "and policies that can be set") would reveal "detailed medical or psychological information" that is not public information in accordance with *N.J.S.A. 47:1A-10*, the purpose of which statute is to protect an individual's right to privacy.

7) **DECLARED** that the Defendant Valerie T. Heilweil violated the Open Public Records Act by redacting the names of certain, disciplined Keyport officers and employees from the September 19, 2007 and October 17, 2007 nonpublic meeting minutes because the "personnel" exception embodied within *N.J.S.A. 10:4-12(b)(8)* does not exempt those names from disclosure.

8) **DECLARED** that within fourteen (14) days of the entry of this Order, Defendants will provide Plaintiff with a) an unredacted copy of the first page of the Keyport Borough Council's October 17, 2006 nonpublic meeting minutes and b) a copy of the first page of the Keyport Borough Council's September 19, 2006 nonpublic meeting minutes that is unredacted except for the redaction described in Paragraph 6 of this Order

9) **DECLARED** that the relief demanded in the Third Count of the Plaintiff's complaint for failing to provide a legally sufficient reason for redacting certain meeting minutes and denying access to certain emails and correspondence is time-barred because those demands were not asserted within forty-five (45) days as required by R. 4:69-6(a).

10) **ORDERED** that Plaintiff is the prevailing party and is entitled to costs in this action. Plaintiff shall file proof of his costs with the Clerk in accordance with R. 4:42-8(c).



Lawrence M. Lawson, A.J.S.C.

FILED: 7-18-2008

IN CHAMBERS

SUPERIOR COURT OF NEW JERSEY  
CIVIL DIVISION  
OCEAN COUNTY  
**VINCENT J. GRASSO, A.J.S.C.**

John Paff Plaintiff(s)

vs.

DOCKET NO. OCN-L- 2105-07

Dover Township Defendant(s)

**ORDER**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS MATTER, having been brought before the Court, and the Court having ascertained that the following determinations are warranted and appropriate,

IT IS, on this 18<sup>th</sup> day of JULY, 2008

ORDERED as follows:

- DEFENDANT SHALL ENDEAVOR TO HAVE AT LEAST DRAFT MINUTES AVAILABLE TO THE PUBLIC BY DEFENDANT'S NEXT REGULARLY SCHEDULED MEETING, BUT IN ALL EVENTS DEFENDANT SHALL MAKE AT LEAST DRAFT MINUTES AVAILABLE TO THE PUBLIC NOT LATER THAN THIRTY DAYS AFTER THE SUBJECT MEETING OR THE SECOND MEETING AFTER THE SUBJECT MEETING, WHICHEVER COMES FIRST
- DEFENDANT, IN ITS MINUTES, SHALL NOT USE THE FORM "INDEX OF IDEAS NOT RELEASED" AND SHALL RELEASE ~~ALL~~ MINUTES OF ALL TOPICS DISCUSSED UNLESS ~~IS~~ PRIVILEGED OR OTHERWISE EXEMPT FROM DISCLOSURE
- TOPIC ONE IN THE 9/12/06 CLOSED SESSION MINUTES SHOULD HAVE BEEN DISCUSSED IN OPEN SESSION, AND DEFENDANT SHALL NOT DISCUSS MATTERS IN CLOSED SESSION UNLESS SUCH MATTERS ARE PRIVILEGED OR AUTHORIZED FOR DISCUSSION IN CLOSED SESSION.

THE UNDERSIGNED HEREBY CONSENT TO THE FORM AND ENTRY OF THIS ORDER.

PAGE 1 OF 2

V. J. Grasso  
Vincent J. Grasso, A.J.S.C.

Walter Paffen FOR PLAINTIFF  
COUNSEL OR PRO SE SIGNATURE

\_\_\_\_\_  
COUNSEL OR PRO SE SIGNATURE

[Signature] for defendant  
COUNSEL OR PRO SE SIGNATURE

\_\_\_\_\_  
COUNSEL OR PRO SE SIGNATURE

NAME ON CASE: PAFF V. DEVER TOWNSHIP

DOCKET NO.: OCN-L-2165-07

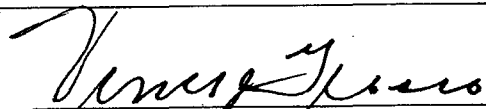
DATE: 7/18/08

ORDER SUPPLEMENTAL PAGE 2 OF 2

THE COURT RESERVES DECISION ON PLAINTIFF'S APPLICATION FOR COSTS PENDING RECEIPT OF PLAINTIFF'S FORMAL APPLICATION AND DEFENDANT'S RESPONSE THEREZO.

Ct finds matters were technical violations and no finding of bad faith or willfulness

Ct 1 of complaint alleging O.P.R.A violation in para 12 is dismissed.

  
Vincent J. Grasso, P.J.Ch.

John Paff  
P.O. Box 5424  
Somerset, NJ 08875-5424  
Tel. 732-873-1251  
Email: paff@pobox.com  
Plaintiff

**FILED**

JUN 26 2009

Steven P. Perskie, J.S.C.

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JOHN PAFF

Plaintiff,  
vs.

ABSECON CUSTODIAN et al

Defendants

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
ATLANTIC COUNTY  
DOCKET NO. L-3392-08

Civil Action

ORDER GRANTING SUMMARY  
JUDGMENT AS TO PORT REPUBLIC

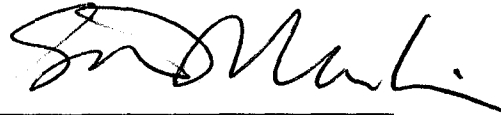
This matter was opened to the Court by John Paff, Plaintiff, and the Court having read and considered the Plaintiff's Notice of Cross-Motion, Supporting Certification, Responding Statement of Material Facts and Letter Brief and any opposition and reply papers filed and for good cause appearing it is on this 26 day of June 2009:

**DECLARED** that Defendants Port Republic City Custodian and Port Republic City Council violated N.J.S.A. 10:4-14 by not promptly disclosing the nonexempt portions of the City Council's January 8, 2008 and January 29, 2008 nonpublic (i.e. closed or executive) meetings.

**ORDERED** that going forward, Defendants Port Republic City Custodian and Port Republic City Council shall publicly disclose draft versions of the City Council's nonpublic meeting minutes, redacted as lawfully allowed, within thirty (30) days after the nonpublic meeting is held or prior to the City Council's next scheduled meeting, whichever occurs first.

**ORDERED** that Plaintiff is the prevailing party in this action and is thus entitled to his costs. Plaintiff shall file his proof of costs with the Clerk in accordance with R.4:42-8(c).

**ORDERED** that Plaintiff shall serve a copy of this Order upon Defendants within 7 days of its entry and return.



\_\_\_\_\_  
Steven P. Perskie, J.S.C.

This motion was (check one)  Opposed  Unopposed

Written / Oral (circle one) findings of fact and conclusions of law were rendered on \_\_\_\_\_, 2009, or

A statement of reasons why no findings of fact and conclusions of law were made is appended to this order.





# New Jersey Libertarian Party

Open Government Advocacy Project

*John Paff, Chairman*

*P.O. Box 5424*

*Somerset, NJ 08875-5424*

*Phone: 732-873-1251 - Fax: 908-325-0129*

*Email: [lpsmc@pobox.com](mailto:lpsmc@pobox.com)*

November 14, 2009

Hon. David Pfund, Mayor, and Members of the  
Ridgewood Village Council  
131 N. Maple Ave,  
Ridgewood, NJ 07451

(via e-mail only to [hmailander@ridgewoodnj.net](mailto:hmailander@ridgewoodnj.net))

Dear Mayor Pfund and Council members:

I write both individually and in my capacity as Chair of the New Jersey Libertarian Party's Open Government Advocacy in response to Village Attorney Matthew S. Rogers' October 29, 2009 letter.

Mr. Rogers is apparently laboring under the misconception<sup>1</sup> that public and nonpublic meeting minutes cannot be publicly released prior to being "approved" or "adopted" by the governing body. Yet, the law holds that there is no reason why minutes need to be "approved" or "adopted" prior to being released to the public.

In Liebeskind v. Mayor and Municipal Council of Bayonne, 265 N.J. Super. 389, 394-395 (App. Div. 1993). The Appellate Division did not take issue with the trial court's order that required the Bayonne City Council to make "copies of final meeting minutes . . . available for inspection within two weeks after each meeting and at least three business days before the next meeting." Since meeting minutes cannot be "approved" or "adopted" except at a meeting, requiring public disclosure of minutes "three business days before the next meeting" necessitates that those minutes, when released, be "unapproved" and not "adopted,"

Similarly, in Matawan Regional Teachers Association v. Matawan-Aberdeen Regional Board of Education, 212 N.J. Super. 328 (Law Div. 1986) the court interpreted the statutory requirement of making the minutes available "promptly" in light of the Meetings Act's policy "favoring public involvement in almost every aspect of government." Id. at 330. The court held that making minutes promptly available implements the Act's overall

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<sup>1</sup> For example, in the first numbered paragraph on page 2 of his letter, Mr. Rogers states that "release of these minutes will happen immediately after **adoption** by the Council." (Emphasis supplied). Also, in the second numbered paragraph, Mr. Rogers suggests, as an option, that a special meeting be called solely "to adopt the minutes of the second work session of the prior month." This makes it apparent that Mr. Rogers believes that the Council cannot lawfully make their minutes public absent prior "approval" or "adoption."

purpose by, among other things, “[p]roviding all persons with the opportunity to take action **prior to the next meeting** of the public body.” *Id.* at 331 (emphasis supplied).

Finally, the Municipal Clerks Association of New Jersey Study Guide, § VI.I (copy attached) states: “If a member of the public requests a copy of the minutes before they are approved by the Governing Body, mark the minutes ‘Draft Copy, subject to approval of the Governing Body.’”

Accordingly, it is simply not true that public meeting minutes need to be “approved” or “adopted” by the Village Council before being publicly released. Since the Council’s minute release policy pronounced in Mr. Rogers’ October 29, 2009 letter is based, in part, on a false premise, it is very likely that the policy can be amended so as to allow public faster access to draft versions of public meeting minutes.

My question: Given that draft, unapproved minutes of public meetings can lawfully be disclosed to the public, is the Village Council willing to amend its policy so that those draft minutes can be publicly disclosed more expeditiously than stated in Mr. Rogers’ letter?

Also, the fourth numbered paragraph on the second page of Mr. Rogers’ letter states:

*Closed session meeting minutes will take longer to adopt due to the confidential and protected nature of the items discussed. The recommended policy will be to have the Village Clerk and the Village Attorney review closed session meeting minutes as they are completed and then every six months determine if the content of the minutes, or portions thereof, can be adopted and released to the public. It is unlikely that these minutes can be adopted and released more frequently because many items discussed in Closed Session are ongoing matters such as litigation, COAH issues, personal matters and contract negotiations.*

And, in her November 2, 2009 e-mail to me, Clerk Mailander stated:

*As stated in this brand new policy, the Village Attorney and I will review the Closed Session minutes every couple of months to determine which items, if any, need to be redacted. They will then be given to the Village Council for review and approval once every six months.*

After reading both paragraphs several times, it seems to me that the policy—if I understand it correctly—allows for a long delay between a closed meeting and the release of that meeting’s minutes, redacted as necessary. For example, if a closed meeting was held on February 3, 2010, the minutes of that meeting might not be reviewed by the Attorney and Clerk until April 7, 2010, i.e. a “couple of months” later. Then, if the Village Council, given its policy to “adopt and release” its closed session minutes every six months, decides to conduct these semi-annual reviews in March and September, it probably wouldn’t “adopt and release” a redacted version of the February 3, 2010 closed meeting minutes until its next scheduled review date, which would occur in September.

If this is an accurate statement of the Village's policy on releasing closed session minutes, then I might as well file my lawsuit because I don't believe that making the public wait six or seven months to see redacted minutes comports with the mandates of N.J.S.A. 10:4-14.

I have sent a copy of this letter to Mr. Rogers and ask that he call or write to me sometime during the week of November 16<sup>th</sup> so that he can better explain and clarify the Village's policy regarding releasing closed meeting minutes. Perhaps I simply don't understand the Village's policy and that having it explained to me will avoid a lawsuit.

Thank you for your attention to this matter. I sincerely hope that we can resolve this matter amicably. **I look forward to hearing from Mr. Rogers.**

Sincerely,

A handwritten signature in black ink, appearing to be "John Paff", with a stylized, cursive script.

John Paff

cc. Matthew S. Rogers, Esq. (via e-mail only to [msr@mrogerslaw.com](mailto:msr@mrogerslaw.com) )

Book  
2004

**SECRETARY TO THE GOVERNING BODY**

VI. MINUTES

- A. Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with *N.J.S.A. 10:4-7* (Legislative Findings and Declarations)

Note - Minutes as outlined above pertain to all meetings: Regular, Special, Emergency and Closed Sessions.

- B. Minutes of every meeting must be prepared in writing as soon as possible after the conclusion of the meeting. The definition of meetings include both regular/ action meetings and conference/agenda sessions, and any special meetings. Executive session minutes must also be prepared in writing.
- C. All minutes must be listed on the next agenda for approval by the Governing Body. Approval of the minutes, and any corrections to the minutes, must be recorded in the minutes of the meeting at which they are considered for approval.
- D. Closed session minutes should be confidentially circulated, listed separately for approval and maintained in a separate binder from the open session minutes, and approved in the same manner as open session minutes. They should be reviewed periodically with the Municipal Attorney for release to the public.
- E. Minutes are defined in Roberts Rules of Order as a record of what is done at the meeting and not what is said. They should include sufficient detail so that a person reading the minutes at some point in the future can understand what took place at a given meeting.
- F. Resolutions must be spread in full in the minutes, including the motion and roll call vote.
- G. Some municipalities maintain resolutions, ordinances and bill lists (vouchers and warrants) in separate volumes and refer to them by title or number in the minutes. (Consult with your Auditor before deviating from the process of spreading these in full in the minutes.)
- H. The Municipal Clerk must sign minutes in all municipalities. In Faulkner municipalities, the minutes must be signed by the Municipal Clerk and the Mayor or Presiding Officer.

**SECRETARY TO THE GOVERNING BODY**

- I. Minutes, except closed session minutes which have not been authorized for release to the public by the Governing Body, must be accessible to the public. If a member of the public requests a copy of the minutes before they are approved by the Governing Body, mark the minutes "Draft Copy, subject to approval of the Governing Body."
  
- J. Fee may be charged for copies of minutes. See Chapter 4, Section XIII D for information on fees.

**MATTHEW S. ROGERS**  
ATTORNEY AT LAW

123 PROSPECT STREET  
RIDGEWOOD, NJ 07451

Tel: (201) 857-3700  
Fax: (201) 857-3699

Email: [msr@mrogerslaw.com](mailto:msr@mrogerslaw.com)  
Website: [www.mrogerslaw.com](http://www.mrogerslaw.com)

November 19, 2009

John Paff  
Libertarian Candidate  
New Jersey Libertarian Party  
P.O. Box 5424  
Somerset, New Jersey 08875-5424

Dear Mr. Paff:

I have reviewed your letter that was attached to your email sent Saturday, 11-14-2009. My letter of 10-29-09 previously sent to you was a response to your request for a statement of the policy Ridgewood has regarding the release of Village Council minutes for public and closed sessions. It did not address each or any specific request for as you know, each request must be dealt with on a case by case basis.

Public and Closed session minutes can be released prior to adoption.

There is nothing to prevent that from happening (there is no law requiring it to happen either) and as long as the minutes are marked as "draft" or "not adopted" it can occur. The consideration for such release must be made on a case by case basis, so it would not happen unless there is a specific request for minutes prior to adoption. For example, if in a Closed Session meeting the Council discusses litigation or contract negotiations, both of which may involve on-going discussion, the request for a copy of the minutes from that Closed Session prior to adoption can receive a response of "draft" or "not adopted" minutes, but for reasons I don't need to go into at this time, the on-going matters will still be redacted from those minutes if they are not concluded or resolved at the time the response to the request is required.

It should be noted that the Village does not schedule regular Closed Sessions and holds such meetings or sessions only when needed. Most of the time, there is only one or two matters discussed in closed session. Because of this, the transcription of Closed Meeting minutes is not immediately done as the transcription is prepared on a meeting by meeting basis. Unlike the regularly scheduled public meetings, the minutes do not get prepared on a regular basis, but only as the meetings occur. This causes a delay sometimes in their preparation. You cite the Municipal Clerk's Study Guide as a source of information for direction regarding this topic. As it pertains to closed session or meeting minutes, the Study Guide calls for "periodic review" of closed session minutes by municipal counsel prior to release to the public.

The Village is proposing a more prompt review than that. The Village is proposing in its policy to have the minutes reviewed by the Clerk and Village attorney within a short time of the preparation of the minutes. Depending upon the status of the matters discussed, they may or may not be released because the matter discussed in closed session may still warrant confidential treatment. The periodic review of Closed Session minutes is to ensure that there is a regular review of the minutes in case a matter is finalized and there is no longer any prohibition or confidential reason not to disclose the discussion of the item. Six months has been suggested as a reasonable period of time to make sure that closed session or meeting matters have been resolved or concluded, and therefore the content of the confidential matters discussed can be released. Again, depending on the receipt of specific request, the Village intends to have the Clerk and attorney review the closed meeting minutes within a short period of time after the transcription of the minutes. A six month regular review of all closed session or meeting minutes will occur to determine the status of matters included in those minutes that could not be previously disclosed because of the nature of the matter. If they are resolved, they will be released, placed on the Council agenda for adoption and posted on the Village website.

If you would like to discuss any point made in this email or the 10-29-09 letter, please feel free to contact me by email or telephone at the above listed number. Thanks you for your input and assistance in this regard.

Very truly yours,

LAW OFFICES OF MATTHEW S. ROGERS, ESQ., L.L.C.

By:

\_\_\_\_\_  
MATTHEW S. ROGERS

cc: Heather Mailander  
Village Council



# New Jersey Libertarian Party

Open Government Advocacy Project

*John Paff, Chairman*

*P.O. Box 5424*

*Somerset, NJ 08875-5424*

*Phone: 732-873-1251 - Fax: 908-325-0129*

*Email: [lpsmc@pobox.com](mailto:lpsmc@pobox.com)*

November 28, 2009

Hon. David Pfund, Mayor, and Members of the  
Ridgewood Village Council  
131 N. Maple Ave,  
Ridgewood, NJ 07451

(via e-mail only to [hmailander@ridgewoodnj.net](mailto:hmailander@ridgewoodnj.net) )

Dear Mayor Pfund and Council members:

I write both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy in response to Village Attorney Matthew S. Rogers' November 19, 2009 letter.

Since Mr. Rogers has now agreed that a) minutes, both public and closed, may sometimes be released in draft form prior to approval and b) upon request, closed minutes, redacted as necessary, will be disclosed a "short period of time" after they are transcribed, it appears that we are getting closer to a reasonable minutes release policy.

I think that the best way for me to proceed is to revisit Ridgewood's minutes release policy in early 2010. By then, the Village Council will have had some experience operating under its new policy and I will have had an opportunity to review some the Council's closed session minutes<sup>1</sup>.

Thank you for your attention to this matter.

Sincerely,

John Paff

cc. Matthew S. Rogers, Esq. (via e-mail only to [msr@mrogerslaw.com](mailto:msr@mrogerslaw.com) )

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<sup>1</sup> Note that although I requested closed session minutes on September 30 2009—almost two months ago—I still haven't received them. However, Clerk Mailander assured me in her November 2, 2009 e-mail that I will probably receive them shortly after the Council's December 9, 2009 meeting.