



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

February 24, 2009

Hon. George Conard, Sr., Mayor
Members of the Township Committee
PO Box 188
Riverside, NJ 08075

(via email only to riversidetwpclerk@comcast.net)

Dear Mayor Conard and Members of the Township Committee:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project. The Project's goal is to encourage local governments around New Jersey to fully comply with the Open Public Records Act, Sen. Byron M. Baer Open Public Meetings Act and other laws that foster open and transparent government.

Attached are the following exhibits:

1 and 2	My 02/19/09 Records Request
3	Clerk Dydek's 02/24/09 Response
4	Committee's 10/06/08 Executive Session Resolution
5	Committee's 08/18/08 Executive Session Resolution
6	Committee's 08/18/08 Executive Session Minutes
7	Committee's 09/15/08 Executive Session Resolution
8	Committee's 09/15/08 Executive Session Minutes
9 through 19	Consent Judgment with Egg Harbor City

I have two issues with the records Clerk Dydek sent to me. First, I don't believe that the Committee's executive session resolutions (Exhibit Pages 4, 5 and 7) are specific enough to satisfy N.J.S.A. 10:4-13. Second, Clerk Dydek's response seems to indicate that not even a redacted version of the minutes from the October 6, 2008 executive session is publicly available despite the fact that four months have elapsed since that meeting.

If you read the Consent Judgment I entered into earlier in this month with Egg Harbor City, you'll see that I confronted the same two issues there.

On the first issue, Egg Harbor City and I agreed to a specific form of resolution (Exhibit Pages 18 and 19) that the City will now use to ensure that its executive session topics are sufficiently described. Also, the Memorandum of Understanding that Egg

Harbor City and I agreed to (see, specifically, Exhibit pages 13 through 16) goes into great detail on exactly how the City is to determine how detailed its resolutions need to be.

On the second issue, you'll see that Egg Harbor City agreed to make draft executive session minutes available within twelve days after a meeting or two business days prior to the next meeting, whichever is longer. The reasons for this are set forth in the Memorandum of Understanding (see, specifically, Exhibit pages 16 through 17).

At the next Riverside Township Committee meeting, would you please discuss this letter and let me know if the Committee is willing to impose upon itself something similar to what Egg Harbor City agreed to?

Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff". The signature is stylized with several loops and a long horizontal stroke at the end.

John Paff

Supplement to John Paff's 02/19/09 records request to Riverside Township

Background:

In my records request made on or about December 3, 2007, I requested, among other records, "any settlement agreement on file that arose out of James Boardman v. Riverside Township and Sgt. Patrick Vacanti, et al, United States District Court, Civil Action No. 04-cv-5779 (JBS)."

In her December 5, 2007 response to my records request, Susan M. Dydek, R.M.C. informed me that Riverside Township and Patrick Vacanti were dismissed from the Boardman lawsuit in January 2007. I don't believe that this was directly responsive request for any settlement agreement, because it is possible that the dismissal was agreed to after a settlement was reached.

In sum, I'm left wondering by Ms. Dydek's response as to whether or not a settlement agreement is on file with the Township or any of its agents, e.g. its insurers. The purpose of ¶ 1 below is to get some clarity on that issue.

Records Requested:

1. Any and all settlement agreements arising out of the Boardman case, cited above.
2. The minutes from the two (2) most recent nonpublic (i.e. executive or closed) Township governing body's meetings for which minutes are available.
3. The resolutions that were passed, in accordance with N.J.S.A. 10:4-13, to authorize the two nonpublic meetings for which minutes are provided in response to ¶ 2 above. If these resolutions are spread out in full in the governing body's public meeting minutes, please provide me with only the pages of the public minutes that contain the requested resolutions.
4. The resolutions that were passed, in accordance with N.J.S.A. 10:4-13, to authorize the two executive or closed sessions recently held by the Township governing body, to the extent that they are not duplicative of the resolutions responsive to ¶ 3 above. (Note: My thought is that there might be some recent closed meetings of the Township governing body for which minutes are not yet available, and I would like to have the resolutions that authorized those closed meetings.)

Basis for Request:

I request the above records in accordance with the Open Public Records Act (OPRA), the Senator Byron M. Baer Open Public Meetings Act and the common law right of access.

Requested Medium for Response and for Documents Responsive to Request:

Please respond to this request in the following order of preference: a) email to paff@pobox.com, b) fax to 908-325-0129, c) regular mail to P.O. Box 5424, Somerset, NJ 08875-5424.

Please send the responsive documents to me by whichever of the above stated methods (i.e. a, b, and c in the immediately preceding paragraph) is the least expensive method. If two or more methods tie for the least expensive method, please transmit the documents in accordance with the order of preference set forth in the immediately preceding paragraph

Township of Riverside

P.O. Box 188
Riverside, NJ 08075
In the County of Burlington

Phone: (856) 461-1460 Fax: (856) 461-5878

February 24, 2009

Mr. John Paff
PO Box 5424
Somerset, NJ 08875-5424
paff@pobox.com

Dear Mr. Paff,

I have received your Public Record Request Form. Attached are copies of minutes from the closed session meetings of August 18, 2008 and September 15, 2008 which are the minutes from the two(2) most recent nonpublic Township Committee's meeting that are available per request number two(2).

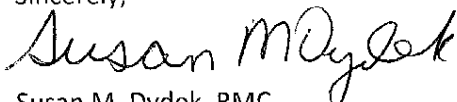
Also, attached are copies of Resolution 2008 - #96 and Resolution 2007-#81 which authorized the Riverside Township Committee to convene into the respective closed session meetings per request number three (3).

Resolutions 2008 - #97 and 2008 - #96 are the last two Resolutions that were passed to authorize their respective closed session meetings. A copy of Resolution 2007 - #97 is attached.

I do not have any settlement agreements in my possession arising from Boardman vs. Riverside Township since this case was voluntary withdrawn.

Should you need any additional information, please contact this office at your convenience.

Sincerely,



Susan M. Dydek, RMC
Municipal Clerk

Cc: Meghan Jack
John C. Gillespie

Attachments
Email

RESOLUTION 2008-#97
A RESOLUTION OF THE TOWNSHIP OF RIVERSIDE PROVIDING FOR A
MEETING NOT OPEN TO THE PUBLIC IN ACCORDANCE WITH THE
PROVISIONS OF THE NEW JERSEY OPEN PUBLIC MEETINGS ACT,
N.J.S.A. 10:4-12


WHEREAS, the Township Committee of the Township of Riverside is subject to certain requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.; and

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-12, provides that an Executive Session, not open to the public, may be held for certain specified purposes when authorized by Resolution; and

WHEREAS, it is necessary for the Township Committee of the Township of Riverside to discuss in a session not open to the public certain matters relating to Personnel and Pending Litigation.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Riverside, assembled in public session on October 6, 2008 that an Executive Session closed to the public shall be held during the Regular Meeting of the Township Committee on October 6, 2008 in the Riverside Township Municipal Building, 1 W. Scott Street, Riverside, New Jersey for the discussion of matters relating to the specific items designated above. It is anticipated that the deliberations conducted in closed session may be disclosed to the public upon the determination of the Township Committee that the public interest will no longer be served by such confidentiality.

I HEREBY CERTIFY that the foregoing Resolution was adopted by the Township Committee of the Township of Riverside, County of Burlington, State of New Jersey, at a Meeting held in the Riverside Township Municipal Building, 1 W. Scott Street, Riverside, NJ 08075 on October 6, 2008.


Susan M. Dydek, RMC
Municipal Clerk

RESOLUTION 2008-#81
A RESOLUTION OF THE TOWNSHIP OF RIVERSIDE PROVIDING FOR A
MEETING NOT OPEN TO THE PUBLIC IN ACCORDANCE WITH THE
PROVISIONS OF THE NEW JERSEY OPEN PUBLIC MEETINGS ACT,
N.J.S.A. 10:4-12

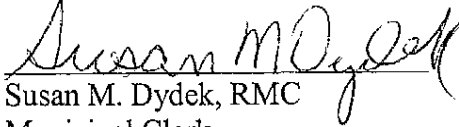
WHEREAS, the Township Committee of the Township of Riverside is subject to certain requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.; and

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-12, provides that an Executive Session, not open to the public, may be held for certain specified purposes when authorized by Resolution; and

WHEREAS, it is necessary for the Township Committee of the Township of Riverside to discuss in a session not open to the public certain matters relating to Litigation.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Riverside, assembled in public session on August 18, 2008 that an Executive Session closed to the public shall be held during the Regular Meeting of the Township Committee on August 18, 2008 in the Riverside Township Municipal Building, 1 W. Scott Street, Riverside, New Jersey for the discussion of matters relating to the specific items designated above. It is anticipated that the deliberations conducted in closed session may be disclosed to the public upon the determination of the Township Committee that the public interest will no longer be served by such confidentiality.

I HEREBY CERTIFY that the foregoing Resolution was adopted by the Township Committee of the Township of Riverside, County of Burlington, State of New Jersey, at a Meeting held in the Riverside Township Municipal Building, 1 W. Scott Street, Riverside, NJ 08075 on August 18, 2008.


Susan M. Dydek, RMC
Municipal Clerk

CONFIDENTIALCONFIDENTIALNOT TO BE RELEASED TO THE PUBLIC UNTIL FINALIZED

Riverside, N.J.
Monday Evening
August 18, 2008
8:51PM
Closed Session

STATEMENT:

Public Notice of this meeting pursuant to the Open Public Meetings Act has been given by the Riverside Township Committee in the following manner:

1. Posting written notice on the official bulletin board at the Township Municipal Building on August 14, 2008
2. Written notice was delivered to the Burlington County Times on August 14, 2008 and mailed to the Courier Post on August 14, 2008.
3. Filed written notice with the Clerk of the Township of Riverside on August 14, 2008.

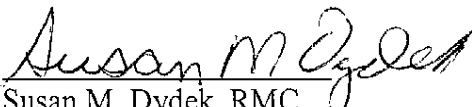
The Closed Session Meeting of the Riverside Township Committee was held on the above date at the Riverside Municipal Building with the following members present: Messrs. Prisco, Carroll, Mrs. Hatcher and Mr. Conard along with Municipal Clerk Dydek, Administrator Jack, Chief Tursi and Solicitor Saponaro.

The Closed Session was being held due to pending litigation.

A brief discussion ensued concerning correspondence received from Parker and McCay regarding an offer of settlement for the O'Reilly lawsuit.

Administrator Jack stated that she sent a letter to Attorney Mark Catanzaro regarding Patrick Vacanti trying to resolve any outstanding issues.

The meeting ended at 9:00P.M.


Susan M. Dydek, RMC
Municipal Clerk

/smd

RESOLUTION 2008-#96
A RESOLUTION OF THE TOWNSHIP OF RIVERSIDE PROVIDING FOR A
MEETING NOT OPEN TO THE PUBLIC IN ACCORDANCE WITH THE
PROVISIONS OF THE NEW JERSEY OPEN PUBLIC MEETINGS ACT,
N.J.S.A. 10:4-12

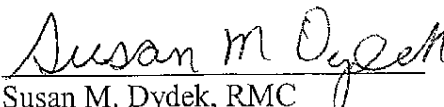
WHEREAS, the Township Committee of the Township of Riverside is subject to certain requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.; and

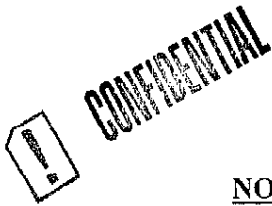
WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-12, provides that an Executive Session, not open to the public, may be held for certain specified purposes when authorized by Resolution; and

WHEREAS, it is necessary for the Township Committee of the Township of Riverside to discuss in a session not open to the public certain matters relating to Personnel.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Riverside, assembled in public session on September 15, 2008 that an Executive Session closed to the public shall be held during the Regular Meeting of the Township Committee on September 15, 2008 in the Riverside Township Municipal Building, 1 W. Scott Street, Riverside, New Jersey for the discussion of matters relating to the specific items designated above. It is anticipated that the deliberations conducted in closed session may be disclosed to the public upon the determination of the Township Committee that the public interest will no longer be served by such confidentiality.

I HEREBY CERTIFY that the foregoing Resolution was adopted by the Township Committee of the Township of Riverside, County of Burlington, State of New Jersey, at a Meeting held in the Riverside Township Municipal Building, 1 W. Scott Street, Riverside, NJ 08075 on September 15, 2008.


Susan M. Dydek, RMC
Municipal Clerk


CONFIDENTIAL

NOT TO BE RELEASED TO THE PUBLIC UNTIL FINALIZED

Riverside, N.J.
 Monday Evening
 September 15, 2008
 8:37PM
Closed Session

STATEMENT:

Public Notice of this meeting pursuant to the Open Public Meetings Act has been given by the Riverside Township Committee in the following manner:

1. Posting written notice on the official bulletin board at the Township Municipal Building on September 12, 2008
2. Written notice was delivered to the Burlington County Times on September 12, 2008 and mailed to the Courier Post on September 12, 2008.
3. Filed written notice with the Clerk of the Township of Riverside on September 12, 2008.

The Closed Session Meeting of the Riverside Township Committee was held on the above date at the Riverside Municipal Building with the following members present: Messrs. Prisco, and Carroll, along with Municipal Clerk Dydek, Administrator Jack, Chief Tursi and Solicitor Saponaro. Mrs. Hatcher and Mr. Polino were excused. Mr. Conard excused himself.

The Closed Session was being held due to personnel.

Chief Tursi gave an overview of a verbal incident involving crossing guard Monica Cimorelli and a neighbor of hers while off duty.


A discussion ensued concerning disciplinary action for Mrs. Cimorelli.

Chief Tursi excused himself at 9:00p.m.

Administrator Jack reviewed the vacation policy in the personnel manual and stated that Devin Kemp has unused vacation days that must be used this year. Mr. Kemp is requested to be paid for those days instead of using them because of the shortage of Public Works employees.

A brief discussion ensued concerning unused vacation days. It was decided not to make any changes, the days must be used or they will be forfeited.

The meeting ended.


 Susan M. Dydek, RMC
 Municipal Clerk

/smd

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

FILED

FEB -2 2009

Steven P. Perskie, J.S.C.

JOHN PAFF
Plaintiff,

vs.

ABSECON CUSTODIAN et al
Defendants

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

Civil Action

**CONSENT JUDGMENT
(w/ Egg Harbor City only)**

This matter was opened to the Court by Plaintiff John Paff and James J. Carroll, III, Esq., attorney for Defendants Egg Harbor City Custodian (hereafter "the Custodian") and Egg Harbor City Council (hereafter "the Council"), and upon consent of these parties, it on this 2nd day of February 2008⁹ ORDERED that:

1. The parties' positions and intentions are set forth in a Memorandum of Understanding, a copy of which is attached and made part of this Consent Judgment.
2. The Council consents to a permanent injunction requiring that the resolutions it passes, in accordance with N.J.S.A. 10:4-13, before going into a nonpublic (i.e. closed or executive) meeting:
 - a. Shall be in the form of the sample "CITY OF EGG HARBOR CITY RESOLUTION NO. _____ AUTHORIZING EXECUTIVE SESSION" attached to this Consent Judgment as Exhibit A

- b. Set forth as much information about the topic(s) to be privately discussed that can be disclosed without undermining the N.J.S.A. 10:4-12b exception that authorized the topic(s) to be discussed in private.
- c. Set forth, as precisely as possible, the time that is expected to elapse or the event that needs to occur before the minutes of the nonpublic session relating to each topic privately discussed may be publicly disclosed.

3. The Custodian and the Council consent to a permanent injunction requiring them, absent extraordinary circumstances, to make a draft version, marked as "draft," of the nonexempt portion of the Council's nonpublic (i.e. closed or executive) meeting minutes available to the public within twelve days after that meeting or two business-days before the Council's next regular meeting, whichever is longer. For example, if the Council went into a nonpublic meeting during its regularly scheduled Thursday, April 10, 2008 meeting, and if its next regularly scheduled meeting was on Thursday, April 24, 2008, then the nonexempt portion of the April 10, 2008 nonpublic meeting must be publicly available by close of business on Tuesday, April 22, 2008. As another example, if the Council held a special meeting on Thursday, April 17, 2008 and went into a nonpublic meeting during that meeting, and if its next regularly scheduled meeting was on Thursday, April 24, 2008, then the nonexempt portion of the April 17, 2008 nonpublic meeting must be publicly available by Tuesday, April 29, 2008, which is twelve days after the nonpublic meeting.

4. The Custodian and the Council consent to a permanent injunction requiring them to include within the Council's nonpublic meeting minutes, a) the date and time that the meeting started, b) the time that the meeting ended, and c) the location of the meeting.

5. The Council agrees to pay Plaintiff, within 10 days of its receipt of a fully executed copy of this Consent Judgment, \$60.36¹ as the Custodian's and Council's share of Plaintiff's costs so far in this matter.

¹ Of the seventeen municipalities sued, this action is still active against fifteen of them. Thus, the total due from this defendant is 1/15 of Plaintiff's total costs which are, to date, of \$905.43..

6. This Consent Judgment is entered into with no admission of fault by the Custodian or the Council.

7. The Consent Judgment resolves all the matters within this lawsuit as they relate to Defendants Egg Harbor City Custodian and Egg Harbor City Council as well as any issues that have been asserted or could be asserted by the defendants against the Plaintiff.

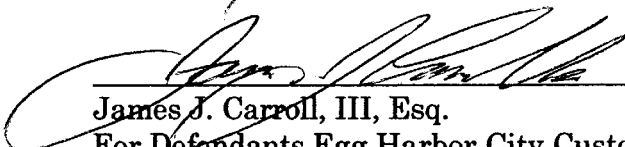
15/ **STEVEN P. PERSKIE, J.S.C.**
Hon. Steven P. Perskie, J.S.C.

We consent to the terms of this Consent Judgment:



John Paff, Plaintiff

Date: 1-30-09



James J. Carroll, III, Esq.
For Defendants Egg Harbor City Custodian and Egg Harbor City Council

Date: 1/22/09

Memorandum of Understanding

The Legislature finds and declares that the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society, and hereby declares it to be 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 except only in those circumstances where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion

N.J.S.A. 10:4-7. The Legislative Findings and Recommendations underpinning the Senator Byron M. Baer Open Public Meetings Act.

This Memorandum is entered into between John Paff (hereafter "Plaintiff") and Defendants Egg Harbor City Custodian (hereafter "the Custodian") and Egg Harbor City Council (hereafter "the Council"). Its purpose is to explain and provide context to the Consent Judgment that has been simultaneously signed by the parties.

Plaintiff chairs the New Jersey Libertarian Party's Open Government Advocacy Project which seeks to increase governmental transparency and accountability.. On October 3, 2008, Plaintiff filed suit against seventeen municipalities in Atlantic County. Among the defendants were the Custodian and the Council. The reasons that the Custodian and Council were named in the suit was because Plaintiff felt that a) the Council's closed session resolutions are not specific enough to satisfy N.J.S.A. 10:4-13, b) the Custodian and the Council needs to make the nonexempt parts of the Council's nonpublic meeting minutes publicly available more quickly, and c) that the Council's nonpublic meeting minutes don't contain the date, time and location of the meeting.

Plaintiff doesn't allege or believe that any of these issues were intentional or that the Custodian or the Council engaged in any wrongdoing or chicanery. From Plaintiff's experience, many if not most municipalities do not follow the letter of the Open Public Records Act and the Senator Byron M. Baer Open Public Meetings Act. Indeed, sixteen municipalities other than Egg Harbor City have also been sued in this matter.

Accordingly, the object of Plaintiff's lawsuit is not to embarrass or pillory the Custodian or the Council. Rather, Plaintiff seeks to use this lawsuit to impress upon Atlantic County's municipalities and other public bodies the vital importance of open government and, hopefully, to convince them to adopt a set of "best practices" that will maximize the amount and quality of official information available to the public and the speed in which citizens receive that information. Similarly, the Custodian and the Council recognize this lawsuit as an opportunity to reaffirm their commitment to open and transparent government.

Against this backdrop, the merits of the Fifth Count, Sixth Count and Eighth Count of First Amended Complaint are addressed below.

Fifth Count

All parties acknowledge that there are legitimate reasons for a municipal governing body to meet in nonpublic session. Among these reasons is the need to prevent the adverse parties in litigation or contract negotiations from gaining an unfair advantage and to allow members of the governing body to debate and deliberate personnel matters without public scrutiny or participation.² But, the need to discuss matters privately should not prevent the public from being informed, as precisely as possible, of the topics that are being privately discussed.

² See South Jersey Publishing Company, Inc. v. New Jersey Expressway Authority, 124 N.J. 478, 494 (1991)

For example, suppose that Egg Harbor City is being sued by a Mr. Jones who was injured after he slipped and fell on what he asserts to be negligently maintained municipal property. Since the lawsuit is already a public record, there is no public purpose served by publicly describing a private discussion of the lawsuit in a N.J.S.A. 10:4-13 resolution vaguely, such as “personnel and legal matters.” Rather, the resolution should at the very least describe the private discussion as “Discussion of slip and fall negligence suit, Jones v. Egg Harbor City, Docket No. ATL-L-012345-08.” This way, the public has a very good sense of what the Council’s private discussion is about while the ability of the Council to develop its lawsuit strategy is not undermined.

Using the same example, suppose that Jones’ attorney sent the City’s attorney an offer to fully settle the lawsuit upon the City’s payment of \$20,000. While the Council would obviously need to discuss how to respond to the offer in private, lest Jones or his attorney would be in the audience witnessing the discussion, there is no reason why the public could be not be informed in the N.J.S.A. 10:4-13 resolution that the Council will meeting in private to discuss “a settlement offer received from the Plaintiff in the slip and fall negligence suit known as Jones v. Egg Harbor City, Docket No. ATL-L-012345-08, in which the Plaintiff offers to settle the suit in exchange for the City paying him \$20,000.” While it may initially seem that this would provide “too much” information to the public, this concern disappears once it is realized that the sole purpose of the N.J.S.A.10:4-12(b)(7) exception is to prevent *adverse parties* to litigation and contracts from learning the details of the public body’s negotiation tactics and litigation strategy.³ Since, in this example, the adverse party (i.e. Jones) already knows that he offered to settle the lawsuit for \$20,000,

³ See the discussion in Nevin v. Asbury Park City Council, 2005 WL 2847974 (App. Div. November 1, 2005)

there is no legitimate reason why the public should not also know of the tendered settlement offer.

For another example, suppose that a personnel matter, such as whether or not a Mrs. Smith, a public works employee, should be disciplined because of repeatedly arriving late to work, is to be discussed in closed session. In such a case, the amount of detail set forth in the N.J.S.A. 10:4-13 resolution should correspond to the amount of detail that the Council and its attorney predict will be publicly disclosed in the closed meeting's minutes, when those minutes are made publicly available.

The standard that the Council is to use when determining how much information about a personnel matter is to be disclosed in the closed session's minutes is set forth in South Jersey Publishing Company, Inc. v. New Jersey Expressway Authority, 124 N.J. 478 (1991). That standard is that a) the public needs information if it is properly fulfill its role of evaluating the wisdom of governmental action or a decision not to act, b) that New Jersey's strong public policy requires that a public body's actions and decisions to not act be disclosed in the body's closed meeting minutes along with sufficient facts and information to permit the public to understand and appraise the reasonableness of the body's determination, and c) to the extent a cognizable privacy interest may be compromised by the required disclosure, the extent of disclosure may be modified through redactions of the minutes, provided the public interest in disclosure is not subverted

Thus, regardless of whether the Council disciplines Ms. Smith or chooses to not impose discipline due to her lateness, the outcome should be recorded in the closed meeting minutes. The question of whether that entry in the minutes should be redacted before the minutes are made public requires a balancing of Ms. Smith's interest in keeping the disciplinary matter private against the public's interest in effectively monitoring the

Council. If the Council, with counsel's advice, determines after balancing these interests that the outcome will be published unredacted in the closed session's minutes (i.e. if the minutes will disclose to the public, e.g. that "Ms. Smith was suspended for three days on account of her habitual lateness"), then the exact nature of the matter (i.e. that "the Council will discuss disciplining Ms. Smith for excessive lateness") should be set forth in the closed meeting's N.J.S.A. 10:4-13 resolution. Inversely, if the Council determines that Ms. Smith's privacy interest exceeds the public's right to know, then less information (e.g. "the Council will discuss disciplining an employee for excessive lateness") should be set forth in the closed meeting's N.J.S.A. 10:4-13 resolution.

Sixth Count

All parties acknowledge that there are legitimate reasons for a municipal governing body to suppress certain portions of the minutes of its nonpublic meetings. Among these reasons is the need to prevent the adverse parties in litigation or contracts from gaining an unfair advantage. But, the fact that some material may need to be redacted or suppressed from the body's nonpublic meeting minutes⁴ does not force a conclusion that the remaining, non-exempt material need not be made promptly available to the public. Indeed, N.J.S.A. 10:4-14 states 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.)

Also, there is no need for minutes to be "approved" by a governing body before drafts of those minutes can be publicly released. Since approval cannot take place but at a meeting, requiring approval before public release makes it impossible for meeting minutes to be available to prior to the body's next meeting.

⁴ See, e.g. Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 557, 58 (1997).

New Jersey courts have held that draft minutes of public meetings must be publicly disclosed prior to the meeting at which formal approval is to occur. Liebeskind v. Mayor and Municipal Council of Bayonne, 265 N.J. Super. 389, 394, 395 (App. Div. 1993) (minutes to be publicly available within two weeks after each meeting and at least three business days before the next meeting). The same principle should apply to the nonexempt portion of the body's nonpublic meeting minutes.

Finally, there is real value in interested members of the public promptly knowing the nature of the nonexempt portions of nonpublic meetings. An opportunity to read the nonexempt portions of the minutes of the previous nonpublic session the day before the next meeting allows citizens to offer cogent, informed comments during the public portion of the next meeting. Delaying the release of those minutes, on the other hand, deprives citizens from being informed of and commenting on important public issues until after those issues may have become stale.

Eighth Count

All parties acknowledge that N.J.S.A. 10:4-14 expressly requires meeting minutes, including nonpublic meeting minutes, to include the "time and place" of the meeting.

Conclusion

Again, Plaintiff attributes no malice or wrongful conduct toward the Custodian or the Council. And, the Custodian and the Council may not necessarily agree that the Open Public Records Act and Meetings Act requires, as a matter of law, that which is set forth in this Consent Judgment. Rather, all parties recognize that the public benefits from open and transparent government and it is this goal that motivates the parties to enter into this Consent Judgment.

**CITY OF EGG HARBOR CITY
RESOLUTION NO. _____
AUTHORIZING EXECUTIVE SESSION**

WHEREAS, while the Sen. Byron M. Baer Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.) requires all meetings of the Egg Harbor City Council to be held in public, N.J.S.A. 10:4-12(b) sets forth nine (9) types of matters that may lawfully be discussed in "Executive Session," i.e. without the public being permitted to attend, and

WHEREAS, the Egg Harbor City Council has determined that _____ (insert number) issues are permitted by N.J.S.A. 10:4-12(b) to be discussed without the public in attendance shall be discussed during an Executive Session to be held on _____, 20__ at _____ P.M, and

WHEREAS, the nine (9) exceptions to public meetings set forth in N.J.S.A. 10:4-12(b) are listed below, and next to each exception is a box within which the number of issues to be privately discussed that fall within that exception shall be written, and after each exception is a space where additional information that will disclose as much information about the discussion as possible without undermining the purpose of the exception shall be written.

"(1) Any matter which, by express provision of Federal law, State statute or rule of court shall be rendered confidential or excluded from public discussion." The legal citation to the provision(s) at issue is: _____ and the nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____;

"(2) Any matter in which the release of information would impair a right to receive funds from the federal government." The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____;

"(3) Any material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal material of any educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by such institution or program, including but not limited to information relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or incompetent, his guardian) shall request in writing that the same be disclosed publicly." The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____;

"(4) Any collective bargaining agreement, or the terms and conditions of which are proposed for inclusion in any collective bargaining agreement, including the negotiation of terms and conditions with employees or representatives of employees of the public body" The collective bargaining contract(s) discussed are between the City and _____;

"(5) Any matter involving the purchase lease or acquisition of real property with public funds, the setting of bank rates or investment of public funds where it could adversely affect the public interest if discussion of such matters were disclosed." The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____;

"(6) Any tactics and techniques utilized in protecting the safety and property of the public provided that their disclosure could impair such protection. Any investigations of violations or possible violations of the law." The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____;

“(7) Any pending or anticipated litigation or contract negotiation in which the public body is or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.” The parties to and docket numbers of each item of litigation and/or the parties to each contract discussed are _____

_____ and nature of the discussion, described as specifically as possible without undermining the need for confidentiality is _____

“(8) Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.” Subject to the balancing of the public's interest and the employee's privacy rights under South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, the employee(s) and nature of the discussion, described as specifically as possible without undermining the need for confidentiality are _____

“(9) Any deliberation of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act of omission for which the responding party bears responsibility.” The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____

WHEREAS, the length of the Executive Session is estimated to be _____ minutes after which the public meeting of the City Council shall reconvene;

NOW, THEREFORE, BE IT RESOLVED that the City Council of Egg Harbor City will go into Executive Session for **only** the above stated reasons;

BE IT FURTHER RESOLVED that the City Council directs the City Clerk to make ten (10) photocopies of this resolution immediately after it passes and to distribute those photocopies to the public in attendance prior to the Executive Session commencing.

BE IT FURTHER RESOLVED that the blank spaces within this form of resolution are to be filled out in conformity with a Consent Judgment and Memorandum of Understanding dated [DATE] that arose out John Paff v. Absecon Custodian, et al, Docket No. ATL-L-3392-08.

BE IT FURTHER RESOLVED that the City Council hereby declares that its discussion of the aforementioned subject(s) will be made public at a time when the public's interest in disclosure is greater than any privacy or governmental interest being protected from disclosure. For each of the above items, the estimated date by which such disclosure can be made and/or the occurrence that needs to take place before disclosure can be made are listed below (attach separate sheet if necessary)

Subject of Discussion	Estimated Date	Necessary Occurrence

ATTEST:

CITY OF EGG HARBOR CITY

Egg Harbor City Clerk

Mayor

(Exhibit A to Consent Judgment)