



# New Jersey Libertarian Party

Open Government Advocacy Project

*John Paff, Chairman*

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May 30, 2008

John DiMaio, Director and Members  
Warren County Board of Chosen Freeholders  
165 County Route 519 South  
Belvidere, NJ 07823-1949 (via fax to 908-475-6528)

Dear Director DiMaio and Board Members:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project to invite your attention to a concern I have regarding the Board's compliance with the Senator Byron M. Baer Open Public Meetings Act (OPMA).

Attached is a copy of Resolution 222-08 that purportedly authorized the Board's April 9, 2008 nonpublic (i.e. closed or executive) meeting in accordance with N.J.S.A. 10:4-13. The resolution, as it appears on the County's Internet site, does not disclose the *precise reason* why the Board excluded the public from this meeting. Rather, the resolution simply lists *all* of the categories of topics that the OPMA permits to be discussed behind closed doors.

Is the the resolution<sup>1</sup> contained within the Internet version of the Board's minutes identical to the actual resolution passed by the Board? My thought is that perhaps the actual, hard copy version of the resolution might show, for example, a handwritten circle around "(7) *Matters Relating to Litigation, Negotiations and the Attorney-Client Privilege*" and contain a handwritten comment indicating that the session was called to discuss "the litigation matter of Smith v. Warren County, Docket No. WAR-L-000001-08."

If the actual, hard copy and Internet versions of the resolution are identical, then the Board's form of closed session resolution is deficient because it needs to be more specific as to what topics are going to be privately discussed. I litigated this issue last year in Middlesex County and the judge there held<sup>2</sup> that that "Judge Carchman's decision clearly articulates the public policy behind the Act, i.e., **that closed session resolutions should contain as much information as is consistent with full public knowledge without doing any harm to the public interest.**" (Emphasis supplied.) While I am certainly not

<sup>1</sup> <http://www.co.warren.nj.us/Download/WCBCF%20Minutes%202008-04-09.pdf>

<sup>2</sup> My complaint and court's unpublished decision are on-line at <http://www.lpcnj.org/OGTF/Monroe.pdf>

sure of it, I would guess that a Superior Court Judge in Warren County would rule in a similar manner.

Would you please address these concerns at your June 25, 2008 meeting and let me know your thoughts?

I appreciate your time and look forward to receiving your response.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

John Paff

cc. Steve Marvin, Clerk and County Administrator (*via email only*)

**RESOLUTION 228-08**

On motion by Mr. Chamberlain, seconded by Mr. Gardner, at 8:33 p.m., the following resolution was adopted by the Board of Chosen Freeholders of the County of Warren at a meeting held on April 9, 2008.

**RESOLUTION AUTHORIZING EXECUTIVE SESSION OF THE WARREN COUNTY BOARD OF CHOSEN FREEHOLDERS 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 Warren County Board of Chosen Freeholders 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 Warren County Board of Chosen Freeholders to discuss in a session not open to the public certain matters relating to the item or items authorized by N.J.S.A. 10:4-12b and designated below:

*(1) Matters Required by Law to be Confidential:* Any matter which, by express provision of Federal law of State statute or rule of court shall be rendered confidential or excluded from the provisions of the Open Public Meetings Act.

*(2) Matters Where the Release of Information Would Impair the Right to Receive Funds:* Any matter in which the release of information would impair a right to receive funds from the Government of the United States.

*(3) Matters Involving Individual Privacy:* 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.

*(4) Matters Relating to Collective Bargaining Agreements:* Any collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body.

*(5) Matters Relating to the Purchase, Lease or Acquisition of Real Property or the Investment of Public Funds:* Any matter involving the purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed.

*(6) Matters Relating to Public Safety and Property:* Any tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair such

**ATTESTED TO:**

protection. Any investigations of possible violations of the law.

*(7) Matters Relating to Litigation, Negotiations and the Attorney-Client Privilege:* 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.

*(8) Matters Relating to the Employment Relationship:* Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance or 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 the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.

*(9) Matters Relating to the Potential Imposition of a Penalty:* Any deliberations 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 bearing responsibility.

**NOW, THEREFORE, BE IT RESOLVED** by the Warren County Board of Chosen Freeholders, assembled in public session on April 9, 2008 that an Executive Session closed to the Public shall be held on April 9, 2008 at 8:33 p.m. in the Freeholders Conference Room located at the Wayne Dumont, Jr. Administration Building, 165 County Route 519 South, Belvidere, New Jersey 07823 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 Warren County Board of Chosen Freeholders that the public interest will no longer be served by such confidentiality.

I hereby certify the above to be a true copy of a resolution adopted by the Board of Chosen Freeholders of the County of Warren at a meeting held on April 9, 2008.

Steve Marvin, Clerk of the Board  
Recorded Vote: Mr. Chamberlain

yes, Mr. Gardner yes, Mr. DiMaio absent



# New Jersey Libertarian Party

Open Government Advocacy Project

*John Paff, Chairman*

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

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

May 31, 2008

Art Charlton, Director  
Warren County Public Information Dept.  
165 County Route 519 South  
Belvidere, NJ 07823 (via email only to [acharlton@co.warren.nj.us](mailto:acharlton@co.warren.nj.us))

Dear Mr. Charlton:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project. I acknowledge receipt of your email of May 30, 2008, which I've included here for your ready reference.

*Dear Mr. Paff,*

*I received your OPRA request via email this afternoon seeking minutes of Freeholder Board closed sessions held on three dates this year.*

*According to county policy, the minutes from those meetings will be reviewed and possibly redacted if there are issues that have not yet lost their confidentiality. The minutes must then be approved by the freeholder board for release.*

*The next meeting of the board is on Wednesday, June 25, at which time I anticipate the review and preparation will be completed and the minutes will be ready for their approval. I expect to be able to send you the minutes on June 26, but if anything changes, I'll let you know.*

*As you know from our OPRA request form, copies of documents up to 10 pages are provided at no charge. If the page count exceeds 10 and the modest copying fee applies, I'll give you a call at 732-873-1251 or send you an email.*

*If you have any questions, please call me at the numbers listed below.*

*Sincerely,*

*Art Charlton*

As you are aware, my May 30, 2008 records request asked for the minutes of three executive sessions, the earliest of which was held on February 27, 2008. So, your position is that I'm not able to see even redacted minutes of that meeting until at least June 26, 2008, which is nearly 120 days after the meeting was held.

N.J.S.A. 10:4-14 states:

**Minutes of meetings.** 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. 10:4-12b].

(emphasis supplied.)

Do you believe that the way you're handling my request complies with the "promptly available" mandate of the statute? I certainly don't, and ask that you please present the following suggestion to the Freeholders at the Board's June 25, 2008 meeting.

Instead of the Board itself "approving" closed session minutes for release, the Board should delegate that task to another official, perhaps the Clerk of the Board or the County Administrator, who, along with possible assistance of the County Council, could apply the necessary redactions and release the requested minutes to the public.

In *Courier Post v. Lenape Regional High School District*, 360 N.J. Super. 191 (2002) Burlington County Assignment Judge John A. Sweeney considered whether a non-attorney, administrative official was qualified to redact sensitive and privileged information from bills for legal services. Judge Sweeney wrote:

The process of review and redaction, however, cannot be used to frustrate the goal of the [Open Public Records] Act set forth in Section 5g. to "promptly permit access to the remainder of the record." Redaction of privileged or confidential data cannot cause the release of otherwise public information to be placed in a straight jacket.

\* \* \*

[A]n individual with sufficient education and experience to hold the position of a custodian of records [which in municipalities is always the municipal clerk] should be able to quickly ascertain the presence of, and delete, confidential and privileged information to enable that custodian to "promptly comply with a request to inspect ..." a government record.

Ibid at 206.

Even though the issues are not precisely the same (i.e. the court case dealt with redacting legal bills and the present inquiry concerns redacting closed session minutes),

Judge Sweeney's comments suggest that the Freeholders can and should delegate the task of redacting closed meeting minutes to some administrative official.

I believe that my recommended policy change would bring the Board into compliance with N.J.S.A. 10:4-14 as well as the seven-business day response requirement of the Open Public Meetings Act but still protect the public's interest in keeping appropriate portions of the closed session minutes confidential.

Would you please confirm that you will put this suggestion before the Freeholders at their June 25, 2008 meeting?

I appreciate your time and look forward to receiving your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Paff', with a stylized flourish at the end.

John Paff

cc. Steve Marvin, Clerk and County Administrator (*via email only*)