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 Attorneys for Plaintiff Susan Scoblink-O'Neill

Susan Scoblink-O'Neill	:	SUPERIOR COURT OF NEW JERSEY
	:	CAMDEN COUNTY
<i>Plaintiff,</i>	:	LAW DIVISION
	:	DOCKET NO: CAM-L- 4390-08
v.	:	
	:	CIVIL ACTION
Borough of Haddon Heights,	:	
Joan Moreland, Municipal Clerk and	:	<i>1st AMENDED COMPLAINT</i>
Patricia Cooper,	:	
<i>Defendants.</i>	:	

Plaintiff, Susan Scoblink-O'Neill, complains against the Defendants as follows:

THE PARTIES

1. Plaintiff Susan Scoblink-O'Neill is a resident and citizen of New Jersey. She currently resides in Camden County.
2.
 - a. Defendant, Borough of Haddon Heights is a New Jersey body politic located in Camden County, New Jersey.
 - b. Defendant, Joan Moreland is the Municipal Clerk and custodian of records for Haddon Heights.
 - c. Defendant Patricia Cooper is a Haddon Heights employee and was designated to respond to the public record request propounded by the Plaintiff.

BACKGROUND

3. On July 7, 2008 Plaintiff requested public records regarding the privatization of the Haddon Heights Public Works Department.
4. Plaintiff made this request pursuant to the Open Public Records Act and the common law right of access.
5. In a response, Defendants attached a 1 page bar graph, ostensibly proffering that the Borough made a \$500,000 decision (alleged claimed savings) based upon a single page bar diagram

6. Defendants' position specifically conflicts both its earlier actions (Plaintiff made an earlier OPRA request for the same material and was told there were no documents) and information referenced by council representative indicates far more expansive and deeper analysis was conducted and estimates were prepared.

COUNT I

VIOLATION OF THE OPEN PUBLIC RECORDS ACT, 47:1A-1 et. seq.

7. The above allegations are herein incorporated by reference.
8. The reports, estimates, etc. relied upon by Haddon Heights to support its decision to privatize public works are public records that were not supplied to the Plaintiff as requested.

COUNT II

VIOLATION OF THE COMMON LAW RIGHT OF ACCESS

9. The above allegations are herein incorporated by reference.
10. Plaintiff and her family have been affected by the privatization of the public works department. Her husband was terminated as a result of the privatization.
11. Plaintiff has a wholesome public interest and/or a legitimate private interest in the public records sought.
12. Defendants do not have a legitimate governmental interest in keeping the records confidential.

COUNT III

VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A. 10:6-1, et seq.

13. The above allegations are herein incorporated by reference.
14. The Common Law Right of Access is a substantive right and/or privilege secured by the Constitution of this State and/or the laws of this State and/or federal law.
15. Plaintiff was deprived of her common law right of access to the documents when she was denied access to the records sought.
16. Defendants' violation of the Common Law Right of Access is a violation of the New Jersey Civil Rights Act.

Wherefore, Plaintiff requests judgement as follows:

- A. Compelling the Defendants to turnover unredacted, legible versions of the documents sought;
- B. Awarding counsel fees and costs;
- C. Awarding other such relief as the Court may deem fair, equitable and/or necessary to facilitate the Plaintiff's intentions and the directives of the Open Public Records Act, the Common Law Right Of Access and/or the New Jersey Civil Rights Act.

COUNT IV

OPRA VIOLATION - USE OF INACCESSIBLE RECORDING EQUIPMENT

- 17. The above allegations are herein incorporated by reference.
- 18. As Defendants now deny the existence of the reports that they once claimed to have relied upon, Plaintiff sought to obtain copies of the meeting where she believed those reports and related matters to have been discussed.
- 19. On September 29, 2008 Plaintiff made another OPRA request to the Borough Of Haddon Heights and Joan Moreland, the municipal Clerk.
- 20. Plaintiff requested audio recordings of the April 15, 2008 and April 26, 2008 council meetings, where she believed the public works privatization project were discussed.
- 21. Defendants timely responded on October 1, 2008 and charged Plaintiff \$6.00 for the tapes.
- 22. When Plaintiff sought to listen to the tapes, it was impossible to do so.
- 23. The tapes were made and copied in a high speed format that renders the tapes unable to be played on "normal" audio tape playing equipment. The equipment is believed to be a device known as a "Lanier Advocate V LCR-5".
- 24. When Plaintiff addressed the Defendant about this, she was informed that they knew the tapes would be useless to her when she asked for them and they have gotten repeated complaints for requesters about the inability to listen to the recordings.
- 25. Defendants informed Plaintiff that if she wanted to listen to her copies, she could bring them to the borough offices during business hours.

26. Plaintiff, like most New Jersey citizens, works and is unable to conform her schedule to the borough hours in order to listen to tapes of the public meetings.
27. Plaintiff was informed that to have transcripts made of the hearings it would require a \$1,000 deposit per meeting.
28. It is a violation of the spirit of open government and a denial of access under the Open Public records Act to provide citizens information and records in a format that cannot be readily or cost-effectively accessed.
29. The obligation to supply public records encompasses the proposition that the material must be supplied in a format that is accessible in a cost effective fashion.

Wherefore, Plaintiff requests judgement as follows:

- A. Compelling the Defendants to turnover audio recordings of the meeting in a format that can be accessed by the public;
- B. Awarding counsel fees and costs for the denial of access relating to the provision materials in inaccessible formats.
- C. Awarding other such relief as the Court may deem fair, equitable and/or necessary to facilitate the Plaintiff's intentions and the directives of the Open Public Records Act, the Common Law Right Of Access and/or the New Jersey Civil Rights Act.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-4, Donald M. Doherty, Jr., Esquire is hereby designated as trial counsel on behalf of the plaintiff.

CERTIFICATION OF COUNSEL PURSUANT TO RULE 4:5-1

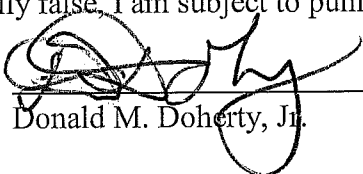
I, the undersigned, hereby certify the matter in controversy is not the subject of any other action in any court nor a pending arbitration proceeding. Furthermore, there is no other action or arbitration proceeding contemplated, although at some point in the future yet to be determined, Plaintiff's husband may have or initiate an employment related claim or arbitration. I further certify that there are no other parties that should be joined to this action.

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:

10/5/08

By:


Donald M. Doherty, Jr.

SETTLEMENT AGREEMENT

This Settlement Agreement and Release (the "Settlement Agreement") is made and entered into this 20 day of July, 2009, by and between Susan Scoblink-O'Neill ("O'Neill") and Borough of Haddon Heights ("Borough").

RECITALS

A. O'Neill filed suit against Borough under Camden County Docket No. CAM-L-4390-08, wherein O'Neill made certain claims under the Open Public Records Act, N.J.S.A. 47:1A-1, et seq.

B. O'Neill and Borough have amicably resolved the litigation by agreement, consisting of the following: (1) production of the Borough of all responsive records, which is hereby acknowledged by Plaintiff, (2) establishment of meeting recording reproduction process that enables production of tape in "normal" formatting, and (3) payment by the Borough of Plaintiff's legal fees equal to \$6,320.00.

C. A Stipulation of Settlement has been executed between the respective attorneys in this matter, which shall be filed with the Court. This Settlement Agreement and a simultaneous Stipulation of Settlement resolves all issues between the parties on the Project.

AGREEMENT

The parties agree as follows:

1. Release and Discharge

In consideration of the payments set forth in Section 2, below, O'Neill and Borough hereby completely mutually release and forever discharge each other from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which either party now has, or which may hereafter accrue or otherwise be acquired, on account of or may in any way grow out of Borough's obligations under the Open Public Records Act for the period up to and the date of this Agreement.

This release shall be a fully binding and complete settlement among the parties, any related entities, their principals, heirs, assigns and successors. The parties acknowledge and agree that the release and discharge set forth above is a general release.

2. Payments

In consideration of the release set forth above, Borough agrees to pay O'Neill a total of \$6,320 for counsel fees, to fully resolve this litigation, which payment shall be made within thirty days of the parties' execution of this Settlement Agreement.

3. Default

O'Neill may declare Borough to be in default of this Settlement Agreement and Release in the event that Borough fails to make payment as set forth in paragraph 2 of this Agreement. In the event that payment is not received, O'Neill shall cause to be forwarded to Borough a default notice advising of the default and demanding an immediate cure no later than 14 days after the date that payment is due, on notice to counsel for Borough. If the default is not cured in that time frame O'Neill may take any and all legal actions reasonably necessary to enforce the terms of the Settlement Agreement or to obtain payment through legal process. In the event that O'Neill declares a default which is not cured as set forth above, Borough shall be responsible for any and all of O'Neill's costs of collection, including reasonable attorneys fees, in enforcing the terms of the Settlement Agreement.

4. Attorney's Fees

Except as otherwise specifically set forth herein, each party hereto shall bear all attorney's fees and costs arising from the actions of its own counsel in connection with this Settlement Agreement, the matters and documents referred to herein, and all related matters. Notwithstanding the above, each party shall be responsible to the other for any and all reasonable counsel fees and costs incurred in enforcing the terms of this Agreement in the event of default as set forth in paragraph 3.

5. Representation of Comprehension of Document

In entering into this Settlement Agreement, the Parties represent that each party has relied upon the advice of their respective attorneys, who are the attorneys of their own choice, concerning the legal consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to the Parties by their respective attorneys; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by each Party. There shall be no presumption against the drafter of this Settlement Agreement.

6. Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey.

7. Additional Documents

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement, including but not limited to the entry of a mutually agreeable Stipulation of Settlement with Prejudice.

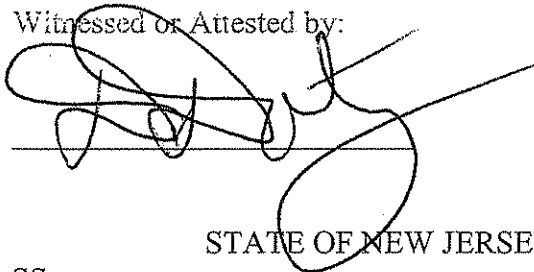
8. Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between the Parties with respect to this Project and shall be binding upon and enure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

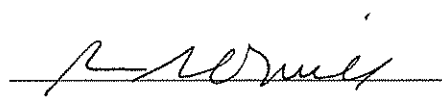
9. Effectiveness

This Settlement Agreement shall become effective immediately following execution by each of the parties.

Witnessed or Attested by:



SUSAN SCOBLINK O'NEILL



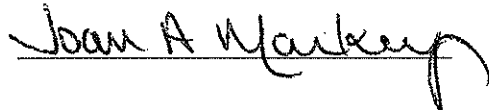
STATE OF NEW JERSEY, COUNTY OF

SS:

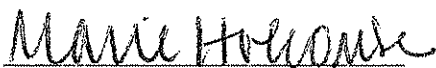
I CERTIFY that on Susan O'Neill, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act or deed.

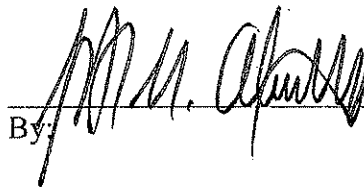
JOAN A. MARKEY
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 5/4/2012



Witnessed or Attested by:



BOROUGH OF HADDON HEIGHTS

By:  (Seal)

STATE OF NEW JERSEY, COUNTY OF

SS:

I CERTIFY that on Scott M. Alexander, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act or deed.

