

John Paff

P.O. Box 5424

Somerset, NJ 08875-5424

E-mail – CJSC@pobox.com

July 3, 2009

Telephone – 732-873-1251

Fax – 908-325-0129

Robin Berg Tabakin, Chairwoman
Government Records Council
101 South Broad Street
Trenton, New Jersey

(via e-mail only to grc@DCA.state.nj.us)

RE: Executive Session Minutes

Dear Chairwoman Berg Tabakin and Council Members:

I write for two reasons. First, I request a copy of the "request for Advisory Opinion from Frank P. Cavallo, Esquire, Parker McCay, P.A." that was discussed during the Council's December 18, 2008 closed session. I prefer that this record be e-mailed to me, or faxed to me if it cannot be e-mailed.

Second, I am concerned about the sparseness of the Council's closed sessions meeting minutes. I will use the Council's December 18, 2008 closed session as an example and have attached the resolution that authorized that closed session and the session's minutes to this letter.

My concern is that the closed session minutes do not include any more information about the matters discussed than that which already appears in the closed session resolution. I believe that this may cause them to be noncompliant with N.J.S.A. 10:4-14 in that they're not "reasonably comprehensible."

For example, the first item listed in both the closed resolution and minutes is an attorney's request that the GRC issue an Advisory Opinion. But, the closed minutes do not reveal whether the attorney's request was granted or denied, and my search of the public meeting minutes from December 18, 2008 through to the present contain no mention of this attorney's request or the Council's response to it.

N.J.S.A. 10:4-14 requires that what took place at meeting and what final action was taken should be reflected in minutes. Liebeskind v. Mayor and Mun. Council of Bayonne, 265 N.J. Super. 389, 401 (App. Div.1993). Accordingly, I believe that at a minimum, the Council's decision as to whether or not to grant the attorney's request must be recorded in the December 18, 2008 closed meeting minutes. Do you agree?

Moreover, other public bodies I have dealt with generally include a few sentences or paragraphs in their closed minutes under each discussion item. For example, see the Galloway Township Council's February 12, 2008 closed meeting minutes, which are attached. While the parts of Galloway's closed minutes that

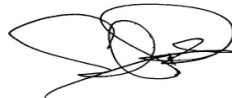
reveal its Council's discussion, deliberation and decision-making are entirely redacted, at least a record of those discussions *exist*. The Government Records Council's closed minutes, however, are essentially a table of contents and do not include anything other than just a description of the topics being discussed.

The difference between the Galloway Council's and the Government Records Council's minutes is important. Even if the public never gets to see an unredacted version of Galloway's February 12, 2008 closed minutes, the minutes still are a valuable aid to new members of the Galloway Council who wish to inform themselves about how previous council members dealt with certain issues.

When new members are appointed to the Government Records Council, how will they learn what happened at previous executive sessions absent "reasonably comprehensible" minutes? Are they expected to rely on the recollections of other members and staff who were present at the closed meetings?

Thank you for your time and attention. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to be "John Paff", with a large, stylized flourish at the end.

John Paff

December 18, 2008 Closed Session Minutes
(taken from December 18, 2008 open session transcript)

Whereas, N.J.S.A. 10:4-12 permits a public body to go into closed session during a public meeting; and whereas the Government Records Council has deemed it necessary to go into closed session to discuss certain matters which are exempt to public discussion under the Open Public Meetings Act, and, whereas, the regular meeting of the Council will reconvene at the conclusion of the closed meeting. Now; therefore, be it resolved, that the Council will convene in closed session to receive legal advice and discuss anticipated litigation, in which the Council may become a party pursuant to N.J.S.A. [10:4-12(b)7] in the following matters:

One, request for Advisory Opinion from Frank P. Cavallo, Esquire, Parker McCay, P.A.

Two, John Paff versus Borough of Lavallette Ocean, 2000-209.

Three, Gill versus Department of Banking and Insurance. Appellate Opinion, decided 11/28/2008, A-0886-07T1.

Four, Bart versus City of Paterson Housing Authority. Appellate Opinion decided 11/21/2008 A-85826-06T1.

Five, NJFOG versus GRC, Docket No. MER-L-1858-08.

Six, Edward Oskay versus NJ State Parole Board, 2008-53.

Be it further resolved that the Council will disclose to the public the matters discovered or determined in closed session, as soon as possible, after the final decisions are issued in the above cases.

December 18, 2008 Closed Session Minutes

The Council convened in closed session at 9:55 a.m. in Conference Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Robin Berg Tabakin, David Fleisher, Kathryn Forsyth (designee of Commissioner Lucille Davy, Department of Education) and Janice Kovach (designee of Commissioner Joseph V. Doria, Jr., Department of Community Affairs).

Also in attendance were GRC Staff: In-House Counsel Karyn Gordon, Senior Case Manager Dara Lownie, In Camera Attorney John Stewart, GRC Staff Secretary Brigitte Hairston, Deputy Attorney General Debra Allen and Designated Outside Counsel Gina Orosz and Kelly Lake.

A motion was made by Mr. Fleisher and seconded by Ms. Forsyth to go into closed session. The motion was adopted by a unanimous vote.

The Council met in closed session pursuant to N.J.S.A. 10:4-12.b(7) to receive legal advice and discuss anticipated litigation in which the public body may become a party in the following matters:

1. Request for Advisory Opinion from Frank P. Cavallo, Esquire, Parker McCay P.A.
2. John Paff v. Borough of Lavallette (Ocean) (2007-209)
3. Gill v. Department Of Banking and Ins. (Appellate Opinion Decided 11-28-2008) A-0886-07T1
4. Bart v. City Of Paterson Housing Authority (Appellate Opinion Decided 11-21-2008) A- 5826-06T1
5. NJFOG v. GRC, Docket No. MER-L-1858-08
6. Edward Oskay v. NJ State Parole Board (2008-53)

A motion was made by Ms. Kovach and seconded by Mr. Fleisher to end the closed session. The motion was adopted by a unanimous vote.

The closed session meeting concluded at 10:45 a.m.

February 12, 2008, Galloway, NJ

The Closed Meeting of the Galloway Township Council and Utilities Division was held at 8:45 PM on the above date in Council Chambers, 300 E. Jimmie Leeds Road, Galloway, NJ. Council Members present were:

ACKERMAN BASSFORD COX DESIMONE
GORMAN HARTMAN WORTHINGTON

Also present were: Township Manager Jill Gougher and Michael Blee, Esq.

First Vehicle Services - Fleet Maintenance

[REDACTED]

Health Insurance Committee Changes Discussed to Modify Existing Insurance
Human Resource Director George Wackenheim

[REDACTED]

[REDACTED]

Councilman Gorman has abstained and left at this portion of the meeting.

Memorandum of Agreement Local 68
Human Resource Director George Wackenheim

[REDACTED]

[REDACTED]

On motion of Worthington, seconded by Ackerman Closed Session was adjourned to Open Session: (Roll Call Vote: Ackerman, Aye; Cox, Aye; DeSimone, Aye; Hartman, Aye; Worthington, Aye; Bassford, Aye.)

The meeting was adjourned at 9:45 PM.

Respectfully submitted,

Lisa A. Tilton
Lisa A. Tilton, Acting Township Clerk

Subject: RE: Letter to Government Records Council
From: "Government Records Council" <grc@DCA.state.nj.us>
To: "John Paff" <paff@pobox.com>

Mr. Paff,

We are in receipt of your correspondence. I will forward it to the Council members and we will have a response for you after the July 29, 2009 meeting. Please note this is the next time the GRC meets, and I'm sure you can appreciate that I expect the members will want to discuss this matter before responding.

Attached is the letter requesting the Advisory Opinion and the GRC's response.

Sincerely,
Catherine Starghill

Catherine Starghill, Esq.
Executive Director
State of New Jersey
Government Records Council

tel: 609-292-6830 | fax: 609-633-6337

This correspondence contains advisory, consultative or deliberative material and is intended solely for the person(s) shown as recipient(s).

>From: John Paff [<mailto:paff@pobox.com>]
>Sent: Friday, July 03, 2009 1:06 PM
>To: Government Records Council
>Subject: Letter to Government Records Council
>
>Would you please acknowledge receipt of the attached letter?
>
>Thank you.
>
>John Paff



[Request for Advisory Opinion \(Oct 2008\).pdf](#)



ATTORNEYS AT LAW

Parker McCay P.A.
Three Greentree Centre
7001 Lincoln Drive West
P.O. Box 974
Marlton, NJ 08053-0974
P: 856-596-8900
F: 856-596-9631
www.parkermccay.com

Frank P. Cavallo, Jr., Esquire
P: 856-985-4074
F: 856-810-5852
fcavallo@parkermccay.com

October 27, 2008

File No. 1121-0050

Catherine Starghill, Esquire
Executive Director
New Jersey Government Records Council
Post Office Box 819
Trenton, New Jersey 08625-0819

Re: **New Jersey State Firemens Association**

Dear Ms. Starghill:

The purpose of this letter is to request an Advisory Opinion as to whether the New Jersey State Firemens Association is a public agency subject to the requirements of the Open Public Records Act, N.J.S.A. § 47:1A-1 et seq. ("OPRA"). It is the Association's contention that it does not meet the criteria as a public agency, however, we call upon your expertise for guidance so that measures may be taken to comply if necessary.

OPRA defines a public agency to include "...the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch..." N.J.S.A. § 47:1A-1.1

Through our review of past GRC decision, it is apparent that the Government Records Council has considered the public agency question on numerous occasions. For example, it has determined that the New Jersey Sports and Exposition Authority (GRC 2004-142), the Seaside Heights Business Improvement District (2005-50) and the Montclair Community Pre-K Center (2005-130) are each public agencies subject to OPRA requirements. Conversely, it has determined that the Children's Hospital of New Jersey (2006-13) and the Union County Alliance (2006-73) are not public agencies. Unfortunately, except as noted below, these decision shed little insight into the analysis utilized to reach these determinations.

The New Jersey Supreme Court found a private, non-profit development corporation was a public agency subject to OPRA and also subject to the Open Public Meetings Act as a "public body." Times of Trenton v. Lafayette Yard Comm. Deve. Corp., 183 N.J. 519 (2005). While the definition of public body differs from public agency under the separate legislative schemes, the court found that the functions of the development corporation were enough to require adherence to both statutory enactments.

In Lafayette Yard, the court held that the corporation, although private and non-profit: (1) was created for the express purpose of redeveloping property; (2) was comprised of members

October 27, 2008

Page 2

exclusively appointed by the local governing body; (3) had a policy which mandated reversion of assets, repayment of debt and liquidation of assets to that city; and (4) had the authority to issue tax-exempt bonds. Lafayette Yard at 442. The Supreme Court found these characteristics enough to subject the corporation to the OPMA and then equated a public body to a public entity to require OPRA requirements as well.

In strong reliance on Lafayette Yard, the Government Records Council considered whether the Association of Retarded Citizens, Union County, Inc. was subject to OPRA. (GRC 2005-136.) ARC-Union's relationship with the State of New Jersey is contractual only. It was not created by the State. According to its Bylaws, Arc-Union was created to "promote the welfare of all mentally retarded citizens and their families, and to cooperate with public and private agencies and other groups and organizations having similar purposes." The GRC determined that, unlike the development corporation in Lafayette Yard, the interest of the public was not implicated by ARC-Union's actions, and the governmental appointment and oversight requirements were lacking. The Complainant's interest in requesting the records was personal rather than implicating a public purpose – i.e. contrary to the letter and spirit of OPRA. The GRC could not stretch those facts to subject ARC-Union to the OPRA requirements.

When evaluating whether the State Firemen's Association is subject to OPRA, we recognize that the Association exists through enabling legislation of N.J.S.A. § 43:17-40 et seq. On its face, this characteristic leans toward subjecting the Association to the requirements of OPRA. However, once created by the Legislature, the membership is filled by individuals of the twenty-one counties, not appointed by government entities. The Association's exclusive purpose (providing relief to retired firefighters and their families) is not akin to performing a government function. The Association is not supported by government funds. Its function, analogous to that of ARC-Union, does not affect the rights, duties, obligation, privileges and benefits of other persons.

Based upon these characteristics, there is a strong argument to suggest that the New Jersey State Firemen's Association is not encompassed with the definition of a public agency subject to OPRA requirements.

We eagerly await your conclusion as to whether the Association is encompassed within the statute's definition.

Very truly yours,


FRANK P. CAVALLO, JR.

FPC/gmm



State of New Jersey
GOVERNMENT RECORDS COUNCIL

ROBIN BERG TABAKIN, Chairman
COMMISSIONER JOSEPH V. DORIA, JR.
COMMISSIONER LUCILLE DAVY
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511
Fax: 609-633-6337
E-mail: grc@dca.state.nj.us
Web Address:
www.nj.gov/grc

November 3, 2008

Frank P. Cavallo, Jr., Esquire
Parker McCay P.A.
Three Greentree Centre
7001 Lincoln Drive West
P.O. Box 974
Marlton, NJ 08053-0974

RE: October 27, 2008 Request for Advisory Opinion

Dear Mr. Cavallo:

This letter will acknowledge the receipt of your letter of October 27, 2008 requesting an Advisory Opinion of the New Jersey Government Records Council.

This matter will be considered by the Council at a meeting date in the near future.

Sincerely,

A handwritten signature in cursive script that reads "Karyn Gordon".

Karyn Gordon, Esq.
In House Counsel



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511
Fax: 609-633-6337
E-mail: grc@dca.state.nj.us
Web Address:
www.nj.gov/grc

ROBIN BERG TABAKIN, Chairman
COMMISSIONER JOSEPH V. DORIA, JR.
COMMISSIONER LUCILLE DAVY
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

December 30, 2008

Frank P. Cavallo, Jr., Esquire
Parker McCay P.A.
Three Greentree Centre
7001 Lincoln Drive West
P.O. Box 974
Marlton, NJ 08053-0974

RE: October 27, 2008 Request for Advisory Opinion

Dear Mr. Cavallo:

Thank you for your letter of October 27, 2008, in which you requested that the Government Records Council issue an Advisory Opinion as to whether the New Jersey State Firemens Association is a public agency subject to the requirements of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA").

The Government Records Council considered your request at its December 18, 2008 Council meeting.

N.J.S.A. 47:1A-7.b. states in pertinent part that the Government Records Council shall "issue advisory opinions, *on its own initiative*, as to whether a particular type of record is a government record which is accessible to the public[.]" (Emphasis added). Moreover, N.J.A.C. 5:105-4.1(a) states in pertinent part that "[t]he Council shall, *in its discretion*, issue advisory opinions as to whether a particular type of record is a government record which is accessible to the public pursuant to N.J.S.A. 47:1A-7.b." (Emphasis added). Additionally, N.J.A.C. 5:105-4.1(b) provides that "[a]dvisory opinions address whether general categories of records are disclosable and do not serve as complaint-specific decisions of the Council."

The Government Records Council therefore declines to issue an Advisory Opinion as to the issue raised above.

Sincerely,

Karyn Gordon, Esq.
In House Counsel