

November 24, 2010

To: John Paff

From: Rosemary DiJosie, Township Clerk

Re: OPRA request - Closed session minutes

I received your OPRA dated November 16, 2010 asking for the following Closed Session minutes: June 6, 2005, September 7, 2005; January 4, 2006, February 25, 2008 and April 7, 2008.

These minutes were not and cannot be furnished to anyone as they cannot be located. As you were previously informed by letter dated July 10, 2008 from Gloucester Township Solicitor David Carlamere, measures have been put in place to better preserve Closed Session minutes from inception to final adoption by Township Council. The minutes you requested were prior to the measures being put into place.



GLEN V. BIANCHINI
Council President

ORLANDO MERCADO
Council Vice President

Council Members
CRYSTAL EVANS
DAN HUTCHISON
KENNETH GARBOWSKI
SHELLEY LOVETT
FRANKLIN T. SCHMIDT

July 10, 2008

John Paff
P.O. Box 5424
Somerset, NJ 08875-5424

Dear Mr. Paff:

Your letter dated June 30th, 2008, transmitted to the Gloucester Township Mayor and Township Council has been forwarded to my office for review and response.

I have reviewed your letter, as well as your position, with the Township Clerk, Rosemary DiJosie.

- Point #1. The Township will revise the format of the "Closed Session Resolution" to be more definitive of the purpose for the closed session. Matters to be discussed in closed session, such as litigation, contract or personnel, will be named, identified and will disclose as much information as possible.
- Point #2. Once the closed session has concluded and Council returns to open session, a statement will be made indicating if the issue has been resolved and concluded or will remain closed. If concluded, a statement will be made for the record and the minutes of the particular closed session issue will be available following adoption. If the closed session issue has not resolved or concluded, such statement will be made and minutes will remain closed until resolved. Once resolved, the minutes will be available for the public.
- Point #3. Closed session minutes will be prepared in a more detailed manner, maintained separate from regular session minutes, with separate approval so as to be more easily identified and produced upon public request.
- Point #4. All closed session meeting minutes will be recorded with time, date and members present for discussion. Each set will be approved by Council and made available for public review upon conclusion of the issue.

I hope the above has adequately responded to your concerns. This Mayor and Council administration will always accept comments and strive to be open and informative to the public.

Sincerely,

David F. Carlamere, Esq.

CINDY RAU-HATTON
Mayor

THOMAS C. CARDIS
Business Administrator

DAVID F. CARLAMERE, ESQ.
Solicitor

ROSEMARY DIJOSIE
Township Clerk



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

June 30, 2008

Hon. Cindy Rau-Hatton, Mayor and Council Members

Township of Gloucester

P.O. Box 8

Blackwood, NJ 08012

(via Email only to rdijosie@glotwp.com)

Dear Mayor Rau-Hatton and Council Members:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project to question the manner in which the Township Council resolves to go into closed session and how it records the minutes of those closed sessions. I ask that you please discuss the issues raised in this letter at your July 14, 2008 meeting.

Attached to this letter are six numbered exhibits which are, respectively, the resolutions authorizing and the minutes from the December 17, 2007, February 4, 2008 and February 11, 2008 Council closed sessions. Both the resolutions and minutes lack specificity and the minutes lack some of the components required by statute.

Specificity of Resolutions

The resolutions that authorize the closed sessions (pages 1, 3, and 5) simply list all of the possible reasons for which a public body can lawfully exclude the public from a meeting. In 1995, a court in New Jersey considered a similar case where a public body told the public that it was going to hold a closed session "to consider personnel matters, labor relations, any pending litigation, and any other matters specifically exempted by the Open Meetings Act." The court stated:

The Board's notice is framed so broadly that it does no more than tell the public that there will be a meeting in executive session. The notice merely recites the litany of exceptions which would allow it to proceed in closed session. No attempt is made to indicate which one or ones of these exceptions are relevant to a particular closed-session proceeding. This complete failure to delineate which subject or subjects will be discussed in closed session does not comply with the statutory mandate that the public know the general nature of the agenda.

In Council of N.J. State College Locals v. Trenton State College Bd. of Trustees, 284 N.J. Super. 108, 113 (Law. 1995).

I believe that Gloucester Township's form of resolution could be much more specific as to what topics are going to be privately discussed and still protect the Township's legitimate need for confidentiality. Suppose, for instance, that the Mayor and Council needed to discuss a lawsuit recently filed by a person who claimed that a negligently maintained floor tile in the municipal building caused her to fall and hurt herself. If the litigation is filed with the court, it is almost always a public document that any member of the public can review at the courthouse. Given this, what harm would be inflicted upon the Township's litigation position if the Mayor and Council resolved during a public meeting that it needed to go into the back room to privately discuss "Janet Smith v. Gloucester Township, Docket No. CAM-L-1234-08, a slip and fall case," instead of just "litigation"? The idea, I think, is that in a democracy the public should be kept "in the loop" to the greatest extent possible. While there might be times when the Mayor and Council need to keep the identities of its litigation and contract adversaries confidential, there is no reason why, in the vast majority of cases, that this information can't be disclosed to the public.

If the Council agrees that an amendment to its closed session procedure is warranted, I recommend that it use the closed session resolution used by Delanco Township in Burlington County which is on-line at <http://www.lpcnj.org/OGTF/DelancoResolution.pdf>

Specificity of Meeting Minutes

A member of the public reading the February 4, 2008 closed meeting minutes (attachment page 4) would learn that ongoing "litigation of a former municipal employee" was discussed. The Open Public Meetings Act, however, requires meeting minutes to be "reasonably comprehensible." See N.J.S.A. 10:4-14. I don't think that the February 4, 2008 minutes regarding this lawsuit meet this standard.

The minutes, in my view, should say something like

The Mayor and Council discussed Joe Doaks v. Township of Gloucester, Docket No. CAM-L-1234-07 in which Doaks, a former Township police officer, sued the Township for wrongful discharge after having been fired for drinking while on duty. The Township attorney told the Mayor and Council that Doaks' attorney had offered to settle the matter in exchange for the Township paying his client \$25,000. The attorney recommended and the Mayor and Council unanimously agreed that the offer ought to be rejected.

The purpose of the closed session minutes isn't just to inform *the public* of what was discussed or done at the meeting, but also to inform *the Mayor and the Council themselves* as to what was discussed or decided. Suppose that a dispute arose among Council members as to what was said at a closed meeting. If the Council had minutes in the form of the above hypothetical, the dispute could easily be resolved. If, however, the Council had only the February 4, 2008 minutes, resolution of the dispute could be difficult or impossible.

Meeting minutes, including closed meeting minutes, should be rather detailed and verbose. The fact that the minutes might contain information that could, if improperly disclosed, harm the Township's interests, shouldn't prevent the inclusion of that information in the minutes. The Township is permitted by the Open Public Meetings Act to excise or redact information from any closed session minutes before making them public. See, for example, Payton v. New Jersey Turnpike, Authority, 148 N.J. 524, 556-57 (1997).

In sum, the minutes should capture the essence of the discussion, and include enough details so that a future reader can understand which issues were discussed and decided. Before releasing the minutes to the public, however, the clerk, and possibly the attorney, need to go through them with a black marker and redact out the parts that would, if disclosed, imperil the government's interest or an individual's privacy.

Do the Mayor and Township agree that its closed meeting minutes ought to be more detailed and verbose so as to create a record of what was discussed and decided?

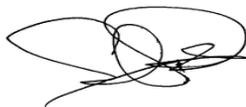
Other Concerns with the Minutes

N.J.S.A. 10:4-14 requires the Township to record in its meeting minutes "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." This requirement pertains to closed sessions as well as to public meetings.

But the minutes at pages 2, 4, and 6 of the attachments do not contain "the time and place [and] members present." Also, since the Township is chartered under the Optional Municipal Charter Law, "[t]he minutes of each meeting shall be signed by the officer presiding at such meeting and by the municipal clerk." N.J.S.A. 40:69A-180(b). This provision appears to govern both public and closed meeting minutes.

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 large, stylized flourish at the end.

John Paff

R-07:12-379

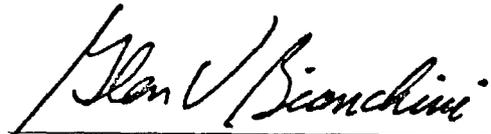
**RESOLUTION TO EXCLUDE PUBLIC FROM DISCUSSION OF EXEMPTED
SUBJECT MATTER AT A REGULAR SESSION OF TOWNSHIP
COUNCIL PURSUANT TO SECTION 8 OF OPEN PUBLIC MEETINGS ACT**

BE IT RESOLVED by the Township Council of the Township of Gloucester, pursuant to Section 8 of the Open Public Meetings Act, that the public be and is hereby excluded from this meeting of the Township Council to be held on December 17, 2007 which may involve discussion by Township Council of the following exempted subject matter:

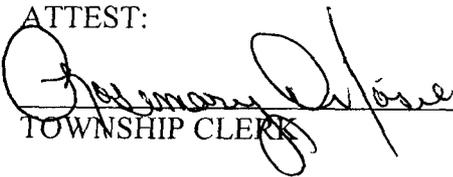
1. Confidential Matter under Federal or State Statutes or Court Rule.
2. Matter which would jeopardize the receipt of federal funds.
3. Matter constituting unwarranted invasion of individual privacy.
4. Matter involving Collective Bargaining.
5. Matter involving purchase, lease or investment using public funds, or involving setting of banking rates.
6. Matters involving investigation of violations or possible violations of law.
7. Matters involving Attorney-Client privilege.
8. Matters involving personnel.
9. Matters involving proceedings which could result in Civil Penalty, suspension or loss of license.

BE IT FURTHER RESOLVED that disclosure to the public of the discussion conducted in closed session shall not be made until such matters have been resolved.

Adopted: December 17, 2007



PRESIDENT OF COUNCIL

ATTEST:


TOWNSHIP CLERK

GLOUCESTER TOWNSHIP COUNCIL
EXECUTIVE MINUTES

DECEMBER 17, 2007

There was a discussion concerning personnel, specifically a new CFO, as Candace Prince, the current CFO is retiring. It was stated that interviews were conducted by Candace Prince, Susan Flemming and the auditor Bob Stewart. Mr. Cardis stated that they have interviewed 4 good applicants. Salaries were discussed for this position.

Lou Rosner, Labor Attorney was present at the meeting. He stated that all 6 units contracts are up at this time. He stated that healthcare is a common concern in all contracts.

The salaries of the supervisors at the Recreation Department were discussed, as well as the salary of the Tax Collector.

R-08:02-058A

**RESOLUTION TO EXCLUDE PUBLIC FROM DISCUSSION OF EXEMPTED
SUBJECT MATTER AT A SPECIAL SESSION OF TOWNSHIP
COUNCIL PURSUANT TO SECTION 8 OF OPEN PUBLIC MEETINGS ACT**

BE IT RESOLVED by the Township Council of the Township of Gloucester, pursuant to Section 8 of the Open Public Meetings Act, that the public be and is hereby excluded from this meeting of the Township Council to be held on February 4, 2008 which may involve discussion by Township Council of the following exempted subject matter:

1. Confidential Matter under Federal or State Statutes or Court Rule.
2. Matter which would jeopardize the receipt of federal funds.
3. Matter constituting unwarranted invasion of individual privacy.
4. Matter involving Collective Bargaining.
5. Matter involving purchase, lease or investment using public funds, or involving setting of banking rates.
6. Matters involving investigation of violations or possible violations of law.
7. Matters involving Attorney-Client privilege.
8. Matters involving personnel.
9. Matters involving proceedings which could result in Civil Penalty, suspension or loss of license.

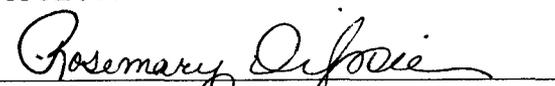
BE IT FURTHER RESOLVED that disclosure to the public of the discussion conducted in closed session shall not be made until such matters have been resolved.

Adopted: February 4, 2008



PRESIDENT OF COUNCIL

ATTEST:



TOWNSHIP CLERK

GLOUCESTER TOWNSHIP COUNCIL
EXECUTIVE MINUTES

February 4, 2008

There was a discussion concerning litigation of a former municipal employee. This case is still on going at this time.

There was also a discussion of a an incident involving Public Works. This is also on going at this time.

Lou Rosner, Labor Counsel was present to discuss the progress of the talks between the township and the patrolmen. He stated that mediation and arbitration have been discussed and they are moving forward with negotiations. Mr. Rosner stated that they are trying to address the contracts in a financially responsible way. Mr. Rosner was asked if he was part of the last negotiations an sated that he was not.

R-08:02-074

**RESOLUTION TO EXCLUDE PUBLIC FROM DISCUSSION OF EXEMPTED
SUBJECT MATTER AT A REGULAR SESSION OF TOWNSHIP
COUNCIL PURSUANT TO SECTION 8 OF OPEN PUBLIC MEETINGS ACT**

BE IT RESOLVED by the Township Council of the Township of Gloucester, pursuant to Section 8 of the Open Public Meetings Act, that the public be and is hereby excluded from this meeting of the Township Council to be held on February 11, 2008 which may involve discussion by Township Council of the following exempted subject matter:

1. Confidential Matter under Federal or State Statutes or Court Rule.
2. Matter which would jeopardize the receipt of federal funds.
3. Matter constituting unwarranted invasion of individual privacy.
4. Matter involving Collective Bargaining.
5. Matter involving purchase, lease or investment using public funds, or involving setting of banking rates.
6. Matters involving investigation of violations or possible violations of law.
7. Matters involving Attorney-Client privilege.
8. Matters involving personnel.
9. Matters involving proceedings which could result in Civil Penalty, suspension or loss of license.

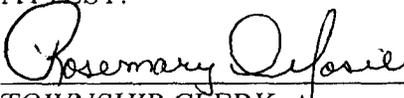
BE IT FURTHER RESOLVED that disclosure to the public of the discussion conducted in closed session shall not be made until such matters have been resolved.

Adopted: February 11, 2008



PRESIDENT OF COUNCIL

ATTEST:



TOWNSHIP CLERK

GLOUCESTER TOWNSHIP COUNCIL
EXECUTIVE MINUTES

February 11, 2008

There was a discussion concerning litigation of an incident by an individual under the control of a Gloucester Township police officer, who was hurt and suffered a broken ankle. The claim is to be settled with Gloucester Township's maximum exposure the first \$10,000.00.