



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 22, 2011

Hon. Rudy Fernandez, Mayor and members of the
Livingston Township Council
357 S Livingston Ave
Livingston, NJ 07039

(via e-mail only to townclerk@livingstonnj.org)

Dear Mayor Fernandez 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 learn whether Livingston Township has an e-mail retention policy that will ensure that official e-mails are retained and archived consistent with State guidelines.

This inquiry was prompted by my visit to Livingston's Internet site¹ today where I noticed that the e-mail addresses listed for the Mayor and Council appear to be personal rather than "municipal" e-mail addresses. For example, Township Council Member Michael Rieber's e-mail address is listed as cfsports@aol.com which is apparently his personal e-mail address.

Compare the Livingston Council's e-mail directory to Vineland's². If you click on the e-mail link for any of the Vineland City Council members, you'll be given their "Vinelandcity.org" address, which is part of the municipality's domain rather than a personal e-mail address.

The fact that Livingston's Internet site invites the public to contact its elected officials at their personal e-mail addresses concerns me because it leaves open the possibility that the Mayor and Council may be sending and receiving e-mails that are "government records" in

¹ <http://www.livingstonnj.org/councilmeetings.htm>

² <http://www.vinelandcity.org/Government.htm>

accordance with the Open Public Records Act (OPRA)³ but which are not being properly retained and archived by the Township administration.

For example, Councilman Gary Schneiderman, whose term of office expires at the end of 2012, according to the Township's Internet site, receives e-mails at schneiderman5@verizon.net. Suppose that Mr. Schneiderman is not re-elected, relocates out of state and that in 2013 a citizen requests some e-mails that he sent and received during 2010 that dealt with municipal business.

In such a case, would the Township Clerk be able to produce the requested e-mails from the Township's own files, or would he or she need to track down former Councilman Schneiderman and ask him to produce the e-mails from his own files in order to satisfy the records request? If it's the latter, then what would the Township Clerk do if former Councilman Schneiderman's computer had since crashed or if the e-mails were otherwise not available?

Vineland wouldn't have this problem because e-mails that are sent or received by Vinelandcity.org e-mail addresses are presumably preserved on the City's server. So, Vineland's clerk could retrieve any requested e-mails from the City's server without having to contact the Council member who sent or received those e-mails.

As you are probably aware, Livingston Township must comply with the New Jersey Division of Archives and Records Management's "Circular Letter No. 03-10-ST" entitled, "Managing Electronic Mail: Guidelines And Best Practices"⁴ which, among other things, makes the Township responsible for a) archiving e-mails and ensuring that the e-mail system is reliable enough to meet state and federal "Rules of Evidence" requirements (Sec. 2.6); b) ensuring that e-mails are "indexed in an organized and consistent pattern" (Sec. 2.7); and c) setting forth "agency procedures" so that employees can "understand and carry out their role in managing e-mail." (Sec. 2.8).

Since it appears that the Livingston Mayor and Council members are likely communicating official business via their personal e-mail accounts, I am having difficulty understanding how they are compliant with the Circular Letter. In order to learn more about Livingston's compliance with that Circular Letter, please find my OPRA request.

³ E-mails on an elected official's personal computer are government records subject to disclosure under the Open Public Records Act. See Donal Meyers v. Township of Fair Lawn, GRC Case No. 2005-127 at <http://www.nj.gov/grc/decisions/2005-127.html>

⁴ See, <http://www.njarchives.org/links/circular-letter-03-10-st.html>

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

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

John Paff

OPRA Request

Township of Livingston

Submitted on 02/22/11 via E-mail to townclerk@livingstonnj.org

To the Custodian of Records: Please accept this as my request for government records. Please note that the Open Public Records Act (OPRA) is not the only basis for my request. I claim entitlement to the records sought under both OPRA and the Common Law right of access.

Requestor's Name: John Paff
Address: Please DO NOT use regular mail – use e-mail or fax
Phone: 732-873-1251
Fax: 908-325-0129
E-Mail: paff@pobox.com

Records Requested:

1. The nonexempt portions of the first three e-mails sent after 12:01 a.m. on February 23, 2009 by former Councilman Charles "Buddy" August that related to municipal business.
2. The nonexempt portions of the first three (3) e-mails sent by sitting Councilman Stephen A. Santola after 12:01 a.m. on February 23, 2010 that related to municipal business.
3. The nonexempt portions of the first three e-mails sent after 12:01 a.m. on February 23, 2009 by former Councilwoman Arlene Johnson that related to municipal business.
4. Any policy or other writing presently in force in Incorrect reference to Pitman Borough which addresses the requirements and recommendations set forth in DARM Circular Letter No. 03-10-ST.
5. The resolutions which, in accordance with N.J.S.A. 10:4-13, authorized the first three executive (closed) meetings held by the Township Councils on or after January 10, 2010.
6. The minutes, redacted as narrowly as possible, for the first three executive (closed) meetings held by the Township Councils on or after January 10, 2010.

TOWNSHIP OF  LIVINGSTON

357 S. Livingston Avenue • Livingston, New Jersey 07039-3994
Phone (973) 992-5000 • Fax (973) 535-7967

www.livingstonnj.org

RUFINO "RUDY" FERNANDEZ, JR.
MAYOR

COUNCIL MEMBERS
STEPHEN A. SANTOLA
GARY S. SCHNEIDERMAN
MICHAEL RIEBER
DEBORAH E. SHAPIRO

MICHELE E. MEADE
TOWNSHIP MANAGER
973- 535-7973

GLENN R. TURTLETAUB
TOWNSHIP CLERK
973-535-7940

SHARON L. WEINER
TOWNSHIP ATTORNEY

March 2, 2011

John Paff
Via email: paff@pobox.com

Re: Your OPRA Request dated 2/22/11 received 2/21/11 8:56 PM

Dear Mr. Paff:

This comes in response to the above captioned OPRA Request.

In response to:

"1. The nonexempt portions of the first three e-mails sent after 12:01 a.m. on February 23, 2009 by former Councilman Charles "Buddy" August that related to municipal business."

We have requested responsive documents from former Councilmember August, who advises that he no longer works for JB Hanauer & Company (his employer at the time of the date in question.) He advises that he has twice requested the e-mails from those who would know how to retrieve any responsive emails at that company, and as of March 1, has been unsuccessful in being able to retrieve any e-mails from that time period. Mr. August has advised that he will be unable to pursue them today (Wednesday, 3/1) for personal reasons, but will continue to do so after March 2. We would request an additional three business days to provide any responsive documents. Mr. August has also stated that he has no emails sent from his home.

"2. The nonexempt portions of the first three e-mails sent by sitting Councilman Stephen A. Santola after 12:01 a.m. on February 23, 2010 that related to municipal business."

Attached please find the first three e-mails sent by Stephen Santola after 12:01 a.m. on February 23, 2010 related to municipal business dated: February 24, 2010 6:40 AM; February 24, 2010 2:57 PM; and February 24, 2010 4:34 PM.

"3. The nonexempt portions of the first three e-mails sent after 12:01 a.m. on February 23, 2009 by former Councilwoman Arlene Johnson that related to municipal business."

Attached please find the first three e-mails sent by Arlene Johnson after 12:01 a.m. on February 23, 2009 related to municipal business dated: February 24, 2009 4:10:27 P M; February 24, 2009 4:11:44 PM; and February 24, 2009 4:13:51 PM.

“4. Any policy or other writing presently in force in Pitman Borough which addresses the requirements and recommendations set forth in DARM Circular Letter No. 03-10-ST.”

I am advised that due to the Township's relocation of Township offices into a new Town Hall building this past fall, that the server currently servicing the new building cannot yet accommodate outside connections, and that Councilmembers are not able to use the Livingston email addresses. Please be assured the Township is aware of the policy requirements you identify in your letter, has been working to address the situation, and is in the process of developing a policy to address the situation. There are no documents on file regarding Pitman Borough's policy.

“5. The resolutions which, in accordance with N.J.S.A. 10:4-13, authorized t

Erroneous reference to
Pitman Borough

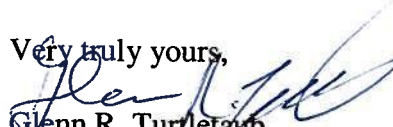
executive (closed) meetings held by the Township Councils on or after January 10, 2010.”

The resolutions authorizing the first three executive (closed) meetings held by the Township Council are included in the body of the minutes responsive to your request in item #6.

“6. The minutes, redacted as narrowly as possible, for the first three executive (closed) meetings held by the Township Councils on or after January 10, 2010.”

The minutes of the Livingston Township Council Conference Closed Session of January 11, 2010 have been redacted on advice of Counsel. The matters that were redacted refer to acquisition of land for the first paragraph and ongoing litigation for the Livingston Library in the second which are exempt under the Open Public Meetings Act. The minutes of the Livingston Township Council Conference Closed Sessions of January 25, 2010, and February 1, 2010 are attached.

Very truly yours,


Glenn R. Turteltaub
Township Clerk

cc: Mayor and Township Council
Michele E. Meade, Township Manager
Sharon L. Weiner, Esq., Township Attorney

Attachments :(10)

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DEBORAH E. SHAPIRO

GLENN R. TURTLETAUB
TOWNSHIP CLERK
973-535-7940

SHARON L. WEINER
TOWNSHIP ATTORNEY

March 7, 2011

John Paff
Via email: paff@pobox.com

Re: Your OPRA Request dated 2/22/11 received 2/21/11 8:56 PM

Dear Mr. Paff:


This comes to follow up on my March 2 letter to you regarding your OPRA request for **"The nonexempt portions of the first three e-mails sent after 12:01 a.m. on February 23, 2009 by former Councilman Charles "Buddy" August that related to municipal business"**.

Former Councilmember August has spoken with Mr. Waldor, Vice President and Assistant Complex Manager of RBC, who is the person in charge of technical support and therefore the person to address the request for emails. (RBC had bought out Mr. August's former employer, JB Hanauer & Company.) Mr. August again asked to be provided with emails he may have sent for the dates in question, as requested in your OPRA Request.

Mr. Waldor advised that he does not know how to retrieve and can't retrieve any such documents, and that he has no knowledge of how to retrieve old emails from the time period when Mr. August worked for JB Hanauer & Company. Mr. Waldor did tell Mr. August that he would keep trying.

Accordingly, Mr. August has provided no documents to me and I am unable to provide any documents to you. If any emails are retrieved that are responsive to your request they will be forwarded to your attention.

Very truly yours,


Glenn R. Turtleaub
Township Clerk

cc: Mayor and Township Council
Michele E. Meade, Township Manager
Sharon L. Weiner, Esq., Township Attorney
Charles "Buddy" August