

John Paff
P.O. Box 5424
Somerset, NJ 08875-5424
Tel. 732-873-1251
Email: paff@pobox.com
Plaintiff

Jose Delgado
503 N 36th St
Camden, NJ 08110
Email: delgadoquindin@aol.com
Plaintiff

JOHN PAFF and JOSE DELGADO
Plaintiffs,

vs.

CAMDEN CITY BOARD OF
EDUCATION
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
CAMDEN COUNTY
DOCKET NO. *L-5680-11*

Civil Action

ORDER TO SHOW CAUSE
PRELIMINARY INJUNCTION
PURSUANT TO R.4:52

THIS MATTER being brought before the court by John Paff and Jose Delgado, Pro Se Plaintiffs, seeking relief by way of preliminary injunction at the return date set forth below pursuant to R. 4:52, based upon the facts set forth in the verified complaint filed herewith and for good cause shown.

It is on this 21 day of NOV 2011 ORDERED that Defendant Camden City Board of Education, appear and show cause before the Superior Court at the Camden County Courthouse in Camden, New Jersey, on the 10 day of Feb., ²⁰¹²~~2011~~ at 9 o'clock in the A.M. / ~~P.M.~~ or as soon thereafter as the parties can be heard why an order should not be issued preliminarily enjoining and restraining Defendant Camden City Board of Education from

- A. Failing to make the nonexempt portions of its future nonpublic (i.e. "closed" or "executive") meetings publicly available within a period of time to be fixed by the Court.

- B. Failing to adopt resolutions prior to going into its future nonpublic (i.e. "closed" or "executive") meetings that i) are separate, free-standing "resolutions" rather than "motions" that are spread out in the public meeting minutes, and ii) that contain at least the amount of detail, as fixed by the court, regarding the subject matter of the closed discussions and the time and the circumstances under which it can be public disclosed.
- C. Discussing matters in nonpublic session unless those matters meet the requirements of N.J.S.A. 10:4-12(b) strictly construed in favor of openness and against closure.
- D. Awarding Plaintiffs their costs.
- E. Granting such other relief as the court deems equitable and just.

And it is further ORDERED that:

1. A copy of this order to show cause, verified complaint, brief and any supporting affidavits or certifications submitted in support of this application be served upon Defendant Camden City Board of Education, ^{by their counsel, if known,} by either hand delivery or certified mail within ___ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. Plaintiffs must file with the court his proof of service of the pleadings on the defendant no later than ^{ten (10)} ~~three (3)~~ days before the return date.

3. Defendant shall file and serve its written opposition to this order to show cause and the request for entry of injunctive relief and proof of service by

Jan. 27 ^{2012.} ~~2011.~~ The original documents must be filed with the Clerk of the Superior Court at 101 South Fifth St, Camden, New Jersey, 08103. Defendant must send a copy of its answer and opposition papers directly to Judge _____, whose is 101 South Fifth St, Camden, New Jersey, 08103. Defendant must also send a copy of its

opposition papers to Plaintiffs whose names and addresses appear above. A telephone call will not protect Defendant's rights; Defendant must file its opposition and pay the required fee of \$135 and serve its opposition on both Plaintiffs, if Defendant wants the court to hear its opposition to the injunctive relief the plaintiffs are seeking.

4. Plaintiffs must file and serve any written reply to the defendant's order to show cause opposition by _____, 2011. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

5. If the defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

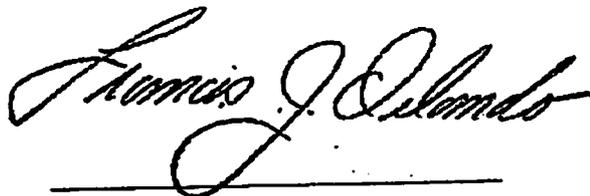
6. If the plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

7. Defendant take notice that the plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If Defendant disputes this complaint, it, or its attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court of Camden County, 101 South Fifth St, Camden, New Jersey, 08103. Include a \$135 filing fee payable to the ~~Treasurer State of New Jersey.~~ *Clerk, Superior Court.* Defendant must also send a copy of its Answer to Plaintiff whose name and address appear above. A telephone call will not protect Defendant's rights; it must file and serve its Answer (with the fee) or judgment may be entered against it by default. Please note: Opposition to the order to show cause is not an Answer and Defendant must file both. Please note further: if Defendant does not file and serve an Answer within 35 days of this Order, the Court may enter a default against it for the relief plaintiff demands.

8. If Defendant cannot afford an attorney, it may call the Legal Services office in Camden County at 856-964-2010. If Defendant does not have an attorney and is not eligible for free legal assistance, it may obtain a referral to an attorney by calling the Lawyer Referral Services at 856-964-4520.

10. The court will entertain argument, but not testimony, on the return date of the order to show cause, ~~unless the court and parties are advised to the contrary no later than~~
~~_____ days before the return date.~~



† J.S.C.

FRANCIS J. ORLANDO, JR., A.J.S.C.

John Paff
P.O. Box 5424
Somerset, NJ 08875-5424
Tel. 732-873-1251
Email: paff@pobox.com
Plaintiff

Jose Delgado
503 N 36th St
Camden, NJ 08110
Email: delgadoguindin@aol.com
Plaintiff

_____	:	
JOHN PAFF and JOSE DELGADO	:	SUPERIOR COURT OF NEW JERSEY
Plaintiffs,	:	LAW DIVISION, CIVIL PART
	:	CAMDEN COUNTY
vs.	:	DOCKET NO.
	:	
CAMDEN CITY BOARD OF	:	
EDUCATION	:	Civil Action
Defendant	:	
_____	:	VERIFIED COMPLAINT

Plaintiffs John Paff and Jose Delgado, by way of complaint against the Defendant Camden City Board of Education state as follows:

Preliminary Statement

1. This is an action under the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et. seq., seeking to enjoin the Camden City Board of Education from a) failing to promptly disclose to the public the nonexempt portions of the minutes of its nonpublic (i.e. closed or executive) meetings; b) passing motions in advance of its nonpublic meetings which are not compliant with N.J.S.A. 10:4-13 and N.J.S.A. 40:49-1 and c) discussing matters in nonpublic session that are required by law to be discussed in public session.

Parties

2. Plaintiff John Paff is an individual who resides in Franklin Township, Somerset County, New Jersey and receives mail at P.O. Box 5424, Somerset, NJ 08875.

3. Plaintiff Jose Delgado is an individual who resides in the City of Camden, Camden, New Jersey and receives mail at 503 N 36th St, Camden, NJ 08110.

4. Defendant Camden City Board of Education (“Board”) is a public body as that term is defined by N.J.S.A. 10:4-8(a).

First Count

(Failure to Make Meeting Minutes Promptly Available)

5. Plaintiffs repeat the allegations stated above as if set forth at length herein.

6. On or about September 29, 2011, Plaintiffs submitted to the Board a records request (Exhibit page 1) seeking, among other records, “[t]he minutes of the three most recently held nonpublic (i.e. closed or executive) school board meetings for which minutes are available for public disclosure in either full or redacted form.”

7. With its October 14, 2011 response (Exhibit page 2), the Board instead provided Plaintiffs with “[t]he minutes of the three (3) most recently held nonpublic meeting (i.e. ‘closed’ or ‘executive’ session) minutes that have been approved by the Board for publication.” Along with its October 14, 2011 response, the Board provided Plaintiffs with redacted versions of the minutes of its nonpublic (i.e. closed or executive) meetings held on January 25, 2011, 9:17 p.m. (Exhibit pages 3 – 4); February 15, 2011, 6:40 p.m. (Exhibit pages 5 – 6) and March 1, 2011, 9:08 p.m. (Exhibit pages 7 – 8).

8. In their supplemental records request submitted on October 15, 2011 (Exhibit pages 9 – 11), Plaintiffs noted the difference between the minutes that were requested and those which were provided and requested the “minutes of every closed session [held between March 22, 2011 and September 30, 2011] regardless of whether the minutes themselves or their release have been ‘approved’ by the Board.”

9. In its October 26, 2011 response (Exhibit pages 12 – 14) to Plaintiffs’ October 15, 2011 request, the Board declined to disclose either redacted or unredacted versions of any minutes of nonpublic meetings held after March 1, 2011. Yet, the public meeting minutes that accompanied the Board’s October 26, 2011 response (Exhibit pages 15 – 33) revealed that the Board held sixteen (16) nonpublic meetings on March 22, 2011; April 20, 2011; April 26, 2001; May 4, 2011; May 17, 2011 (two session); May 24, 2011; June 21, 2011; June 28, 2011; July 19, 2011; July 26, 2011; August 2, 2011; August 16, 2011; August 23, 2011; September 20, 2011 and September 27, 2011.

10. In its October 26, 2011 response, the Board posited that it is permitted by law to totally suppress minutes of its nonpublic meetings unless and until those minutes are approved by Board.

WHEREFORE, Plaintiff demands judgment:

A. Declaring that Defendant Board violated N.J.S.A. 10:4-14 by, on October 26, 2011, completely suppressing minutes of its nonpublic meetings held as early as March 22, 2011.

B. Fixing a period of time within which Defendant Board, after it meets in a future nonpublic session, must make the nonexempt portions of the minutes of that nonpublic meeting available to the public.

C. Enjoining Defendant Board, going forward, from violating the time period fixed in accordance with ¶ B above.

D. Ordering Defendant Board, if it has not already done so, to disclose the nonexempt portions of its March 22, 2011; April 20, 2011; April 26, 2001; May 4, 2011; May

17, 2011 (two session); May 24, 2011; June 21, 2011; June 28, 2011; July 19, 2011; July 26, 2011; August 2, 2011; August 16, 2011; August 23, 2011; September 20, 2011 and September 27, 2011 nonpublic meeting minutes as well as any the nonexempt portions of any previously undisclosed nonpublic sessions held by the Board prior to March 22, 2011.

E. Awarding Plaintiff his costs.

F. Such other relief as the Court deems equitable and just.

Second Count

(Failure to Pass Proper Nonpublic Session Resolutions)

11. Plaintiffs repeat the allegations stated above as if set forth at length herein.

12. In ¶ 4 of their September 29, 2011 request (Exhibit page 1), Plaintiffs requested “[t]he resolutions, as required by N.J.S.A. 10:4-13, that authorized the [January 25, 2011, 9:17 p.m. (Exhibit pages 3 – 4); February 15, 2011, 6:40 p.m. (Exhibit pages 5 – 6) and March 1, 2011, 9:08 p.m. nonpublic meetings].”

13. In ¶ 5 of their September 29, 2011 request (Exhibit page 1), Plaintiffs requested “[t]he resolutions, as required by N.J.S.A. 10:4-13, that authorized the school board’s three most recently held nonpublic meetings, regardless of whether the minutes of those meetings are publicly disclosable either in full or redacted form.”

14. In its October 14, 2011 response (Exhibit page 2) to Plaintiff’s September 29, 2011 request, the Board stated that it “is not in possession of any records responsive to those requests.” But, it did provide Plaintiffs with pages from its public meeting minutes that contained “Closed Session” and “End Closed Session” motions. Those motions were passed regarding the following nonpublic sessions held by the Board: a) January 25, 2011,

9:17 p.m. (Exhibit page 34); February 15, 2011, 6:40 p.m. (Exhibit page 35); February 15, 2011, 10:20 p.m. (Exhibit pages 36 – 37) and March 1, 2011, 9:08 p.m. (Exhibit page 38).

15. Given that the Board allegedly had no “resolutions” that were compliant with N.J.S.A. 10:4-13, Plaintiffs, in ¶ 2 of their October 15, 2011 records request (Exhibit pages 9 – 11), requested “[t]he pages of any and all Board meetings held between March 22, 2011 and September 30, 2011 which contain either a ‘Closed Session’ or ‘End Closed Session’ motion.

16. In response to Plaintiff’s October 14, 2011 records request, the Board provided Plaintiffs with the pages from its public meeting minutes (Exhibit pages 15 – 33) that purportedly authorized closed sessions held on March 22, 2011; April 20, 2011; April 26, 2001; May 4, 2011; May 17, 2011 (two session); May 24, 2011; June 21, 2011; June 28, 2011; July 19, 2011; July 26, 2011; August 2, 2011; August 16, 2011; August 23, 2011; September 20, 2011 and September 27, 2011.

17. Some of the motions passed between January 25, 2011 and September 27, 2011 that purportedly complied with N.J.S.A. 10:4-13 did not describe the topics to be discussed in nonpublic session with sufficient precision and detail to satisfy N.J.S.A. 10:4-13(a).

18. Each motion attached as an exhibit to this Verified Complaint that the Board passed in order to purportedly comply with N.J.S.A. 10:4-13 contains the following sentence, purportedly to comply with N.J.S.A. 10:4-13(b): “The subject matters that have been stated for the record that the board is going to closed session to discuss may be disclosed to the public if and when the need for confidentiality no longer exists.”

WHEREFORE, Plaintiff demands judgment:

G. Declaring that Defendant Board is in violation of N.J.S.A. 10:4-13 by passing “motions” and recording them in the meeting minutes instead of passing separate and free-standing “resolutions” that meet the requirements of N.J.S.A. 40:49-1.

H. Enjoining the Board, going forward, from excluding the public from its meeting unless it first passes a separate and free-standing “resolution” that meets the requirements of N.J.S.A. 10:4-13 and N.J.S.A. 40:49-1.

I. Declaring that the language contained in the motion that purportedly authorized some of the Board’s nonpublic sessions held between January 25, 2011 and September 27, 2011 did not identify the topics to be discussed during the nonpublic session precisely enough to satisfy N.J.S.A. 10:4-13(a).

J. Determining how precisely the Board’s descriptions of the subject matters of its nonpublic discussions must be in order to satisfy N.J.S.A. 10:4-13(a) and enjoining the Board, going forward, from excluding the public from a meeting unless a resolution containing a sufficiently precise description of the subject matters to be discussed is first passed.

K. Declaring that stating “The subject matters that have been stated for the record that the board is going to closed session to discuss may be disclosed to the public if and when the need for confidentiality no longer exists.” in its nonpublic session resolutions is not compliant with N.J.S.A. 10:4-13(b).

L. Determining how precisely the Board is required to inform the public of the time when and the circumstances under which the discussion conducted in its nonpublic

meetings can be disclosed to the public and enjoining the Board, going forward, from excluding the public from a meeting unless a resolution containing a sufficiently precise language is first passed.

M. Awarding Plaintiff his costs.

N. Such other relief as the Court deems equitable and just.

Third Count

(Improper Matters Discussed in Nonpublic Session)

19. Plaintiffs repeat the allegations stated above as if set forth at length herein.

20. The minutes of the Board's March 1, 2011, 9:08 p.m. nonpublic meeting

(Exhibit page 8) concerned a recommendation to approve a new individual to serve as the Board's business administrator. The minutes reflect that “

Mr. Sean Brown thinks that it is odd that more information is not given to Board Members regarding important decisions. He also thought that it was odd that the original advertisement was only advertised in two (2) places. Then it was advertised more fully.

21. Mr. Brown's comments do not relate to the qualifications of a specific prospective public officer or employee, as required by N.J.S.A. 10:4-12(b)(8). Rather, they are critical of the manner of in which district administration informs elected school board members of matters relating to important decisions.

WHEREFORE, Plaintiff demands judgment:

O. Declaring that Defendant Board violated the Senator Byron M. Baer Open Public Meetings Act by discussing matters during its March 1, 2011, 9:08 p.m. nonpublic meeting that were required to have been discussed at a meeting at which the public was permitted to attend.

P. Enjoining Defendant Board, going forward, from discussing matters in nonpublic session unless those matters meet the requirements of N.J.S.A. 10:4-12(b) strictly construed in favor of openness and against closure.

Q. Awarding Plaintiff his costs.

R. Such other relief as the Court deems equitable and just.

Certification Of No Other Actions

Pursuant to R.4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Certification Pursuant to R.1:38-7(b)

W certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future

Dated: November 8, 2011

John Paff
Plaintiff

Dated: November 8, 2011

Jose Delgado
Plaintiff

VERIFICATION

I, John Paff and Jose Delgado, hereby certify and say as follows:

1. We are the plaintiffs in this lawsuit.
2. We have personal knowledge of the facts alleged in the Verified Complaint and Brief in this matter.

3. The factual allegations of the Verified Complaint and Brief are true.

4. All documents attached to the Verified Complaint and Brief are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner.

We certify that the foregoing statements made by me are true. We are aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 8, 2011

John Paff
Plaintiff

Dated: November 8, 2011

Jose Delgado
Plaintiff

The exhibits to the brief are on-line here: <http://ogtf.lpcnj.org/2012/2012028ik//CCBOEBriefExh.pdf>

JOHN PAFF and JOSE DELGADO	:	SUPERIOR COURT OF NEW JERSEY
Plaintiffs,	:	LAW DIVISION, CIVIL PART
	:	CAMDEN COUNTY
vs.	:	DOCKET NO.
	:	
CAMDEN CITY BOARD OF	:	
EDUCATION	:	Civil Action
Defendant	:	
	:	
	:	
	:	

**BRIEF IN SUPPORT OF PLAINTIFF'S APPLICATION
FOR INJUNCTIVE RELIEF**

John Paff
P.O. Box 5424
Somerset, NJ 08875-5424
Tel. 732-873-1251
Email: paff@pobox.com
Plaintiff

Jose Delgado
503 N 36th St
Camden, NJ 08110
Email: delgadoguindin@aol.com
Plaintiff

TABLE OF CONTENTS

Preliminary Statement 1

Statement of Facts 1

Argument..... 3

 Point I: Availability of Injunctive Relief 3

 Point II: Prompt availability of meeting minutes. 3

 Point III: N.J.S.A. 10:4-13 is satisfied by “resolutions” and not “motions.” 8

 Point IV: N.J.S.A. 10:4-13(a) requires more detail regarding the
 matters privately discussed than the Defendant’s
 motions currently provide. 10

 Point V: N.J.S.A. 10:4-13(b) requires more detail regarding the
 time when and the circumstances under which the discussion
 conducted in closed session of the public body can be disclosed
 to the public than the Defendant’s motions currently provide. 12

 Point VI: Improper Nonpublic Discussions 13

 Point VII: Plaintiffs should be awarded their costs. 14

TABLE OF AUTHORITIES

Cases

<u>African Council v. Hadge</u> , 255 N.J. Super. 4 (App. Div. 1992).....	14
<u>Burnett v. Gloucester</u> , 409 N.J. Super. 219 (App. Div. 2009)	3
<u>Council of New Jersey State College Locals v. Trenton State College Board</u> , 284 N.J. Super. 108 (Law Div.1994).....	11
<u>Gallo v. Salesian Soc., Inc.</u> , 290 N.J. Super. 616 (App. Div. 1996).....	15
<u>Hartz Mountain Industries, Inc. v. New Jersey Sports & Exposition Authority</u> , 369 N.J. Super. 175 (App. Div. 2004)	13
<u>Liebeskind v. Mayor and Municipal Council of Bayonne</u> , 265 N.J. Super. 389 (App. Div. 1993)	7
<u>Matawan Reg'l Teachers Assoc. v. Matawan-Aberdeen Reg'l Bd. of Educ.</u> , 212 N.J. Super. 328 (Law Div.1986).....	3, 7, 8
<u>McGovern v. Rutgers</u> , 418 N.J. Super. 458 (App. Div. 2011)	11
<u>Napoli v. Borough of Interlaken</u> , Docket No. MON-L-1831-08.....	5, 6
<u>Nevin v. Asbury Park City Council</u> , 2005 WL 2847974 (App. Div. November 1, 2005)	12
<u>O'Shea v. W. Milford Board of Educ.</u> , 391 N.J. Super. 534 (App. Div. 2007)	4, 5
<u>Paff v. Absecon Custodian et al</u> , Docket No. ATL-L-3392-08.....	6
<u>Paff v. Dover Township</u> , Docket No. OCN-L-2165-07.....	6
<u>Paff v. Keyport Borough Council, et al.</u> , Docket No. MON-L-3317-07.....	6
<u>Rice v. Union County Reg'l High Sch. Bd. of Educ.</u> , 155 N.J. Super. 64 (App.Div.1977), <u>certif. denied</u> , 76 N.J. 238 (1978)	10

Statutes

N.J.R.E. 201(b)	9
N.J.S.A. 10:4-12.....	4
N.J.S.A. 10:4-12(b)	13, 14
N.J.S.A. 10:4-12(b)(8)	3
N.J.S.A. 10:4-13.....	1, 2, 9
N.J.S.A. 10:4-13(a)	10, 11
N.J.S.A. 10:4-13(b)	12
N.J.S.A. 10:4-14.....	4, 5
N.J.S.A. 10:4-16.....	3
N.J.S.A. 10:4-21.....	10
N.J.S.A. 10:4-6 et seq.....	1
N.J.S.A. 10:4-7.....	10

Other Authorities

34 <u>New Jersey Practice, Local Government Law</u> § 141, at 174 (Michael A. Pane) (2d ed. 1993).....	11
---	----

Rules

<u>R</u> 4:42-8(a)	15
<u>R</u> .4:42-8(a)	14, 15

Preliminary Statement

Plaintiffs are two citizens who seek to bring Defendant Camden City Board of Education into better compliance with the Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. This lawsuit, among other things, presents five questions for the Court's consideration:

1. How promptly must the Defendant publicly disclose the nonexempt portions of its nonpublic (i.e. "closed" or "executive") meeting minutes?
2. Does the Defendant's claim that it must first "approve" its nonpublic meeting minutes prior to publicly disclosing even redacted versions of them have a basis in law?
3. Must Defendant pass a separate, free-standing resolution in order to satisfy the requirements of N.J.S.A. 10:4-13, or is it sufficient for it to pass a motion, which is recorded in the regular meeting minutes?
4. In its N.J.S.A. 10:4-13 motions or resolutions, how specifically must Defendant describe the topics it plans to discuss during its nonpublic meetings?
5. In its N.J.S.A. 10:4-13 motions or resolutions, how precisely must Defendant state the time when and the circumstances under which the discussion conducted in nonpublic session can be disclosed to the public?

Statement of Facts

Plaintiffs made two records requests, on September 29, 2011 and October 15, 2011, that sought various nonpublic meeting resolutions and minutes from Defendant Camden City Board of Education. The Board responded to Plaintiffs' two requests, respectively, on

October 14, 2011 and October 26, 2011. The Board's responses disclosed the following matters that are relevant to this lawsuit:

1. Even though Defendant held sixteen (16) nonpublic meetings between March 22, 2011 and September 27, 2011, it refused to publicly disclose even redacted versions of those meetings' minutes. (Verified Complaint, ¶ 9). Indeed, in its October 26, 2011 letter, Defendant posits that its responsibility to protect the public interest and personal privacy requires that prior to public disclosure, the "meeting minutes must be reviewed by the Board . . . to determine whether an unwarranted invasion of privacy would occur." (Verified Complaint, ¶ 10, Exhibit page 13). Yet, the Defendant apparently has no apparent timetable for "approval" of its nonpublic minutes. As stated in Exhibit page 14:

the Board intended to approve additional closed session meeting minutes at its last regularly scheduled meeting. However, that agenda item was tabled to be discussed at a later time. Consequently, there are no additional records responsive to your request other than [the three sets of nonpublic meeting minutes] which were provided to you on October 14, 2011.

2. Instead of adopting separate, free-standing resolutions prior to excluding the public from its meetings, Defendant instead passes motions and embodies them within its public meeting minutes. (Verified Complaint, ¶ 13).

3. Some of the motions that Defendant passes in purported compliance with N.J.S.A. 10:4-13 describe the topics of the nonpublic discussion and predict the time and circumstances under which the nonpublic discussion can be publicly disclosed in very general terms. For example, the February 15, 2011 motion states, in its entirety, that:

MOTION was made by Mr. Lamboy and seconded by Ms. Coscarello to go into Closed/Executive Session to discuss Legal Update, Contract Negotiations, Suspensions, Acting Principal-

Vets, Resignations, Stipend Production Manager at 10:20 p.m.
The subject matters that have been stated for the record that the board is going into closed session to discuss may be disclosed to the public if and when the need for confidentiality no longer exists. Action may be taken when the Board reconvenes. Motion was carried by the following vote: YES-MR. BROWN, MS. COSCARELLO, MS. DAVIS, MR. LAMBOY, MRS. DUNBAR-BEY, PRESIDENT.
(Exhibit page 36).

4. The Board sometimes discusses matters during nonpublic session that are not within any of the exceptions enumerated within N.J.S.A. 10:4-12(b)(8). For example, the minutes of the March 1, 2011 nonpublic session state in part that:

Mr. Sean Brown thinks that it is odd that more information is not given to Board Members regarding important decisions. He also thought that it was odd that the original advertisement was only advertised in two (2) places. Then it was advertised more fully.
(Exhibit page 8).

Argument

Point I: Availability of Injunctive Relief

N.J.S.A. 10:4-16 expressly authorizes “any member of the public” to “apply to the Superior Court for injunctive orders or other remedies to insure compliance” with the Open Public Meetings Act. “Where injunctions are creatures of statute, all that need be proven is a statutory violation. Other jurisdictions, having similar open meetings acts, hold that the legislative intent is to allow injunctions once a violation is shown and relief is deemed appropriate.” Burnett v. Gloucester, 409 N.J. Super. 219, 242, (App. Div. 2009) quoting Matawan Reg’l Teachers Assoc. v. Matawan-Aberdeen Reg’l Bd. of Educ., 212 N.J. Super. 328, 335 (Law Div.1986) (internal citations omitted). Here, violations of the Act are evident and this Court should grant injunctive relief.

Point II: Prompt availability of meeting minutes.

Defendant's position is that the law permits it to entirely suppress its nonpublic meeting minutes until after it "approves" those minutes at a subsequent meeting. But, the Board had not, as of October 26, 2011, "approved" its nonpublic minutes from meetings held as early as March 22, 2011. Depriving the public of access to even redacted versions of a nonpublic meeting held more than seven months ago cannot be reconciled with the mandate of N.J.S.A. 10:4-14 that those minutes be made "promptly available to the public to the extent that making such matters public shall not be inconsistent with [N.J.S.A. 10:4-12]."

Further, the Board has previously failed to "approve" its closed meeting minutes for two years after a nonpublic meeting occurred. See "Motion to Accept the remaining closed session minutes from April 2, 2009 through May 31, 2010" passed on April 26, 2011. Exhibit page 17.

At Exhibit page 13, Defendant cites O'Shea v. W. Milford Board of Educ., 391 N.J. Super. 534 (App. Div. 2007). The record at issue in O'Shea was not a set of nonpublic meeting minutes, but the board secretary's handwritten notes, which the Appellate Division compared to "yellow-sticky note[s] penned by a government official to help him or her remember a work-related task." Id. at 539.

Indeed, O'Shea is actually contrary to Defendant's position because the school board in that case "provided [Mr. O'Shea] with the unapproved but typed formal minutes of the executive session, as prepared by the Secretary and submitted to the Board." Id. at 537. The fact that the West Milford Board publicly disclosed its "unapproved" minutes calls into question Defendant's contention that it needs to "approve" its nonpublic meeting minutes proper to their release.

Other case law undercuts Defendant's reliance on O'Shea. Attached to this brief as Exhibit A is a July 30, 2008 order entered by Hon. Lawrence M. Lawson, A.J.S.C. in the case of Napoli v. Borough of Interlaken, Docket No. MON-L-1831-08. Attached as Exhibit B is Judge Lawson's June 26, 2008 written opinion in this unpublished case.

Beginning on at the bottom of page 7 of his written opinion, Judge Lawson addressed O'Shea in response to the defendant's contention that the plaintiff "was not entitled to closed session meeting minutes as the meetings contained detailed discussions that were permitted to be discussed in private session." Judge Lawson found that "pursuant to the Appellate Division's decision in O'Shea the Defendant's contention for failing to provide timely minutes must fail. As a result, the court finds that the Defendant failed to provide the Plaintiff with timely minutes in accordance with N.J.S.A. 10:4-14."

Both on the second page of his order and on page 27 of his opinion Judge Lawson ordered "defendant to provide its minutes within thirty (30) days of the last held meeting or prior to the governing body's next scheduled meeting, whichever occurs first." It is noteworthy that Judge Lawson's order applied to both public and nonpublic meeting minutes, which undercuts the Camden Board's assertion, at Exhibit page 13, that nonpublic meeting minutes need to be approved before redacted, draft versions of them can be disclosed to the public.

Other cases have also held that nonpublic meeting minutes, properly redacted, must be made available within a short, fixed period of time and that there is no requirement that those redacted minutes be "approved" prior to their release.

Attached to this brief as Exhibit C is Judge Lawson's February 13, 2009 order

entered in the case of Paff v. Keyport Borough Council, et al., Docket No. MON-L-3317-07. Similar to his holding in Napoli, Judge Lawson ordered that “the minutes of both public and nonpublic meetings of Defendant Keyport Borough Council shall be available to the public within thirty (30) days of the last held meeting or prior to the next scheduled meeting, whichever occurs first.” The requirement that the Keyport Council publicly disclose its nonpublic minutes *prior to* the next scheduled meeting precludes it from “approving” those minutes prior to public disclosure. Attached as Exhibit D is Judge Lawson’s December 8, 2008 unpublished opinion in Paff v. Keyport, which held, at page 23, that ““the court will order Defendant to provide its minutes within thirty (30) days of the last held meeting or prior to the governing body’s next scheduled meeting, whichever occurs first.”

In accord with both Napoli v. Interlaken and Paff v. Keyport Borough Council, et al. is Paff v. Absecon Custodian et al, Docket No. ATL-L-3392-08. Attached as Exhibit E is the Hon. Steven P. Perskie’s June 26, 2009 order ordering the City of Port Republic to “publicly disclose draft versions of the City Council’s nonpublic meeting minutes, redacted as lawfully allowed, within thirty (30) days after the nonpublic meeting is held or prior to the City Council’s next scheduled meeting, whichever occurs first.”

Also in accord is Paff v. Dover Township, Docket No. OCN-L-2165-07, in which Assignment Judge Vincent J. Grasso ordered the Township to “endeavor to have at least draft minutes available to the public by Defendant’s next regularly scheduled meeting, but in all events shall make at least draft minutes available to the public not later than thirty days after the subject meeting or the second meeting after the subject meeting, whichever comes first.” Judge Grasso’s July 18, 2008 order is attached as Exhibit F.

Other than these four unpublished cases, the only published case law Plaintiff can locate on the issue of prompt disclosure of minutes are the cases of Liebeskind v. Mayor and Municipal Council of Bayonne, 265 N.J. Super. 389 (App. Div. 1993) and Matawan Regional Teachers Association, supra. Both of these cases dealt with prompt disclosure of *public* meeting minutes.

In Liebeskind, supra at 394-395 (App. Div. 1993), the Appellate Division did not take issue with the trial court's order that required the Bayonne City Council to make "copies of final meeting minutes . . . available for inspection within two weeks after each meeting and at least three business days before the next meeting."

In Matawan Regional Teachers Association, supra, the court interpreted the statutory requirement of making the minutes available "promptly" in light of the Meetings Act's policy "favoring public involvement in almost every aspect of government." Id. at 330. The court held that making minutes promptly available implements the Act's overall purpose in three ways:

1. Enabling those attending a meeting to know what occurred at prior meetings. This is particularly important if successive meetings deal with related issues, as here.
2. Providing all persons with the opportunity to take action prior to the next meeting of the public body.
3. Informing persons, who might be aggrieved by actions of the public body and enabling them to take appropriate and timely steps to appeal or otherwise respond.

Matawan at 331

The court, after considering several factors, such as how often the board met and the public importance of the minutes' subject matter, ultimately held that the board's public

meeting “minutes, in order to be promptly available as required by the Open Public Meetings Act, must be available within two weeks after any regular meeting. If successive meetings involving the same subject matter are held at intervals shorter than two weeks, the board shall make the minutes of the earlier meeting available in advance of the later one.” Id. at 334.

Importantly, the Matawan court held that not only did meeting minutes need to be disclosed promptly, but that the “standard for publication of the minutes . . . must be made known so that it can be enforced and the public and the association, here, can have meaningful recourse to the remedies provided by the act itself.” Id. at 333. Unless the public knows in advance when a body’s minutes will be disclosed, it will not know whether the mandates of the Meetings Act are being obeyed.

In sum, the weight of the case law demonstrates that public bodies must provide the public with draft versions of its public meeting minutes and draft versions of appropriately redacted nonpublic meetings within a short period of time and prior to the body’s next scheduled meeting. And, the case law demonstrates that the standard under which the Board must disclose its minutes must be known by the public so that citizens know in advance when the minutes of a particular meeting are required to be disclosed. Accordingly, this Court should follow the lead of other courts and, after evaluating the specific circumstances of the Camden Board (e.g. how frequently the Board meets), fix a period of time within which the Board must make draft versions of the nonexempt portions of its nonpublic meeting minutes publicly available.

Point III: N.J.S.A. 10:4-13 is satisfied by “resolutions” and not “motions.”

N.J.S.A. 10:4-13 specifies that before excluding the public from a meeting, a public body must “adopt a resolution” setting forth information about the matters to be discussed in nonpublic session and when those discussions can be made public. The statute does not state that “passing a motion” is sufficient but specifically calls for “a resolution” to be adopted.

“Resolutions,” while similar to “motions” differ in two respects. First, a resolution is more formal than a motion. Second, resolutions are drawn as separate, free-standing documents while motions are embodied within a body’s public meeting minutes. Plaintiff asserts that the Legislature, in N.J.S.A. 10:4-13, specifically called for resolutions instead of motions because it wanted a certain degree of formality to attend to an act as significant as excluding the public from a meeting. Further, and of more practical importance, is that free-standing resolutions, as documents that are drafted and approved at a public meeting, would be available to the public much sooner than minutes that are incorporated within a body’s regular meeting minutes.

Meeting minutes of public bodies are rarely, if ever, publicly available immediately after the conclusion of a meeting or even within a day or two thereafter. Rather, public meeting minutes often are not typed up, even in draft form, for several weeks after the meeting. Since this is a fact that is “so generally known . . . that [it] cannot reasonably be the subject of dispute,” Plaintiffs ask the Court to take judicial notice of it. N.J.R.E. 201(b).

A member of the public who wishes to inform himself or herself of the reasons why a public body excluded the public from a meeting would be able to secure a copy of a formal resolution that contained those reasons at the body’s office within a day or two after the

meeting. But, if those reasons were embodied within a motion, the motion would likely not be publicly available in written form for several weeks after the meeting. Thus, Plaintiff asserts, the Legislature specifically required that “resolutions” and not “motions” be adopted in advance of nonpublic sessions to enable to the public to promptly obtain the body’s written reasons for going into nonpublic session.

Even if the Court doubts Plaintiffs’ contention, the Meetings Act is to be “liberally construed in order to accomplish its purpose and the public policy of this State as set forth in [N.J.S.A. 10:4-7].” N.J.S.A. 10:4-21, Rice v. Union County Reg’l High Sch. Bd. of Educ., 155 N.J. Super. 64, 70 (App.Div.1977), certif. denied, 76 N.J. 238 (1978). Since providing the public with prompt access to the written reasons why a public body excluded the public from one of its meetings fosters and enhances the “proper functioning of the democratic process,” N.J.S.A. 10:4-7, the Court should construe N.J.S.A. 10:4-13 liberally by compelling the Defendant, going forward, to adopt free-standing resolutions, rather than motions, to authorize its nonpublic sessions.

Point IV: N.J.S.A. 10:4-13(a) requires more detail regarding the matters privately discussed than the Defendant’s motions currently provide.

N.J.S.A. 10:4-13(a) requires the Defendant, in a resolution, to “stat[e] the general nature of the subject to be discussed” during a nonpublic session. The Defendant, in its motions, describes the subjects to be privately discussed with varying degrees of specificity.

At its March 22, 2011 public meeting, for example, the subjects of the nonpublic session were specifically described as “Ronald Ford vs. CBOE, J.R. for L.R. vs. CBOE, Carruth vs. CBOE, Snead vs. CBOE, Negotiations Teachers and Administration Updates.” Exhibit page 15. Yet, the Board’s February 15, 2011 motion described the topic of the

nonpublic discussion as being “Legal Update, Contract Negotiations, Suspensions, Acting Principal-Vets, Resignations, Stipend Production Manager.” Exhibit page 36.

In McGovern v. Rutgers, 418 N.J. Super. 458, 469-70 (App. Div. 2011), the Appellate Division considered the question of how much specificity N.J.S.A. 10:4-13(a) requires. The court held that when informing the public of the general nature of nonpublic meeting discussion topics, a body “must tread a fine line—informing the public about its executive-session activities while not compromising the privacy interests of those whose business is being discussed” (quoting Council of New Jersey State College Locals v. Trenton State College Board, 284 N.J. Super. 108, 113, (Law Div.1994)). The court approved of the New Jersey State College court’s statement that a resolution “should contain as much information as is consistent with full public knowledge without doing any harm to the public interest.” 284 N.J. Super at 114 (quoting 34 New Jersey Practice, Local Government Law § 141, at 174 (Michael A. Pane) (2d ed. 1993)).

Informing the public that a “Legal Update” or “Contract Negotiations” were going to be privately discussed, as the Defendant did on February 15, 2011, does not meet this standard. The Board could and should have included within its resolution the parties to the contract being negotiated and the specific legal issues that were being “updated.”

Further, it is not clear what “Acting Principal-Vets” means or what aspect of the “Stipend Production Manager” was being discussed. Without this information, it is impossible for the public to judge whether or not either of these topics properly qualified for nonpublic discussion.

Plaintiffs request an order, consistent with McGovern v. Rutgers, requiring the

Defendant, going forward, to place within its nonpublic meeting a resolutions a description of the topics to be privately discussed that contains the maximum amount of information about those topics that can be disclosed without doing any harm to the public interest. For example, if the Board were to receive a \$20,000 settlement offer from the attorney of a slip and fall plaintiff who sued the Board for negligence, the Board should describe the discussion in its resolution as “to discuss a \$20,000 settlement offer received from the Plaintiff in John Doe v. Camden Board of Education, Docket No. CAM-L-1234-10.” No harm will be done by public disclosure of this level of detail because a) the plaintiff and his lawyer already know that they offered a \$20,000 settlement and b) the sole purpose of the contract and litigation exception within N.J.S.A. 10:4-12(b)(7) is to keep *adverse parties* to litigation and contracts from being privy to the details of the public body’s negotiation tactics and litigation strategy. Nevin v. Asbury Park City Council, 2005 WL 2847974 (App. Div. November 1, 2005), attached as Exhibit G.

Point V: N.J.S.A. 10:4-13(b) requires more detail regarding the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public than the Defendant’s motions currently provide.

N.J.S.A. 10:4-13(b) requires the Defendant’s nonpublic session resolutions to “stat[e] as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public.” Yet, the Board purports to satisfy this statutory requirement by stating in its motions that “The subject matters that have been stated for the record that the board is going to closed session to discuss may be disclosed to the public if and when the need for confidentiality no longer exists.” Exhibit pages 15 - 33.

The Board's language provides the public with no real information and is essentially meaningless. In order to comply with the statute, the Board must analyze each topic discussed in closed session and predict, as best as it can, the time when or circumstances under which the closed topic discussion can be disclosed. If, for example, the Board was discussing settlement of John Doe's lawsuit, see Point IV, *supra*, the Board's resolution should state "if the Board accepts Doe's settlement offer, the nonpublic discussion will be disclosed immediately. Otherwise, that discussion will be revealed upon the lawsuit settling or being otherwise disposed of and after the time for which an appeal has expired."

Plaintiffs seek an injunction requiring the Defendant, going forward, to include in its resolutions a specific and meaningful prediction of the time when or circumstances under which closed topic discussions can be disclosed.

Point VI: Improper Nonpublic Discussions

N.J.S.A. 10:4-12(b) states that "a public body may exclude the public **only** from that portion of a meeting at which the public body discusses [nine types of specifically described matters]." (Emphasis supplied). The overall purpose of the Open Public Meetings Act is to maximize the amount a body's official discussion that occurs in public and to construe the exceptions to public meetings strictly in favor of openness and against closure. Hartz Mountain Industries, Inc. v. New Jersey Sports & Exposition Authority, 369 N.J. Super. 175, 186 (App. Div. 2004).

Under this standard, nonpublic discussions such as the one set forth in ¶ 20 of the Verified Complaint (where Mr. Sean Brown opined about the dearth of information that is given to Board Members and the lack of sufficient advertisement) are clearly prohibited.

Accordingly, this Court should enjoin Defendant, going forward, from discussing any matters in nonpublic session unless they are within one or more of the N.J.S.A. 10:4-12(b) exceptions, strictly construed against closure and in favor of openness.

Point VII: Plaintiffs should be awarded their costs.

R.4:42-8(a) states:

Unless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party.

The definition of a “prevailing party” was discussed by the Appellate Division in African Council v. Hadge, 255 N.J. Super. 4, 11 (App. Div. 1992). Although the case dealt with a federal civil rights counsel fee claim, the logic set forth by the African Council court should also apply here:

Singer v. State adopted a two-pronged test for determining when one is a prevailing party for purposes of Section 1988 counsel fee awards. Singer requires a party to “demonstrate that his [her] lawsuit was causally related to securing the relief obtained; a fee award is justified if plaintiffs’ efforts are a ‘necessary and important’ factor in obtaining the relief” and “plaintiff must establish that the relief granted had some basis in law.” (internal citations omitted)

The present litigation, if successful, will cause a substantial change to the timeliness and regularity of the Defendant’s disclosure of its nonpublic meeting minutes as well as improvement in the amount of information contained with the Board’s nonpublic meeting minutes and an injunction against improper discussions occurring outside of the public’s presence. If successful, Plaintiffs should be declared the “prevailing party” because their lawsuit was both “causally related” and a “necessary and important factor” in obtaining the desired relief and because the relief granted has a basis in law. Id.

Once it has been established that Plaintiffs are the “prevailing party,” costs ought to be “allowed as of course.” R.4:42-8(a). In Gallo v. Salesian Soc., Inc., 290 N.J. Super. 616, 660 (App. Div. 1996) the Appellate Division stated:

R 4:42-8(a) provides: “Unless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party.” The judge here expressly found that plaintiff was a prevailing party. He should have awarded her costs “as of course” under the rule.

Finally, denial of costs in this instance would profoundly chill Plaintiffs’ willingness, and that of other interested citizens, to bring suits, such as this one, that seek to benefit the public interest. The salutary public policy behind statutes such as the Open Public Meetings Act would be frustrated if citizens were dissuaded enforcing it.

Respectfully,

November 8, 2011

John Paff

November 8, 2011

Jose Delgado

John Paff
P.O. Box 5424
Somerset, NJ 08875-5424
Tel. 732-873-1251
Email: paff@pobox.com
Plaintiff

Jose Delgado
503 N 36th St
Camden, NJ 08110
Email: delgadoquindin@aol.com
Plaintiff

JOHN PAFF and JOSE DELGADO	:	SUPERIOR COURT OF NEW JERSEY
Plaintiffs,	:	LAW DIVISION, CIVIL PART
	:	CAMDEN COUNTY
vs.	:	DOCKET NO.
	:	
CAMDEN CITY BOARD OF	:	
EDUCATION	:	Civil Action
Defendant	:	
	:	JUDGMENT FOR
	:	INJUNCTIVE RELIEF
	:	

This matter was opened to the Court by way of Order to Show Cause by John Paff and Jose Delgado, Pro Se Plaintiffs and the Court having read and considered the Plaintiff's Verified Complaint, Brief and any opposition and reply papers filed and having heard argument on _____, 2011 and for good cause appearing it is on this _____ day of _____ 2011:

1. **ORDERED** that Defendant Camden City Board of Education is permanently enjoined from failing to make the nonexempt portions of its future nonpublic (i.e. "closed" or "executive") meetings publicly available within ____ days prior to its next public meeting or within ____ days, whichever come first.

2. **ORDERED** that Defendant Camden City Board of Education is permanently enjoined from passing resolutions prior to going into its future nonpublic (i.e. "closed" or "executive") meetings that i) are not in the form of formal, free-standing "resolutions" (i.e.

passing motions that are spread out in the public meeting minutes is specifically prohibited), ii) fail to describe the topics to be discussed in private in as much detail as possible without doing any harm to the public interest and iii) fail to include a specific and meaningful prediction of the time when or circumstances under which each discussion conducted during the nonpublic meeting can be publicly disclosed.

3. **ORDERED** that Defendant Camden City Board of Education is permanently enjoined from discussing a matter during a nonpublic meet unless it is within one or more of the N.J.S.A. 10:4-12(b) exceptions, strictly construed against closure and in favor of openness.

4. **ORDERED** that Plaintiffs is the prevailing party in this action and is thus entitled to his costs. Plaintiffs shall file their proof of costs with the Clerk in accordance with R.4:42-8(c).

5. **ORDERED** that Plaintiff shall serve a copy of this Order upon Defendant within 7 days of its entry and return.

J.S.C.

This motion was (check one) Opposed Unopposed

Written / Oral (circle one) findings of fact and conclusions of law were rendered on _____, 2011, or

A statement of reasons why no findings of fact and conclusions of law were made is appended to this order.