



# New Jersey Libertarian Party

Open Government Advocacy Project

*John Paff, Chairman*

*P.O. Box 5424*

*Somerset, NJ 08875-5424*

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May 4, 2012

Hon. Robert Campbell, Mayor and members of the  
Downe Township Committee  
288 Main St  
Newport, NJ 08345      *(via e-mail to [downetwpclerk@comcast.net](mailto:downetwpclerk@comcast.net))<sup>1</sup>*

Dear Mayor Campbell and Committee members:

I write both individually and in my capacity as chairman of the New Jersey Libertarian Party's Open Government Advocacy Project to request that the Township Committee bring itself into compliance with N.J.S.A. 10:4-14. This statute requires public bodies to make their meeting minutes "promptly available" to the public. Attached is a "draft" civil lawsuit that intend to file in the Cumberland County Superior Court. I will seek a court ruling similar to that contained in ¶¶ 1 and 2 of the attached February 13, 2009 Order issued in Paff v. Keyport, Docket No. MON-L-3317-07.

Of course, I prefer an amicable solution instead of a lawsuit. To that end, would the Committee, be willing to publicly promise that it will, going forward, make the minutes of its public meeting and the nonexempt portions of its nonpublic meetings public available within thirty (30) days of the meeting or prior to the next scheduled meeting, whichever occurs first?

I would appreciate hearing from the Committee or Mr. Carr by Friday, May 11, 2012. If I don't hear from anyone by then, I will file my lawsuit without further notice.

Sincerely,

John Paff

cc. John Carr, Esq. *(via e-mail only to [cressecarr@juno.com](mailto:cressecarr@juno.com)) w/ enclosures*

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<sup>1</sup> I have also sent this letter to [rgc4downe@comcast.net](mailto:rgc4downe@comcast.net), [dcook@gccnj.edu](mailto:dcook@gccnj.edu) and [tammibear1@hotmail.com](mailto:tammibear1@hotmail.com), all of which are listed on the Township's Internet site.



## **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. Defendant Downe Township Committee (hereafter “the Committee”) is a public body as that term is defined by N.J.S.A. 10:4-8(a).

## **FIRST COUNT**

4. Plaintiff repeats the allegations stated above as if set forth at length herein.

5. On April 23, 2012, Plaintiff submitted a request under the Open Public Records Act to the Downe Township Clerk’s office. Among the records requested were the minutes from the Committee’s November 9, 2011 public meeting and October 3, 2011 nonpublic (i.e. executive or closed) meeting.

6. In a May 4, 2012 e-mail, Deputy Township Clerk Nadine Lockley denied Plaintiff access to the Committee’s November 9, 2011 public meeting and October 3, 2011 nonpublic meeting minutes stating that they “have not been approved to date.”

7. The Committee’s failure or refusal to have minutes from October and November 2011 publicly available by May 2012 violates the statutory mandate that public meeting minutes and the nonexempt portions of nonpublic meeting minutes “shall be promptly available to the public.” N.J.S.A. 10:4-14.

**WHEREFORE**, Plaintiff demands judgment:

A. Declaring that the Committee violated N.J.S.A. 10:4-14 by failing or refusing to make its November 9, 2011 public meeting minutes and the nonexempt portions of its October 3, 2011 nonpublic meeting minutes available as of May 4, 2012.

B. Enjoining the Committee, going forward, from failing or refusing to make its public meeting minutes and the nonexempt portions of its October 3, 2011 nonpublic meeting minutes available to the public with a time period to be fixed by the Court.

C. Awarding Plaintiff his costs.

D. 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.

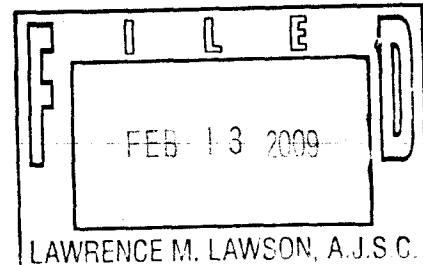
### **Certification Pursuant to R.1:38-7(b)**

I 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: May \_\_\_\_\_, 2012

\_\_\_\_\_  
John Paff  
Plaintiff

**WISNIEWSKI & ASSOCIATES, LLC**  
17 Main Street  
Sayreville, New Jersey 08872  
(732)651-0040  
Attorneys for Defendant, BOROUGH OF KEYPORT  
Our File No.: 152.10313



**JOHN PAFF**

**Plaintiff(s)**

**vs.**

**KEYPORT BOROUGH COUNCIL and  
VALERIE T. HEILWEIL**

**Defendant(s)**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MONMOUTH COUNTY  
DOCKET NO. L-3317-07**

**CIVIL ACTION**

**ORDER**

This matter having brought before the Court by John Paff, Plaintiff and tried before the Honorable Lawrence M. Lawson on August 12, 2008; by John Paff, Pro Se and Eric M. Winston, Esq. of Wisniewski and Associates, LLC on behalf of the Defendants Keyport Borough Council and Valerie T. Heilweil, and the Court having considered the Trial Briefs and Oral Argument presented by the parties and having issued a written Opinion on December 8, 2008.

It is on this 13 day of Febur, 2009 :

1) **DECLARED** that the Defendants vioiated *N.J.S.A. 10:4-14* by not making the minutes of the Keyport Borough Council's April 10, 2007 and May 21, 2007 public meetings and the Keyport Borough Council's March 6, 2007, April 10, 2007, April 24, 2007, May 1, 2007 and May 21, 2007 nonpublic (i.e. executive or closed) meetings publicly available promptly.

2) **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.

3) **ORDERED** that nonpublic meeting minutes may be redacted as necessary.

4) **DECLARED** that the Defendant Keyport Borough Council's April 10, 2007 nonpublic discussion of "Loitering of Day Workers" and its April 24, 2007 nonpublic discussion of "Proposed Ordinance – Smoking in Motor Vehicles with Children" and "K. Hovnanian" fell within the "anticipated litigation" exception of *N.J.S.A. 10:4-12(b)(7)* and thus did not violate the Senator Byron M. Baer Open Public Meetings Act.

5) **DECLARED** that the Defendant Keyport Borough Council's April 10, 2007 nonpublic discussion regarding "the need to find someone on a three-man shift" and its April 24, 2007 nonpublic discussion of a general question concerning Class I and Class II Specials fell within the "personnel" exception of *N.J.S.A. 10:4-12(b)(8)* and thus did not violate the Senator Byron M. Baer Open Public Meetings Act.

6) **DECLARED** that the first redaction within Paragraph 3 of the Keyport Borough Council's September 19, 2006 nonpublic meeting minutes (i.e. the redacted word between "Police Officers who become" and "and policies that can be set") would reveal "detailed medical or psychological information" that is not public information in accordance with *N.J.S.A. 47:1A-10*, the purpose of which statute is to protect an individual's right to privacy.

7) **DECLARED** that the Defendant Valerie T. Heilweil violated the Open Public Records Act by redacting the names of certain, disciplined Keyport officers and employees from the September 19, 2007 and October 17, 2007 nonpublic meeting minutes because the "personnel" exception embodied within *N.J.S.A. 10:4-12(b)(8)* does not exempt those names from disclosure.

8) **DECLARED** that within fourteen (14) days of the entry of this Order, Defendants will provide Plaintiff with a) an unredacted copy of the first page of the Keyport Borough Council's October 17, 2006 nonpublic meeting minutes and b) a copy of the first page of the Keyport Borough Council's September 19, 2006 nonpublic meeting minutes that is unredacted except for the redaction described in Paragraph 6 of this Order

9) **DECLARED** that the relief demanded in the Third Count of the Plaintiff's complaint for failing to provide a legally sufficient reason for redacting certain meeting minutes and denying access to certain emails and correspondence is time-barred because those demands were not asserted within forty-five (45) days as required by R. 4:69-6(a).

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



Lawrence M. Lawson, A.J.S.C.

**CRESSE AND CARR**  
COUNSELLORS AT LAW  
39 COOPER STREET  
P.O. Box 357  
WOODBURY, NEW JERSEY 08096  
856-845-0037

WARREN H. CARR  
JOHN G. CARR \*

\* MEMBER NEW JERSEY  
AND FLORIDA BARS

WADSWORTH CRESSE, JR. (1910-1976)  
AMOS J. PEASLEE, JR. (1923-1989)  
FAX: 856-384-8778

May 9, 2012

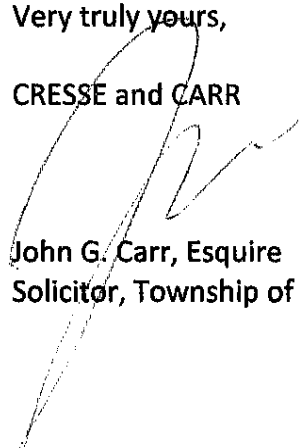
John Paff, Chairman  
New Jersey Libertarian Party  
P.O. Box 5424  
Somerset, NJ 08875-5424

Dear Mr. Paff:

With regard to your correspondence dated May 4, 2012 be advised that I had actually reached out to you via telephone on Monday, May 7, 2012 hoping to discuss this matter in further depth with you. This being said, your correspondence of May 4, 2012 was discussed by the Committee on the evening of May 7<sup>th</sup> with regard to a policy as to the preparation of minutes. I am providing you with a copy of the unsigned Resolution which was adopted on the evening of May 7, 2012 by the Downe Township Committee, having been added to the agenda after being discussed in open session. The Resolution was passed as Resolution 097-2012. I trust you will find this to your satisfaction.

Very truly yours,

CRESSE and CARR

  
John G. Carr, Esquire  
Solicitor, Township of Downe

JGC/dls  
Enclosure  
cc: Township Committee (w/o enclosure)

Dictated But Not Read



**TOWNSHIP OF DOWNE****CUMBERLAND COUNTY, NEW JERSEY**

	YES	NO	ABSTAIN	ABSENT
Mayor Campbell				
Deputy Mayor Wilford				
Committeeperson Bart				
Committeeperson Cook				
Committeeperson Reynolds				

Resolution Number:

Dated:

Offered By:

Seconded By:

**THIS IS A RESOLUTION SETTING FORTH A POLICY FOR THE DOWNE TOWNSHIP COMMITTEE CALLING FOR MEETING MINUTES IN THE FORM OF "DRAFT" COPIES TO BE MADE AVAILABLE UPON THE FIRST TO OCCUR OF THIRTY (30) DAYS OF A MEETING OF THE TOWNSHIP COMMITTEE OR PRIOR TO THE NEXT SCHEDULED MEETING**

**WHEREAS**, Downe Township is subject as a Municipal body within the State of New Jersey to New Jersey's Open Public Meetings Law (N.J.S.A. 10:4-6 et seq.) and the Act itself calls for the production of meeting minutes "promptly" following meetings of the public body; and,

**WHEREAS**, The Downe Township Committee takes seriously its obligation on behalf of its taxpayers to keep interested parties up-to-date on the considerations and actions of the governing body of Downe Township such as is called for by the New Jersey Open Public Meetings Act;

**NOW, THEREFORE, BE IT RESOLVED**, by the Township Committee of the Township of Downe, County of Cumberland and State of New Jersey as follows:

The Township Committee of Downe Township shall make the minutes of its public meetings and the non-exempt portion of its non-public meetings available to interested parties in draft form upon the sooner to occur of thirty (30) days after a meeting or prior to the next scheduled meeting, whichever occurs first. This being said, it is understood that at a subsequent meeting the governing body shall vote on the draft minutes prior to their becoming an official record of the Township governing body.

**THIS RESOLUTION** was adopted by the Township Committee of the Township of Downe  
on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Robert Campbell, Mayor

**CERTIFICATION**

The undersigned, Clerk of the Township of Downe, hereby certifies that the foregoing is  
a true copy of a Resolution adopted by the Township Committee of the Township of Downe at  
its meeting held on \_\_\_\_\_.

\_\_\_\_\_  
Richard J. DeVillasanta, Clerk