



# OPRA Request

*Lisette Duffy, Records Custodian  
Borough of Englewood Cliffs*

*Submitted 05/10/12 (after hours) via Fax to (201) 569-4356*

## OPRA request #1

### Background:

My information is that at its May 9, 2012 meeting, the Englewood Cliffs Borough Council approved the minutes from public meetings held in July, August, September and October 2010 as well as the public meetings held on November 22, 2010 and December 8, 2010. My information is also that Councilwoman McMorrow claims that a) the minutes from the public meetings held in July, August, September and October 2010 had already been approved at the December 8, 2010 public meeting and b) that the audio recording of the December 8, 2010 meeting would evidence that those minutes had indeed been then approved. Thus, it is possible that the Borough Council has now twice approved minutes from the public meetings held in July, August, September and October 2010: once on December 8, 2010 and again on May 9, 2012.

### Records Request:

1. The audio of the December 8, 2010 public meeting.
2. The minutes of the public meetings held in July, August, September and October 2010 that were approved at the May 9, 2012 public meeting.
3. Copies of the minutes of the public meetings held in July, August, September and October 2010 that Councilwoman McMorrow has in her possession that were allegedly approved at the December 8, 2010 meeting. Expressly excepted from this request are any markings or notes that Councilwoman McMorrow made to her copies of those meeting minutes.
4. Minutes of the December 8, 2010 public meetings so that I can compare the written minutes to see if they're consistent with the audio tape of the same meeting, especially regarding whether or not minutes of the July, August, September and October 2010 public meetings were approved on that date.

### OPRA request #2

#### Background:

I understand that it is possible that the minutes of the public meetings held on May 3, 2010, May 12, 2010, June 3, 2010 and June 9, 2010 have not yet been approved as of present date, even though approximately two years have elapsed since then and even though draft minutes from those meetings were made available to me on March 3, 2012.

#### Records Request:

Approved minutes from the May 3, 2010, May 12, 2010, June 3, 2010 and June 9, 2010 public meetings.

### OPRA request #3

#### Background:

I understand that at its October 13, 2010 meeting, the Council approved minutes from public (regular, caucus and/or special) meetings held on January 13, 2010, January 24, 2010, February 1, 2010, February 24, 2010, March 10, 2010, April 5, 2010, April 7, 2010 and April 14, 2010. On the same date, the Council also approved executive session minutes from January 2, 2010, January 13, 2010 and January 24, 2010. However, I understand that despite the approval of these minutes, at least some of them were never reduced to hard copy form, signed by the appropriate municipal officials and put into the Clerk's official, written records. Rather, I believe that these minutes may have remained only in electronic form on what is now Lisette Duffy's computer and that the Council considers print outs of those electronic copies the equivalent of the versions of the minutes that were approved on October 13, 2010. I am interested in learning whether there were any hard copies of the minutes, as approved, signed and placed in the Clerk's records on or within a reasonable time after their approval on October 13, 2010.

#### Records Request:

Versions of all the minutes referenced in "OPRA request #3 Background" above that were signed by either Acting Clerk Cohen or Clerk Susan Spohn. For any minutes within the scope of this request that were not signed by either of these officials, please inform me that no records are responsive to my request.

#### OPRA request #4

##### Background:

I understand that it is possible that no minutes, approved or unapproved, are on file for a) any Council public meetings (whether regular, caucus or special) held in 2011 or b) any Council closed or executive meetings held in 2010 or 2011, except for the executive meetings held on January 2, 2010, January 13, 2010 and January 24, 2010. The purpose of this request is to determine whether my understanding is correct.

##### Records Request:

1. Approved Council minutes from all public and nonpublic meetings within the scope of "OPRA Request #4 Background" above.
2. Draft Council minutes, marked as draft, from all public and nonpublic meetings within the scope of "OPRA Request #4 Background" above.

Thank you!

----- Original Message -----

Subject: PAFF OPRA 5/11/2012

Date: Tue, 15 May 2012 11:25:56 -0400

From: Lisette Duffy <LDuffy@englewoodcliffsnj.org>

To: John Paff <paff@pobox.com>

CC: Carter <Carter.Corrifton@verizon.net>, Mayor Parisi  
<jparisi@OTTERSTEDT.com>, Elena Salas  
<ESalas@englewoodcliffsnj.org>

Good morning,

In reference to your OPRA received in this office on  
5/11/2012 item #1:

The copying fee for our audio cassette from 2010 is \$135/hr.  
for labor. The CD's are an additional \$2.29 each. Please be  
advised these are recorded cassettes prior to the Borough  
switching to its current audio system of compact discs. We  
utilize an outside vendor who will be completing the  
transfer for us. Judging by what is on the tapes, I don't  
foresee the copying be more than 2 ½ hours.

Kindly advise how you would like to proceed.

Thank you,

\*/Lisette M. Duffy/\*

\*Borough Administrator/Acting Municipal Clerk\*

# John Paff

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MAY 15, 2012

Telephone – 732-873-1251

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Lisette M. Duffy, Acting Municipal Clerk

Borough of Englewood Cliffs

482 Hudson Terrace

Englewood Cliffs, NJ 07632

(via e-mail to LDuffy@englewoodcliffsnj.org )

Dear Ms. Duffy:

I am in receipt of your May 15, 2012 initial response to my May 11, 2012 request for a copy of “the audio from the December 8, 2010 public meeting.” You state that a) the Borough’s rate is \$135 per hour for the “labor” involved in copying an audio tape recording to a CD, b) that CD’s themselves cost \$2.29 each and that c) you estimate that it would take up to 2.5 hours of “labor” to copy the audio from a tape to a CD. Thus, it would cost me up to \$339.79 (i.e. \$135 X 2.5 + \$2.29) to fulfill my request for the audio of a single Borough council meeting.

This is clearly a prohibitive cost that stands as an obstacle to the average citizen’s ability to gain access to government records. Thus, I have to decide whether to a) abandon my request for this audio or b) challenge the cost in either the Superior Court or Government Records Council. Before making this decision, I need to understand whether the Borough has properly complied with N.J.S.A. 47:1A-5(d), which apparently is the section of OPRA that the Borough is relying upon to justify its charge. That section provides:

*A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record: (1) in a medium not routinely used by the agency; (2) not routinely developed or maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.*

First, from reading this statutory citation, it is not clear to me whether the Borough is justified in charging anything beyond the cost of the blank tape or CD itself. First, this is not a request where I am

asking the Borough to convert its recording from or onto some sort of unusual or exotic medium. Indeed, my request did not specify a medium. The Borough, up until recently, "routinely used" audio tape to record its council meetings. I am simply asking for a copy of such a recording in whatever medium or format in which the recording presently exists. It seems to me that if the Borough "routinely" kept its recordings on audio tape, it is not unreasonable for the public to expect the Borough to possess the equipment necessary for those tapes to be inexpensively played and duplicated.

Second, even if the court or GRC were to agree that tapes are no longer "routinely used by" Englewood Cliffs, it is not clear to me that a \$339.79 charge is "reasonable." Even if the Borough's vendor indeed charges \$135 per hour for duplicating an audiotape, the court or GRC might find that the Borough has less expensive options available to it (perhaps it could purchase a cassette tape duplicator which are widely available for less than \$100) and that the Borough's choice to use an expensive, outside vendor is unreasonable and an abuse of the Borough's discretion.

Would the Borough please reevaluate its position on this matter, or at least provide me with a better justification for its proposed \$339.79 fee? In particular, is the cassette at issue of a standard size and recorded at a standard speed? Knowing whether or not the cassette is standard or in some sort of proprietary format will help me judge the reasonableness of the fee that the Borough is attempting to charge me.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Paff", with a large, stylized flourish above the name.

John Paff