

John Paff

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MAY 16, 2012

Hon. Joseph C. Parisi, Jr., Mayor and members of the
Englewood Cliffs Borough Council
482 Hudson Terrace
Englewood Cliffs, NJ 07632 *(via e-mail only to LDuffy@englewoodcliffsnj.org)*

Dear Mayor Parisi and Council members:

Attached is a copy of my May 15, 2012 letter to Acting Clerk Duffy. As you can see, a question has arisen regarding the propriety of charging me up to \$339.79 to duplicate an audio recording of the Borough Council's December 8, 2010 public meeting. Following is the text of Ms. Duffy's May 15, 2012 e-mailed response to my letter.

Mr. Paff, I apologize if my answer was vague.

We have standard size 2 x 4 audio cassettes that were used in 2010 and part of 2011. In order for me to provide you with a copy of such tapes, I need to have the tapes sent out for copying. We can have them copied onto another cassette or compact disc (the choice is yours). There is no additional charge imposed by the borough for copying. We are passing on the cost that company charges us, to you.

If you would like to hear the audio cassettes in the office, you are most welcome to make an appointment and we will accommodate you, during our work hours.

As for your question regarding the tape speed, I have no knowledge on that subject.

Please note, your OPRA was not clear as to which audio you requested. I have two meetings - Caucus and Regular for December 8, 2010.

Thank you,

While the Borough's position—that it can charge up to \$340 to duplicate a single audio recording—may seem outrageous, it may have some support in the law. In [Wolosky v. Victory Gardens, Complaint No. 2010-187](#), the Government Records Council (GRC) considered a case where Victory Gardens Borough, which did not have its own audio duplication equipment, used the services of a vendor named Gramco to duplicate its audio recordings. The GRC found that in order to duplicate the Borough's audio recordings, Gramco, for a fee of \$195 per hour, “brings its equipment to the

Borough offices to compress the channels of the Borough's audio recordings from four (4) to one (1) and convert the audio recording speed to a normal speed that will allow for duplication." The GRC found that this process was an "extensive use of information technology" as defined by N.J.S.A. 47:1A-5(d) and justified the \$195 per hour special service charge.

In order to determine whether I should challenge the Borough's position, I need to know whether the original tapes of the December 8, 2010 Borough Council caucus and regular meetings are a) recorded at normal speed and thus able to be duplicated by a standard dual-cassette deck or b) recorded at some different speed or possesses some other characteristic requires specialized duplication equipment. Since Ms. Duffy stated that she has "no knowledge on that subject," I seek this information from the Mayor and Council.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "John Paff", with a stylized flourish at the end.

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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