

Borough of Swedesboro

COUNTY OF GLOUCESTER

☆☆☆☆☆☆☆☆
Borough of Swedesboro
1500 Kings Highway
Swedesboro, NJ 08085
856-467-0202

January 10, 2014

John Paff, Chairman
New Jersey Libertarian Party
P.O. Box 5424
Somerset, NJ 088-75-5424

Dear Mr. Paff:

The Borough of Swedesboro received your Open Public Records Act (OPRA) request on Monday, January 6, 2014 with a response to you from Tanya Goodwin via e-mail on the same date confirming your request. As such the (7) business day deadline to respond to your request is Tuesday, January 14, 2014. This response is being provided on January 10, 2014, the 5th business day after the custodian's receipt of said request.

The Following records are being provided in their entirety and are responsive to your request.

1. Minutes of each of the Borough Councils nonpublic (i.e. executive or closed meeting) meetings held during year 2013.
2. The resolutions or motions which pursuant to N.J.S.A. 10:4-13, authorized each of the Borough Council's nonpublic (i.e. executive or closed) meetings held during year 2013.
3. Copy of your May 17, 2012 letter to Mayor Fromm and Council members regarding the Borough Council's compliance with the Open Public Meetings Act.
4. No response was provided to you directly in regards to your letter, though was provided to Mayor and Council at the 6/4/12 meeting.

These records are being transmitted to you via e-mail as per your request. Pursuant to N.J.S.A. 47:1A-5.b, the cost associated with this request is 0.00.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the Borough of Swedesboro to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial Access Complaint Form. You may contact the GRC by toll free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ. 08625, by e-mail grc@dca.state.nj.us or at their website, www.state.nj.us/grc. The GRC can also answer any questions about the law.

John Paff, Chairman
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All questions regarding complaints filed in the Superior Court should be directed to the Court Clerk in your County.

Sincerely,



Tanya Goodwin, RMC, CMR
Borough Clerk
1500 Kings Highway
Swedesboro, NJ 08085
Phone: 856.467.0202
Fax: 856-467-5767
E-mail: tgoodwin@swedesboro.comcastbiz.net

20140106T230117R

To: tgoodwin@swedesboro.comcastbiz.net
From: John Paff <paff@pobox.com>
Subject: OPRA Request

Borough of Swedesboro

Please accept this e-mail/fax as my request for government records in accordance with the Open Public Records Act (OPRA) and the common law right of access. Please respond and send all responsive documents to me via e-mail at paff@pobox.com. If e-mail is not possible, please fax responses and responsive records to me at 908-325-0129. Also, I would appreciate it if you would acknowledge your receipt of this e-mail/fax.

Records requested:

1. Minutes of each of the Borough Council's nonpublic (i.e. executive or closed) meeting held during year 2013. If you redact, please redact as narrowly as possible, if at all, and provide enough detail about the nature of each redaction to allow me to assess whether or not the redaction is reasonable.
2. The resolutions or motions which, pursuant to N.J.S.A. 10:4-13, authorized each of the Borough Council's nonpublic (i.e. executive or closed) meeting held during year 2013.
3. Copy of my May 17, 2012 letter to Mayor Fromm and Council members regarding the Borough Council's compliance with the Open Public Meetings Act.
4. Any responses to my May 17, 2012 letter that were sent to me by or on the Borough Council's behalf.

Thank you,

John Paff
(voice - 732-873-1251)

R-102-2013

RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF SWEDESBORO,
COUNTY OF GLOUCESTER AND STATE OF NEW JERSEY ON THE MATTER OF A
CLOSED OR EXECUTIVE SESSION

WHEREAS, under the provisions of the Open Public Meetings Law, N.J.S.A. 10:4-12(b) the public may be excluded from that portion of a meeting at which certain enumerated topics are discussed; and,

WHEREAS, this public body is of the opinion that such circumstances presently exist;

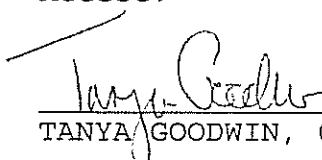
NOW, THEREFORE, BE IT RESOLVED, that the Borough Council will go into closed or executive session from which the public shall be excluded. The matters being discussed during the session include matters involving the Police Department, and the sale of public property.

BE IT FURTHER RESOLVED, that the discussion conducted at said closed or executive session shall be disclosed to the public as soon as such disclosure shall not be prejudicial to the parties concerned.

ADOPTED at a regular meeting of the Mayor and Borough Council of the Borough of Swedesboro held on October 7, 2013.

BOROUGH OF SWEDESBORO

Attest:



TANYA GOODWIN, CLERK



THOMAS FROMM, MAYOR

CERTIFICATION

The foregoing Resolution was duly adopted at a meeting of the Borough Council of the Borough of Swedesboro held on the 7th day of October, 2013 at Borough Hall, 1500 Kings Highway, Swedesboro, NJ 08085.



TANYA L. GOODWIN, CLERK

R-85-2013

RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF
SWEDESBORO, COUNTY OF GLOUCESTER AND STATE OF NEW
JERSEY ON THE MATTER OF CLOSED OR EXECUTIVE SESSION

WHEREAS, under the provisions of the Open Public Meetings Law, N.J.S.A. 10:4-12(b) the public may be excluded from that portion of the meeting at which certain enumerated topics are discussed; and,

WHEREAS, this public body is of the opinion that such circumstances presently exist;

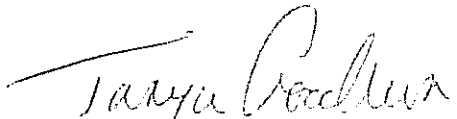
NOW, THEREFORE, BE IT RESOLVED that the Borough Council will go into closed or executive session from which the public shall be excluded. The matters being discussed during this session include records within attorney client privilege.

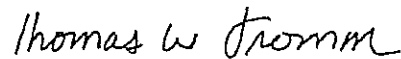
BE IT FURTHER RESOLVED that the discussion conducted at said closed or executive session shall be disclosed to the public as soon as such disclosure shall not be prejudicial to the parties concerned.

ADOPTED at a regular meeting of the Mayor and Borough Council of the Borough of Swedesboro held on July 1, 2013.

BOROUGH OF SWEDESBORO

ATTEST:


TANYA GOODWIN, CLERK



Thomas W. FROMM, MAYOR

CERTIFICATION

The foregoing Resolution was duly adopted at a meeting of the Borough Council of the Borough of Swedesboro held on the 1st Day of July, 2013 at Borough Hall, 1500 Kings Highway, Swedesboro, NJ 08085.


Tanya L. Goodwin, Clerk

R-59-2013

RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF
SWEDESBORO, COUNTY OF GLOUCESTER AND STATE OF NEW
JERSEY ON THE MATTER OF CLOSED OR EXECUTIVE SESSION

WHEREAS, under the provisions of the Open Public Meetings Law, N.J.S.A. 10:4-12(b) the public may be excluded from that portion of the meeting at which certain enumerated topics are discussed; and,

WHEREAS, this public body is of the opinion that such circumstances presently exist;

NOW, THEREFORE, BE IT RESOLVED that the Borough Council will go into closed or executive session from which the public shall be excluded. The matters being discussed during this session include employee discipline matter, litigation Musumeci vs. Swedesboro Planning Board, and subpoena regarding former Police Officer Michael Denick.

BE IT FURTHER RESOLVED that the discussion conducted at said closed or executive session shall be disclosed to the public as soon as such disclosure shall not be prejudicial to the parties concerned.

ADOPTED at a regular meeting of the Mayor and Borough Council of the Borough of Swedesboro held on April 1, 2013.

BOROUGH OF SWEDESBORO

ATTEST:

Thomas W. Fromm

Thomas W. FROMM, MAYOR

Tanya Goodwin
TANYA GOODWIN, CLERK

CERTIFICATION

The foregoing Resolution was duly adopted at a meeting of the Borough Council of the Borough of Swedesboro held on the 1st Day of April, 2013 at Borough Hall, 1500 Kings Highway, Swedesboro, NJ 08085.

Tanya L. Goodwin
Tanya L. Goodwin, Clerk

R-25-2013

RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF
SWEDESBORO, COUNTY OF GLOUCESTER AND STATE OF NEW
JERSEY ON THE MATTER OF CLOSED OR EXECUTIVE SESSION

WHEREAS, under the provisions of the Open Public Meetings Law, N.J.S.A. 10:4-12(b) the public may be excluded from that portion of the meeting at which certain enumerated topics are discussed; and,

WHEREAS, this public body is of the opinion that such circumstance presently exist;

NOW, THEREFORE, BE IT RESOLVED that the Borough Council will go into closed or executive session from which the public shall be excluded to regarding a litigation matter served upon the Borough.

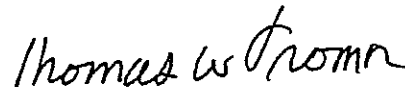
BE IT FURTHER RESOLVED that the discussion conducted at said closed or executive session shall be disclosed to the public as soon as such disclosure shall not be prejudicial to the parties concerned.

ADOPTED at a regular meeting of the Mayor and Borough Council of the Borough of Swedesboro held on January 7, 2013

BOROUGH OF SWEDESBORO

ATTEST:


TANYA GOODWIN, CLERK



Thomas W. FROMM, MAYOR

BOROUGH OF SWEDESBORO CLOSED SESSION MINUTES
JANUARY 7, 2013 (RESOLUTION R-25-2013)

Closed Session started at 7:40 p.m. Mayor Fromm stated that the borough received notice of a lawsuit today. Mayor Fromm stated that the information was submitted to the insurance company, as well as the solicitor. Mayor Fromm stated that no one can have any further communication regarding this matter.

Mayor Fromm stated that the employee was brought in for a verbal warning. The incident involved an employee and a resident and is now in the legal system.

Mr. Casella asked if the employee was off the road, Mayor Fromm stated that he was, but our solicitor indicated that we had no basis for keeping him from doing his job.

Mr. Casella made a motion to come out of closed session, seconded by Mr. Weeks. All members-yes.

Closed session was ended at 7:45 p.m.

BOROUGH OF SWEDSBORO CLOSED SESSION MINUTES
APRIL 1, 2013 (RESOLUTION R-59-2013)

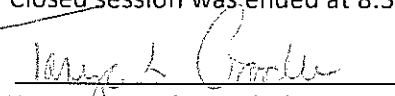
Mayor Fromm informed Council of Disciplinary action that was taken last week on Employee John Gangemi resulting in a 1 day unpaid suspension. This was as a result of a complaint from a resident on East Avenue when employee accidentally spray painted his car while doing a mark out for the Borough. Employee was instructed by the Superintendent of Public Works to have no contact with owner, however, employee took it upon himself to not only contact the owner, but take his car for repair, which was deemed as insubordination. Mayor Fromm stated that employee signed the write up and noted that we are following our policies and procedures, as well as the union contract.

Mayor Fromm also spoke of the subpoena of records that we received in regards to a probationary officer who worked for the Borough, officer Denick. The records requested will be submitted.

Mayor Fromm also spoke of the civil action lawsuit filed by Mr. Musumeci and advised Council not to have any discussions with him regarding this matter.

Mr. Flaherty made a motion to come out of closed session, seconded by Mr. Weeks. Vote all yes.

Closed session was ended at 8:34 p.m.



Tanya L. Goodwin, Clerk

BOROUGH OF SWEDESBORO CLOSED SESSION MINUTES
July 1, 2013 (RESOLUTION R-85-2013)

Mr. Trimble, the borough solicitor outlined the charges regarding the matter of the Kings Liquor License, as well as the Plea Agreement that the opposing solicitor has submitted, 30 day suspension with a request to impose starting on July 10th. Mr. Trimble advised that if council does not accept the plea then we will need to proceed with the court hearing. After providing council with an outline, Council did agree to accept the plea, however, with an immediate suspension, as well as a class on diversity management for all employees.

Mr. Trimble also outlined the second matter regarding the renewal of the liquor license and went over some restrictions to said license.

Mr. Flaherty made a motion to come out of closed session, seconded by Mr. Weeks. Vote all yes.

Closed session was ended at 7:44 p.m.


Tanya L. Goodwin, Clerk

CLOSED SESSION MINUTES OF OCTOBER 7, 2013 (Resolution R-102-2013)

Mayor Fromm announced that there were two items noted in the resolution that were to be discussed:

The first topic was the possible purchase of the Intrapac Property on Ashton Avenue. Mayor Fromm indicated that an interval property to promote developers coming into Swedesboro would be the Intrapac property as noted by SAG as part of their marketing plan. Mayor Fromm indicated that he has had informal discussions with the owners of this property to discuss the possibility of the Borough purchasing it. Mayor Fromm reported that the original asking price for the property was \$900,000.00, which is also what the property is assessed at however they are willing to sell to the borough for \$500,000.00. Mayor Fromm wants to make clear that the owners of the property are not happy about making this deal and selling the property so far below what they consider to be the fair market value. They and their realtor believe that if they were to wait for the economy in Swedesboro to improve they could get very close to their original asking price of \$900,000.00.

Mayor Fromm addressed council that we need to take advantage of this unique situation and obtain this property now at a greatly reduced price due to the state of the economy. It will never be available for this amount or less. The owners are managing the property from Canada, paying insurance, utilities and taxes on the property not knowing when the economy will rebound to the point where they could get the fair market value. It is our best interest to act now. Mayor Fromm indicated that he spoke with Jeff Coles about the funding for the purchase and outlined that there is money left over in certain line items, but that we would need to borrow against our surplus in the amount of \$150,000.00. Mayor Fromm did indicate that our surplus is at 1.2 million.

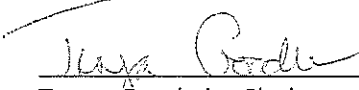
Mr. Casella did indicate that site did have previous environmental issues, though Mayor Fromm did indicate that we will do our due diligence to make sure that the site is remediated. Mr. Casella also asked if the building would be taken down and at what cost.

Mrs. Gahrs asked if there is anything left in the building and expressed her concerns of being stuck with the property if developers do not purchase the property.

Mrs. Hale noted that this would be the best shot for developing of the downtown.

Mayor Fromm also discussed a matter concerning the police department. Mayor Fromm wanted to bring to the attention of the council that Woolwich and East Greenwich are in discussion about merging police forces to be named Kingsway Regional Police Force, which would also include Swedesboro and Harrison. Mayor Fromm indicated that he was not informed initially and just attended a meeting to get more information. Mayor Fromm reported that there would be no cost reduction and no reduction in the police forces. Mayor Fromm indicated that our contract is up in 2014 and also noted that Logan is not involved in this discussion. Mayor Fromm did note that we could look into contracting with Logan.

Mr. Weeks motioned to come out of closed session, seconded by Mr. Flaherty. Vote all yes. 8:27pm.


Tanya Goodwin, Clerk



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: paff@pobox.com

MAY 17, 2012

Hon. Thomas W. Fromm, Mayor and members of the
Swedesboro Borough Council
1500 Kings Highway
Swedesboro, NJ 08085 *(via e-mail only to tgoodwin@swedesboro.comcastbiz.net)*

Dear Mayor Fromm and Council members:

I write both individually and on behalf the New Jersey Libertarian Party's Open Government Advocacy Project to comment on the manner in which the Borough Council goes into nonpublic (i.e. executive or closed) session.

As you are aware, the Senator Byron M. Baer Open Public Meetings Act requires public bodies, such as the Swedesboro Borough Council, to publicly pass a resolution before excluding the public from a meeting. The statute that requires the resolution states:

N.J.S.A. 10:4-13—Closed meetings; resolution to conduct.

No public body shall exclude the public from any meeting to discuss any matter described in subsection 7. b. (10:4-12) until the public body shall first adopt a resolution, at a meeting to which the public shall be admitted:

a. Stating the general nature of the subject to be discussed; and

b. Stating 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.

By way of a recent records request, I received resolutions which purport to authorize executive sessions held by the Borough Council on January 19, 2010, June 21, 2010, January 3, 2011, March 21, 2011 and May 16, 2011. According to Clerk Goodwin, these are the resolutions for the five most recently held executive sessions. Copies of them are attached to this letter for your ready reference.

Those resolutions, which are virtually identical to each other, state the “general nature” of the executive session as discussion of “matters involving pending litigation, collective bargaining agreements, matters involving lease or acquisition of real property or investment of public funds, protecting public safety, and/or personnel.” Notably, the most recent resolution— from May 16, 2011—identifies the general nature as being “related to acquisition of property.”

I don't think that this form of resolution—at least the ones other than May 16, 2011— satisfies N.J.S.A. 10:4-13 because it gives the public no real sense of what is being privately discussed¹. To paraphrase the highest court of another state, a body which only announces “legal matters” or “personnel negotiations” for going into executive session has said nothing. It might have well have stated to the audience, “Ladies and gentlemen, we are going into executive session,” and stopped there. Hinds County Council of Supervisors v. Common Cause of Mississippi, 551 So.2d 107, 114 (MS 1989).

Of course, there can be no dispute that the Borough Council often has legitimate reasons to meet in nonpublic session. Among these reasons is the need to prevent the adverse parties in litigation or contract negotiations from gaining an unfair advantage and to allow members of the governing body to debate and deliberate personnel matters without public scrutiny or participation. But, the need to discuss matters privately should not prevent the public from being informed, as precisely as possible, of the topics that are being privately discussed.

For example, suppose that Swedesboro is being sued by a Mr. Jones who was injured after he slipped and fell on what he claims to be negligently maintained municipal property. Since the lawsuit is already a public record, there is no public purpose served by vaguely describing a private discussion of it as “pending litigation.” Rather, the resolution should at the very least describe the private discussion as “Discussion of slip and fall negligence suit, Jones v. Swedesboro, Docket No. GLO-L-012345-11.” This way, the public has a very good sense of what the Council’s private discussion is about while the ability of the Council to develop its lawsuit strategy is not undermined.

Using the same example, suppose that Jones’ attorney sent the Council’s attorney an offer to fully settle the lawsuit upon the Council’s payment of \$20,000. While the Council would obviously need to discuss how to respond to the offer in private, lest Jones or his attorney would be in the audience witnessing the discussion, there is no reason why the public cannot be

¹ In McGovern v. Rutgers, 418 N.J. Super. 458, 469-70 (App. Div. 2011)¹, 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)).

informed in the N.J.S.A. 10:4-13 resolution that the Council will meet in private to discuss “a settlement offer received from the Plaintiff in the slip and fall negligence suit known as Jones v. Swedesboro, Docket No. GLO-L-012345-11, in which the Plaintiff offers to settle the suit in exchange for the Council paying him \$20,000.” While it may initially seem that this would provide “too much” information to the public, this concern disappears once it is realized that the sole purpose of the exception² that allows litigation matters to be discussed in private is to keep the adverse party to the litigation in the dark regarding the Council’s position.³ Since, in this example, the adverse party (i.e. Jones) already knows that he offered to settle the lawsuit for \$20,000, there is no legitimate reason why the public should not also know of the tendered settlement offer.

As another example, suppose that a personnel matter, such as whether or not a Mrs. Smith, a public works employee, should be disciplined because of repeatedly arriving late to work, is to be discussed in closed session. In such a case, the amount of detail set forth in the N.J.S.A. 10:4-13 resolution should correspond to the amount of detail that the Council and its attorney predict will be publicly disclosed in the closed meeting’s minutes, when those minutes are made public.

The standard that the Council is to use when determining how much information about a personnel matter is to be disclosed in the closed session’s minutes is set forth in South Jersey Publishing Company, Inc. v. New Jersey Expressway Authority, 124 N.J. 478 (1991). That standard is that a) the public needs information if it is properly fulfill its role of evaluating the wisdom of governmental action or a decision not to act, b) that New Jersey’s strong public policy requires that a public body’s actions and decisions to not act be disclosed in the body’s closed meeting minutes along with sufficient facts and information to permit the public to understand and appraise the reasonableness of the body’s determination, and c) to the extent a cognizable privacy interest may be compromised by the required disclosure, the extent of disclosure may be modified through redactions of the minutes, provided the public interest in disclosure is not subverted

Thus, regardless of whether the Council disciplines Ms. Smith or chooses to not impose discipline due to her lateness, the outcome should be recorded in the closed meeting minutes. The question of whether that entry in the minutes should be redacted before the minutes are made public requires a balancing of Ms. Smith’s interest in keeping the disciplinary matter private against the public’s interest in effectively monitoring the Council. If the Council, with counsel’s advice, determines after balancing these interests that the outcome will be published unredacted in the closed session’s minutes (i.e. if the minutes will disclose to the public, e.g. that “Ms. Smith was suspended for three days on account of her habitual lateness”), then the exact

² N.J.S.A. 10:4-12(b)(7) is to prevent adverse parties to litigation and contracts from learning the details of the public body’s negotiation tactics and litigation strategy.

³ See the discussion in Paff v. Washington Township, Docket No. MER-L-2205-07 and Nevin v. Asbury Park City Council, 2005 WL 2847974 (App. Div. November 1, 2005) which are on-line at <http://www.lpcni.org/OGTF/Washington.pdf>. (Nevin begins at page 44 of the PDF file at the link).

nature of the matter (i.e. that "the Council will discuss disciplining Ms. Smith for excessive lateness") should be set forth in the closed meeting's N.J.S.A. 10:4-13 resolution. Inversely, if the Council determines that Ms. Smith's privacy interest exceeds the public's right to know, then less information (e.g. "the Council will discuss disciplining an employee for excessive lateness") should be set forth in the closed meeting's N.J.S.A. 10:4-13 resolution.

In other words, if the officer or employee being discussed doesn't have a privacy interest sufficient to withstand a citizen's request for the executive session minutes, why should not the public know the topic of the executive session prior to it occurring?

In conclusion, I've attached a "model resolution" that I would like the Council to use in the future.

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

Sincerely,

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

John Paff