NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

JOHN PAFF, Plaintiff, v. WASHINGTON TOWNSHIP COUNCIL, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-MERCER COUNTY DOCKET No.:MER-L-2205-07 CIVIL ACTION OPINION

Decided: March 14, 2008

John Paff, plantiff pro se.

Mark M. Roselli, for the defendant (Roselli Griegel, attorneys; Mr. Roselli, on the brief).

FEINBERG, A.J.S.C.

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This matter is before the court on a motion for summary judgment filed by plaintiff, John Paff ("Paff" or "plaintiff") against defendant, Washington Township Council[1] ("Council" or "defendant"). In response, Council has filed a cross motion for summary judgment. Paff is a resident of Franklin Township, New Jersey. The Council is a public body as that term is defined by N.J.S.A. 10:4-8(a).[2]

On October 26, 2006, the Council, during its regular meeting, adopted a resolution excluding the public from discussions of and actions specified as contract negotiations. According to defendant, the Council went into executive session to discuss contract negotiations with a potential vendor to provide health insurance for Township employees and personnel. Thereafter, at 9:09 p.m., the Council met with Joseph DiBella ("DiBella") of Commerce

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[1] It should be noted that Washington Township formally changed its name to Robbinsville Township, effective January 1, 2008. For purposes of this motion, however, the court will refer to the Township as Washington Township.

[2] N.J.S.A. 10:4-8(a) provides, "Public Body means a commission, authority, board, council, committee or any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, or collectively authorized to spend public funds..."

Insurance.[3] During this time, DiBella promoted his company's insurance services and offered to reduce the company's commission to $30,000 if the Council entered into a contract for a period of two years. (Pl.'s Certif. at 17). After the presentation, Council asked DiBella to leave the room. DiBella left the room at 9:28 p.m.

Subsequently, the acting Township Attorney advised the Council that "this is a potential litigation matter." Ibid. The Mayor then discussed "having the two vendors come to the next executive session meeting to give their pitch." Ibid. The Mayor, Township Administrator, and Council "discussed the issue further" and certain issues with regard to Commerce Insurance were also addressed by the Township Administrator. Ibid. At 9:41 p.m., DiBella returned to the room. At this time, he was asked to "come back in two weeks to discuss this further." Id. at Ex. 18. In addition, the Mayor told DiBella that "he'd like to see if Blue Cross/Blue Shield rates are competitive." Ibid. The meeting was then adjourned at 9:44 p.m.

In April 2007, plaintiff filed a records request with Washington Township seeking certain Council executive session meeting minutes, including the minutes from the

[3] This executive session is also referred to as "October 26, 2006 Executive Session Topic #1."

October 26, 2006 executive session. By way of letter dated April 20, 2007, the Clerk of Washington Township ("Clerk") informed plaintiff that certain minutes from the Council's non-public meetings were available, including redacted minutes from the October 26, 2006 executive session. The letter indicated redactions were warranted "since a party involved in the contract negotiations is the subject of potential litigation with the Township and includes matters discussed with the municipal attorney constituting attorney client privilege." Id. at Ex. 6-7. Thereafter, in early May 2007, the Clerk sent these redacted minutes to plaintiff along with the resolution authorizing the executive session.

In response, plaintiff sent a letter to the Clerk dated July 11, 2007. In this communication to the Clerk, Paff objected to the heavily redacted minutes. Moreover, plaintiff alleged the explanations in the April 20, 2007 letter and in the resolution were insufficient to give the public any real sense as to what topics were privately discussed during the executive session. As a result, plaintiff reiterated his request for a copy of the October 26, 2006 executive session meeting minutes. Specifically, plaintiff requested that the minutes be un-redacted or, at

least, "more narrowly redacted," and directed the Clerk to explain any redactions made. Id. at Ex. 2.

On July 17, 2007, the Clerk responded to the supplemental request. In this communication, the Clerk explained why the minutes previously provided were redacted. Specifically, the Clerk indicated:

> Exhibit 10 (Minutes from closed session on October 26, 2006), were redacted at the time of my response to you (April 20, 2007) because the Township of Washington had not made a decision regarding a health benefits broker at that time. It appears that they can now be release and therefore, I will place this set of minutes on the next Township council meeting agenda for their release.
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> [Pl.'s Certif. at Ex. 15.]

Thereafter, on or about July 30, 2007, the Clerk provided plaintiff with un-redacted minutes of the October 26, 2006 executive session.

Ultimately, on August 28, 2007, plaintiff filed a two count complaint against the Council. The complaint alleged: (1) the Council's executive session meeting with DiBella violated the Open Public Meetings Act ("OPMA"), N.J.S.A. 10:4-6, et seq.; and (2) the redacted minutes made available to plaintiff in May 2007 were too heavily redacted. The prayer for relief sought: (1) to declare the Council violated the OPMA by excluding the public from the

portions of the executive session meeting which took place between 9:09 and 9:28 p.m. and between 9:41 and 9:44 p.m.; (2) to enjoin the Council from discussing anticipated or pending litigation or contract matters in non-public sessions when the adverse party to the litigation or contract matter is present; (3) to declare the Council violated the OPMA by too heavily redacting the minutes of the October 26, 2006 executive session provided to plaintiff in May 2007; (4) to enjoin the Council from redacting closed session minutes more heavily than permitted by law; (5) costs of suit; and (6) such other relief as the court deems equitable and just.

On September 14, 2007, Council was served with the complaint. After being served, Council failed to file a responsive pleading. Consequently, on October 31, 2007, plaintiff filed this motion for summary judgment, returnable on December 7, 2007. With consent of the parties, the return date was rescheduled to March 14, 2008.

To support summary judgment, plaintiff represents the record, consisting of meeting minutes and correspondence between the respective parties, presents no factual dispute and is therefore appropriate for disposition.

First, plaintiff argues the Council's October 26, 2006 executive session meeting with a private vendor violated

the OPMA. Specifically, plaintiff asserts opposing parties to municipal contracts, other than collective bargaining matters, are prohibited from attending non-public sessions of a governing body.

Second, plaintiff argues the minutes of the October 26, 2006 executive session should not have contained any redactions of the discussions between defendant and DiBella between 9:09 and 9:28 p.m. and between 9:41 and 9:44 p.m. Plaintiff submits that in providing the redacted version of these minutes defendant violated N.J.S.A. 10:4-14[4].

Third, plaintiff argues there should have been no redactions or, in the alternative, less redactions applied to the minutes regarding the discussions that occurred between 9:28 and 9:41 p.m. Finally, plaintiff seeks costs in bringing this action.

In response, the Council asserts: (1) plaintiff does not have standing to maintain this action; (2) the claim is moot because plaintiff received a copy of the un-redacted minutes from the October 26, 2006 executive session; and (3) the claim that the Council violated the OPMA is

[4] N.J.S.A. 10:4-14 provides: "Each public body shall keep reasonably comprehensible minutes of all of its meetings...which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with section 7 of this act."

unfounded. Therefore, Council submits summary judgment in its favor is appropriate.

Under R. 4:46-2, summary judgment shall be granted if there is "no genuine issue as to any material fact challenged and the moving party is entitled to a judgment or order as a matter of law." See also Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 73 (1954). New Jersey courts have clarified the standard and process employed in a summary judgment motion. The judge must engage in a weighing process analogous to that of a directed verdict and apply the "same evidentiary standard of proof - by a preponderance of the evidence or clear and convincing evidence - that would apply at the trial on the merits." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 533 (1995).

Furthermore, in order to survive summary judgment, the factual dispute must be on material, and not insubstantial, issues. "A non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute." Id. at 529. Instead, the non-moving party has the burden "to make an affirmative demonstration, where the means are at hand to do so, that the facts are not as the movant alleges." Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App. Div. 1962), certif. denied, 37

N.J. 229 (1962). Moreover, the facts in the complaint, and all reasonable inferences drawn therefrom, must be "viewed in the light most favorable to the nonmoving party." Brill, supra, 142 N.J. 520, 533 (1995).

A.

STANDING

As a threshold matter, the court must address whether plaintiff has standing to maintain this action. Challenging standing, defendant contends plaintiff does not reside, work or seek employment within the Township. As a result, defendant submits plaintiff does not have a stake in the Council's choice of an insurance broker or health insurance plan for the Township employees. Moreover, the Council contends plaintiff will suffer no adverse effects from: (1) any specific insurance broker or carrier selected by the Township; or (2) from a non-public meeting conducted by the Council with a prospective vendor for a contract.

The concept of standing refers to a litigant's "ability or entitlement to maintain an action before the court." Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 80 (App. Div. 2001). The "essential purpose" of the standing doctrine in New Jersey is to:

> [A]ssure that the invocation and exercise of judicial power in a given case are appropriate. Further, the

> relationship of plaintiffs to the subject matter of the litigation and to other parties must be such to generate confidence in the ability of the judicial process to get to the truth of the matter and in the integrity and soundness of the final adjudication. Also, the standing doctrine serves to fulfill the paramount judicial responsibility of a court to seek just and expeditious determinations on the ultimate merits of deserving controversies.
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> [N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 82 N.J. 57, 69 (1980).]

"New Jersey cases have historically taken a much more liberal approach on the issue of standing than have the federal cases." Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 101 (1971). "Unlike the Federal Constitution, there is no express language in New Jersey's Constitution which confines the exercise of our judicial power to actual cases and controversies." Id. at 107. Nevertheless, the New Jersey Supreme Court observed that a proper exercise of judicial power precludes rendering "advisory opinions or function[ing] in the abstract." Ibid. As a corollary to that principle, courts will not "entertain proceedings by plaintiffs who are 'mere intermeddlers' or are merely interlopers or strangers to the dispute." Ibid. In N.J. State Chamber of Commerce, supra, the Court again stressed that our standing rules

serve to preclude actions initiated by persons whose relation to the dispute may be described as "total strangers or causal interlopers," a threshold the court described as "fairly low." 82 N.J. at 68.

Thus, the Court has "consistently held that in cases of great public interest, any 'slight additional private interest' will be sufficient to afford standing. Salorio v. Glaser, 82 N.J. 482, 491 (1980). "[A] plaintiff's particular interest in the litigation in certain circumstances need not be the sole determinant. That interest may be accorded proportionately less significance where it coincides with a strong public interest." N.J. State Chamber of Commerce, supra, 82 N.J. at 68. In Al Walker, Inc. v. Stanhope, 23 N.J. 657 (1957), the Court quoted with approval from Hudson Region County Retail Liquor Stores, Ass'n v. Bd. of Comm'rs of Hoboken, 135 N.J.L. 502, 510 (E&A 1947), that "it takes but slight private interest, added to and harmonizing with the public interest to support standing to sue."

The court is satisfied plaintiff has standing to maintain this action. N.J.S.A. 10:4-16 provides:

> **Any person, including a member of the public,** may apply to the Superior Court for injunctive orders or other remedies to insure compliance with the provisions of this act, and the court

> shall issue such orders and provide such remedies as shall be necessary to insure compliance with the provisions of this act.
>
> [N.J.S.A. 10:4-16 (emphasis added).]

N.J.S.A. 10:4-16 specifically confers standing upon plaintiff to bring and maintain this action. As a member of the public, plaintiff has brought this action to insure defendant's compliance with OPMA. Thus, plaintiff falls within the purview of the statute and has standing.

In addition, as stated above, the threshold for determining whether a party can establish standing is "fairly low." As a citizen of the State of New Jersey, plaintiff has an interest in whether local government is following the procedures delineated in the OPMA to ensure the integrity of its actions. Consequently, plaintiff has a sufficient private interest in the outcome of this litigation. This is coupled with a strong public interest to see that the OPMA is complied with by governmental bodies such as defendant. These interests are sufficient to confer standing upon plaintiff.

Measuring plaintiff's "status in this case against the essential purposes of the standing doctrine in New Jersey [which is] to assure that the invocation and exercise of judicial power in a given case are appropriate," the court

concludes that "the relationship of plaintiffs to the subject matter [is]...such to generate confidence in the ability of the judicial process to get to the truth of the matter and in the soundness of the final adjudication." N.J. State Chamber of Commerce, 82 N.J. at 69.

B.

OPEN PUBLIC MEETINGS ACT

Plaintiff argues the October 26, 2006 executive session held by the Council was in violation of the OPMA. Specifically, plaintiff submits since DiBella, the opposing party to the potential contract, was present and participated in the closed session meeting, the exemption delineated in N.J.S.A. 10:4-12(b)(7) does not apply. Consequently, plaintiff asserts Council's discussions with DiBella should have been in an open session.

To support this position, plaintiff relies on the unpublished opinion in Nevin v. Asbury Park City Council, 2005 WL 2847974, (App. Div. decided November 1, 2005). In Nevin, the Appellate Division held the exemption in N.J.S.A. 10:4-12(b)(7) is not applicable to "contract negotiations with the opposing party but only...to discussions *about* contract negotiations by the public body." Id. at *2 (emphasis in original). Plaintiff submits that although the Nevin decision is not binding on this

court, the case is analogous to this matter and the reasoning set forth in the decision should be adopted by this court.

Defendant refutes the notion that the executive session does not fall with the N.J.S.A. 10:4-12(b)(7) exception. Specifically, defendant argues the October 26, 2006 executive session involved contract negotiations with a potential vendor and, therefore, falls within the applicable exception.

In addition, defendant argues that its meeting with DiBella in executive session was proper because DiBella disclosed the terms his firm was extending to the Township. Defendant asserts that if the content of these terms would have been revealed to competitors and the general public, it would give others an unfair advantage in negotiations as well as putting the Township at a disadvantage in negotiations. Moreover, defendant posits its discussion of these terms could have been similarly considered in an executive session if DiBella was not present and presented them by way of written proposal. As a result, the Council asserts DiBella's presence at the session is irrelevant because the subject matter discussed necessitated closing the session to the public.

The OPMA requires that "all meetings...be open to the public at all times." S. Jersey Publ'g Co. Inc. v. New Jersey Expressway Auth., 124 N.J. 478, 490 (1991)(quoting N.J.S.A. 10:4-12(a)). However, the OPMA does allow for executive, closed session meetings in a limited number of circumstances, including negotiations concerning pending or anticipated litigation or any matters "falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer." N.J.S.A. 10:4-12(b)(7). Specifically, N.J.S.A. 10:4-12(b)(7) provides:

> A public body may exclude the public only from that portion of a meeting at which the public body discusses:
>
> ...
>
> (7) Any pending or anticipated litigation or contract negotiation other than in subsection b.(4) here in which the public body is, or may become a party.
>
> Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.
>
> [N.J.S.A. 10:4-12(b)(7).]

Prior to any such closed session meeting, a resolution must be adopted stating both the subject that will be discussed at the meeting and when the information will be

available to the public. N.J.S.A. 10:4-13. If the public body meets in a private session under the OPMA, the minutes of such meeting will generally be made promptly available for the public, N.J.S.A. 10:4-14, unless disclosure of any materials would "subvert the purpose of [a] particular exception," such as the attorney-client privilege. Payton v. N.J. Tpk. Transit Auth., 148 N.J. 524, 557 (1997).

Initially, the court notes the Council complied with N.J.S.A. 10:4-13 in authorizing the October 26, 2006 executive session. A resolution was adopted by the Council indicating the subject matter that was to be discussed and when the information would be made available to the public. Specifically, the resolution stated:

> 1. The public shall be excluded from discussions of and action hereinafter specified as contract negotiations, personnel.
>
> 2. It is anticipated at this time the above stated subject matter will be made public when it is determined that the need for confidentiality no longer exists.
>
> [Pl.'s Certif. at Ex. 10.]

Next, the court finds the Council's executive session meeting with DiBella from 9:09 p.m. to 9:28 p.m. and then again between 9:41 p.m. and 9:44 p.m. was in violation of the OPMA. The reasoning in the Nevin case, although not

binding on this court, supports such a conclusion. As stated by the court:

> In our view, exception b(7) does not relate to contract negotiations with the opposing party but only, as plaintiffs contend, to discussions *about* contract negotiations by the public body. The inclusion of "pending or anticipated litigation" in the same subsection strongly supports this conclusion. *See Gandolfi v. Town of* Hammonton, 367 *N.J.Super.* 527, 539 (App.Div.2004) (propriety of adverse attorney being present in closed meeting "may be in doubt" in light of statements by the Court in *Payton v. New Jersey Tpk. Auth.*, 148 *N.J.* 524, 558 (1997)). In both instances, the public body would not want to expose its litigation or negotiation strategy in an open session to which the opposing party would be privy. Indeed, this conclusion is made almost inescapable by subsection b(4), which expressly allows the opposing party to a collective bargaining agreement to be present in a non-public session. No such language appears in b(7) which itself exempts collective bargaining discussions from the general rubric of contract negotiations.
>
> [Nevin, supra at *2.]

In this case, the Council met with DiBella, an opposing party to a potential contract, in an executive session. The discussions that took place between them should have been discussed in an open session. To illustrate, from 9:09 p.m. to 9:28 p.m., DiBella "pitched" his company's insurance services in order to obtain the

Township contract. The Council was not discussing its negotiation strategy or any other aspect of the negotiation. Rather, DiBella was merely promoting his company's services to the Council. As stated above, the exemption applies to discussions about contract negotiations by the public body, not contract negotiations with the opposing party. This discussion clearly falls outside the exemption.

However, the court is satisfied the discussion the Council engaged in after DiBella stepped out of the room does fall within the b(7) exemption. From 9:28 p.m. to 9:41 p.m., the Council discussed DiBella's presentation and certain other issues with regard to the negotiation. In addition, the Council was advised by the Township Attorney that "this is a potential litigation matter." This discussion clearly falls within the exemption since the Council was talking about the contract negotiations, potential litigation, and possible strategies. Therefore, this meeting was properly conducted in a closed session.

For much of the same reasons articulated above, the discussions between the Council and DiBella between 9:41 p.m. and 9:44 p.m. should have been conducted in an open session. At this time, the Council asked DiBella to "come back in two weeks" and advised him that they would like to

see if another company's rates are competitive. There was no indication any contract negotiations or other strategies were discussed. As a result, this discussion as well does not fall within the exemption.

N.J.S.A. 10:4-15(a) provides that "[a]ny action taken by a public body at a meeting which does not conform with the provisions of this act [the OPMA] shall be voidable in a proceeding in lieu of prerogative writ[s]..." This statute further provides that when action taken by a public body does not conform to the provisions of this act, it "may take corrective or remedial action by acting de novo at a public meeting held in conformity with this act..." This remedial section of the act "contemplate[s] maximum flexibility in rectifying governmental action which falls short of the standards of openness prescribed for the conduct of official business." Polillo v. Deane, 74 N.J. 562, 579 (1977). "While the purpose of the act is to secure public access to the meetings of public bodies, N.J.S.A. 10:4-15 'provide[s] a means to balance the rights of an informed citizenry against the need of government to function effectively.'" Council of N.J. State Coll. Locals v. Trenton State Coll. Bd. of Trustees, 284 N.J. Super. 108, 115 (Law Div. 1995).

Although a portion of the executive session of October 26, 2006 violated the OPMA, no "action" was taken at the meeting which is subject to challenge. The Council did not award a contract to any company or vote in support of any specific company. Rather, the Council merely listened to DiBella's proposal and advised him other firms would be considered. In addition, the Township fully released un-redacted minutes of the executive session to plaintiff in July 2007. In the court's view, the fact that no action was taken by the Council and the subsequent release of the minutes cured any violation of the OPMA.

However, the remedies available under the OPMA are not limited to invalidating official action, but may include equitable, declaratory or other kinds of relief. Specifically, N.J.S.A. 10:4-16 provides:

> Any person, including a member of the public, may apply to the Superior Court for injunctive orders or other remedies to insure compliance with the provisions of this act, and the court shall issue such orders and provide such remedies as shall be necessary to insure compliance with the provisions of this act.
>
> [N.J.S.A. 10:4-16.]

Pursuant to this statute, a court may order prospective compliance with the OPMA and an aggrieved party may proceed by motion to enforce litigant's rights under R. 1:10-3 when

there is alleged failure to comply with the court's order. See Loigman v. Comm. of Middletown, 308 N.J. Super. 500, 503 (App. Div. 1998).

Remedies are not limited to meetings where official action is taken. Ibid. N.J.S.A. 10:4-16 can be invoked to question meetings even where no action is taken, but where some violation of the OPMA has occurred, such as exclusion of all or some part of the public. Loigman, supra, 308 N.J. Super. at 503. A court order directing prospective compliance with a part of the OPMA is fully enforceable under R. 1:10-3 and need not await the filing of a new complaint. Ibid. To hold otherwise would make illusory the prospective injunctive remedies under the OPMA. Ibid.

Although no official action was taken at the October 26, 2006 executive session held in violation of the OPMA, in accordance with N.J.S.A. 10:4-16 and the applicable case law, the court hereby deems the following relief appropriate: (1) a declaration the Council violated the OPMA by excluding the public from the portions of its October 26, 2006 executive session that occurred between 9:09 p.m. and 9:28 p.m. and between 9:41 p.m. and 9:44 p.m.; and (2) prospectively enjoining the Council from discussing contract negotiations in a non-public session when the adverse party to the contract is present to insure

compliance with the OPMA, excluding collective bargaining matters as provided for in N.J.S.A. 10:4-12(b)(4).

C.

MOOTNESS

The next issue is whether defendant violated the OPMA by providing heavily redacted minutes from the October 26, 2006 executive session is precluded by the mootness doctrine.

Consistent with the aforementioned principle that New Jersey courts will not render advisory opinions or exercise its jurisdiction in the abstract, courts will not entertain cases when a controversy no longer exists and the disputed issues have become moot. De Vesa v. Dorsey, 134 N.J. 420, 428 (1993). A case is technically moot when the original issue presented has been resolved, at least concerning the parties who initiated the litigation. Ibid.

In some circumstances, however, courts will entertain a case despite its mootness. Specifically, courts will entertain a case that has become moot when the issue is of significant public importance and is likely to recur. In re Conroy, 98 N.J. 321, 342 (1985). As stated by the New Jersey Supreme Court, "[w]hile we ordinarily refuse to examine moot matters due to our reluctance to render legal decisions in the abstract and our desire to conserve

judicial resources, we will rule on such matter where they are of substantial importance and are capable of repetition yet evade review." De Vesa, supra, 134 N.J. at 428.

The court agrees the second count of the complaint is moot. By plaintiff's own admissions, plaintiff was provided an un-redacted copy of the minutes of the October 26, 2006 executive session in July 2007. Moreover, these un-redacted minutes were provided to plaintiff prior to the institution of this action.

As recounted in the statement of facts, the Washington Township Clerk provided plaintiff with an explanation as to why the minutes were redacted when they were initially provided. Specifically, the Clerk explained redactions were warranted because "a party involved in the contract negotiations is the subject of potential litigation with the Township and includes matters discussed with the municipal attorney constituting attorney client privilege." (Pl.'s Certif. at Ex. 6-7).

However, by July 2007, all issues surrounding why the redactions were necessary were resolved. Pursuant thereto, un-redacted copies of the minutes were provided to plaintiff. Since plaintiff has received what he sought, a copy of the un-redacted minutes, his arguments regarding same are moot. Moreover, for the reasons stated in part B,

even assuming the Council impermissibly redacted the meeting minutes provided to plaintiff in May 2007 in violation of the OPMA, the subsequent release of a copy of the un-redacted minutes to plaintiff cured any violation. Therefore, the court is satisfied count two of the complaint should be dismissed.

Accordingly, defendant's motion for summary judgment is granted as to the second count of the complaint.

D.

COSTS

Plaintiff's application for costs is denied without prejudice. Under R. 4:42-8, a prevailing party in litigation is normally entitled to costs. R. 4:42-8 provides in pertinent part:

> Parties Entitled. Unless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party. The action of the clerk in taxing costs is reviewable by the court on motion.
>
> [R. 4:42-8(a).]

However, in this case, plaintiff has not submitted a certification or affidavit detailing the costs incurred. Therefore, plaintiff's entitlement to same cannot be adequately addressed at this time. As a result, the court will permit plaintiff ten days to submit a certification or

affidavit, to the court and opposing counsel, in support of an application for fees. Upon receipt of same, the court will then entertain the application for costs.

E.

CONCLUSION

For the foregoing reasons, the courts finds the discussions between 9:09 p.m. and 9:28 p.m. and 9:41 p.m. to 9:44 p.m. of the October 26, 2006 executive session held by the Council were in violation of the OPMA. Even though these portions of the meeting were held in violation of the OPMA, no action was taken by Council and the Township has since released un-redacted minutes of the meeting, thereby curing any violation of the OPMA.

However, in accordance with N.J.S.A. 10:4-16, the court hereby prospectively enjoins the Council from violating the OPMA by discussing contract matters in a non-public session when an adverse party to the contract is present. Accordingly, plaintiff's complaint is hereby dismissed. Counsel for defendant shall prepare an order consistent with the findings set forth in this opinion.