

JOHN P. SCHMIDT,

Plaintiff

v.

SWEDESBORO WOOLWICH BOARD OF
EDUCATION and MIKE GRIGGEL,

Defendants

SUPERIOR COURT OF NEW JERSEY
GLOUCESTER COUNTY
LAW DIVISION

DOCKET N. L-862-14

CIVIL ACTION

OPINION

Ted M. Rosenberg for Plaintiff
R. Taylor Ruilova (Comegno Law Group) for Defendants

Curio, A.J.S.C.

This matter is before the court for a determination regarding redactions from certain Swedesboro-Woolwich Board of Education executive session meeting minutes.

Plaintiff filed an Order to Show Cause alleging violation of the Open Public Records Act on June 16, 2014. Defendants filed an answer and affirmative defenses on August 20, 2014.

Upon the filing of the Complaint, defendants supplied the requested records, but in redacted form together with a privilege log.

The parties have stipulated that the defendants violated OPRA by failing to comply with plaintiff's OPRA request in a timely fashion. The parties have stipulated that the plaintiff shall receive the agreed-upon sum of \$3000 as total reimbursement for all attorney's fees and costs associated with this matter.

The remaining dispute involves whether the redactions made were appropriate. The parties have waived oral argument and submitted the contested documents in unredacted form for the court's in camera review together with the privilege log prepared by defendants.

Upon consideration of the arguments of counsel and review of the contested documents, comparing the unredacted to the redacted and considering the reasons for redaction articulated by defendants on the privilege log, the court finds that all disputed redactions are appropriate and therefore are not violative of OPRA. This is so because each of the contested redactions deal with discussions during executive

session concerning personnel issues or are advisory, consultative or deliberative in nature. In some instances the redactions are appropriate for both reasons.

The court is satisfied that, consistent with the itemization provided in the privilege log, where indicated, the redaction, did, in fact deal with employment, potential appointment, evaluation of performance or similar personnel matters. Likewise, consistent with the itemization provided in the privilege log, where indicated, the redaction did, in fact, deal with general policy discussions, were pre-decisional and consisted of opinions, recommendations, questions, give and take constituting the deliberative process designed to formulate policy determinations. Accordingly, where raised, the defendants have properly invoked the deliberative process privilege.

The deliberative process privilege "permits the government to withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated." (citation omitted) The essence of the privilege is simple, its rationale built on powerful logic. ...the privilege is necessary to ensure free and uninhibited communication within governmental agencies so that the best possible decisions can be reached...

The justification for a deliberative process privilege also arises out of the desire to prevent disclosure of proposed policies before they have been fully vetted and adopted by a government agency, (citation omitted) as well as the desire to prevent the confusion that could result from release of information concerning matters that do not bear on an agency's chosen outcome, *see id. at 772-73. Education Law Center v. New Jersey Department of Education* 198 N1.274 (2009) at 285

Plaintiff's Complaint also alleges entitlement to unredacted records under the Common Law Right of Access. Since plaintiff has not demonstrated that his interest in disclosure outweighs the governmental entity's interest in non-disclosure, this alternate theory fails, too.

The opinion of the Court in Education Law Center, supra, clearly articulates the interest in non-disclosure and it is substantial.

In conclusion, defendants' redactions were appropriate and no further document disclosure is ordered.