

NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

Kean Federation of Teachers, et al.,

Plaintiffs,

v.

Board of Trustees of Kean University,
et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

OCEAN COUNTY

DOCKET NO. OCN-L-179-14

CIVIL ACTION

OPINION

Argued: September 15, 2014

Decided: September 18, 2014

Vincent J. Grasso, A.J.S.C.

Robert A. Fagella, Esq. appearing on behalf of the plaintiffs, Kean Federation of Teachers, et al.
(Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C.)

James P. Lidon, Esq. appearing on behalf of the defendants, Board of Trustees of Kean
University, et al. (McElroy, Deutsch, Mulvaney & Carpenter, LLP)

Summary

In this action in lieu of prerogative writs, plaintiffs Kean Federation of Teachers, Jacqueline Massa, and Anna Demers seek to invalidate action taken by defendants Board of Trustees of Kean University at a public meeting held on December 7, 2013 at the campus in Ocean County for failure to comply with the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 to -21. The suit also seeks to compel the production of public documents related to that meeting under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, the common law right of access, and OPMA.

In count one, plaintiffs seek to void the nonrenewal of plaintiffs' employment contracts because of the Board's failure to comply with OPMA's notice provisions per Rice v. Union County Regional High School Board Of Education, 155 N.J. Super. 64 (App. Div. 1977), certif. denied, 76 N.J. 238 (1978) (Rice notices). In count two, plaintiffs allege that the Board violated OPRA and the common law right of access by denying access to draft resolutions and committee reports and violated OPMA by failing to distribute the draft resolutions and committee reports prior to the meeting. Count three pleads that the Board's alleged violations of OPRA and OPMA violated New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -6.2. In count four, plaintiffs allege that the Board's failure to make the meeting minutes of closed session promptly available violated OPMA and its heavy redaction of the minutes violated OPMA, OPRA, and the common law.

The court issued an opinion on the parties' various motions on June 17, 2014. As to the First Count of the Second Amended Complaint, the court denied defendants' motion to dismiss under R. 4:6-2(a) for lack of subject-matter jurisdiction; the court found that defendants' failure to issue Rice notices to affected faculty violated OPMA; the court denied plaintiffs' summary judgment as to voiding the Board's action based on the violation; the court denied defendants' cross-motion for summary judgment seeking to dismiss count one. As to the Second Count, the court granted defendants' motion to dismiss under R. 4:6-2(e) in part in that defendants did not violate OPRA in its denial of access to the draft resolutions. Regarding the alleged written reports, the court ordered defendants to submit supplemental certifications addressing whether these reports exist. As to the Third Count, the court granted defendants' motion to dismiss for failure to state a claim. Regarding the Fourth Count, the court denied defendants' motion to dismiss for failure to state a claim and requested the parties to submit supplementary briefs.

In summary, the issues that remain outstanding following the court's June 17, 2014 ruling are: (1) count two, plaintiffs' right to access alleged written committee reports in connection with the Board's December 7, 2013 meeting under OPRA, the common law right of access, and OPMA; (2) count two, plaintiffs' right to access draft resolutions that were referenced in the draft agenda for the Board's December 7, 2013 meeting under the common law right of access and OPMA; (3) count four, plaintiff's allegation regarding the closed session minutes of the Board's December 7, 2013 meeting, that the delay between the request and the receipt was improper under OPMA; (4) count four regarding plaintiff's objection to the redactions of the closed session minutes under OPMA, OPRA, and the common law.

Background

The court gave a detailed factual background in its June 17, 2014 opinion. Accordingly, the court does not do so at length in this opinion. Instead, the court will recite only those facts found in the record that are germane to the remaining issues.

On December 2, 2013, the University provided notice to the public that its Trustees would conduct a meeting on December 7, 2013. The agenda provided a generalized list of topics that the Trustees would discuss at the meeting. Among those topics, the agenda listed "personnel recommendations." The complaint states that at the meeting and in the published agenda, the Board referenced several reports prepared by the Board's subcommittees. The complaint also alleges that the Board received several draft resolutions to vote on. The Board declined to grant plaintiffs access to the draft resolutions and the reports based on the deliberative process privilege.

As to plaintiffs' request of copies of the closed session minutes of the December 7, 2013 meeting, the Board did not publish the redacted minutes until March 14, 2014, which was ninety-

seven days (97) after the public meeting took place. The court has reviewed *in camera* the unredacted minutes.

Findings

Committee Reports

In Count two of the Second Amended Complaint, plaintiffs seek access to alleged written committee reports in connection with the Board's December 7, 2013 meeting under OPRA, the common law right of access, and OPMA. In response to the court's order, defendants submitted certifications of Trustees Bakke, Baltimore, D'Agostino, Repollet, and Morell stating that the reports at issue were "brief oral reports" presented during the public session of the meeting and that the committees neither prepared nor presented written reports to the Board. Additionally, defendants submitted a certification of the University's Custodian of Records (Ms. Barkley-Haelig) describing that her inquiries concerning the requested reports found no written reports but brief oral reports made by the committee chairs during the public session of the meeting. Plaintiffs have provided no evidence to the contrary and did not dispute the Board members' certifications at oral argument. Therefore, the court finds that the certifications establish that there are no government records or common law public records responsive to plaintiffs' request. As a result, the court finds that there is no violation of OPRA, the common law right of access, and OPMA regarding the requested written reports.

Draft Resolutions

1. Common Law Right of Access

In Count two, plaintiffs allege that the draft resolutions distributed to the Board for the December 7, 2013 meeting should have been released under either the common law right of access or OPMA. Plaintiffs argue that the draft resolutions which the Board intended to vote

upon are important to plaintiffs and fall within the scope of documents subject to the common law access. Plaintiffs concede that the draft resolutions inform the public of what the Board of Trustees tentatively intends to address at the public meeting and work as a starting point of a discussion that the Board will accept, reject, or modify. Although defendants agree that the draft resolutions are “public records” within the common law definition and plaintiffs have interest in seeking the draft resolutions, defendants contend that the draft resolutions are confidential and therefore exempt under the common law deliberative process privilege.

The common law right of access involves a two-step inquiry. First, a plaintiff must establish an interest in the public record, including either “a wholesome public interest or a legitimate private interest.” Education Law Center v. N.J. Dept. of Educ., 198 N.J. 274, 302 (2009). Second, a plaintiff’s interest in disclosure of the relevant documents must outweigh the State’s interest in non-disclosure. Education Law Center, supra, 198 N.J. at 303. In performing the balancing function, a court should consider “the extent to which agency self-evaluation, program improvement, or other decisionmaking will be chilled by disclosure.” Loigman v. Kimmelman, 102 N.J. 98, 113 (1986). The deliberative process privilege protects public interest in fostering free and open comments within government agencies and preventing the release of proposed policies before a board considers them. Education Law Center, supra, 198 N.J. at 279.

In Education Law Center, New Jersey Supreme Court held that the public interest underlying the deliberative process privilege outweighed the plaintiff’s common law interest in access and accordingly, exempted the document at issue from release under the common law. Education Law Center, supra, 198 N.J. at 304. The Court concluded that a record was entitled to deliberative process protection when it was used in the decision-making process and its disclosure would reveal deliberations that occurred during that process. Education Law Center,

supra, 198 N.J. at 280. The Court held that a court must assess a document against the backdrop of an agency's deliberative efforts in order to determine a document's nexus to that process and its capacity to expose the agency's deliberative processes. Education Law Center, supra, 198 N.J. at 281.

Here, the court finds that the Board may withhold the draft resolutions based on the deliberative process exemption under the common law. The court, in its June 17, 2014 opinion, found that the draft resolutions are privileged because they are pre-decisional recommendations for action by the Board and therefore constitute "inter-agency or intra-agency advisory, consultative, or deliberative material[s]" pursuant to N.J.S.A. 47:1A-1.1. This OPRA exemption encompasses the common law deliberative process privilege, which exists to: (1) foster "free and open comments within government agencies;" and (2) "prevents the release of proposed policies before they have been fully scrutinized and implemented by the governmental agency." Tractenberg v. West Orange, 416 N.J. Super. 354, 366 (App. Div. 2010) (citations omitted); Education Law Center, supra, 198 N.J. at 284. Therefore, the court's reasoning of OPRA exemption applies to the common law right of access analysis as well.

Neither party disputes that plaintiffs had an interest in obtaining the draft resolutions. Nevertheless, the court finds that the draft resolutions reflect the Board's deliberations in its voting on resolutions and therefore reveal the Board's thinking on matters in its decision-making process. The disclosure of the draft resolutions would impede the Board's functions by discouraging open and frank discussion and recommendations and chill the Board's future decision-making. Moreover, draft resolutions may be modified, changed or rejected in their entirety. Therefore, the court holds that the public interest in maintaining confidentiality over the draft resolutions outweighs plaintiffs' common law interest in access.

2. OPMA

In Count two, plaintiffs additionally allege that the draft resolutions are part of the proposed agenda for the December 7, 2013 Board meeting and that defendants violated the “adequate notice” requirement of N.J.S.A. 10:4-8(d) by failing to publish the draft resolutions before the meeting. Defendants contend that its annual publication of “meeting dates, times and places” pursuant to N.J.S.A. 10:4-18 satisfies its advance disclosure obligations under N.J.S.A. 10:4-8.

N.J.S.A. 10:4-8(d) provides:

“Adequate notice” means written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting Where annual notice or revisions thereof in compliance with section 13 of this act¹ set forth the location of any meeting, no further notice shall be required for such meeting.

[N.J.S.A. 10:4-8(d).]

N.J.S.A. 10:4-18 states as follows:

At least once each year, within 7 days following the annual organization or reorganization meeting of a public body, or if there be no such organization or reorganization meeting in the year, then by not later than January 10 of such year, every public body shall post and maintain posted throughout the year . . . a schedule of the regular meetings of the public body to be held during the succeeding year. Such schedule shall contain the location of each meeting to the extent it is known, and the time and date of each meeting.

[N.J.S.A. 10:4-18.]

In Witt v. Gloucester County Board of Chosen Freeholders, New Jersey Supreme Court held that publication of an agenda is required only in those instances where no annual notice has been provided in accordance with N.J.S.A. 10:4-18. Witt v. Gloucester County Bd. of Chosen Freeholders, 94 N.J. 422, 426 (1983). By interpreting N.J.S.A. 10:4-8(d), the Court concluded

¹ N.J.S.A. 10:4-18.

that “notice of at least 48 hours” in compliance with N.J.S.A. 10:4-8(d) is required only in those situations where the public body has failed to provide annual notice in compliance with N.J.S.A. 10:4-18. Witt, supra, 94 N.J. at 432.

Here, the court finds that the University is not required to publish an agenda for the meeting at issue. Plaintiffs’ reliance on Opderbeck v. Midland Park Board of Education is misplaced, because the defendant there admitted its failure in complying the annual notice requirement under N.J.S.A. 10:4-18 due to a clerical error. Opderbeck v. Midland Park Bd. Of Educ., Docket No. BER-L-8571-13, 2013 N.J. Super. Unpub. LEXIS 3010. In Opderbeck, the defendant published its annual meeting notice in one newspaper instead of two as required by N.J.S.A. 10:4-18. In contrast, neither party here disputes that the University has complied with the annual notice requirements of N.J.S.A. 10:4-18 for the December 7, 2013 meeting. As a result, the court holds that the University did not violate the “adequate notice” requirement of N.J.S.A. 10:4-8(d) by publishing the annual notice of the meeting in compliance with N.J.S.A. 10:4-18 without providing the draft resolutions in its 48-hour notice.

Closed Session Minutes – Delay

In Count four, plaintiffs claim that defendants violated the “promptly available” requirement of N.J.S.A. 10:4-14 by not releasing the minutes of the executive session meeting of December 7, 2013 until March 11, 2014. The Board argues that draft minutes without the Board’s approval is not “government record” under OPRA. The Board’s chairperson, Ada Morell, through her certification establishes that in recent years the Board generally conducts five (5) regularly scheduled meetings during each academic year, which covers roughly a ten (10)-month period running from September to June. Morell states that for the 2013-2014 academic year, the Board held meetings on September 16, 2013; December 7, 2013; March 3,

2014; May 12, 2014; and June 23, 2014. According to Morell, it has been the Board's practice to consider for approval at each meeting the minutes of the immediately previous meeting. In the case at hand, that practice resulted in the minutes of the December 7, 2013 meeting being approved at the next regularly scheduled meeting of March 3, 2014 and released on March 11, 2014, which was six (6) days after the approval. Defendants assert that by releasing the requested minutes within six business days after the approval, the Board complies with the requirements under N.J.S.A. 10:4-14. Therefore, at issue is whether the passage of ninety-seven (97) days taken for the Board to approve the minutes satisfies the statutory requirement of OPMA under N.J.S.A. 10:4-14.

N.J.S.A. 10:4-14 provides:

Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, 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.

[N.J.S.A. 10:4-14.]

In Matawan Regional Teachers Association v. Matawan-Aberdeen Regional Board of Education, the court noted that although there is no definition of "promptly available," a court should construe it in light of the spirit of the legislation and the common sense of the situation. Matawan Reg'l. Teachers Assoc. v. Matawan-Aberdeen Reg'l. Bd. of Educ., 212 N.J. Super. 328, 331 (Law Div. 1986). The court listed three ways that the "prompt availability" requirement implements the OPMA's purpose:

1. Enabling those attending a meeting to know what occurred at prior meetings. This is particularly important if successive meetings deal with related issues, as here.
2. Providing all persons with the opportunity to take action prior to the next meeting of the public body.

3. Informing persons, who might be aggrieved by actions of the public body and enabling them to take appropriate and timely steps to appeal or otherwise respond.

[Ibid.]

The court indicated that a court must arrive at a proper standard for “prompt availability” in light of the particular facts by marshalling and weighing relevant factors. Matawan, supra, 212 N.J. Super. at 335. The court also pointed out that the board’s obligation is to adapt to the standard and to plan its employees’ assignment accordingly. Matawan, supra, 212 N.J. Super. at 333. The factors that the court considered in Matawan are as follows:

1. Prior experience in the publication of board minutes.
2. The subject matter of the minutes and its importance to the association and others directly affected by board action.
3. The subject matter of the minutes and its importance to the public, in general.
4. The intervals at which regular meetings were scheduled.
5. Whether meetings complained of were regularly scheduled or were, because of some exigency, held so close together that the board could not reasonably be expected to abide by the act’s requirement.

[Ibid.]

In Matawan, most of the meetings were scheduled every two weeks. Matawan, supra, 212 N.J. Super. at 334. Upon examination of these factors, the court ordered that the minutes requested must be available within two weeks after any regular meeting and if successive meetings involving the same subject matter are held at intervals shorter than two weeks, the board should make the minutes of the earlier meeting available in advance of the later one. Ibid.

Moreover, draft meeting minutes without a board’s approval are not “governmental records” under OPRA and are not the formal minutes subject to N.J.S.A. 10:4-14. O’Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534, 538–39 (App. Div. 2007), certif. denied, 2007 N.J. LEXIS 997 (2007). They are pre-decisional recommendations for action by the Board and therefore constitute “inter-agency or intra-agency advisory, consultative, or deliberative

material[s]” pursuant to N.J.S.A. 47:1A-1.1, which encompasses the common law deliberative process privilege. O’Shea, supra, 391 N.J. Super. at 538; Tractenberg, supra, 416 N.J. Super. at 366; Education Law Center, supra, 198 N.J. at 284.

Here, the court finds that the “promptly available” requirement of N.J.S.A. 10:4-14 was not met by releasing the approved closed session minutes ninety-seven (97) days after the meeting. The court is mindful that OPMA provides no temporal framework to public bodies regarding their statutory obligation to make approved minutes of their meeting “promptly available.” The trial court in the Matawan case endeavored to define “promptly available” and observed that the literal meaning of the term made “no sense when applied to the act” as public bodies “cannot make minutes available immediately upon conclusion of a meeting.” Matawan, supra, 212 N.J. Super. at 331. If the Legislature had intended that public bodies adopt their minutes within a prescribed time period, such as within thirty (30) days, the statute would so provide.

In light of no specific statutory requirement, the custom and practice of a particular public body must be afforded some consideration, as long as they are reasonable. The trial court in the Matawan case ordered that the minutes requested must be available within two (2) weeks after any regular meeting because the Matawan-Aberdeen Regional Board of Education met every two (2) weeks. Matawan, supra, 212 N.J. Super. at 334. In the instant case, the Board’s schedule is quite different as it schedules five (5) meetings in the academic year, which runs from September until June. The scheduling of five (5) meetings during this ten (10) month period is a presumptively valid timeframe in order for the Board to conduct and complete its business.

Nevertheless, it is the court’s view that the passage of ninety-seven (97) days fails to satisfy the “prompt availableness” requirement. If a public body meets only once or twice a year,

then arguably some steps need to be taken to generate approved minutes in a more timely fashion. Although such is not the case here, the delay of ninety-seven (97) days is simply not prompt under the circumstances here. The minutes at issue contains subject matters that are important to the teachers directly affected by the Board action. The delay of ninety-seven (97) days fails to inform these teachers and their association of the Board which would enable them to take appropriate and timely steps to appeal or otherwise respond. A good number of public bodies meet regularly every month to adopt and approve the minutes from the previous meeting without difficulty. Moreover, current technology development can facilitate and speed up the approving process. In light of these facts and factors, the court suggests that the Board's meeting minutes should be released within 30 to 45 days. The Board needs to comply with the "promptly available" requirement of OPMA within the suggested guideline indicated by the court. How the Board will comply with the "promptly available" requirement of N.J.S.A. 10:4-14 is executive matter left to the Board.

Closed Session Minutes – Redaction

In Count four, plaintiffs object to the redactions of the closed session minutes under OPMA, OPRA, and the common law. Plaintiffs argue that the Board's excessive redactions have rendered the minutes unintelligible and meaningless. Plaintiffs cite Payton v. New Jersey Turnpike Authority, 148 N.J. 524 (1997) to support their argument that the University's wholesale redactions did not meet the Court's strict standard by failing to explain how release of the information would harm the University's interests.

There are eight redactions in the released minutes. As to redaction 1, 2, and 3, the University's Custodian of Records, in her certification, cites "the contract exemption" of N.J.S.A. 10:4-12(b)(7) for redacting statements regarding potential plans and contractual aspects

of the plans under considerations by the University. As to redaction 4 and 5, the University merely cites N.J.S.A. 10:4-12(b)(4), (7), and (8) for the redactions. For redaction 6, the University cites N.J.S.A. 10:4-12(b)(7) to exempt University counsel's legal advice to the Board and argues that attorney-client privileged process materials are exempt from disclosure under N.J.S.A. 47:1A-1.1 and N.J.S.A. 10:4-14. For redaction 7, the University explains that the Board's discussion of potential new duties of Board members is exempt as terms and conditions of employment of appointees under N.J.S.A. 10:4-12(b)(8). Finally, for redaction 8, the University claims that the discussion of the status of contract negotiations is exempted pursuant to N.J.S.A. 10:4-12(b)(7). The University further argues that the redacted potential plans, the associated contractual and related matters reflect advisory, consultative, deliberative matters that are excluded from OPRA's definition of public records under N.J.S.A. 47:1A-1.1. The University explains that the exposure of its advisory, consultative, and deliberative process would impede decision-making and be contrary to the public interest and contrary to the legislative intent underlying OPRA and OPMA. The University further argues that the public interest underlying the exemptions found in N.J.S.A. 10:4-12(b) outweighs plaintiffs' interest in accessing the redacted matters under the common law. Nevertheless, defendants conceded at the oral argument that if the meeting minutes were drafted with redaction requirements in mind, the redaction may disclose generic topics discussed at the meeting.

OPRA manifests the State's public policy of government transparency and timely access to records. N.J.S.A. 47:1A-1 provides:

Government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access . . . shall be construed in favor of the public's right of access.

[N.J.S.A. 47:1A-1.]

OPRA places the burden of proving the exception on the public body and requires the custodian to indicate the specific basis for withholding the record. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(g).

OPMA, in N.J.S.A. 10:4-14, requires public bodies to keep reasonably comprehensible minutes of all its meetings and make them available for public access. It provides:

Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, 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.

[N.J.S.A. 10:4-14.]

The term of “reasonably comprehensive” requires the minutes to contain sufficient facts and information to describe what took place at the meeting and what final action was taken in order to permit the public to understand and appraise the reasonableness of the public body’s determination. South Jersey Publishing Co., Inc. v. N.J. Expressway Auth., 124 N.J. 478, 493 (1991); Liebeskind v. Mayor and Mun. Council of Bayonne, 265 N.J. Super. 389, 401 (App. Div. 1993). Nevertheless, N.J.S.A.10:4-12(b) allows a public body to exclude the public from certain enumerated subjects at a meeting, including the terms and conditions proposed for inclusion in any collective bargaining agreement; 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; personnel employment matters. N.J.S.A.10:4-12(b)(4), (7), (8).

The common law right of access involves a two-step inquiry. First, a plaintiff must establish an interest in the public record. Second, a plaintiff’s interest in disclosure of the relevant documents must outweigh the State’s interest in non-disclosure. Education Law Center, supra, 198 N.J. at 302–3.

In other words, if a public body legitimately conducts a meeting in closed session under any of the exceptions enumerated in N.J.S.A. 10:4-12b, it nevertheless must make the minutes of that meeting “promptly available to the public” unless the disclosure would subvert the purpose of the particular exception. Payton v. N.J. Tpk. Auth., *supra*, 148 N.J. at 556–57. If disclosure would subvert the purpose of an exception, then the subversion must be balanced against the applicant’s interest in disclosure. *Ibid.* Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient. Hammock v. Hoffmann-LaRoche, Inc., 142 N.J. 356, 381-82 (1995). The need for secrecy should extend no further than necessary to protect the demonstrated need for confidentiality. *Ibid.* The redacted minutes should allow the public to get general idea about what is discussed in order to evaluate the wisdom of governmental action. South Jersey, *supra*, 124 N.J. at 459.

Under these principles, the court finds that the Board fell short of meeting its obligation under OPRA and OPMA by overly broad redactions and its failure to explain how the redacted matters will clearly endanger public interest for all the redactions. As to redaction 4 and 5, the Board additionally failed to indicate the specific basis for the redactions, but merely listed three different exemptions. Moreover, the Board failed to explain why the public interest in redacting these matters outweighs plaintiffs’ interest in accessing them. Finally, the released minutes are incomprehensible due to excessive redactions. In sum, the court finds that the Board fails its burden of proof in withholding the matters in the minutes and therefore violates OPRA, OPMA, and the common law. The Board should articulate its reasoning more sufficiently and limit the redactions to only the items that would clearly endanger public interest. The redacted minutes should allow disclosure of the generic topics of the Board’s discussion. Accordingly, the court

orders the Board to reissue the closed session minutes with redactions consistent with this opinion and case law.

Sanctions

Finally, plaintiffs assert that defendants' violations are willful and deliberate and therefore warrant sanctions. The court must consider the nature, quality, and effect of the noncompliance in fashioning a corrective remedy. Polillo v. Deane, 74 N.J. 562, 579 (1977). Substantial compliance with the act carries some weight. Polillo, supra, 74 N.J. at 579; Precision Indus. Design Co. v. Beckwith, 185 N.J. Super. 9, 15 (App. Div. 1982), certif. denied, 91 N.J. 545 (1982). The relief should be appropriate to the particular situation. Polillo, supra, 74 N.J. at 579.

Here, the court holds that injunctive relief is the appropriate remedy in this case. Plaintiffs do not allege specific adverse effects of defendants' past violations nor provide sufficient evidence to show that defendants' violations were intentional. The concern of the court is the Board's future compliance. Injunctive relief provides the best assurance of defendants' future compliance. Therefore, the court orders that the Board conform in the future to N.J.S.A. 10:4-14 and suggests that the Board make meeting minutes available to the public within 30 to 45 days and orders the Board to redact meeting minutes in compliance with OPRA, OPMA, and the common law right of access.

In summary, for count two, the court finds no violation of OPRA, the common law right of access, and OPMA regarding the requested written reports. The court also finds that the Board may withhold the draft resolutions based on the common law deliberative process privilege and is not required to publish the draft resolutions as a part of agenda before the meeting. As to count four, judgment is entered in favor of plaintiffs. The court orders the Board to conform in the

future to the “promptly available” requirement of N.J.S.A. 10:4-14 by planning its approval of meeting minutes accordingly. The court also orders the Board to reissue the closed session minutes with redactions consistent with this opinion and case law. Counsel need to confer and advise the court on the issue of counsel fees and costs. Mr. Lidon is to prepare the order.