

WALTER M. LUERS, ESQ. - 034041999  
LAW OFFICES OF WALTER M. LUERS, LLC  
Suite C202  
23 West Main Street  
Clinton, New Jersey 08809  
Telephone: 908.894.5656  
Attorneys for Plaintiff

RECEIVED & FILED  
SUPERIOR COURT  
2014 OCT 16 A 11:56  
MORRIS COUNTY  
CIVIL DIVISION

<p>DONNA DIXON,  Plaintiff,  vs.  BOROUGH OF KINNELON, MAYOR ROBERT W. COLLINS, BOROUGH COUNCIL and KAREN M. IUELE in her Official Capacity as the Acting Municipal Clerk and Records Custodian of the Borough of Kinnelon,  Defendants.</p>	<p><b>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY</b></p> <p>DOCKET NO. <u>L-2580-14</u></p> <p><b>CIVIL ACTION</b></p> <p><b>COMPLAINT IN LIEU OF PREROGATIVE WRITS</b></p>
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Plaintiff Donna Dixon, through her undersigned counsel Law Offices of Walter M. Luers, LLC, complaining of the Defendants, alleges as follows:

1. This is an action alleging a violation of the Open Public Meetings Act ("OPMA"), *N.J.S.A. 10:4-6, et seq.* and for declaratory judgment pursuant to the Declaratory Judgment Act, *N.J.S.A. 2A:16-51*.
2. This action is being brought because the Defendants Borough of Kinnelon (hereinafter, "Kinnelon" or "Borough"), Mayor Robert W. Collins, Borough Council and Karen M. Iuele in her official capacity as Acting Borough Clerk (hereinafter, "Borough Clerk") and Records Custodian (collectively, "Defendants") have failed to provide Ms. Dixon with several documents requested by her pursuant to the Open Public Records Act and the common law right of access. The documents to which access was

denied include: (1) all closed session meeting minutes of the Borough of Kinnelon governing body from January 1, 2009 until June 30, 2014. This action is also being brought because the Borough Council has not approved executive session meeting minutes for any of its executive session meetings that were held from January 1, 2009 to December 1, 2012, in violation of the requirement in the Open Public Meetings Act, *N.J.S.A. 10:4-6, et seq.*, that meeting minutes be approved and released to the public "promptly." Finally, this action is also being brought because the Borough Council has not approved "workshop" session meeting minutes for any of its "workshop" session meetings that were held from January 1, 2009 to June 30, 2014, in violation of the requirement in the Open Public Meetings Act, *N.J.S.A. 10:4-6, et seq.*, that meeting minutes be approved and released to the public "promptly."

#### **THE PARTIES**

3. Plaintiff Donna Dixon is an individual residing at 28 Forestdale Avenue, Kinnelon, New Jersey 07405 who is interested and concerned about transparency (or the lack thereof) in municipal government.

4. Defendant Borough of Kinnelon ("Defendant Borough") is a public municipal body corporate and politic of the State of New Jersey and is a political subdivision of the State of New Jersey. The Borough's principal place of business is located at Kinnelon Municipal Building, 130 Kinnelon Road, Kinnelon, New Jersey 07405.

5. Defendant Borough is a "public agency" as the term is defined by OPRA, *N.J.S.A. 47:1A-1.1*.

6. Defendant Mayor Robert W. Collins is the Borough Mayor and the Executive Branch under Kinnelon's form of government. The Mayor's office and principle place of business is located at the Kinnelon Municipal Building, 130 Kinnelon Road, Kinnelon, New Jersey 07405. The Mayor presides over all governing body meetings. N.J.S.A. 40A:60-5c; Kinnelon Borough Code § 4-7. The Mayor shall see to it that the laws of the State and the ordinances of the Borough are faithfully executed. N.J.S.A. 40A:60-5h. Minutes of meetings are required to be signed by the Mayor and the Clerk. Kinnelon Borough Code § 4-12. Defendant Mayor Collins (who has served on the Kinnelon governing body for more than a decade) has known or should have known that the Defendants have an obligation to keep minutes of all its meetings. N.J.S.A. 10:4-14. Defendant Mayor Collins refuses or has failed to require the Defendants to comply with OPMA.

7. Defendant Borough Council is the Legislative Branch under Kinnelon's form of government. The Borough Council consists of six council persons. Borough Council has an obligation to adopt minutes for ALL meetings. They have not done so.

8. Defendant Iuele is the Borough's acting clerk. Her principal place of business is the Kinnelon Municipal Building, 130 Kinnelon Road, Kinnelon, New Jersey 07405. The Borough Clerk shall keep the minutes properly and fully indexed. Kinnelon Borough Code § 13-3. She has not done so.

9. Defendant Iuele is a "Custodian of a government record" as that term is defined by N.J.S.A. 47:1A-1.1.

## JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction of this action pursuant to *N.J.S.A.* 10:4-15 and -16.

11. Venue is proper in this Court pursuant to *R.* 4:3-2(a)(2) because all of the relevant events occurred in this County, and the public agency, the Defendant, is a municipal agency located within this County and the Plaintiff resides in this County.

## FACTUAL ALLEGATIONS

12. The Defendants conducts public meetings on the second and third Thursday of every month. Kinnelon Borough Code § 4-10. The meeting on the second Thursday of the month is referred to as a “workshop” meeting. The meeting on the Third Thursday of the month is referred to as the “regular” meeting. Upon information and belief, the Defendants “tape” the “workshop” meeting but have NEVER created or produced written minutes for same. The Defendants have never adopted minutes associated with the “workshop” meetings.

13. Upon information and belief, the Borough’s Clerk makes hand-written notations during closed session meetings but has never created or produced written minutes for same prior to Plaintiff’s OPRA request. The Defendants have never adopted minutes associated with the closed session meetings prior to Plaintiff’s OPRA request.

14. On information and belief, a Kinnelon Resident other than Plaintiff, on July 17, 2014 presented Defendant Iuele with an OPRA request for executive session minutes. The Kinnelon resident was informed by Defendant Iuele that same

could be found on the Borough's Website. There are no closed session minutes on the Borough's Website.

15. On August 19, 2014, Plaintiff served the Defendants with an OPRA request. The August 19, 2014 OPRA request asked for copies of the following records: (1) all closed session meeting minutes of the Borough of Kinnelon from January 1, 2009 to June 30, 2014.

16. On August 19, 2014, Defendant's Acting Clerk informed Plaintiff that if issues discussed in closed session were not resolved Plaintiff could not have the closed session minutes.

17. On August 20, 2014, Defendant Iuele requested an extension of thirty (30) days to comply with the OPRA request.

18. On August 27, 2014, Plaintiff indicated that she had no problem with the extra 30 days.

19. On August 27, 2014, Defendant Iuele indicated that she would email the Plaintiff as soon as the closed session minutes requested were ready.

20. On September 18, 2014, the Defendant listed on its Meeting Agenda the approval of closed session minutes, by way of Consent Agenda item "o". The following dates were listed: 12/20/12, 2/21/13, 3/20/14, 4/17/14, 5/16/14, 6/19/14, and 11/21/14.

21. The records requested by the Plaintiff – Mayor and Council closed session (or executive session) meeting minutes - are "public records" as defined by the Open Public Records Act, the Open Public Meetings Act and the common law right of access.

22. Plaintiff has a legitimate private interest and a wholesome public interest in accessing these documents.

23. Defendants have no legitimate interest in maintaining the confidentiality of these documents. Defendant's interests do not outweigh the Plaintiff's interest in obtaining the documents. Defendants' have promised in their Resolution To Go Into Executive Session" that "Minutes will be kept and once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes can be made public". Defendants have failed to do so.

24. While it is not presently clear to Plaintiff on which specific dates the Mayor and Borough Council held executive (closed) session meetings, on information and belief the Mayor and Council have held executive session meetings 5-8 times per year from January 1, 2009 to June 30, 2014. Defendants held executive session meetings including, but not limited to, July 17, 2008, March 12, 2009, November 18, 2010, December 9, 2010, February 16, 2012, May 10, 2012, June 14, 2012, and December 13, 2012. These closed session minutes are not available and have not been adopted. NONE of the "workshop" meeting minutes are available. NONE have been adopted.

#### **COUNT I: VIOLATION OF OPMA**

25. The Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-24 of the Plaintiff's complaint as though fully set forth at length herein.

26. Pursuant to *N.J.S.A. 10:4-14* of the OPMA, public agencies must "promptly" approve and release to the public minutes of public agency meetings,

including meeting minutes of closed or executive session meetings. Courts have interpreted "promptly" as within 30 days after a meeting or even earlier, under certain circumstances.

27. Between January 1, 2009 and December 30, 2012, the Mayor and Borough Council of Kinnelon have held at least seven closed or executive session meetings.

28. Upon information and belief, none of the above meeting minutes of closed or executive session meetings of the Kinnelon Mayor and Council have been approved for release. Since more than 30 days has elapsed since all of the relevant executive or closed session meetings have been held, the minutes of those meetings should have been approved by the governing body, but they have not.

29. Therefore, Defendants have violated and continue to violate the OPMA.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment against the Defendants:

A. Ordering Defendants to provide copies of the documents and information requested by the Plaintiff on August 19, 2014;

B. Declaring that Defendants have violated the Open Public Meetings Act by not promptly approving and releasing to the public executive session meeting minutes and "workshop" meeting minutes;

C. Ordering Defendants to immediately approve executive session meeting minutes and "workshop" session meeting minutes for all such meetings held by

the governing body of Kinnelon for the time period of January 1, 2009 through June 30, 2014;

D. Ordering Defendants to immediately disclose executive session meeting minutes to the Plaintiff upon approval;

E. Enjoining Defendants from future violations of the Open Public Meetings Act;

F. Ordering Defendants to adopt by ordinance or resolution a procedure that requires Defendants to present draft executive session meeting minutes and "workshop" session meeting minutes to the governing body for approval within 30 days after such meetings are held and requiring the governing body, absent exigent circumstances, to approve and release to the public such executive session meeting minutes within 30 days after such meetings are held.

G. Requiring Defendants to post the meeting agenda at least two days prior to said meeting; and

H. Awarding Plaintiff costs and reasonable attorneys' fees; and

I. For such other or further relief as this Court deems just and equitable.

**CERTIFICATION PURSUANT TO R. 4:5-1**

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action of arbitration proceeding is contemplated. Further, other than the parties set forth in this



complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

**CERTIFICATION PURSUANT TO R. 1:38-7(b)**

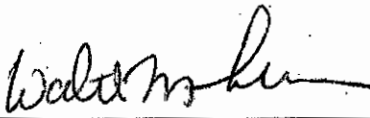
I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Walter M. Luers, Esq. is designated as trial counsel on behalf of Plaintiff.

Respectfully Submitted,

LAW OFFICE OF WALTER M. LUERS, LLC

By: 

DATED: Oct. 15, 2014

Walter M. Luers, Member  
Suite C202  
23 West Main Street  
Clinton, New Jersey 08809  
Telephone: 908.894.5656