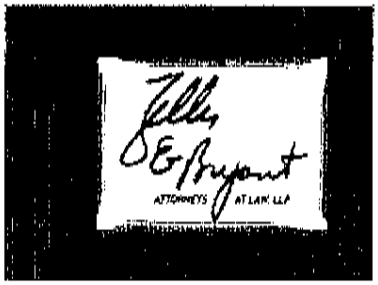

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Woodcrest Pavilion
Ten Melrose Avenue, Suite 400
Cherry Hill, New Jersey 08003
(856) 428-6600 - phone
(856) 428-6314 - fax

DATE: 5/31/07 **TIME:** _____

TO: Mr. John Paff

FAX NO: 908-325-0129

FROM: Matthew B. Wieliczko, Esquire

RE: Paff v. Lawnside Borough Council
Docket No: CAM-L-7027-06
Our File NO: 2470-325-06

COMMENTS: Defendant's Cross-Motion, letter brief to Judge Orlando and proposed form of Order

This transmission contains 12 pages including this transmittal.

If you do not receive the total amount of pages with this transmission, please call (856) 428-6600 and inform the sender.

PLEASE ACKNOWLEDGE THIS FAX _____.

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May 31, 2007

VIA HAND DELIVERY

Civil Fee Processing Unit
Superior Court of New Jersey
Camden County Hall of Justice
101 South Fifth Street
Suite 110
Camden, New Jersey 08103

RE: Paff v. Lawnside Borough Council
Docket No: CAM-L-7027-06
Our File No.: 2470-325-06

Dear Sir/Madam:

Enclosed please find the following:

1. Defendant's Cross Notice of Motion (0 & 1);

2. Letter Brief in opposition to Plaintiff's motion returnable June 8, 2007 and in support of Defendant's cross-motion also returnable on that same date;

3. Proposed form of Order (0 & 2);

4. Check in the amount of $30.00.

Would you please file and return a stamped filed copy in the self-addressed stamped envelope enclosed.

Very truly yours,

ZELLER & BRYANT, LLP

By: MATTHEW B. WIELICZKO, Esquire

MBW:pk
Enc.
cc: Honorable Francis J. Orlando, Jr., A.J.S.C. (via hand Delivery - courtesy copy)
Mr. John Paff (via fax, e-mail and overnight mail)
Jesse Harris, Borough Administrator, Borough of Lawnside

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ZELLER & BRYANT, LLP
Attorneys for Defendant,
Lawnside Borough Council

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Phone: (856) 428-6600

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAMDEN COUNTY
DOCKET NO: L-7027-06

JOHN PAFF,

Plaintiff,

vs.

Civil Action

LAWNSIDE BOROUGH COUNCIL,

NOTICE OF CROSS MOTION

Defendant.

TO: John Paff, Pro Se
P.O. Box 5424
Somerset, New Jersey 08875-5424

TAKE NOTICE that the undersigned will apply to the above Court at the Superior Court of New Jersey, on June 8, 2007 at 9:00 o'clock, or as soon thereafter as counsel may be heard, for an Order confirming that the April 27, 2007 submission of defense counsel in this matter complied with the Court's Order of April 13, 2007. In support of the cross-motion Defendant will rely upon the enclosed letter brief of counsel.

TAKE FURTHER NOTICE that, pursuant to Rule 1:6-2(c), no date has been fixed for any pretrial conference, arbitration proceeding scheduled pursuant to R. 4:21A, calendar call or trial.

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Zeller & Bryant
ATTORNEYS AT LAW, LLP

Pursuant to Rule 1:6-2(d), the undersigned:

(X) waives oral argument and consents to disposition on the papers.
( ) requests oral argument if contested.
( ) requests oral argument.

A proposed form of Order is annexed.

DATED: May 31, 2007

ZELLER & BRYANT, LLP
Attorneys for Defendant,
Lawnside Borough Council

By: _____
MATTHEW B. WIELICZKO, Esquire

CERTIFICATION OF FILING

I certify that the original of the within documents were filed with the Clerk of the Superior Court in Camden, New Jersey, within the time prescribed by Rule 1:6-3.

DATED: May 31, 2007

ZELLER & BRYANT, LLP
Attorneys for Defendant,
Lawnside Borough Council

By: _____
MATTHEW B. WIELICZKO, Esquire

CERTIFICATION OF SERVICE

I certify that a copy of the within documents were served upon John Paff, Pro Se Plaintiff via fax and regular mail at P.O. Box 5424, Somerset, New Jersey 08875-5424 and via e-mail at CJSC@pobox.com.

DATED: May 31, 2007

ZELLER & BRYANT, LLP
Attorneys for Defendant,
Lawnside Borough Council

By: _____
MATTHEW B. WIELICZKO, Esquire

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May 31, 2007

VIA HAND DELIVERY

Honorable Francis J. Orlando, Jr., A.J.S.C.
Superior Court of New Jersey
101 South Fifth Street
Camden, New Jersey 08103

RE: Paff v. Lawnside Borough Council
Docket No: CAM-L-7027-06
Our File No.: 2470-325-06

Dear Judge Orlando:

I represent the Defendant, Lawnside Borough Council, in the above-referenced matter. In that regard, it is respectfully requested that Your Honor accept this letter brief in lieu of a more formal brief in support of Defendant's cross-motion and in opposition to Plaintiff's motion, both of which are returnable on June 8, 2007.

Plaintiff seeks leave to amend the Complaint, seeks an Order, pursuant to R.1:10-3, "holding" that the Defendant's April 27, 2007 submission to Your Honor did not comply with the Court's Order of April 13, 2007 and requests that Defendant or its counsel be required to file and serve an additional and "compliant" Certification. Defendant opposes

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the Plaintiff's application and cross-moves for a ruling that the April 27, 2007 submission of defense counsel complied with the Court's Order of April 13, 2007.

We first address the second part of the Plaintiff's application concerning this Court's Order of April 13, 2007 and the subsequent submissions of defense counsel. Initially, citation or use of R.1:10-3 by the Plaintiff, seeking enforcement of the April 13, 2007 Order, is an inappropriate use of that Rule. There has been no determination that the Defendant violated Your Honor's April 13, 2007 Order with the defense submission of April 27, 2007, making reference to R.1:10-3 even more inappropriate. There has been no offense of contempt in this matter by the Defendant. There has been no contumacious conduct and clearly no willfully contumacious conduct. There has been no disruption of this proceeding or affront to the integrity of the judicial process. There has been no disrespect for the Court or the Plaintiff. There has been no willful attempt to hinder or impede the administration of justice in this matter. Moreover, Plaintiff's application in this regard is premature given Your Honor's still pending in camera review of the Defendant's April 27, 2007 submissions.[1]

In seeking the relief identified, Plaintiff has placed

[1] In the event that the Court agrees that the Plaintiff's motion is premature, Defendant then concedes that its cross-motion would also be premature.

the "cart before the horse." There has been no determination by this Court that defense submissions of April 27, 2007 were inadequate or were in anyway a violation of the Court's April 13, 2007 Order. If there is such a determination, the Defendant will respond accordingly. Plaintiff's attempts to be both the advocate and the arbiter of what is right and wrong, what is appropriate and inappropriate, and whether the April 27, 2007 submission of defense counsel "legally" complies with the April 13, 2007 Order, are inappropriate and an improper basis for seeking the relief requested.

There is no "punishment" warranted or necessary of the Defendant and there certainly is no aid that needs to be offered to the Plaintiff's rights. While R.1:10-3 may be the appropriate vehicle for a motion to enforce litigant's rights to enforce an Order requiring a municipality to comply with the Open Public Meetings Act, it does not permit the Plaintiff to prematurely make such an application while the Court reviews in camera the Defendant's April 27, 2007 submissions. In Loigman v. Township Committee of Tp. of Middletown, 308 N.J. Super. 500, 503 (App. Div. 1998) the trial judge granted relief requested under N.J.S.A. 10:4-16. When the Defendant failed to comply with the judge's directions, there was a determination made that a motion to enforce the litigant's rights was an appropriate vehicle to enforce the Order. Here, there has been no determination that the Defendant willfully

failed to comply with an Order of Judgment. See Hynes v. Clark, 297 N.J. Super. 44, 57 (App. Div. 1997).

It is the Defendant's position that its April 27, 2007 submissions fully complied with the Court's April 13, 2007 Order. With regard to the redacted Executive Session record, and the basis for the redactions, at pages 2 and 3 of the Defendant's April 27, 2007 submission, the Defendant referred the Court to Defendant's March 20, 2007 memorandum of law in opposition to the Plaintiff's motion for partial summary judgment and, in addition, provided the Court with additional proffers concerning the basis for the redactions. Defendant continues to rely upon the contents of that submission as being appropriate and in conformance with this Court's April 13, 2007 Order.

With regard to the other relief sought by the Plaintiff, leave to amend the Complaint, Plaintiff advances two requests. Initially, Plaintiff seeks leave to amend in order to seek declaratory and injunctive relief that minutes/notes of the April 24 and April 28, 2006 closed meetings failed to satisfy the "reasonably comprehensive" standard imposed by N.J.S.A. 10:4-4. However, in the Third Count of the Plaintiff's current Complaint, Plaintiff alleged that the minutes of the Defendant's non-public meetings were not "reasonably comprehensive" and otherwise falls short of the requirements imposed by N.J.S.A. 10:4-14. Accordingly, there apparently is absolutely no need to amend the Complaint to seek declaratory

and injunctive relief for a cause of action already plead in the Third Count of the current Complaint.

The second part of the Plaintiff's application for leave to amend seeks declaratory or injunctive relief on whether it was "legal" for Defendant to meet with prospective "redevelopers" on March 7, 2006, March 8, 2006 and March 14, 2006 "without the public being allowed to observe those meetings". However, the First Count of Plaintiff's current Complaint contains, in the Wherefore clause, paragraph A, a request for relief seeking a declaration that motions passed by the Defendant and excluding the public from these same meetings of March 7, March 8, and March 14, 2006 did not satisfy the requirements of N.J.S.A. 10:4-13. Again, there would appear to be no need to seek an amendment to the Complaint in conjunction with obtaining a ruling from this Court that the public was somehow impermissibly excluded from certain meetings with prospective "developers". The Wherefore clause in the First Count of the Plaintiff's Complaint further states, at paragraph C, that Plaintiff seeks an Order enjoining the Defendant from excluding the public from any future meetings. Admittedly this may refer to somewhat different relief. However, it is still relief in the nature of a determination by the Court that motions passed excluding the public from the March 7, 8 and 14, 2006 meetings violated N.J.S.A. 10:4-13 and seeks a determination that the Defendant should be enjoined from doing so in the future.

Accordingly, it is respectfully submitted that the Plaintiff's motion should be denied in total and that the defense cross-motion should be granted. A proposed form of Order has been enclosed.

Respectfully submitted,

ZELLER & BRYANT, LLP

By: _____
MATTHEW B. WIELICZKO, Esquire

MBW:pk
cc: Mr. John Paff (via regular mail and e-mail and fax)
(New Jersey Address: P.O. Box 5424, Somerset, NJ, 08875)
Jessie Harris, Borough Administrator

ZELLER & BRYANT, LLP
Attorneys for Defendant,
Lawnside Borough Council

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Phone: (856) 428-6600

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAMDEN COUNTY
DOCKET NO: L-7027-06

JOHN PAFF,

Plaintiff,

vs.

Civil Action

ORDER

LAWNSIDE BOROUGH COUNCIL,

Defendant.

This matter having been brought before the Court by John Paff, Plaintiff, on a Notice of Motion seeking various relief, and with Matthew B. Wieliczko, Esquire, of Zeller & Bryant, LLP, appearing on behalf of Defendant, Lawnside Borough Council, and having cross-moved for various relief, and opposing the motion of Plaintiff, having considered the submissions of the parties, and for good cause shown, it is on this day of June, 2007 ORDERED that the April 27, 2007 submissions of defense counsel complied with this Court's Order of April 13, 2007.

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Zeller & Bryant
ATTORNEYS AT LAW, LLP

IT IS FURTHER ORDERED that Plaintiff's application for leave to file and serve a First Amended Complaint is DENIED.

FRANCIS J. ORLANDO, A.J.S.C.

PAPERS CONSIDERED

_____Notice of Motion	_____Answering Brief
_____Movant's Brief	_____Cross-Motion
_____Movant's Affidavit	_____Movant's Reply
_____Answering Affidavit	_____Other

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