

New Jersey Government Records Council Denial of Access Complaint

Please read these instructions before completing this form:

- ?? This form is to be used only for claims of denial of access to public records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002 under "OPRA," the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.). 1
- ?? If you believe you have wrongfully been denied access to a public record under OPRA, you may ask the GRC staff for informal assistance in resolving the matter by calling 866-850-0511, by e-mail at grc@dca.state.nj.us, or by writing to the GRC at P.O. Box 819, Trenton, NJ 08625. If a resolution cannot be reached or if you do not wish to consult the GRC staff, you may EITHER file this Complaint with the GRC or seek relief from the Law Division of Superior Court, but not both. 2
- ?? Please print or type your responses, and provide ALL information requested. Incomplete forms will delay processing. This form is available in downloadable format from the GRC web site at www.nj.gov/grc. 3
- ?? Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request. 4
- ?? *The GRC recommends that you send the Custodian listed in Section 2 a copy of this complaint and that you keep a copy for your own files.* 5

1. About the Requester of the Documents:

Full Name: John Paff 6

Mailing Address: P.O. Box 5424 7

City: Somerset State: NJ ZIP 08875-5424 8

Please provide a phone number at which GRC staff can contact you between 8 A.M.-5 P.M., Monday-Friday: 732-873-1251 9

Fax Number: 908-325-0129 E-Mail address (if used): paff@pobox.com 10

If you are represented by an attorney, please provide: 11

Name: n/a Telephone Number: _____ Fax Number: _____ 12

Should we contact your attorney for further information on this Complaint? Yes No 13

2. About the Custodian of Records:

Name of the public agency from which records were sought: Borough of Kenilworth 14

Name of custodian on whom records request was served: Kathleen Moschitta, Deputy Clerk 15

Telephone Number: 908-276-9090 E-Mail address (if used): _____ 16

Name of custodian who denied records request: Same 17

Telephone Number: Same Other Telephone (if used): _____ 18

Fax Number: 908-276-7688 E-Mail address (if used): _____ 19

3. About the Record Request:

Date your records request was provided to the custodian: July 19, 2006

Did you receive a reply to your request? Yes No

If so, state the date your request was denied: July 27, 2006 and August 8, 2006

Has there been any other complaint filed with the GRC concerning this record request or any document sought in it?
Yes No

If yes, state the date the Complaint was submitted to the GRC, the case number of the Complaint, and the final disposition of the Complaint, if known.

Date: _____ Case Number: _____

Disposition: _____

Have you ever before spoken with or written to the GRC or its staff about the record request or any document sought in it?

Yes Date: _____ No

Have you filed any action with the N.J. Superior Court concerning this record request or any document sought in it?

No Yes If Yes, Docket Number: _____

4. Documents to submit with this Form:

- o **Complete** the attached **Records Denied List** to describe the records to which you were denied access.
- o **Attach** a copy of the Records Request Form you filed with the public agency and any correspondence between you and the record custodian(s) or staff that concern the portion of your OPRA request that was denied. Be sure to include any e-mail, memoranda, phone messages, or any other documents such as affidavits, or certifications related to the request and the denial.
- o **Summarize** in writing the content, time and date of any conversations regarding this complaint, along with the names of the participants and any witnesses. Use the attached **Detail Summary** for this purpose.
- o **Provide** any written arguments or other information you would like the Council to consider in deciding your complaint.

5. Verification of Complaint:

By signing this complaint, I affirm that:

- o I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- o The information I have provided is true to the best of my knowledge and belief;
- o The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim; and
- o I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me which is an indictable offense under the laws of the State of New Jersey or any other State, or pertaining to the family of that victim.



Signature (required)

August 11, 2006

Date

MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENTATION TO:

Government Records Council, PO Box 819, Trenton, New Jersey 08625

The GRC recommends that Requester send the Custodian listed in Section 2 a copy of this complaint

***New Jersey Government Records Council
Denial of Access Complaint – Supplement
In RE Paff v. Borough of Kenilworth***

Statement of Facts and Introduction of Exhibits:

1. On July 19, 2006 I faxed a government record request to Custodian. My two-page request is attached as Exhibits A1 - A2.
2. In response to my request, I received a three-page faxed document on July 27, 2006, consisting of a fax cover sheet from Deputy Clerk Moschitta and a copy of my two-page record request with the number of pages filed in. See Exhibits B1 – B3.
3. After I sent my \$6.63 check to Custodian, I received an envelope containing seven pages of documents that purport to be responsive to my request. See Exhibits C1 – C7. Specifically, C1 to C4 are the minutes of the Borough Council's June 13, 2006 Worksession; C5 to C6 are the agenda of the Borough Council's June 13, 2006 Worksession; and C7 is the redacted minutes from the Borough Council's June 13, 2006 closed session. No cover letter was sent along with the documents.

Legal Argument:

1. *The documents are not responsive to my request.*

Exhibit A2 show that I requested:

1. *Minutes of the Borough Council Work Session of June 13, 2006.*
2. *The resolutions, passed in accordance with NJSA 10:4-13, that authorized the most recent three (3) Borough Council closed or executive (i.e. nonpublic) sessions.*
3. *The minutes from the closed or executive sessions authorized by the resolutions set forth in the immediately preceding request, redacted narrowly, if at all.*

I did receive the June 13, 2006 Worksession minutes (Exhibits C1 – C4), so the first paragraph of my request was satisfied.

However, I did not receive any of the "resolutions . . . that authorized the most recent three (3) Borough Council closed or executive (i.e. nonpublic) sessions," as requested in the second paragraph of my request. Nor did I receive the minutes from the most recent three (3) Borough Council closed or executive (i.e. nonpublic) sessions, that I had requested in the third paragraph. Also, I did not receive any explanation as to why those requested records were not furnished.

***New Jersey Government Records Council
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Instead, I received an agenda of the June 13, 2006 Worksession (Exhibits C5 – C6), which I did not request, and a set of redacted minutes from the June 13, 2006 closed session (Exhibit C7). I was not informed, however, whether the June 13, 2006 closed session was among one of the most recent three closed sessions held by the Borough Council.

In order to comply with OPRA, a custodian needs to carefully read the record request and either provide the records requested or provide written, lawful reasons why the records cannot be produced. When someone requests *three* sets of minutes, for example, it is not acceptable for the Custodian to provide only *one* set of minutes without giving the requestor a written, lawful reason why the remaining two sets cannot be furnished.

Since at least two sets of closed session minutes and three closed session resolutions were neither furnished to me nor their absences explained, those records were denied. N.J.S.A. 47:1A-5(i) "the failure to respond shall be deemed a denial of the request." Since no reason was given for the denial, Custodian violated OPRA.

2. I was charged for documents I didn't receive.

At Custodian's request (Exhibit B1 to B2), I paid \$6.63 for "8 pages at 75c/pg plus 63c postage" Yet, I received only seven pages of records and two of those pages (i.e. Exhibits C5 – C6) were an agenda that I never requested. Since I only received five pages of requested records, I should have been charged $5 \times .75 = \$3.75$ plus postage.

3. No reason is given justifying the redactions on the closed session minutes.

N.J.S.A. 47:1A-6 burdens Custodian with proving that every denial is lawful, and N.J.S.A. 47:1A-5(g) requires Custodian to "indicate the specific basis" for any denial of access. Beyond stating the "specific basis" for its redactions, Custodian is also required to "produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality." Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 382-83 (App. Div. 2003).

Here, Custodian provides no justification for the redactions. This makes it impossible for any member of the public to determine whether the denial is justified. Since Custodian has failed to sufficiently justify her denial, I am entitled to receive unredacted versions of the requested closed session minutes.

I realize that Custodian, upon receipt of this complaint, may wish to provide me and the GRC with redacted minutes and more detailed justification for the denial. Custodian may argue that she is entitled to "supplement the record" by virtue of N.J.S.A. 47:1A-7(e) which provides that

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The custodian shall have the opportunity to present the board with any statement or information concerning the complaint which the custodian wishes. If the council is able to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed.

While this provision certainly permits Custodian to explain and defend how her denial satisfies her burden of proof, it does not entitle her to raise new justifications and reasons that were not included within her original denial. I assert that a public agency, when denying a record in whole or part, is obliged to thoroughly justify any denials within its original notice. To allow an agency to assert new and additional justifications, (i.e., to give an agency "a second bite at the apple") deprives a requestor of the "summary or expedited" procedure that N.J.S.A. 47:1A-6 promises and invites record custodians to provide casual and even cavalier justifications in their initial denials, comfortable in knowing that they can always supplement or alter their justifications if the requestor complains. Accordingly, the GRC is obliged to determine this issue on the record presently before it.

I am also cognizant that the GRC sometimes conducts in camera reviews in matters such as this one. I would object to such a review because it is the Custodian's burden to prove that its redactions are lawful, not to just give the unredacted minutes to the Council to let it decide which portions should be released. Such a procedure would improperly relieve Custodian of her burden of proof.

Requested Relief:

1. An Order declaring that Custodian violated OPRA.
2. An Order requiring Custodian to grant me access to the resolutions and minutes of the three most recent Borough Council closed sessions.
3. An Order requiring Custodian to refund me \$2.25 for three pages I was wrongly charged for.

An Order compelling disclosure of unredacted minutes from the closed session of June 13, 2006.

Certification of Service:

On August 11, 2006, I served a copy of this complaint, with all attachments, upon Custodian via Fax only to 908-276-7688.



Dated: August 11, 2006

John Paff

PUBLIC RECORD REQUEST FORM

BOROUGH

OF

KENILWORTH

(BOROUGH, TOWNSHIP, CITY, COUNTY)

(NAME OF MUNICIPALITY OR COUNTY)

IMPORTANT NOTICE

The reverse side of this form contains important information related to your rights to request government records. Please read it carefully.

REQUESTOR INFORMATION: (PLEASE PRINT)

First Name John MI _____ Last Name Paff
Mailing Address PO Box 5424
City Somerset State NJ Zip 08875 E-Mail paff@pobox.com
Business Hours Telephone Area Code 732 Number 873 1251 Extension _____
Preferred Delivery: Pick Up US Mail On Site Inspect
Check One: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE HAVE NOT been convicted of any indictable offense under the laws of New Jersey or any other state of the United States.
Signature _____ Date 07/19/06

Payment Information

Select Payment Method
Cash Check Money Order

Fees: Pages 1-10 \$0.75@
Pages 11-20 \$0.50@
Pages 21- \$0.25@

Police Accident Rpt. via Mail
Pages 1-3 \$5.00
Pages 4- \$1.00@
as per N.J.S.A. 39:4-131

Delivery: Delivery/postage fees additional depending upon delivery service.

INFORMATION REQUESTED:

- Copy of Minutes (specify board or entity, date, topic or other identifying information) See attached
- Copy of Ordinance or Resolution (specify date, number, or other identifying information)
- Police Accident Report: (Identify Accident) Fee: _____
- Other Type of Report (specify) _____
- License Information (specify) _____
- Information on Specific Property Address _____ Blk # _____ Lot # _____
- Municipal Lien Search Fee: _____
Municipal Lien Searches are provided by the designated search officer and will be provided within 15 days after the request is received and the fee paid, as provided in N.J.S.A. 54:5-11, et seq.
- List of Property Owners within 200 feet Fee: _____
As provided in N.J.S.A. 40:55D-12, the fee is the greater of \$.25 per name or \$10.00

Describe from Above:

Information Requested will be ready on: _____ Estimated Cost: _____
Disposition: Date Filled _____ Date Mailed _____ Date Picked Up _____ Date Denied _____
Reason for Denial: _____

Custodian Name (Please Print) Signature Date

Attachment to 07/19/06 OPRA request form for Kenilworth Borough:

1. Minutes of the Borough Council Work Session of June 13, 2006.
2. The resolutions, passed in accordance with NJSA 10:4-13, that authorized the most recent three (3) Borough Council closed or executive (i.e. nonpublic) sessions.
3. The minutes from the closed or executive sessions authorized by the resolutions set forth in the immediately preceding request, redacted narrowly, if at all.

PUBLIC RECORD REQUEST FORM

BOROUGH OF KENILWORTH
(BOROUGH, TOWNSHIP, CITY, COUNTY) (NAME OF MUNICIPALITY OR COUNTY)

IMPORTANT NOTICE

The reverse side of this form contains important information related to your rights to request government records. Please read it carefully.

REQUESTOR INFORMATION: (PLEASE PRINT)

First Name John MI _____ Last Name Paff
 Mailing Address: PO Box 5424
 City Somerset State NJ Zip 08875 E-Mail paff@pobox.com
 Business Hours Telephone Area Code 732 Number 873 1251 Extension _____
 Preferred Delivery Pick Up US Mail On Site Inspect
 Check One: Under penalty of N.J.S.A. 9C:28-3, I certify that I HAVE I HAVE NOT been convicted of any indictable offense under the laws of New Jersey or any other state of the United States.
 Signature _____ Date 07/19/06

Payment Information
 Select Payment Method
 Cash Check Money Order
 Pages 1-10 \$0.75 ea
 Pages 11-20 \$0.50 ea
 Pages 21 \$0.25 ea
 Police Accident Rpt. via Mail
 Pages 1-3 \$5.00
 Pages 4- \$1.00 ea
 as per N.J.S.A. 39:4-131
 Delivery: Delivery/postage fees additional depending upon delivery service

INFORMATION REQUESTED:

- Copy of Minutes (specify board or entity, date, topic or other identifying information) See attached
- Copy of Ordinance or Resolution (specify date, number, or other identifying information)
- Police Accident Report: (Identify Accident) _____ Fee: _____
- Other Type of Report (specify) _____
- License Information (specify) _____
- Information on Specific Property Address _____ WK # _____ Lot # _____
- Municipal Lien Search Fee: _____
Municipal Lien Searches are provided by the designated search officer and will be provided within 15 days after the request is received and the fee paid, as provided in N.J.S.A. 54:5-11, et seq.
- List of Property Owners within 200 feet Fee: _____
As provided in N.J.S.A. 40:55E-12, the fee is the greater of \$.25 per name or \$10.00

Describe from Above:

Information Requested will be ready on: 7/27/06 Estimated Cost: \$6.63 (2 pages at 75¢/pg plus 65¢ postage)
 Disposition: Date Filled _____ Date Mailed _____ Date Picked Up _____ Date Denied _____
 Reason for Denial: _____

Custodian Name (Please Print) _____ Signature _____ Date _____

John Paff

Telephone 732 873 1251

P.O. Box 5424
Somerset, New Jersey 08875 5424

E-mail - CJSC@pobox.com

July 18, 2006

Fax - 908-325-0129

Hedy Lipke, Borough Clerk
567 Boulevard
Kerilworth, NJ 07033*(via fax only to 908-276-7688)*

Dear Ms. Lipke:

I checked the Borough's website and cannot locate a public records request form for download. Therefore, I am submitting my request on this letter. If there is a form on your website and if you require its completion, please direct me to the URL or fax a blank form to me.

I would like to purchase photocopies, and have them mailed to me, of the following:

1. Minutes of the Borough Council Work Session of June 13, 2006.
2. The resolutions, passed in accordance with N.J.S.A. 10:4-13, that authorized the most recent three (3) Borough Council closed or executive (i.e. nonpublic) sessions.
3. The minutes from the closed or executive sessions authorized by the resolutions set forth in the immediately preceding request, redacted narrowly, if at all.

Thank you for your attention to this matter.

Sincerely,



John Paff

*faxed Opra 7/19/06
form.*

WORK SESSION MEETING OF MAYOR AND COUNCIL OF THE BOROUGH OF KENILWORTH HELD ON TUESDAY, JUNE 13, 2006.

BOROUGH OF KENILWORTH	
JUN 13 2006	
ROLL CALL	
CLEMENTI	✓
COLOMBO	Absent
CORVELLI	✓
DELUCA	✓
SOOS	✓
TALON	✓

Mayor David read the Notice of Requirements of the Open Public Meetings Act.

Roll Call at 7:31 P.M.

Also present were Attorney Cohen, Finance Officer Nichols and one member of the press.

Mayor David read over the items on the agenda: (Copy attached)

1. Regarding the request of Richard Holler, Council directed that the trees be pruned. Borough Clerk to send him a letter advising of this.
2. Regarding the request of Alan Chalenski, Council directed that a letter be sent stating that it is the homeowner's responsibility to maintain easements.
3. Regarding the quote from Tomaro for 12 replacement trees at a cost of \$4,920., Council approved the cost, however, they do not want pear trees planted. Jeff Marsden is to be contacted to pick another kind of tree, perhaps a Japanese Maple. Mayor David also stated that before the trees are planted by Tomaro, the residents where they are being planted be informed.
4. Regarding the bid received for Recycling Collection & Marketing from Great Northern Recycling, Inc., a motion was made by Councilman Clementi and seconded by Councilman DeLuca to award the contract for a three year period with a two year extension option. Resolution to be on tomorrow night's agenda.
5. Regarding the request for three trees to be cut down by the Borough from Mr. & Mrs. Paras from No. 16th Street, Council instructed that a letter be sent denying the request since it is Borough policy not to cut down healthy trees, however, the DPW will prune branches away from the wires and the house.
6. Regarding the letter received by the Mayor concerning a meeting of Mayors/representatives in Clark, since the Mayor is unable to attend Councilman Soos will be attending.

Mayor's Report:

Mayor David reported the following:

1. The Facilities Committee met last night along with Gina from the UCIA to interview two firms recommended by the UCIA and the Schering people for Construction Manager for the Public Safety Building project. The two companies interviewed were Imperial and Jingoli. Both gave presentations and it is the recommendation of the Facilities Committee that Imperial be hired. They would oversee the entire project and make sure the project stays on plan and on budget. Their fee is usually a percentage of the cost of the project. The Facilities Committee felt that Imperial would give us more personal attention. Mayor David asked for Council's approval.

A motion was made by Councilman Soos and seconded by Councilman Corvelli to hire Imperial as Construction Manager for the new police facilities. Vote was all in favor.

Councilman Soos - stated that the next step will be to interview architects.

Mayor David - wants to make Council members aware that there are two sites being considered. The UCIA is trying to find out the agent of one property to see if we can buy it. Gina will be contacting Imperial to ask them to give us a list of potential architects. The Committee also intends to look at some of their work.

2. He received a letter from the Organ & Tissue Donation Awareness Committee thanking us for the resolution and allowing them to tie ribbons on the trees along the Boulevard.
3. He received a letter from FEMA regarding new flood insurance maps and flood insurance rate maps which will become effective soon. The Borough is required to pass a Flood Prevention Plan.
4. A thank you was received from Nancy Halpin for the get well gift.
5. The County is offering matching Recreation Grants for equipment or scholarships. The Mayor gave the application to Councilman Corvelli to bring to the Recreation Committee.

Mayor's Report (cont.)

6. A memo was received from the Borough Clerk acknowledging flower donations and volunteers who planted the flowers.
7. He has a personnel matter for Closed Session.
8. He received a letter from Robert Engler asking to be appointed to the Recreation Committee.

Finance Report:

Councilman Clementi reported that we should find out about Extra-Ordinary Aid at the end of the month and then we will finalize our Budget.

Public Works Report:

Councilman DeLuca reported the following:

1. There still has been only one quote submitted for the cleaning of the insides of the gas tanks at the Yard. No one else has responded. Foreman Walter Krieck asks if Council wants to go ahead and accept the proposal of Lorco Petroleum Services. Cost is \$340. plus \$.65 per gallon for disposal of water and residue.

Consensus of Council is to wait until the end of the week and if no other proposals are received then authorize Lorco to do the work.

2. Ronald Friedman received his Class B CDL license last week. In the past employees have received a \$2 per hour increase upon obtaining this license, however, this is not in their contract. What does Council wish to do?

Councilman Soos - objected to the increase and also objected to the reimbursement to Ronald Friedman for his CDL License fees since it is not in the contract.

Councilman Taylor - agreed to denying the hourly increase, but feels that the Borough should pay for his CDL License since it is for Borough use.

Councilman Soos made a motion not to give Ronald Friedman the \$2 hourly increase and not to pay for his CDL License fees. Motion seconded by Councilman Clementi. Upon roll call the motion was defeated: Vote: Corvelli, DeLuca & Taylor, "NO"; Clementi & Soos, "YES".

Councilman Taylor made a motion to pay for Ronald Friedman's CDL License but not grant a \$2 hourly increase. Motion seconded by Councilman Corvelli and upon roll call the motion was approved: Vote: Corvelli, DeLuca & Taylor, "YES"; Clementi & Soos, "NO".

3. The Department responded to a call regarding illegal dumping of a garbage can full of oil on Washington Avenue. There was no spillage and the Department disposed of the can.
4. Last week a DPW crew weeded all the planters along the Boulevard to allow the 8th grade Brearley Middle School Honor Society volunteers to plant flowers.

Councilman Soos - asked about painting the building at DiMario Park after the vinyl siding color has been picked.

Councilman Soos - asked when the front and side entrances are going to be painted.

Borough Clerk Lipke - responded that Pat's Painting has scheduled dates 3 times already and postponed each one.

Council feels that if Pat's does not come in one month's time, we should get someone else to do the job.

Public Safety Report:

In Councilwoman Colosimo's absence, Councilman Soos reported that the Police have responded to a complaint and discovered illegal apartments, which they reported to the Zoning Officer. However, by the time the Zoning Officer went to the residence, there was no sign of the illegal apartment. There have been at least three such incidents. The new policy is that the Police will take a photo when they discover an illegal apartment.

Planning, Zoning & Ordinance Report:

Councilman Soos reported the following:

1. He received a proposal from our engineer, PMK, on the Library Elevator that was way too high. He told PMK so and they have redone the proposal and now the price is reasonable.

Mayor David - explained that this is design work which required architect work which explains the cost. This is necessary since the Elevator requires an outside shaft. We have grant money that has to be expended.

Councilman Soos made a motion to authorize PMK to do the design work for the Elevator at the Library at a cost of \$32,600 and to authorize the Mayor to sign the Agreement. Motion seconded by Councilman Clementi and all in favor. (Resolution to be on tomorrow night's agenda)

2. Councilman Soos asked Attorney Cohen where he is on the Landlord/Tenant Ordinance.

Attorney Cohen - replied he has been looking at other town's ordinances to see if they would apply to our needs - he has completed 90% of the general language of the ordinance but now specifics have to be addressed that will hold up in court.

Councilman Soos - asked to have a draft copy so that the PZO Committee can look at it.

Mayor David - asked Attorney Cohen about the Duplex Ordinance.

Attorney Cohen - replied that it is ready for first reading tomorrow night.

Recreation, Ecology, Lighting & Fire Report:

Councilman Corvelli reported the following:

1. The Recreation Committee has scheduled a Swim Night for July.
2. Robert Engler would like to be appointed to the Rec Committee.

Mayor David - stated if there is a vacancy appoint Mr. Engler tomorrow night.

3. The Summer Playground Program will begin June 26th.
4. The Recreation Committee will be sponsoring a 5 or 10K run for the Centennial.
5. The Fire Department received two thank you letters which he will read at tomorrow's Council Meeting.
6. He has a matter of potential litigation/personnel for Closed Session.

Health, Education & Welfare Report:

Councilman Taylor reported the following:

1. The Council Education Committee will be meeting with the Board of Education next Monday.
2. He attended the Awards Ceremony at the high school and presented the Borough's awards in the Mayor's absence.
3. The Library Board is unhappy about the bill for the HVAC that they have to pay.
4. The Library is concerned about dead branches on the County trees in front of the Library. They contacted the County Shade Tree Commission to trim the branches but have had no action as of yet.

Finance Officer's Report:

Finance Officer Nancy Nichols reported the following:

1. The Auditors have finished the Audit and expect the report to be submitted next week.
They will want to meet with the Finance Committee after that.
2. There was a Tax Sale last week - all were sold to outside buyers.
3. She completed all the Handyman Vouchers for the County CD Grant.
4. The 3rd Quarter estimated tax bills will be mailed out by July 1st.
5. The ladies in Borough Hall have asked if they can switch Election Day off for Monday, July 3rd.

Council agreed to the change for Borough Hall personnel.

6. Nancy Nichols stated that she is having her department work on Veteran's Day since it is the last day for payment of taxes. They will be getting another day off.

Borough Clerk's Report:

Borough Clerk Hedy Lipke reported the following:

1. She will be away on vacation from June 20th through June 28th.
2. She has asked Chief Dowd who is the Alternate Commission to attend the JIF Meeting on July 28th.
3. She sent a reply to the DEP regarding the Stormwater Regulation Deficiencies. Supt. Ryan supplied documentation for a number of items, however, there are open issues which have to be addressed by the Borough Engineer. A copy of the letter was given to Dan Swayze.

Borough Attorney's Report:

Borough Attorney Cohen reported that he has nothing for Open Session.

Mayor David opened the meeting to the public. No one desiring to be heard the meeting was closed to the public.

A motion to go into Closed Session to discuss Personnel and potential Litigation Matters was made by Councilman Taylor and seconded by Councilman DeLuca.

CLOSED SESSION

Return to open session.

Mayor David stated that matters of personnel and potential litigation were discussed in Closed session and no action was taken.

Motion to adjourn was made by Councilman Soos and seconded by Councilman Taylor.

Meeting adjourned at 9:25 P.M.

BOROUGH OF KENILWORTH

AGENDA

WORK SESSION

TUESDAY, JUNE 13, 2006

Notice of Claim received on 5/25/06 - Michael Ramos v. Kenilworth - concerning his house fire, alleging the town was at fault due to improper inspections. Forwarded to the insurance company.

Notices from NJLM as follows: (Copies to all)

1. Various topics
2. Gang Deterrence & '07 Budget Provisions
3. NJDOT Policy on Deer Carcasses on Roads
4. Solid Waste Facilities at Rail Yards
5. Property taxes
6. Electronic Library & Reduction in Municipal Library Taxes
7. NJLM Rutgers Center for Green Building Committee
8. Clarification of NJDOT's Proposal to Dispose of Deer Carcasses & Use of Palm Trees Imported from Southern States for Landscaping & Decorating.

NJLM Legislative Bulletin. (Copy to all)

Notice from DCA regarding training requirements under the National Incident Management (NIMS). (Copy to all)

Letter from DEP (to Schoor DePalma) regarding Stream Encroachment Permit Rejection - Rahway River Branch 10-24. (Copy to all)

Letter from Stefanie Lonecker, 590 Passaic Avenue, requesting permission for a Block Party on Passaic Avenue on Saturday, July 22nd from 3 P.M. to 10 P.M. (Copy to all)

Memo from Chief Dowd stating no objection to the above Block Party, however, advising that it end by darkness. (Copy to all)

Letter from Alexander Martakis, 180 Faitoute Avenue, asking that his damaged driveway be repaired. Note: repair has been done by the DPW). (Copy to all)

Letter from Richard Holler, 728 Richfield Avenue, requesting that the Oak trees at DiMario Park be pruned by his fence. (Copy to all)

Letter from Alan Chalenski, 225 So. Michigan Avenue, asking the town to résumé maintenance of the brook and the easement by his house. (Copy to all)

Letter from Elizabeth Rehberger, 45 No. 9th Street, thanking the Governing Body for their intervention in the removal of her tree. (Copy to all)

Memo from Jeff Marsden, Schoor DePalma, with a quote from Tomaro regarding replacement of 12 street trees at a cost of \$4,920. What do you wish to do" (Copy to all)

Bids were received on May 30, 2006 for "Recycling Collection & Marketing" for a 3 year contract, as follows:

Great Northern Recycling, Inc. = Year 1 = \$ 67,600.
Year 2 = \$ 70,980.
Year 3 = \$ 74,529.
3 Year Total = \$213,109.00

Optional:

Year 4 = \$74,529.
Year 5 = \$78,255.

Attorney Cohen has reviewed the bid and everything is in order. Do you wish to award?

Memo from Nancy Nichols, Tax Collector, reported on the 2006 Tax Sale. (Copy to all)

Letter from Tom & Debby Paras, 321 North 16th Street, asking that three Maple Trees be cut down stating that they are too big for the area and enclosing photos. (Copy to all)

Mayor David received a letter inviting him and a representative of Council to attend a meeting to discuss the feasibility of creating a public-private partnership to manage sewerage facilities currently under the jurisdiction of RVSA. Meeting is on Wednesday, June 21st at 2:30 P.M. in the Clark Municipal Building - Room 16. Need a representative to attend as the Mayor cannot.

Letter inviting Mayor and Council to attend the Brearley Middle School Annual Awards Night on Wednesday, June 14, 2006 at 6:30 P.M. (Copy to all)

NJLM ALERT: "Local Franchise Rights Threatened". (Copy to all)

Resolutions/Ordinances received from the following:

Cranford - Ordinance amending their Land Development Code to Limit Living Areas in Certain Residences.

Roselle Park = Stormwater Management Plan adopted by the Roselle Park Planning Board.

Note: Bids are to be received on Monday, June 26th for No. 17th Street Reconstruction and for DiMario Park Renovations.

BOROUGH RESOLUTIONS:

1. All bills paid when properly audited and funds are available.
2. Treasurer authorized to refund White Goods Pick Up Fees to Wray Bailey, 237 No. 9th Street = \$50.00.
3. Treasurer to refund a Building Permit Fee to Robert Kahl, 300 Roosevelt Lane as he is a volunteer fireman = \$46.00.
4. Renewal of Liquor License for 2006-2007 term of 572 Holding Company t/a Tosca with a Special Condition.
5. Renewal of Liquor License for 2006-2007 term of Michigan Pub with a Special Condition.
6. Renewal of Liquor License for 2006-2007 term of Galmayo, Inc. t/a the Blackthorn with Special Conditions.
7. Renewal of Plenary Retail Consumption, Distribution and Club Licenses for 2006-2007 term.
8. 2006 Temporary Budget Appropriation Transfers.
9. Borough Clerk authorized to issue Raffle Licenses to the Kenilworth Historical Society for a 50/50 Raffle and a Casino Night on October 6, 2006.
10. Resolution outlining the Centennial Committee's plans for Centennial Celebrations in 2007.
11. Employing 2006 Summer Playground workers.
12. Authorizing the Tax Collector to send out estimated tax bills.

Reports of Mayor, Council and Borough Attorney.

Meeting Open to the Public

Council reserves the right to go into Closed Session if needed.

Adjournment

CLOSED SESSION PORTION OF THE WORK SESSION MEETING OF MAYOR AND COUNCIL OF THE BOROUGH KENILWORTH HELD ON TUESDAY, JUNE 13, 2006.

Mayor David read the Notice of Requirements of a Closed Session Meeting stating that matters of personnel and potential litigation are to be discussed.

Councilman Taylor asked Attorney Cohen if there is any conflict since he advised [REDACTED] on who to contact for help regarding his filing of a Notice of Claim.

Attorney Cohen felt there was no conflict.

Councilman Corvelli - Fire Department Potential Litigation

Councilman Corvelli reported that there was an incident with [REDACTED] over the weekend and a meeting of the Council Fire Committee and the Fire Department Executive Committee was called since they heard that [REDACTED] is hiring a lawyer. The Fire Department scheduled a Hearing with [REDACTED] for Friday, however, [REDACTED] has asked that it be postponed for a month as "he wants to settle whatever matter there is out of court".

Councilman DeLuca - stated that it seems that charges were brought against [REDACTED] by another Firefighter.

Mayor David - Personnel

Mayor David stated he received a memo from Joanne Szelingiewicz, Court Administrator, stating that Deputy [REDACTED] will be out of work for a month and [REDACTED] has been filling in for her. She is asking for additional compensation for [REDACTED].

Mayor David - stated he would ask Joanne to put together a written proposal on the appropriate compensation or come to a Work Session Meeting [REDACTED] person.

There being no further business for Closed Session [REDACTED] en Session was made by Councilman Taylor and seconded by Councilman [REDACTED].

Tom Borsody
Tambourine Property Services
54 Stone St
New Brunswick, NJ 08901-1137

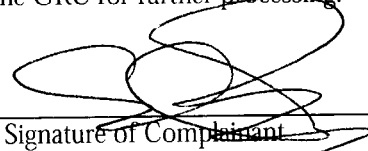
New Jersey Government Records Council Agreement To Mediate (Complainant)

Complaint Number: 2006-153

By participating in mediation I and my representative (if any) agree:

1. To engage in a good faith effort to resolve the above referenced complaint filed with the Government Records Council (GRC) concerning access to records or related matters described in the Complaint;
2. That all discussions and documents arising during mediation are confidential unless otherwise legally obtainable. Documents provided in mediation cannot be used in a GRC hearing or appeal from a GRC determination unless those documents are public records or the party with control over the documents consents to their use in such a proceeding. Conversations with the mediator or with the other party during mediation will not constitute statements that can be used in a later GRC hearing or appeal from a GRC determination;
3. That I will not subpoena the mediator to testify or to produce any mediation materials whatsoever following the mediation. I acknowledge that the mediator(s) will not testify on behalf of any party in any pending or future administrative or judicial proceeding, or disclose any information obtained during mediation unless the parties expressly consent to such disclosure, or unless law or court order requires disclosure. I further agree that the mediator(s) will be held harmless for any claim arising from the mediation process;
4. That the mediation session will not be recorded (either video or audio) and that no transcript of the session will be produced;
5. That the mediator will not decide who is right or wrong and that I shall not ask the mediator to act as my advocate. I acknowledge that the mediator will try to help the parties reach their own resolution of this dispute by encouraging discussion;
6. That each party has a right to have a representative with them during mediation;
7. That when a settlement is reached, it shall be put in writing and signed, and shall be binding upon all parties to the agreement. A copy shall be provided to the GRC. If the complaint is not resolved during mediation, the complaint will be transferred to the GRC for further processing.

John Raff
Name of Complainant
(Please Print)


Signature of Complainant

8/21/06
Date

Complete below only if using a representative:

Name of Complainant Representative
(Please Print)

Signature of Complainant
Representative

Date

Jon S. Corzine
Governor



Ronald K. Chen
Public Advocate

State of New Jersey

Office of Dispute Settlement

P O Box 853

Trenton, New Jersey 08625

Tel: (609) 292-1773 Fax: (609) 292-6292

Mediation Settlement Agreement

Date: September 9, 2006

GRC Complaint No: 2006-153

Requester: John Paff

Custodian: Borough of Kenilworth

Hedy Lipke, Record Custodian

Parties to this agreement understand that signing this document is voluntary and without coercion.

The Borough of Kenilworth agrees to the following:

1. The Borough shall, within ten days after its acceptance of this agreement, provide Mr. Paff with the resolutions, passed in accordance with NJSA 10:4-13, that authorized the three (3) most recent Borough Council closed or executive (i.e. nonpublic) sessions that occurred prior to July 19, 2006. Alternatively, the Borough will provide Mr. Paff with a statement that the resolutions do not exist, if indeed those resolutions do not exist.
2. The Borough shall, within ten days after its acceptance of this agreement, provide Mr. Paff with the minutes of the Borough Council's closed or executive (i.e. nonpublic) sessions that were authorized by the resolutions identified by ¶ 1 above, or if the resolutions do not exist, the most recent three Borough Council closed or executive sessions that occurred prior to July 19, 2006.
3. The Borough shall, for each set of Borough Council closed session minutes furnished in accordance with ¶ 2 above, set forth detailed, written reasons why any part of those minutes are redacted or otherwise suppressed.
4. The Borough shall provide all of the above records at no additional charge to Mr. Paff.
5. The Borough shall, going forward, publicly release its approved executive session minutes within seven business days after receiving a request and provide detailed, written explanations why any text was suppressed or redacted.

Mr. Paff agrees to withdraw GRC Complaint 2006-153 and to waive his right to collect the \$2.25 demanded within that complaint.

Mr. Paff understands that withdrawal of this complaint under this Agreement fulfills the Custodian's obligation and that of his/her employer with respect to the OPRA record request dated July 19, 2006 which is the subject of GRC Complaint 2006-153. Mr. Paff agrees to abandon any claims under OPRA against the Custodian and the Custodian's employer including any claim to monetary damages of any sort with respect to this claim. However, Mr. Paff specifically reserves the right to challenge, in a separate action, the

**OPRA Complaint 2006-153
Mediation Settlement Agreement**

redactions made to the records that are to be furnished in accordance with this agreement.

This agreement, which shall be a public record, can not be used in reference to any other complaint.

John P. [Signature] [Signature] 9.23.06
Name of Requestor Signature of Requestor Date
(Please Print)

Name of Requestor Representative Signature of Requestor Representative Date
(Please Print)

Name of Records Custodian [Signature] 9/12/06
(Please Print) Signature of Records Custodian Date

Jeffrey M. Cohen [Signature] 9/12/06
Name of Records Custodian Signature of Records Custodian Date
Representative Representative
(Please Print)

Borough of Kenilworth

5 6 7 B O U L E V A R D
KENILWORTH, NEW JERSEY 07033

Office of
H E D Y L I P K E
Borough Clerk
Tel. (908) 276-9090
Fax: (908) 276-7688

September 15, 2006

John Paff
P.O. Box 5424
Somerset, NJ 08875-5424

RE: Records Request Per
Settlement Agreement

Dear Mr. Paff:

As per the Settlement Agreement, please be advised of the following:

1. Regarding resolutions authorizing the three (3) most recent Borough Closed Session Meeting Minutes, there are no written resolutions. It has been the Borough's policy to authorize going into Closed Session by a voice motion, stating the reason for going into Closed Session, during the Open portion of the Work Session Meeting just prior to going into Closed.

This practice has been changed as of the meeting of August 22, 2006. A written resolution is now required (sample attached). Also, the Special Closed Session Meeting of July 13, 2006 was advertised in our official newspapers stating the purpose of the Closed Session Meeting.

2. Enclosed are the minutes of the most recent Borough Council Closed Sessions prior to July 19, 2006. Minutes of July 13; July 11; June 27 and June 13, 2006 (minutes previously submitted, with redactions omitted).
3. Regarding redactions, in the enclosed July 11th minutes a Personnel/Litigation Matter has been redacted upon the advice of our Borough Attorney, since it would violate the confidentiality provision of a settlement agreement that arose out of litigation.
4. There is no charge for the above records.



In conclusion, the Borough intends to release said minutes within seven business days after receiving a request and provide proper explanations if necessary.

Sincerely,
/s/ Hedy Lipke

Borough Clerk

Enclosures

RESOLUTION

No. Kenilworth, NJ _____

Introduced by _____

Adoption moved by _____

Seconded by _____

EXECUTIVE CLOSED SESSION

WHEREAS, the Open Public Meetings Act, P.L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist; and

WHEREAS, the Governing Body wishes to discuss:

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.

NOW, THEREFORE, BE IT RESOLVED that the public be excluded from this meeting.

Approved _____ Mayor


Date _____

Kenilworth

567 BOULEVARD
KENILWORTH, NEW JERSEY 07033

Office of
HEDY LIPKE
Borough Clerk
Tel. (908) 276-9090
Fax: (908) 276-7688

June 30, 2006

TO: MEMBERS OF THE GOVERNING BODY
FROM: HEDY LIPKE, BOROUGH CLERK 
RE: SPECIAL MEETING - THURSDAY, JULY 13, 2006

There will be a Special Closed Work Session Meeting of the Governing Body of the Borough of Kenilworth on Thursday, July 13, 2006 at 7:00 P.M. in the Council Room at Borough Hall, 567 Boulevard, Kenilworth, NJ for the purpose of interviewing potential Police Officer candidates and also any other pertinent business that may arise.

Please attend.

CC: Cranford Chronicle
Kenilworth Leader
Star Ledger
Attorney Jeffrey Cohen
Police Chief William Dowd
Bulletin Board

FILE COPY

SPECIAL CLOSED SESSION MEETING OF THE MAYOR AND COUNCIL OF THE BOROUGH OF KENILWORTH HELD ON THURSDAY, JULY 13, 2006.

Mayor David read the Notice of a Special Meeting stating that, as advertised, the purpose of this meeting is to interview police officer candidates.

Roll Call at 7:00 P.M.
Also present were Borough Attorney Cohen and Police Chief Dowd.

Mayor David asked for a motion to go into Closed Session for a personnel matter, specifically to interview police candidates.

A motion to go into Closed Session was made by Councilwoman Colosimo and seconded by Councilman Soos.

CLOSED SESSION:



Return to Open Session

Mayor David stated that five candidates for police department were interviewed in Closed Session and two candidates are to be offered positions.

There being no further business, a motion to adjourn was made by Councilman Soos and seconded by Councilman Clementi.

9:25 P.M.

BOROUGH Or KENILWORTH	
JUL 13 2006	
ROLL CALL	
CLEMENTI	✓
COLOSIMO	✓
CORVELLI	✓
DE LUCA	✓
TAYLOR	✓

Borough of Kenilworth
Department of Police



567 Boulevard
Kenilworth, NJ 07033
Tel. 908-276-1700 Fax:
908-276-1822

William Dowd
Chief of Police

POLICE CANDIDATE INTERVIEWS

July 13, 2006

7:00 - *Mark Dempsey*

7:20 - *Anthony Forlenza*

7:40 - *Joseph Scuzorzo*

8:00 - *Edward Paster*

8:20 - *Anthony DaCunza*

SPECIAL CLOSED SESSION MEETING OF THE MAYOR AND COUNCIL OF THE BOROUGH OF KENILWORTH HELD ON THURSDAY, JULY 13, 2006.

Mayor David read the Notice of Requirements of a Closed Session Meeting stating that, as noticed, this meeting is for a personnel matter, specifically to interview police candidates.

Police Commissioner Councilwoman Colosimo stated that five candidates will be interviewed tonight. Chief Dowd has provided a list of the candidates to all. (copy attached) The usual procedure will be followed with all Council members asking questions of each candidate. (sample questions provided to all and attached).

Chief Dowd explained that the first candidate, Mark Dempsey, had interviewed for a position a few years back.

Mark Dempsey

Councilwoman Colosimo asked Mark to tell about himself.

Mark Dempsey - stated he is 25 years old, a resident of Kenilworth, is athletic, has 62 college credits for Union College, worked in construction and currently works in Westfield as a Traffic Officer. He also coaches high school sports.

Councilman DeLuca - asked would you continue coaching or do community work if hired as a police officer.

Mark Dempsey - replied, yes, he would do community work and continue coaching and his goal is to be a DARE officer.

Councilman Taylor - asked what if one of your friends committed a crime, what would you do.

Mark Dempsey - replied he would have to enforce the law.

Councilman Corvelli - asked if he was on the list in Westfield and if hired here would you be loyal to us.

Mark Dempsey - yes, he is on the list in Westfield, but if hired here he would be loyal.

Councilman Clementi - asked how should a police officer conduct himself off-duty.

Mark Dempsey - replied he is older now and more sedate.

Councilman Soos - asked what do you have to contribute to our force.

Mark Dempsey - he is a team player and has good human skills.

Chief Dowd - asked if he carries a weapon in Westfield.

Mark Dempsey - replied, no.

Councilwoman Colosimo - asked what would make you better than the other candidates.

Mark Dempsey - he is honest and has good human relations skills.

Mayor David - asked what would you do if someone offered you a bribe.

Mark Dempsey - replied, he would not take it as he would not jeopardize his job and career.

Attorney Cohen - asked if he thinks it is good for a police officer to reside in the town where he lives.

Mark Dempsey - replied, yes, it is an advantage because he knows the town and the people.

Councilwoman Colosimo - asked what is the most important quality for a police officer.

Mark Dempsey - replied, to be a people person.

Councilman Soos - asked how would you control the alcohol and drug problem with kids and parents.

Mark Dempsey - replied, he would be a friend to the kids to try to guide them.

Councilwoman Colosimo - asked how do you feel about the use of deadly force.

Mark Dempsey - replied, if needed he would have to take the initiative.

Chief Dowd - asked if he is interviewing with any other towns.

Mark Dempsey - replied, he has an interview with Maplewood on August 2nd. Councilwoman

Colosimo - asked if there is anything else he would like to tell about himself.

Mark Dempsey - stated he wanted to stay in town - he wants to live and work here. He is older now since the last interview and more focused.

At this time Mark Dempsey left.

Anthony Forlenza

Councilwoman Colosimo - asked Anthony Forlenza to tell something about himself.

Anthony Forlenza - stated he is 30 years old, a resident of Union, living with Mom now but will be getting married when his girlfriend gets out of college. He has been an EMT for 13 years and a police dispatcher, graduated from the Police Academy and then worked for the Kean University Police for 2 years before transferring to the Boonton Police Force. He left Boonton because of an impending lay-off and then got a job in the Hazlet Police Dept. where he is currently working. He stated that Hazlet is a hard commute with their work schedule.

Councilman Soos - asked how he feels about our 12 hour shift and 4 & 4 schedule on a rotating schedule.

Anthony Forlenza - replied, it sounds good.

Chief Dowd - asked if he is making top salary now.

Anthony Forlenza - replied, no, he is making \$60,000 right now.

Councilman Taylor - asked what does he know about Kenilworth.

Anthony Forlenza - he knows the size of the town and knows Police Detective Anthony Giacalone from the Academy and a few other people in town. He knows it is a good town.

Councilman Corvelli - asked if he thinks it is a plus or minus not knowing anyone in town.

Anthony Forlenza - replied that in Boonton he did not know anybody but go to know everyone. In Hazlet he is not really meeting with people.

Chief Dowd - asked what kind of work does he do now in Hazlet.

Anthony Forlenza - he does patrol car duties and medical calls.

Councilman Taylor - asked what assurances are there if he is hired that he would not transfer again.

Anthony Forlenza - replied that he likes Kenilworth as it is close to Union and his friends.

Attorney Cohen - asked if he has any other applications out.

Anthony Forlenza - yes, he has put in for Fanwood - he likes small towns and departments.

Councilwoman Colosimo - asked what if we cannot meet your present salary - would you still be interested.

Anthony Forleza - yes, he would still be interested - he just wants to get in.

Councilman Soos - asked what are his hobbies.

Anthony Forlenza - fishing and camping.

Councilman DeLuca - asked what made you want to be a police officer.

Anthony Forlenza - in talking with police officers it sounded really interesting and after taking some classes he really got more interested.

Mayor David - asked what is his view on community policing.

Anthony Forlenza - it is very important, have to talk to people, they like that and it develops rapport. We have to get people involved.

Councilman Soos - asked how he feels about deadly force.

Anthony Forlenza - he would use deadly force if necessary to save himself or another person.

Chief Dowd - asked if he had any disciplinary problems in his employment.

Anthony Forlenza - replied, none.

Councilwoman Colosimo - asked why should we choose you.

Anthony Forlenza - because he is a hard worker and team player and this type of town is where he wants to live and work. He has a lot of training; the present Hazlet Police Chief and Sgts. like his work. He has paid for many courses taken himself to further his training.

Anthony Forleza left at this time.

Joseph Scurzo

Councilwoman Colosimo - asked Joseph Scurzo to tell something about himself.

Joseph Scurzo - he grew up in Kenilworth and went through the school system. He is 31 years old. Went to Union College and Academy, hired by Union County Sheriff's Office where he has worked for six years.

Chief Dowd - asked what his salary is now.

Joseph Scurzo - \$58,963.

Special Closed Meeting - July 13, 2006

Page 4

Councilman Taylor - asked what makes a good officer.

Joseph Scurzo - replied he is now working Court security and training new officers as there is a big gang trial going on.

Councilwoman Colosimo - asked what does he know about assisting us in preventing gangs.

Joseph Scurzo - replied that gangs are now focusing on high schools and recruiting there. We have to prevent that as there are big gang problems in Elizabeth and Plainfield.

Councilman DeLuca - asked how does his family feel about his being a police officer.

Joseph Scurzo - his family is very supportive of anything he wants to do.

Councilman Soos - asked how does he feel about working in town where you know everyone - is it an advantage or disadvantage.

Joseph Scurzo - replied, that it works both ways but is more of an advantage.

Councilwoman Colosimo - asked why do you want to make the move to our department.

Joseph Scurzo - replied that he wants to work in town, he just bought his parents house and he loves the town.

Councilman Soos - asked what if we cannot meet your present salary.

Joseph Scurzo - replied it is not a problem if it is not an extensive cut in pay.

Councilman Taylor - asked what are his hobbies.

Joseph Scurzo - fishing, hunting and the beach.

Councilman Corvelli - asked if given the opportunity would you be loyal to our town.

Joseph Scurzo - yes, he wants to stay here.

Councilman Soos - there are problems with alcohol and drugs with kids and parents - how can you help.

Joseph Scurozo - he would teach and show kids the consequences of drinking and drug use to try to deter them.

Councilman Corvelli - asked if he minds shift work.

Joseph Scurzo - replied, he doesn't mind at all as he is presently doing a lot of overtime.

Attorney Cohen - asked if he has any business ventures on the side.

Joseph Scurzo - replied, not right now as he has been working a lot of overtime.

Councilman Taylor - asked about his work experience at his present job.

Joseph Scurzo - replied he has worked many different details for the Sheriff's Department.

Chief Dowd - asked if he has had any disciplinary problems.

Joseph Scurzo - none

Councilman Clementi - asked how he feels about the use of deadly force.

Joseph Scuorzo - replied he has never fired his gun but has drawn his gun but would use deadly force if necessary.

Councilwoman Colosimo - asked why we should choose you over the others.

Joseph Scuorzo - replied because he is on the top of his job and has been given many varied duties which show he knows his job and they trust him.

Joseph Scuorzo left at this time.

Edward Paster

Councilwoman Colosimo - asked Edward Paster to tell a little about himself.

Edward Paster - stated he is 24 years old; graduated from the Academy in 2004 and has worked as a Police officer at Kean University for 2 years. He was an Auxiliary Police Officer in Union for 4 years which gave him a good idea of what he wanted to do. He went to school in town and played sports.

Councilwoman Colosimo - asked why do you want to be a Kenilworth Police Officer.

Edward Paster - replied he knew that he wanted to be a police officer since he was a kid and has set that as his goal.

Councilman Taylor - asked what training he has had.

Edward Paster - replied he graduated from the Academy; is firearms certified and worked as an Auxiliary Policeman in Union. He has a 4 year degree from Kean; was in the Honor Society; is an EMT and has Basic Skills Training.

Councilman DeLuca - asked if he has plans of staying in Kenilworth.

Edward Paster - replied, definitely, he loves this town.

Councilman Taylor - asked what if a friend commits a crime.

Edward Paster - replied that he respects his job and would enforce the law.

Councilman Soos - asked if it is an advantage or disadvantage of knowing people in town.

Edward Paster - he feels it is an advantage since everyone knows everyone.

Councilwoman Colosimo - asked how he feels about community policing.

Edward Paster - replied that it is very important, he likes people and talking with them.

Councilman DeLuca - asked if he is involved in other community things.

Edward Paster - replied he would like to work the DARE program and wants to do some coaching.

Councilman Clementi - asked what is his salary now.

Edward Paster - \$44,999.

Councilman Clementi - asked what if we could not meet your present salary.

Edward Paster - replied that he would take a pay cut if needed since it would work out in the long run.

Councilman Soos - asked if he is under contract with Kean.

Edward Paster - replied, there is no contract, he had to work for two years and that is up now.

Chief Dowd - asked if he has had any disciplinary problems.

Edward Paster - none

Councilman Soos - asked if he has had to use his gun and if he had to how does he feel about deadly force.

Edward Paster - replied that he has drawn his gun but not fired it but would use if necessary.

Councilman DeLuca - asked how does his family feel about a police job.

Edward Paster - replied that they are happy for the most part - they know it is a good career.

Councilwoman Colosimo - asked what makes a good police officer.

Edward Paster - replied, training and a good appearance.

Chief Dowd - asked what shifts he now works.

Edward Paster - replied he works three shifts - 7-3; 3-11 and 11-7 and holidays.

Councilwoman Colosimo - asked why should we choose you.

Edward Paster - replied that as stated on his résumé he is the most qualified and has had hands on experience and a lot of training.

Edward Paster left at this time.

Anthony DaCunza

Councilwoman Colosimo - asked Anthony DaCunza to tell a bit about himself.

Anthony DaCunza - he is 31 years old; has lived in Kenilworth for 4 years; just married; likes small community; graduated from the Academy; attended Union County College. This is only the second interview he has had since he graduated from the Academy. He is currently a police officer at Kean.

Councilwoman Colosimo - asked why does he want to be a Kenilworth Police Officer.

Anthony DaCunza - replied he likes smaller departments and towns and can see himself here.

Councilman Clementi - asked what salary he is making now.

Anthony DaCunza - \$44,995.

Councilman Soos - asked if he signed a contract with Kean.

Anthony DaCunza - replied, no, but has worked there for 2 years and is now a "free agent".

Councilman Clementi - asked what if we cannot meet your present salary.

Anthony DaCunza - replied that would be okay in order to get the job.

Councilman DeLuca - asked what prompted him to change careers.

Anthony DaCunza - replied he wanted a change and has family in law enforcement but he wanted to wait until he was a little older to pursue police work.

Councilman Corvelli - asked if he is hired here, would he stay.

Anthony DaCunza - replied, yes, he wants to work in a family oriented place and wants only one-stop.

Councilman DeLuca - asked what community activities would you like to do.

Anthony DaCunza - replied that some other towns put out Police cards and he would like to do that and he would also set up golf outings, etc.

Chief Dowd - asked if he has had any disciplinary problems.

Anthony DaCunza - replied, no problems - he feels the nature of police work is people relations.

Councilman Soos - asked how he feels about the use of deadly force.

Anthony DaCunza - stated he would use if necessary but would try to avoid it. He has drawn his gun but has never fired - he feels talking is best.

Councilman Soos - asked how could he help with the problem of alcohol and drug use of kids and parents.

Anthony DaCunza - he would do outreach programs with parents and kids.

Councilwoman Colosimo - asked what if a friend was doing something illegal.

Anthony DaCunza - replied he would hate to do it, but the law is the law and that is part of the police oath.

Councilwoman Colosimo - asked if there was anything else he wanted to say and why should we choose you.

Anthony DaCunza - stated he knows all the other candidates, however, he is 31 years old and mature and prefers a quiet life. The Governing Body could rest easy knowing he would do the job the right way.

Anthony DaCunza left at this time.

Council members discussed the five candidates interviewed and ranked them as follows: Council members Clementi, Colosimo, Corvelli, Soos and Taylor ranked the candidates (1) Scuzorzo, (2) Paster, (3) DaCunza, (4) Dempsey and (5) Forlenza.

Councilman DeLuca scored them as follows: (1) Paster, (2) Scuzorzo, (3) DaCunza, (4) Dempsey and (5) Forlenza.

Chief Dowd scored the candidates as follows: (1) Scuzorzo, (2) Paster, (3) DaCunza, (4) Dempsey and (5) Forlenza.

Attorney Cohen stated that he would rank Scuzorzo and Paster very close.

Council discussed the rankings stating they would love to hire the two top candidates but they can only hire one for now. The second position will be available after January 1, 2007.

Council decided to offer the current position to Joseph Scuzo and discussed the salary to offer him. After discussion, Council decided to offer the current position to Joseph Scuzo at a salary of \$59,032.58 (Step 3) starting on August 7, 2006 and to also offer Edward Paster a position after January 1, 2007 at a salary of \$45,900 (Step 2).

A motion was made by Councilwoman Colosimo and seconded by Councilman Taylor to hire Joseph Scuzo as a Police Officer as of August 7, 2006 at a salary of \$59,032.58 (Step 3). Upon Roll Call the vote was 5 "Yes" and 1 "No".

Councilwoman Colosimo made another motion to offer Edward Paster a position as of January 1, 2007 at a salary of \$45,900. (Step 2). Motion was seconded by Councilman DeLuca and on roll call the vote was unanimous in favor.



A motion to return to Open Session was made by Councilman Soos and seconded by Councilman Taylor.

CLOSED SESSION PORTION OF THE WORK SESSION MEETING OF MAYOR AND COUNCIL OF THE BOROUGH OF KENILWORTH HELD ON TUESDAY, JULY 11, 2006.

Council President Soos read the Notice of Requirements of a Closed Session Meeting stating that matters of personnel and litigation are to be discussed.

Councilman Soos - Personnel Matter




Councilman Soos stated that a situation has come up regarding a DPW Sanitation employee. It seems a resident of Pembroke Drive called to complain that his garbage was not picked up. Foreman Walter Kriek went to check and found that the garbage consisted of illegal materials that do not go into the regular garbage. When he told the resident that this was not to be picked up, the resident said he has been paying a Sanitation employee money to take the stuff. The matter is being investigated by the Police Department. If proven it could be grounds for dismissal.

)f Borough Clerk Lipke - Personnel/Litigation Matter



Council agreed to wait for our Labor Attorney's resolution of this matter.

Attorney Cohen - Personnel

Attorney Cohen reported he received a call from Len Leudekke's attorney saying that his Appal Hearing is being held on August 18th. Disciplinary proceedings against him are pending based on  the outcome of the appeal. Attorney Cohen will keep Chief Dowd informed.

There being no further business for Closed Session, a motion to Return to Open Session was made by Councilwoman Colosimo and seconded by Councilman DeLuca.

CLOSED SESSION PORTION OF THE WORK SESSION MEETING OF MAYOR AND COUNCIL OF THE BOROUGH OF KENILWORTH HELD ON JUNE 27, 2006.

Mayor David read the Notice of Requirements of a Closed Session Meeting stating that matters of personnel are to be discussed.

Councilwoman Colosimo - Personnel Matter

Councilwoman Colosimo advised that former police officer Lamont accepted involuntary disability for 40% of his salary. If he had put in a request for early retirement he would have received 60% of his salary.



Councilman Soos questioned a bill on the Bill List for \$300.00 for a gun for Lamont.

Councilman Soos - Personnel Matter

Councilman **Soos** advised that Joanne Szelingiewicz requested that we offer Debra Weiss the position of Deputy Court Clerk at \$40,000.00 without medical benefits. Debra would take the place of Barbara Grabowski, who is out with back problems. Debra's current salary as a part time clerk is \$23,400.00. Barbara's salary is \$32,000.00.

Motion was made to offer Debra the position for \$40,000.00 without medical benefits.
All in favor.



Motion was made by Councilman Soos and seconded by Councilwoman Colosimo to return to Open Session.

Kathi Moschetta
Deputy Clerk

CLOSED SESSION PORTION OF THE WORK SESSION MEETING OF MAYOR AND COUNCIL OF THE BOROUGH KENILWORTH HELD ON TUESDAY, JUNE 13, 2006.

Mayor David read the Notice of Requirements of a Closed Session Meeting stating that matters of personnel and potential litigation are to be discussed.

Councilman Taylor asked Attorney Cohen if there is any conflict since he advised Michael Ramos on who to contact for help regarding his filing of a Notice of Claim.

Attorney Cohen felt there was no conflict.

Councilman Corvelli - Fire Department Potential Litigation

Councilman Corvelli reported that there was an incident with Tony Peters over the weekend and a meeting of the Council Fire Committee and the Fire Department Executive Committee was called since they heard that Tony is hiring a lawyer. The Fire Department scheduled a Hearing with Tony for Friday, however, Tony has asked that it be postponed for a month as "he wants to settle whatever matter there is out of court".

Councilman DeLuca - stated that it seems that charges were brought against Tony Peters by another Firefighter.

Mayor David - Personnel

Mayor David stated he received a memo from Joanne Szelingiewicz, Court Administrator, stating that Deputy Barbara Grabowski will be out of work for a month and Debbie Weiss has been filling in for her. She is asking for additional compensation for Debbie.

Mayor David - stated he would ask Joanne to put together a written proposal on the appropriate compensation or come to a Work Session Meeting to discuss the matter in person.

There being no further business for Closed Session, a motion to return to Open Session was made by Councilman Taylor and seconded by Councilman Clementi.

PUBLIC RECORD REQUEST FORM

BOROUGH

OF

KENILWORTH

(BOROUGH, TOWNSHIP, CITY, COUNTY)

(NAME OF MUNICIPALITY OR COUNTY)

IMPORTANT NOTICE

The reverse side of this form contains important information related to your rights to request government records. Please read it carefully.

REQUESTOR INFORMATION: (PLEASE PRINT)

First Name John MI _____ Last Name Paff
Mailing Address PO Box 5424
City Somerset State NJ Zip 08875 E-Mail paff@pobox.com
Business Hours Telephone Area Code 732 Number 873 1251 Extension _____
Preferred Delivery: Pick Up US Mail On Site Inspect
Check One: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE HAVE NOT been convicted of any indictable offense under the laws of New Jersey or any other state of the United States.
Signature _____ Date 07/19/06

Payment Information

Select Payment Method
Cash Check Money Order

Fees: Pages 1-10 \$0.75@
Pages 11-20 \$0.50@
Pages 21- \$0.25@

Police Accident Rpt. via Mail
Pages 1-3 \$5.00
Pages 4- \$1.00@
as per N.J.S.A. 39:4-131

Delivery: Delivery/postage fees additional depending upon delivery service.

INFORMATION REQUESTED:

- Copy of Minutes (specify board or entity, date, topic or other identifying information) See attached
- Copy of Ordinance or Resolution (specify date, number, or other identifying information)
- Police Accident Report: (Identify Accident) Fee: _____
- Other Type of Report (specify) _____
- License Information (specify) _____
- Information on Specific Property Address _____ Blk # _____ Lot # _____
- Municipal Lien Search Fee: _____
Municipal Lien Searches are provided by the designated search officer and will be provided within 15 days after the request is received and the fee paid, as provided in N.J.S.A. 54:5-11, et seq.
- List of Property Owners within 200 feet Fee: _____
As provided in N.J.S.A. 40:55D-12, the fee is the greater of \$.25 per name or \$10.00

Describe from Above:

Information Requested will be ready on: _____ Estimated Cost: _____
Disposition: Date Filled _____ Date Mailed _____ Date Picked Up _____ Date Denied _____
Reason for Denial: _____

Custodian Name (Please Print) Signature Date

Supplement to Government Records Request Form – Kenilworth Borough

I believe that taxpayers have the right to inform themselves of how their government operates and how it spends taxpayers' money.

I recently received a copy of the Borough Council's July 11, 2006 nonpublic meeting minutes and note that some text beneath the "Borough Clerk Lipke – Personnel/Litigation matter" item has been redacted. According to ¶ 3 of Clerk Lipke's September 15, 2006 letter to me, that text had "been redacted upon the advice of our Borough Attorney, since it would violate the confidentiality provision of a settlement agreement that arose out of litigation."

Please consider this a request for records under the Open Public Records Act and the common law. I would like to purchase photocopies of the following:

- The settlement agreement "that arose out of litigation" discussed during the Borough Council's July 11, 2006 nonpublic meeting and redacted from the minutes that of that meeting that were sent to me.
- Any records showing that the referred to settlement agreement was filed with a court.
- Any records showing that a confidentiality order regarding the referred to litigation was issued by a court or other tribunal

Also, In order to assist in my attorney's determination as to the legality of the confidentiality provision, please inform me as to whether or not the settlement agreement involved the payment of public funds.

Borough of Kenilworth

567 BOULEVARD
KENILWORTH, NEW JERSEY 07033

Office of
HEDY LIPKE
Borough Clerk
Tel. (908) 276-9090
Fax: (908) 276-7688

October 16, 2006

John Paff
P.O. Box 5424
Somerset, NJ 08875

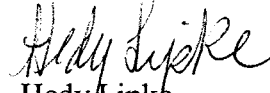
RE: OPRA REQUEST

Mr. Paff:

I apologize for the delay, but I have just today received the opinion from our Labor Attorney regarding your request.

Enclosed is the reply to the OPRA request of 10/4/06.

Sincerely,


Hedy Lipke
Borough Clerk

Enclosure

Faxed to 908-276-7688 on 10/04/06 at 1:15 p.m.

PUBLIC RECORD REQUEST FORM

BOROUGH OF KENILWORTH (BOROUGH, TOWNSHIP, CITY, COUNTY) (NAME OF MUNICIPALITY OR COUNTY)

IMPORTANT NOTICE

The reverse side of this form contains important information related to your rights to request government records. Please read it carefully.

REQUESTOR INFORMATION: (PLEASE PRINT)

Requestor information fields: First Name John, Last Name Paff, Mailing Address PO Box 5424, City Somerset, State NJ, Zip 08875, Email paff@pobox.com, Business Hours Telephone Area Code 732, Number 873 1251, Extension, Preferred Delivery: Pick Up, On Site Inspect, Check One: Under penalty of perjury, I certify that I HAVE NOT been convicted of any indictable offense under the laws of New Jersey or any other state of the United States. Signature: [Signature], Date: 10/04/06

Payment Information: Select Payment Method: Cash, Check, Money Order. Fees: Pages 1-10 \$1.75, Pages 11-20 \$0.50, Pages 21 \$0.25, Police Accident Rpt. via Mail Pages 1-3 \$5.00, Pages 4- \$1.00, as per N.J.S.A. 39:4-13. Delivery, Delivery/Postage fees additional depending upon delivery service.

INFORMATION REQUESTED:

- Copy of Minutes (specify board or entity, date, topic or other identifying information) See attached
Copy of Ordinance or Resolution (specify date, number, or other identifying information)
Police Accident Report: (Identify Accident)
Other Type of Report (specify)
License Information (specify)
Information on Specific Property Address, Blk #, Lot #
Municipal Lien Search Municipal Lien Searches are provided by the designated search officer and will be provided within 15 days after the request is received and the fee paid, as provided in N.J.S.A. 54-5-11, et seq.
List of Property Owners within 200 feet As provided in N.J.S.A. 40:55D-12, the fee is the greater of \$.25 per acre or \$10.00

Describe from Above:

Information Requested will be ready by: 10/16/06 Estimated Cost:
Disposition: Date Filled 10/16/06 Date Mailed 10/16/06 Date Picked Up Date Denied
Reason for Denial: Hedy Lipke (Controlling Name) Signature: Hedy Lipke Date: 10/16/06

Page 2 9082767688 06:40 9007:47 011

Supplement to Government Records Request Form – Kenilworth Borough

I believe that taxpayers have the right to inform themselves of how their government operates and how it spends taxpayers' money.

I recently received a copy of the Borough Council's July 11, 2006 nonpublic meeting minutes and note that some text beneath the "Borough Clerk Lipke – Personnel Litigation matter" item has been redacted. According to ¶ 3 of Clerk Lipke's September 15, 2006 letter to me, that text had "been redacted upon the advice of our Borough Attorney, since it would violate the confidentiality provision of a settlement agreement that arose out of litigation."

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- The settlement agreement "that arose out of litigation" discussed during the Borough Council's July 11, 2006 nonpublic meeting and redacted from the minutes of that meeting that were sent to me
- Any records showing that the referred to settlement agreement was filed with a court.
- Any records showing that a confidentiality order regarding the referred to litigation was issued by a court or other tribunal

Also, in order to assist in my attorney's determination as to the legality of the confidentiality provision, please inform me as to whether or not the settlement agreement involved the payment of public funds.

MEMORANDUM

TO: JOHN PAFF
P.O. Box 5424
Somerset, NJ 08875

FROM: HEDY LIPKE

RE: OCTOBER 4, 2006 OPEN PUBLIC RECORDS ACT REQUEST

DATED: OCTOBER 16, 006

You made a request (attached) under the Open Public Records Act ("OPRA") for the following:

1. "The Settlement Agreement that arose out of litigation discussed during the Borough Council's July 11, 2006 non-public meeting and redacted from the minutes of that meeting that were sent to me."

That Settlement Agreement contains confidential information related to a former employee of the Borough. That former employee of the Borough has been provided with a copy of your OPRA request to determine whether that former employee has any objection to the disclosure of the Settlement Agreement. We have given the employee seven (7) days to register any objection to your OPRA request. We therefore request this reasonable extension to reply in full to your OPRA request.

2. "Any records showing that the referred to Settlement Agreement was filed with the court."

The Borough is in possession of no such records.

3. "Any records showing that a confidentiality order regarding the referred to litigation was issued by a court or other tribunal."

The Borough is in possession of no such records.

We will make a further response to you upon receipt of any communication from the affected former employee. Thank you for your interest in the Borough's affairs.

STEVEN L. ROGUT
DANIEL J. McCARTHY
CHRISTOPHER L. TROY^o
DIANE U. DABULAS
GEOFFREY W. VEITH^o
JONATHAN R. MacBRIDE[†]

ROGUT McCARTHY TROY LLC
COUNSELLORS AT LAW

37 ALDEN STREET
CRANFORD, NEW JERSEY 07016-2106

Telephone (908) 931-1150
Facsimile (908) 931-1151
Facsimile (908) 653-4832

www.rmtllc.com

PENNSYLVANIA OFFICE:

100 WEST ELM STREET, SUITE 400
CONSHOHOCKEN, PA 19428

Telephone (610) 644-5900
Facsimile (610) 834-9499

ANN S. BEDDINGFIELD, Of Counsel^{††}
NORMAN B. KAUFF, Of Counsel
JOSEPH A. JULIANA, Of Counsel^o
COLLEEN E. PATTERSON[†]
MICHAEL J. ALIVERNINI^{†•}
SCOTT A. GALANO
MELISSA A. PETERS
CHRISTOPHER H. FRICK[†]
OWEN G. FLETCHER
DANIEL J. FLEMING^o
NEAL S. SPEECE[†]
MARGARET K. SIMPSON^o

^o ADMITTED IN PA ONLY
^o ALSO ADMITTED IN NY
^{††} ADMITTED IN NY, CT AND NC ONLY
[†] ALSO ADMITTED IN PA
[•] ALSO ADMITTED IN DC

December 11, 2006

John Paff
P.O. Box 5424
Somerset, New Jersey 08875

RE: OCTOBER 4, 2006 OPEN PUBLIC RECORDS ACT REQUEST

Dear Mr. Paff:

The Borough of Kenilworth ("Borough") is in receipt of your letter dated December 1, 2006 regarding your October 4, 2006 Open Public Records Act Request. It has been referred to this office for response.

On October 16, 2006, the Borough provided you with a response to your October 4, 2006 request. In that October 16, 2006 response, the Borough advised that it had provided the affected former employee, Daniel Rica, with time to voice an objection to your request for a copy of the Settlement Agreement that arose out of litigation discussed during the Borough Council's July 11, 2006 non-public meeting and redacted from the minutes of that meeting. Mr. Rica subsequently advised that he objected to the release of the Settlement Agreement due to its confidential nature. Therefore, we decline to release the document at this time to provide Mr. Rica with an opportunity to vindicate his privacy right claim.

The Borough is providing Mr. Rica until December 31, 2006 to file a complaint with the Government Records Council ("GRC"), or a Court of competent jurisdiction, regarding the confidentiality of his Settlement Agreement. This will allow Mr. Rica with an opportunity to submit his position regarding the confidential nature of the Settlement Agreement. By copy of this letter, we are further putting Mr. Rica on notice that if he does not seek protection against the release of the Settlement Agreement by December 31, 2006 and provide proof to the Borough of same, the Borough will release the

John Paff
December 13, 2006
Page 2

requested document to you. Mr. Rica can contact the GRC regarding a submission as follows:

Mail: Government Records Council
PO Box 819
Trenton, NJ 08625

Phone Numbers Toll-free help-line: 866-850-0511
Regular Office: 609-292-6830
Fax: 609-633-6337

E-Mail: GRC@dca.state.nj.us

As stated above, if Mr. Rica does not advise by December 31, 2006 that he has sought protection against the release of the Settlement Agreement, then we will provide you with the requested document.

Very truly yours,


Daniel J. McCarthy

cc: Hedy Lipke
Daniel Rica
Alex Keosky, Esq.

John Paff

Telephone – 732-873-1251

P.O. Box 5424
Somerset, New Jersey 08875-5424
E-mail – CJSC@pobox.com
January 16, 2007

Fax – 908-325-0129

Daniel J. McCarthy, Esq.
Rogut, McCarthy, Troy, LLC.
37 Alden St
Cranford, NJ 07016-2106 *(via Fax only to 908-931-1151)*

Dear Mr. McCarthy:

I am in receipt of your December 11, 2006 letter advising me that Borough of Kenilworth was providing former employee Daniel Rica until December 31, 2006 to seek protection against release of the Settlement Agreement that I had previously requested.

Has Mr. Rica notified you that he has filed a complaint seeking protection? If so, please advise me of the tribunal and the docket number. If not, please send me a copy of the Settlement Agreement.

Thank you for your attention to this matter.

Sincerely,



John Paff

P.S. Until about mid-April, I will be receiving mail, temporarily, at

2106 S Cypress Bend Dr, Apt 102
Pompano Beach, FL 33069-4457

During this time, I would appreciate it if you would correspond with me at the Florida address instead of the New Jersey address in the letterhead. My fax number of 908-325-0129 and email address of paff@pobox.com will automatically forward to my Florida address. Thank you.

Borough of Kenilworth

567 BOULEVARD
KENILWORTH, NEW JERSEY 07033

Office of
HEDY LIPKE
Borough Clerk
Tel. (908) 276-9090
Fax: (908) 276-7688

January 19, 2007

John Paff
2106 S. Cypress Bend Drive
Apt. 102
Pompano Beach, FL 33069-4457

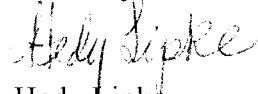
RE: OPRA Request - "Daniel Rica Settlement
Agreement"

Dear Mr. Paff:

Since no response was received from Mr. Rica regarding any objection he might have to the release of the Settlement Agreement, I have been advised by our Labor Attorney to release the Agreement on this date.

A copy of the Agreement between Daniel Rica and the Borough of Kenilworth is enclosed.

Sincerely,



Hedy Lipke
Borough Clerk

Enclosure

**CONFIDENTIAL RETIREMENT FROM EMPLOYMENT,
SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Confidential Retirement from Employment, Settlement Agreement and General Release, hereinafter referred to as the "Agreement" is made between Daniel J. Rica, (hereinafter "Mr. Rica") residing at 123 N. 24th Street, Kenilworth, New Jersey 07033, and the Borough of Kenilworth, the Council of the Borough of Kenilworth, the Borough's members, officers, directors, officials, past and present employees, elected representatives, agents, servants, insurers and attorneys, William Dowd, Kenneth Grady, William Hannon, (all in their official and individual capacities) (hereinafter referred to as the "Borough"), and Mr. Rica and the Borough together referred to as the "Parties."

This Agreement is intended to settle all claims, charges, debts, obligations, grievances, demands, suits, judgments or causes of action of any kind whatsoever, that were made or could have been made, to date and in the future by Mr. Rica against the Borough arising from or related to Mr. Rica's office and employment as a police officer in the Borough and his retirement from that employment. The provisions of the Agreement are mutual and dependent, except as set forth to the contrary below. This Agreement replaces any other agreements, to the extent that they existed, with regard to the same subject matter:

- 1) In return for the commitment by the Borough as set forth below, Mr. Rica will dismiss his Complaint, with prejudice, filed under Docket No. UNN-L-3055-04, with the Superior Court of New Jersey, Law Division, Union county (hereinafter the "Civil Action"). Further, Mr. Rica, for himself, his heirs, executors, administrators and assigns, does irrevocably and unconditionally release and forever discharge the Borough from the beginning of time to the date this Agreement is executed by Mr.

Rica, of and from any and all debts, obligations, grievances, claims, charges, demands, suits, judgments, or causes of action of any kind whatsoever, whether known or unknown, seen or unforeseen, which are raised or could have been raised against the Borough in the matter captioned Daniel J. Rica vs. Borough of Kenilworth, the Council of the Borough of Kenilworth, William Dowd, Kenneth Grady, William Hannon, Docket No. UNN-L-3055-04 in the Superior Court of New Jersey, Law Division, Union County, or in any other cause of action of any kind whatsoever in tort, contract, statute, regulation or ordinance or on any other basis for compensatory, punitive, or other damages, expenses, reimbursements, disbursements, attorneys' fees, damages and interest or costs of any kind including, but not limited to, all rights and claims, whether in law or in equity, in any federal, state, county, local or municipal court or administrative agency including but not limited to the New Jersey Division of Pensions, the Police and Firemen's Retirement System (PFRS) and the New Jersey Department of Personnel or any grievances through any forum, which Rica or anyone acting through him, his estate or on behalf of Rica or his estate or otherwise, have, have had, asserted or could have asserted, including but not limited to, claims under the Borough's policies, state pension laws, PFRS laws, the Worker's Compensation statutes, the applicable Collective Bargaining Agreement, the Borough's Code, the Borough's ordinances, and all federal, state, local law claims, whether constitutional, statutory, regulatory or common law, including but not limited to, claims regarding promotions, termination of employment, resignation, retirement, any and all employee benefits, sick time, vacation time, compensatory time, terminal leave, disciplines, grievances, retaliation, reassignments, transfers,

personal injury, emotional distress, loss of economic benefit, pattern and policy of unlawful employment practice, any claim whatsoever arising out of and/or related to Mr. Rica's employment, harassment, retaliation, breach of and/or interference with contract, non-renewal of contract, breach of implied covenant of good faith and fair dealing, violation of any collective bargaining agreement, discrimination on any basis, claims for arbitration in any forum for any cause of action alleging violations of, but not limited to, the federal Constitution, the Constitution of the State of New Jersey, Title VII of the U.S. Civil Rights Act of 1964, the federal Age Discrimination in Employment Act of 1967, the federal Americans with Disabilities Act, the federal Employment Retirement Income Security Act, the federal Fair Labor Standards Act, the federal Family and Medical Leave Act, the New Jersey Family Leave Act, the New Jersey Law Against Discrimination, the New Jersey Conscientious Employee Protection Act. Mr. Rica understands that he is not releasing any claims he may have to enforce the provisions of this Agreement. Mr. Rica further agrees not to file a lawsuit or administrative claim or demand for arbitration to assert any of the claims he has given up, released or waived; and

- 2) Mr. Rica understands and agrees that upon the execution of this Agreement, he will do all things necessary, in a timely manner, to complete his application for an ordinary service retirement from the New Jersey Division of Pensions and the PFRS. Further, Mr. Rica agrees that his retirement date from the Borough shall be no later than sixty (60) days prior to the effective date of his retirement as established by PFRS. The Borough agrees to provide reasonable assistance to Mr. Rica, if requested, in connection with Mr. Rica's PFRS application for retirement benefits.

Mr. Rica further agrees that he will not reapply for employment in any capacity with the Borough at any time after his execution of this Agreement; and

- 3) Mr. Rica understands and agrees that he will permanently retire from the Borough and his retirement from the Borough is final and irrevocable, no matter what and regardless of whether or not his application for retirement with PFRS is successful. If Mr. Rica's retirement application with PFRS is not successful, his retirement date from the Borough shall be the date the plaintiff executes this Agreement; and
- 4) To the extent permitted by law, Mr. Rica understands and agrees not to disclose, either directly or indirectly, any information whatsoever relating to the existence or substance of this Agreement, the Civil Action, the business of the Borough, Mr. Rica's employment with the Borough, or any current or former employees of the Borough to any person or entity including, but not limited to, members of the media or press, present or former employees of the Borough and/or attorneys or private investigators representing other employees or entities. Mr. Rica, however, may disclose the terms of this Agreement to (i) his spouse and accountant, provided, however, that those to whom Mr. Rica makes such disclosure agree to keep such information confidential and not disclose it to others; or (ii) as required by lawful process or subpoena or if required to do so by any regulatory body or agency. Upon inquiry regarding this proceeding, Mr. Rica shall either not respond or state only that it has been resolved.

In the event Mr. Rica is subject to subpoena, court order or otherwise compelled to testify, appear or provide information regarding the Borough, within three (3) days of

Mr. Rica's receipt of said subpoena, court order, or other notification, Mr. Rica will provide written notice, via facsimile and mail, to:

Jacqueline A. DeGregorio, Esq.
Weiner Lesniak LLP
629 Parsippany Road
P.O. Box 438
Parsippany, New Jersey 07054
Facsimile: 973-403-0010

This Agreement shall not be filed with any court and shall remain forever confidential except in an action to enforce or for breach of this Agreement. If Mr. Rica asserts an action to enforce this Agreement or for breach of this Agreement, Mr. Rica shall maintain such confidentiality by whatever means necessary, including, but not limited to, submitting the Agreement to a court under confidential seal; and

- 5) Mr. Rica understands and agrees not to defame, disparage or demean the Borough in any manner whatsoever; and
- 6) Mr. Rica understands and agrees that he is responsible for all applicable taxes, if any, as a result of the receipt of the settlement monies. Mr. Rica understands and agrees that the Borough is providing Mr. Rica with no representations regarding tax obligations or consequences that may arise from this Agreement. Mr. Rica agrees to indemnify the Borough and hold the Borough harmless for all taxes, penalties and interest, withholding or otherwise, for which the Borough may be found liable as a consequence of having paid monies to Mr. Rica pursuant to this Agreement. The Borough shall notify Mr. Rica within thirty (30) days, in writing and via certified mail, return receipt requested, of any IRS or N.J. Tax Division notifications, assessments or concerns and Mr. Rica is to keep his address current with the

Borough. It is expressly agreed that if the Borough is required to provide payments for taxes or interest or penalties to any taxing authority, Mr. Rica shall reimburse the Borough for such payments to such taxing authority within ten (10) days after the Borough notifies Mr. Rica, in writing, via certified mail, return receipt requested, that it has incurred such liability; and

- 7) Mr. Rica represents and warrants that he is unaware of and has not received notice of any liens, assignments, subrogations, encumbrances, garnishments, security interest, or any other rights of any person or entity to all or any part of the payments made pursuant to this Agreement including, but not limited to, any such claims by any health care providers, any state or other governmental bodies, any employers, workers' compensation insurers, or any attorneys, that would give such a person or entity a claim to recover all or a portion of the payments made pursuant to this Agreement. Mr. Rica agrees to defend, indemnify, and hold harmless each released person or entity from any such liens or encumbrances, or from the breach of the representations and warranties contained in this paragraph; and
- 8) Mr. Rica understands and agrees to defend, indemnify, and hold harmless the Borough with respect to all part, present, and future demands, claims, suits, causes of action, liabilities, liens, or judgments of any kind whatever by any person or entity not a signatory hereto arising out of or in any way related to the released claims; and
- 9) Mr. Rica represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth in this Agreement; and that Mr. Rica has the sole right and exclusive authority to sign this Agreement and receive the sums

specified in it; and that Mr. Rica has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement; and

10) In consideration for Mr. Rica's execution of this Agreement and the promises and covenants contained herein:

a) The Borough agrees to provide and pay for family coverage for medical benefits for Mr. Rica and all surviving eligible dependents for the life of Mr. Rica, at a level equal to those medical benefits currently being provided to Mr. Rica. The methodology of such provision and payment shall be determined solely by the Borough. All benefits for eligible dependents shall cease upon the death of Mr. Rica. Eligible dependents shall include Mr. Rica's spouse and children under the age of eighteen.

b) The Borough's insurers on behalf of the Borough agree to pay Mr. Rica a lump sum payout of \$70,000 within 45 days of the execution of this Agreement with the payment in the form of a check made payable to Mr. Rica and Mr. Rica's counsel, DeCotiis, Fitzpatrick, Cole & Wisler LLP and it is specifically agreed by the Parties that the \$70,000 payment made hereunder shall not be attributed to compensation which may be subject to the Borough's liability for contribution to any benefits fund including, but not limited to, benefit funds of the State of New Jersey, unemployment compensation, disability compensation, Social Security, or the like; and

c) The Borough also agrees to pay Mr. Rica for any and all accrued benefits as determined solely by the Borough including, but not limited to, all terminal leave

benefits and accumulated sick, vacation, and compensatory time, that are provided for in the applicable Collective Bargaining Agreement; and

- 11) All provisions of this Agreement are binding, effective and irrevocable as of the date of the execution of this Agreement by the Parties; and
- 12) This Agreement was negotiated by the Parties with the assistance of the Superior Court of New Jersey, Law Division, Union County (Honorable Walter Barisonek). Each Party was given an opportunity to consult with their own attorney and, in fact, did so consult, before the Agreement was executed and delivered. No provision of this Agreement shall be construed against any Party based upon the fact that the Party or his (its) attorney either proposed or drafted the provision in dispute; and
- 13) This Agreement is not and shall not in any way be deemed to constitute an admission or evidence of any wrongdoing or liability on the part of any of the Parties, nor a violation of any federal, state or local statute, law, rule, regulation, ordinance or principle of common law or equity. Rather, this Agreement constitutes the good faith settlement and release of disputed claims, and it is acknowledged, understood and agreed by the Parties that this Agreement is being entered into by the Parties solely to avoid the burden, expense, delay and uncertainty of further litigation and to **fully and finally** resolve, settle and dismiss with prejudice, any and all claims of any kind whatsoever, whether known or unknown, which Mr. Rica has ever had or now has against the Borough arising out of or relating to his employment with the Borough; and
- 14) This Agreement shall be governed by the applicable laws of the United States and the State of New Jersey and any dispute concerning them or to enforce them shall only be

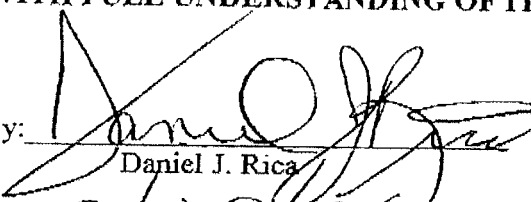
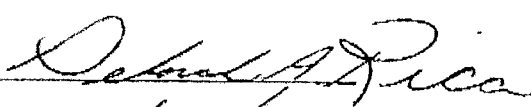
brought in the Superior Court of New Jersey, Union county, or the Federal District Court in Newark, New Jersey; and

- 15) This Agreement contains the entire agreement between Mr. Rica and the Borough and Mr. Rica understands and agrees that regardless of the adequacy of the promises under this Agreement, it is binding on Mr. Rica and on his agents, heirs and assigns and Mr. Rica understands and agrees that they will not seek any other payment whatsoever from the Borough; and
- 16) This Agreement may only be modified by a written and dated amendment signed by the Parties. No entity or person, except those who have signed this Agreement, has any authority to make any promise or representation concerning this Agreement or on behalf of any party. No waiver by any Party of any breach of this Agreement shall be deemed to be a waiver of any other or future breach hereof; and
- 17) In the event any Party breaches a provision of this Agreement, the Parties agree that either may institute an action against the other to specifically enforce any term or terms of this Agreement, in addition to any other legal or equitable relief permitted by law. In the event that any provision of this Agreement is declared illegal or unenforceable by a court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. Moreover, if any such provision is determined to be invalid, illegal or unenforceable but can be made valid, legal or enforceable by modification thereof, then the Party for whose benefit the provision exists, may make such modification as necessary to make the provision valid, legal and enforceable; and

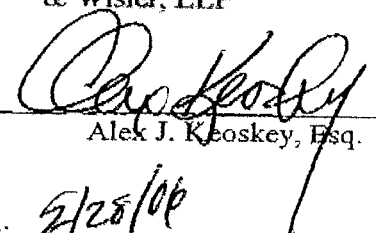
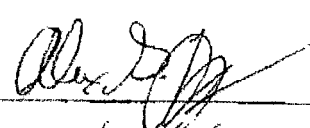
WHEREFORE, intending to be legally bound, the Parties have agreed to the aforesaid terms and indicate their agreement by signing below.

PLEASE READ CAREFULLY.

BY SIGNING THIS AGREEMENT, THE PARTIES ACKNOWLEDGE AND AFFIRM THE FOLLOWING: ALL PARTIES ARE COMPETENT; ALL PARTIES HAVE BEEN AFFORDED A TIME PERIOD OF NO LESS THAN 21 DAYS TO REVIEW AND CONSIDER THIS AGREEMENT; ALL PARTIES HAVE BEEN ADVISED TO CONSULT WITH AN ATTORNEY OF THEIR CHOICE AND HAVE DONE SO; NO REPRESENTATIONS, PROMISES OR INDUCEMENTS HAVE BEEN MADE TO MR. RICA EXCEPT AS SET FORTH IN THIS AGREEMENT; AND THE PARTIES HAVE SIGNED THIS DOCUMENT FREELY AND VOLUNTARILY, INTENDING TO BE LEGALLY BOUND BY ITS TERMS, AND WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

By:  Attest: 
 Daniel J. Rica
 Date: 2/28/06 2/28/06

DeCotiis, Fitzpatrick, Cole & Wisler, LLP

By:  Attest: 
 Alex J. Keoskey, Esq.
 Date: 2/28/06 2/28/06