

John Paff

Telephone – 732-873-1251

P.O. Box 5424
Somerset, New Jersey 08875-5424
E-mail – CJSC@pobox.com
June 22, 2007

Fax – 908-325-0129

Township of Jefferson

Attn: Lydia Magnotti, Custodian of Records

1033 Weldon Rd

Lake Hopatcong, NJ 07849

(via fax only to 973-697-8090)

Dear Ms. Magnotti:

I am in receipt of your May 29, 2007 denial of my request for government records. Enclosed is a draft civil complaint that I intend to file with the Superior Court on Friday, July 13, 2007 unless you provide me the information I seek.

At issue is a public employee, apparently a Township police officer, who, while off duty, "backed into and knocked over a light post at the Milton Inn" but "failed to report the accident." The employee/officer was apparently disciplined, given a summons and required to make restitution. Despite the obvious public nature of this incident, you are refusing to identify the officer/employee who was involved in this accident.

In your Public Records Request Response form, you assert two justifications for refusing to identify this officer/employee. First, you claim that the "information [I] seek is not a public record as it relates to a potential criminal investigatory matter." But the mere fact that a requested record might have information in it that relates to a potential investigation doesn't mean that it's a "criminal investigatory record."

According to the Open Public Records Act, N.J.S.A. 47:1A-1.1, a "criminal investigatory record" has to be "held by a law enforcement agency." The requested records are meeting minutes that are held by you. Therefore, I'm not persuaded by your claim that the unredacted meeting minutes are somehow exempt because they "relate to a potential criminal investigatory matter."

Your second claim is that the requested information relates to a "personnel investigation as well as any charges and necessary remedial action, if any, against a public employee." While it's not exactly clear, it appears that you are claiming that the information I seek is subject to either the "investigation" or "personnel" exceptions embodied in N.J.S.A. 47:1A-3 or 47:1A-10, respectively.

N.J.S.A. 47:1A-3 applies only to "investigations in progress" and the March 1, 2006 closed session minutes clearly state that "the investigation was completed. Also, even if the investigation is still pending, the employee's identify would have to be disclosed unless you could prove that its release would be "inimical to the public

interest." You have not yet even suggested that releasing this information would in any way harm the public interest.

As for N.J.S.A. 47:1A-10, minutes of a meeting are obviously not a "personnel or pension record." Second, Section 10 expressly states that it does not apply where another law requires disclosure, and in this case the Township has not proven that the Open Public Meetings Act does not require disclosure.

But even if you are able to find a provision in the Open Public Records Act that exempts the employee's name from disclosure¹, I have separate rights to the employee's name under both the Open Public Meeting Act² and the common law.

Since the March 1, 2006 closed session minutes were made by a public official in the exercise of his or her public function, it is a common law record. Higg-A-Rella, Inc. v. County of Essex, 141 N.J. 35, 46, (1995). A person seeking access to a common law record must "establish that the balance of [his or her] interest in disclosure against the public interest in maintaining confidentiality weighs in favor of disclosure." Home News v. State Dep't of Health, 144 N.J. 446, 454 (1996). Where the government's interest in confidentiality is "slight or non-existent," the requestor's standing alone will be sufficient to require disclosure to advance a legitimate private interest." Loigman v. Kimmelman, 102 N.J. 98, 105 (1986)

Citizens have a legitimate interest in knowing the identities of and details surrounding police officers/municipal employees who are involved in hit and run accidents. Questions of privilege and favoritism arise. Among them are:

- Was he ticketed for Leaving the Scene of an Accident (N.J.S.A. 39:4-129), the lesser offense of Failure to Report an Accident (N.J.S.A. 39:4-130) or something even less severe?
- Was alcohol consumption related to this accident, or was that possibility even investigated?
- Did he negotiate a dismissal or plea bargain on this charge or was he ultimately found not guilty?
- Was the traffic summons tried before the same municipal court judge that the officer/employee routinely appears before as a witness for the prosecution?

¹ Perhaps the exemption in Section 1.1 for "information generated by or on behalf of public employers . . . in connection . . . with any grievance filed . . . against an individual"?

² I have already provided the essentials of my Open Public Meetings Act argument in the supplement to my records request.


I don't think that any legitimate governmental interest in confidentiality exists and, even if it does, I don't see how it could possibly outweigh the public's interest in disclosure.

If you need the Mayor's and Council's input on how to proceed, I ask that you please consider this letter and enclosed draft complaint "anticipated litigation . . . in which the [you] may become a party" and ask them to discuss it, in accordance with N.J.S.A. 10:4-12(b)(7), during a closed session at your next meeting, which I believe will be held on July 11, 2007.

Since a 45-day statute of limitation may apply, I need to hand-deliver my complaint to the clerk of the court by Friday, July 13, 2007 (i.e. the forty-fifth day after your May 29, 2007 denial). Accordingly, I need to receive the unredacted minutes by no later than 4:30 p.m. on Thursday, July 12, 2007. If I do not, I will file my complaint when the Court opens for business on Friday, July 13. I am available by fax and email.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff", with a large, stylized flourish above the name.

John Paff

John Paff
P.O. Box 5424
Somerset, NJ 08875-5424
Tel. 732-873-1251
Fax: 908-325-0129
Email: paff@pobox.com

JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	MORRIS COUNTY
vs.	:	DOCKET NO.
	:	
JEFFERSON TOWNSHIP RECORD	:	Civil Action
CUSTODIAN and JOHN DOE	:	
Defendant	:	VERIFIED COMPLAINT
	:	

Plaintiff John Paff, by way of complaint against Defendants Jefferson Township Record Custodian (hereafter "Defendant Custodian") and John Doe states as follows:

PARTIES

1. Plaintiff John Paff is an individual who resides in Franklin Township, Somerset County, New Jersey.
2. Defendant Custodian is the "Custodian of a government record" for Jefferson Township, Morris County, as that term is defined by N.J.S.A. 47:1A-1.1.
3. Defendant John Doe is, on information and belief, a Jefferson Township police officer or other employee that "backed into and knocked over a light post at the Milton Inn" but whose identity has not been released to Plaintiff by Defendant Custodian. Defendant John Doe is named as a defendant in accordance with R.4:28-1(a)(2)(i) to give him an opportunity to assert any interest that he may have in this matter.

4. On May 23, 2007, Plaintiff submitted a government records request form to Defendant Custodian. The request form, the attached Supplement and a page from the Jefferson Township Council's March 1, 2006 nonpublic meeting minutes from which four elements were redacted, are attached as Exhibits 1, 2 and 3, respectively.

5. On information and belief, the four elements redacted from Exhibit 2 are, in order: a) the last name of a police officer/employee who was involved in a motor vehicle accident and was disciplined (i.e. John Doe); b) the full name of John Doe; c) the last name of John Doe; and d) the employment rank or position to which John Doe may seek promotion.

6. By letter dated May 29, 2007, Defendant Custodian denied Plaintiff's request that the four redacted elements be revealed. Copies of Defendant Custodian's May 29, 2007 responsive letter and the accompanying "Public Records Request Response" form and "Procedures for Appeal of the Determination" are attached as Exhibits 4, 5 and 6, respectively.

WHEREFORE, Plaintiff demands judgment:

A. Declaring that Plaintiff is entitled to disclosure of the four elements redacted from the March 1, 2006 nonpublic meeting minutes pursuant to the Senator Byron M. Baer Open Public Meetings Act.

B. Declaring that Plaintiff is entitled to disclosure of the four elements redacted from the March 1, 2006 nonpublic meeting minutes pursuant to the Open Public Records Act.

C. Declaring that Plaintiff is entitled to disclosure of the four elements redacted from the first page of the March 1, 2006 nonpublic meeting minutes pursuant to the common law.

D. Compelling Defendant Custodian to promptly disclose to Plaintiff an unredacted version of the first page of the March 1, 2006 nonpublic meeting minutes.

E. Awarding Plaintiff his costs of suit.

F. Such other relief as the Court deems equitable and just.

Certification Of No Other Actions

Pursuant to R.4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Respectfully submitted,

Dated: June ____, 2007

John Paff
Plaintiff

Verification

To be included later.

VIA FAX ONLY
 5/22/07 6:15 PM
 973-697-8090

State of New Jersey
Township of Jefferson
GOVERNMENT RECORDS REQUEST FORM

In Care of Township Clerk
 1033 Weldon Road
 Lake Hopatcong, NJ 07849
 973-208-6132

The reverse side of this form contains important information regarding government records. Please read the reverse side of this form.

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

Requestor Information – Please Print

First Name John MI _____ Last Name Paff
 Company _____
 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 _____ US Mail On Site Inspect _____
Circle 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, any other state, or the United States.
 Signature [Signature] Date 5/23/07

Pay _____
 Maximum _____
 (6) \$ _____
 Cash _____
 Fees: _____
 Delivery: _____
 Extras: _____

Record Request Information: To expedite the request, be as specific as possible in describing the records being requested, type of access requested (copying or inspection), and if data, the medium requested.

See attached

AGENCY USE ONLY

Est. Document Cost _____
 Est. Delivery Cost _____
 Est. Extras Cost _____
 Total Est. Cost _____
 Deposit Amount _____
 Estimated Balance _____

AGENCY USE ONLY

Disposition Notes
 Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

AGENCY USE ONLY

Tracking Information

Tracking # _____ T
 Rec'd Date _____ E
 Ready Date _____ E
 Total Pages _____ E
 Records Pre _____

Supplement to John Paff's May 23, 2007 records request.

Background:

Attached is a page the Council's March 1, 2006 closed session. As you can see, the township attorney has decided to redact the name of the person, apparently a police officer, who was involved in a hit and run accident.

I think that the law is fairly clear that the name of the employee is not exempt from disclosure. Specifically, South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, 493-94 (1991) states:

The purpose of the personnel exemption is to facilitate the process by which the public body makes personnel-type decisions, permitting the debate and deliberation to be conducted without public scrutiny or participation. But the exemption is designed to enable the public body to determine the appropriate action to be taken, not to withhold from the public either the public body's determination or the reasons on which its determination was based. In our view, it would be anomalous to interpret the Open Public Meetings Act, enacted by the Legislature to enhance the public's access to and understanding of the proceedings of governmental bodies, in a manner that foreclosed the public's right to obtain material and information vital to its ability to evaluate the wisdom of governmental action.

I think that the identity of the employee would be an integral part of the "body's determination" and must be disclosed, despite the embarrassment that it might cause the employee. Also, even if the minutes are considered a personnel record under N.J.S.A. 47:1A-10, they would be still be public if the Open Public Meetings Act (i.e. "another law") requires them to be disclosed.

Request:

I would like to purchase another copy of the attached page, but this time with the redactions revealed. If you decline to reveal the redactions, please set forth your precise legal justification for continuing to suppress this information. I make this request under the Open Public Meetings Act, Open Public Records Act and the common law.

REVIEWED BY ADMINISTRATOR; MATTERS RESOLVED - OKAY TO RELEASE
REVIEWED BY ATTORNEY; MATTERS RESOLVED - OKAY TO RELEASE

JEFFERSON TOWNSHIP COUNCIL
CLOSED SESSION
MARCH 1, 2006

PRESENT: RICHARD YOCUM, DEBI MERZ, ROBERT BIRMINGHAM,
ADMINISTRATOR LEACH, LARRY COHEN, MAYOR RUSS FELTER
AND LYDIA MAGNOTTI.

ABSENT: BROOKE HARDY, MICHAEL SANCHELLI.

(Closed Session began at 8:06 p.m.)

PERSONNEL

Police Department - [REDACTED]: Felter reported that he received a call from Chief Palko. Someone backed into and knocked over a light post at the Milton Inn. An investigation was done and it turns out it was [REDACTED]. The investigation was completed today and the discipline will be handed out tomorrow. [REDACTED] was off-duty and failed to report the accident. Felter said a summons will be issued along with suspension time. The incident will go into his permanent record and will hurt his chances for promotion to [REDACTED]. The penalty is fairly severe and there will also be restitution.

CONTRACT NEGOTIATIONS

Board of Education - Stanlick Sewer Project: Leach reported that he has not spoken to Goldshore but apparently he met with John Scheri. Goldshore reviewed everything and basically he feels there is nothing that can be done. Tuttle and Elam reviewed the engineering report and there is something wrong in that zinc and copper are very low on our water supply but the water coming out of school is off the charts. That is what triggered this problem. Leach said they would like to look into the situation to see if something that is being used in the school is causing this reaction. It is a 40-year old school and zinc can come from galvanized pipe and copper comes from copper pipes. Leach reported that he has to advertise in the paper for qualifications for an engineer and he will do that immediately. If the Council is going to move ahead with this, they would like to have the Memorandum of Agreement entered into at the Council's March 15th meeting. Leach advised them that they should have Mr. Tosti write up the Agreement for Cohen's review because it must be in the Council's hands by March 10. Cohen said he will give Tosti a call because he would like a week to review the Agreement. Yocum said that when he met with Bowen,



TOWNSHIP OF JEFFERSON

County of Morris

Municipal Building
 1033 Weldon Rd, Lake Hopatcong, New Jersey 07849
 Telephone (973)697-1500 Fax (973) 697-8090

Sent via facsimile 908-325-0129 and regular mail

OFFICE OF THE CLERK

May 29, 2007

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

Re: Request for Access to Government Records

Dear Mr. Paff:

Enclosed please find the following documents:

- ◆ Public Records Request Form Response
- ◆ Procedures for Appeal of the Determination

Thank you for your cooperation in this matter. Should you wish any additional information, please feel free to contact me.

Sincerely yours,

TOWNSHIP OF JEFFERSON

Lydia Magnotti
 Lydia Magnotti, RMC, CMC
 Township Clerk

Enclosures

C Howard Vex, Esquire



TOWNSHIP OF JEFFERSON

County of Morris

Municipal Building
Weldon Road, Lake Hopatcong P.O., New Jersey 07849
Telephone (973) 697-1500 Fax (973) 697-8090

PUBLIC RECORDS REQUEST RESPONSE

TO: John Paff

DATE: May 29, 2007

The document or documents listed below and requested by you are not being provided because the document or documents are not public records as provided by law, for the following reason(s):

The information you seek is not a public record as it relates to a potential criminal investigatory matter and personnel investigation as well as any charges and necessary remedial action, if any, against a public employee. The specific name of the employee involved was properly redacted as same is not a public record. See N.J.S.A. 47:1A-10; N.J.S.A. 47:1A-1.1. If you believe this determination is incorrect, please explain the basis for your conclusion beyond that provided in your OPRA request. The provisions cited by you thus far do not expressly require the Township to divulge the individual public employee's name.

You have a right to appeal the decision that the document or documents are not public records. You may take your appeal to the Government Records Council or to the New Jersey Superior Court, as provided by N.J.S.A. 47:1A-1 et seq. If your request has been denied, a statement of the procedures for the appeal will be attached to this notification.

May 29, 2007
Date


Lydia Magnotti, Municipal Clerk

ACKNOWLEDGEMENT

I hereby acknowledge that I have received the documents requested except for any documents specifically listed above on which a determination has been made that the documents will not be provided. If any documents have not been provided, I have received information on the procedures for any appeal of the determination.

Date

Applicant

Requesting Access to Government Records Under the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1 et seq.)

1. This form should only be used to submit records requests to the Township of Jefferson.
2. Complete and date this request form and deliver it in person during regular business hours or by mail, fax or electronically to the appropriate custodian of the record requested. Your request is not considered filed until the appropriate custodian of the record requested has received a completed request form. If you submit the request form to any other officer or employee of the Township of Jefferson, that officer or employee may not have the authority to accept your request form on behalf of the Township of Jefferson and your request will be directed to the appropriate division custodian. The seven business day response time will not commence until the proper custodian reviews the request to determine if it is complete.
3. If you submit a request for access to government records to someone other than the appropriate custodian, do not complete the Township of Jefferson request form, or attempt to make a request for access by telephone or fax; the Open Public Records Act and its deadlines, restrictions and remedies will not apply to your request.
4. The fees for duplication of a government record in printed form are listed on the front of this form. We will notify you of any special charges, special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by check or money order payable to the Township of Jefferson..
5. If it is necessary for the records custodian to contact you concerning your request, providing identifying information, such as your name, address and telephone number or an e-mail address is required. Where contact is not necessary, anonymous requests are permitted; except that anonymous requests for personal information are not honored.
6. ***You may be charged a 50% or other deposit when a request for copies exceeds \$25.*** The Jefferson Township custodian will contact you and advise you of any deposit requirements. Anonymous requests, when permitted, require a deposit of 100% of estimated fees. You agree to pay the balance due upon delivery of the records.
7. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, and who is seeking government records containing personal information pertaining to the person's victim or the victim's family.
8. By law, the Township of Jefferson must notify you that it grants or denies a request for access to government records within seven business days after the custodian of the record requested receives the request, provided that the record is currently available and not in storage. If the record requested is not currently available or is in storage, the custodian will advise you within seven business days when the record can be made available and the estimated cost. You may agree with the custodian to extend the time for making records available, or granting or denying your request.
9. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
10. If the Township of Jefferson is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form and send you a signed and dated copy.
11. Except as otherwise provided by law or by agreement with the requester, if the custodian of the record requested fails to respond to you within seven business days of receiving a request form, the failure to respond will be considered a denial of your request.
12. If your request for access to a government record has been denied or unfilled within the time permitted by law, you have a right to challenge the decision by the Township of Jefferson to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint in writing with the Government Records Council (GRC). You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.nj.gov/grc. The Council can also answer other questions about the law.
13. Information provided on this form may be subject to disclosure under the Open Public Records Act.



TOWNSHIP OF JEFFERSON

County of Morris

Municipal Building
1033 Weldon Road, Lake Hopatcong, New Jersey 07849
Tel: (973) 697-1500 Fax: (973) 697-8090

Via facsimile 908-325-0129

OFFICE OF THE CLERK

July 2, 2007

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

Re: Request for Access to Government Records
Correspondence Dated June 22, 2007

Dear Mr. Paff:

After consulting with the Jefferson Township Attorney, I have been advised to release unredacted March 1, 2006 Executive Session minutes regarding Personnel. Upon receipt of the required fee of \$0.75, the document shall be faxed to you.

Thank you for your cooperation in this matter. Should you wish any additional information, please feel free to contact me.

Sincerely yours,

TOWNSHIP OF JEFFERSON


Lydia Magnotti, RMC, CMC
Township Clerk

C: Howard Vex, Esquire