

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

**FILED**  
**MONMOUTH COUNTY**

JUL 10 2007

**CIVIL DIVISION MANAGERS**  
**OFFICE**

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JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	MONMOUTH COUNTY
vs.	:	DOCKET NO. L-3317-07
	:	
KEYPORT BOROUGH COUNCIL	:	Civil Action
and VALERIE T. HEILWEIL	:	
Defendants	:	COMPLAINT
	:	

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Plaintiff John Paff, by way of complaint against the Defendant Keyport Borough Council (hereafter "Defendant Council") and Valerie T. Heilweil (hereafter "Defendant Custodian") states as follows:

**COMMON ALLEGATIONS**

1. Plaintiff John Paff is an individual who resides in Franklin Township, Somerset County, New Jersey.
2. Defendant Council is a public body as that term is defined by N.J.S.A. 10:4-8(a).
3. Defendant Custodian is the "Custodian of a government record" for the Borough of Keyport as that term is defined by N.J.S.A. 47:1A-1.1, and is sued only in her official capacity.
4. On November 24, 2006, Plaintiff wrote the Monmouth County Prosecutor complaining that the Defendant Council's "withholding [of] its September 19, 2006 [nonpublic meeting] minutes for more than three months (i.e. until mid-December, 2006) is

not “prompt” and thus violates the Open Public Meetings Act.” A copy of Plaintiff’s letter to the Prosecutor (2 pages) is attached as Exhibits 1 and 2. Keyport Borough’s November 16, 2006 letter to Plaintiff (1 page), which was one of the attachments to Plaintiff’s letter to the Prosecutor, is attached as Exhibit 3.

5. By letter of December 5, 2006, John S. Wisniewski, Esq., on behalf of Keyport Borough, wrote to the Prosecutor in response to Exhibits 1 and 2. A copy of Wisniewski’s letter (2 pages) is attached as Exhibits 4 and 5.

6. By letter to the Prosecutor dated January 1, 2007, Plaintiff replied to Wisniewski’s response (Exhibits 4 and 5). A copy of Plaintiff’s January 1, 2007 letter (2 pages) is attached as Exhibits 6 and 7.

7. Other than Exhibits 4 and 5, Plaintiff has received no correspondence from Keyport Borough regarding the complaint embodied within Exhibits 1 and 2.

8. By letter dated June 21, 2007, the Monmouth County Prosecutor’s Office declined to pursue Plaintiff’s complaint and closed its file. A copy of the June 21, 2007 letter (2 pages) is attached as Exhibit 8 and 9.

9. On June 21, 2007, Plaintiff submitted to Defendant Custodian a request<sup>1</sup> for government records (2 pages) accompanied by the first page from the Defendant Council’s September 19, 2006 nonpublic meeting minutes (1 page) and its October 17, 2006 nonpublic meeting minutes (1 page)<sup>2</sup>. The request and minutes pages are attached as Exhibits 10 through 13.

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<sup>1</sup> In order to reduce the number of attachments, Plaintiff has not included the three-page record request form that accompanied his request.

<sup>2</sup> Plaintiff received the redacted pages from the September 19, 2006 and October 17, 2006 closed meeting minutes in response to a previous records request.

10. By letter dated June 29, 2007, Defendant Custodian responded to Plaintiff's June 21, 2007 records request. Her response consisted<sup>3</sup> of a June 29, 2007 letter (2 pages), minutes from the Defendant Council's April 10, 2007 nonpublic meeting (4 pages) and the minutes from the Defendant Council's April 24, 2007 nonpublic meeting (5 pages) and is attached as Exhibits 14 through 24.

### **FIRST COUNT**

#### *(Minutes of Public and Nonpublic Meetings Not Promptly Available)*

11. As of the date of this complaint, Defendant Council has failed or refused to publicly release minutes of the following meetings: a) public meetings held on April 10, 2007 and May 21, 2007; and b) the nonexempt portions of nonpublic meetings held on March 6, 2007, May 1, 2007 and May 21, 2007. (See Exhibits 10 and 14.)

12. It took Defendants until mid-December 2006 to provide Plaintiff with redacted versions of its September 9, 2006, October 3, 2006 and October 17, 2006 nonpublic meeting minutes in response to Plaintiff's November 3, 2006 request for those minutes. (See Exhibit 4.)

13. On information and belief, Defendants' policy is to entirely suppress public release of the Defendant Council's public or nonpublic meeting minutes unless and until they have been "approved by the governing body." (See Exhibits 3 and 14.)

**WHEREFORE**, Plaintiff demands judgment:

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<sup>3</sup> Defendant also furnished Plaintiff with resolutions 107-07, 124-07, 139-07, 148-07 and 153-07 as well as the Prosecutor's December 11, 2006 letter to Wisniewski, Wisniewski's December 5, 2006 letter to the Prosecutor, Plaintiff's November 24, 2006 letter to Keyport Borough, the first page of Plaintiff's November 24, 2006 letter to the Prosecutor, Plaintiff's January 1, 2007 email to Keyport Borough, Plaintiff's January 1, 2007 letter to the Prosecutor, Keyport Borough's December 13, 2006 letter to Plaintiff and Keyport Borough's December 7, 2006 email to Plaintiff. None of these documents are attached to the Complaint because they are either duplicative of other exhibits or not relevant to the complaint.

A. Declaring that Defendant Council violated N.J.S.A. 10:4-14 by not making its public meeting minutes and the nonexempt portions of its nonpublic meeting minutes “promptly available to the public.”

B. Declaring that Defendant Council violated the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. by conditioning the public release of its public meeting minutes and the nonexempt portions of its nonpublic meeting minutes upon its “approval” of those minutes.

C. Fixing a time, going forward, within which Defendant Council shall make its public meeting minutes and the nonexempt portions of its nonpublic meeting minutes available to the public.

D. Enjoining Defendant Council from violating the time period fixed in accordance with ¶ C above.

E. Awarding Plaintiff his costs of suit.

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

## **SECOND COUNT**

### *(Improper Topics Discussed During Nonpublic Meetings)*

14. During its April 10, 2007 nonpublic meeting, Defendant Council discussed scheduling a Police Committee meeting and the “need to find someone on a three-man shift that can check parking in the business district.” (See Exhibit 16.)

15. Upon information and belief, Defendant Council believed that it could discuss this topic in private session pursuant to the “personnel exception” contained within N.J.S.A. 10:4-12(b)(8). (See Exhibit 16.)

16. During its April 24, 2007 nonpublic meeting, Defendant Council discussed a general question concerning Class I and Class II Specials. (See Exhibit 24)

17. Upon information and belief, Defendant Council believed that it could discuss this topic in private session pursuant to the “personnel exception” contained within N.J.S.A. 10:4-12(b)(8). (See Exhibit 24.)

**WHEREFORE**, Plaintiff demands judgment:

G. Declaring that Defendant Council violated the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. by discussing the topics described in ¶¶ 14 and 16 without the public being present.

H. Enjoining Defendant Council, going forward, from discussing topics in nonpublic session unless they so qualify under N.J.S.A. 10:4-12(b) as narrowly construed.

I. Awarding Plaintiff his costs of suit.

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

### **THIRD COUNT**

#### *(Improperly Explained Redactions and Suppressions)*

18. Defendants’ explanation for the redactions made to the first pages of Defendant Council’s September 19, 2006 and October 17, 2006 nonpublic meeting minutes (See Exhibits 12 and 13) was that the redacted elements “may not be disclosed pursuant to N.J.S.A. 47:1A-9, 10:4-12(b)(8).” (See Exhibit 14.)

19. Defendants’ explanation for the redactions made to Defendant Council’s April 10, 2007 and April 24, 2007 nonpublic meeting minutes (See Exhibits 16 through 24) was that the redactions were performed “in accordance with the attorney-client privilege exception to the Open Public Records Act (OPRA), N.J.S.A. 10:4-12, 47:1A-1.1.” (See Exhibit 14.)

20. The Open Public Records Act, specifically N.J.S.A. 47:1A-5(g), requires Defendant Custodian, when she is “unable to comply with a request for access,” to “indicate

[in writing] the specific basis” for her inability to comply and to inform the record requestor of that “specific basis.”

21. Citing statutes as justification for restricting the public’s right to access government records, without more, violates the Open Public Records Act because such does not satisfy Defendant Custodian’s duty to produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality. (See Courier News v. Hunterdon County Prosecutor’s Office, 358 N.J. Super. 373, 382-83 (App. Div. 2003).)

22. Citing statutes as justification for restricting the public’s right to access government records, without more, violates the Open Public Records Act because such does not satisfy Defendant Custodian’s duty to explain the redaction in a manner enabling the requestor to assess the applicability of the privilege or protection. (See Paff v. New Jersey Department of Labor, Board of Review, 379 N.J. Super. 346, 354-55 (App. Div. 2005).)

23. In ¶ 5e of his June 21, 2007 request, Plaintiff requested “any and all correspondence, including emails, that relates to the issues raised in [Plaintiff’s] November 24, 2006 letter which were sent or received by the Borough Clerk, Borough Administrator or any member of the Keyport Borough Council.” (See Exhibit 11).

24. In response to this request, Defendant Custodian furnished Plaintiff with items of correspondence that Plaintiff had already sent or received and indicated that “emails are not being supplied as same are not discoverable in accordance with the attorney client privilege and intra-agency advisory, consultative material exceptions to the Open Public Records Act (OPRA). N.J.S.A. 10:4-12, 47:1A-1.1.”

25. Upon information and belief, at least one record, other than those furnished to Plaintiff, is on file and responsive to ¶ 5e of Plaintiff’s request.

26. Defendant Custodian's sweeping and categorical denial of ¶ 5e of Plaintiff's request does not satisfy her duties under the Open Public Records Act and the above-cited case law.

**WHEREFORE**, Plaintiff demands judgment:

K. Declaring that Defendant Custodian violated the Open Public Records Act by not providing a more specific and detailed justification for refusing to disclose the redacted elements from the Defendant Council's September 19, 2006, October 17, 2006, April 10, 2007 and April 24, 2007 nonpublic meeting minutes.

L. Declaring that Defendant Custodian violated the Open Public Records Act by not providing a more specific and detailed justification for refusing to disclose the correspondence and emails identified by ¶ 5e of Plaintiff's June 21, 2007 records request.

M. Enjoining Defendant Custodian, going forward, from suppressing a government record, in whole or part, unless she provides the requestor with a written explanation that conforms to the requirements set forth in Courier News v. Hunterdon County Prosecutor's Office and Paff v. New Jersey Department of Labor, Board of Review.

N. Awarding Plaintiff his costs of suit.

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

**FOURTH COUNT**  
*(Improper Redactions – Personnel matters)*

27. Defendant Custodian has denied Plaintiff access to certain words and phrases pertaining to personnel matters and contained within the first pages of Defendant Council's September 19, 2006 and October 17, 2006 nonpublic meeting minutes (See Exhibits 12 , 13 and 14.)

28. On information and belief, the redacted matter, if revealed, would disclose the identities of specific Keyport Borough officers or employees who were discussed by the Defendant Council in nonpublic session pursuant to N.J.S.A. 10:4-12(b)(8).

29. On information and belief, neither the Defendant Council nor the particular officers or employees being discussed hold a cognizable privacy interest in keeping those officers' or employees' identities confidential that outweighs Plaintiff's "right to obtain material and information vital to [his] ability to evaluate the wisdom of governmental action." (See South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, 493-94 (1991).)

30. The only reasons Defendant Custodian has offered to support her denial of access to these words and phrases is that such "may not be disclosed pursuant to N.J.S.A. 47:1A-9, 10:4-12(b)(8)." (See Exhibit 14.)

31. Neither 47:1A-9 nor N.J.S.A. 10:4-12(b)(8) justify the redactions made to the first pages of Defendant Council's September 19, 2006 and October 17, 2006 nonpublic meeting minutes (See Exhibits 12 , 13 and 14.

**WHEREFORE**, Plaintiff demands judgment:

P. Compelling Defendant Custodian to provide Plaintiff with unredacted versions of the first pages of Defendant Council's September 19, 2006 and October 17, 2006 nonpublic meeting minutes.

Q. Awarding Plaintiff his costs of suit.

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

#### **FIFTH COUNT**

*(Improper Redactions – "Potential Litigation" matters)*

32. During its April 10, 2007 and April 24, 2007 nonpublic meetings, Defendant Council discussed “Loitering of Day Workers” (Exhibit 17), “Proposed Ordinance – Smoking in Motor Vehicles with Children” and “K. Hovnanian” (Exhibit 20) and “K. Hovnanian” (Exhibit 23) all of which appear under a “Potential Litigation” heading.

33. In each case, all of the text beneath the topic headings has been redacted, except that the following unredacted text is disclosed under the “Proposed Ordinance – Smoking in Motor Vehicles with Children” heading: “Councilman Ortman mentioned that this ordinance was brought to him by a member of the Board of Health.”

34. Upon information and belief, these four “Potential Litigation” items ought to have been discussed in public because they are not exempted by N.J.S.A. 10:4-12(b).

35. Alternatively, and upon information and belief, even if one or more of these four “Potential Litigation” items were permitted to be privately discussed, at least some of the redacted text could be publicly disclosed without jeopardizing any legitimate confidentiality interests.

**WHEREFORE**, Plaintiff demands judgment:

S. Compelling Defendants to provide Plaintiff and the Court with a “Vaughn index,” in accordance with Vaughn v. Rosen, 484 F.2d 820 (D.C.Cir.1973), justifying and explaining the redactions applied to the nonpublic meeting minutes pertaining to the four “Potential Litigation” matters set forth in ¶ 32.

T. Compelling the Defendants to file unredacted versions of its nonpublic meeting minutes pertaining to the four “Potential Litigation” matters set forth in ¶ 32 to the Court, under seal, for an in camera review.

U. Compelling the Defendants to provide Plaintiff with the versions of its nonpublic meeting minutes pertaining to the four “Potential Litigation” matters set forth in

¶ 32 that disclose presently redacted information the information that the Court determines to be nonexempt.

V. Awarding Plaintiff his costs of suit.

W. 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.

Dated: July 9, 2007

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John Paff  
Plaintiff

# John Paff

P.O. Box 5424

Somerset, New Jersey 08875

E-mail – CJSC@pobox.com

November 24, 2006

Telephone – 732-873-1251

Fax 908-325-0129

Luis A. Valentin, Prosecutor  
Monmouth County Prosecutor's Office  
71 Monument Park  
Freehold, N.J. 07728-1261

RE: Keyport Borough Council  
Open Public Meetings Act

Dear Prosecutor Valentin:

I write both personally and in my capacity as the New Jersey Libertarian Party's "Open Government Advocate."<sup>1</sup> I believe that the Keyport Borough Council has violated the Open Public Meetings Act and ask that you investigate and take whatever action you deem appropriate.<sup>2</sup> Attached are five pages, consisting of Keyport's November 16, 2006 letter, sent in response to my government records request, and resolutions passed at the Borough Council's September 19, 2006, October 3, 2006 and October 17, 2006 meetings.

While the Borough Council met in nonpublic session on September 19, 2006, October 3, 2006 and October 17, 2006, I have been denied any and all access to the minutes of those nonpublic meetings until after they are "transcribed and approved by the governing body" on December 20, 2006.

N.J.S.A. 10:4-14 requires meeting minutes to be made "promptly available to the public to the extent that making such matters public shall not be inconsistent with" N.J.S.A 10:4-12(b). See also, Atty. Gen. F.O. 1-1998. While "promptly" has not been well defined, case law<sup>3</sup> strongly suggests that Keyport's withholding its September 19, 2006 minutes for more than three months (i.e. until December 20, 2006) is not "prompt" and thus violates the Open Public Meetings Act.

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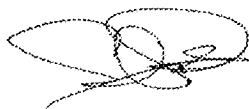
<sup>1</sup> The New Jersey Libertarian Party (NJLP) is a longtime advocate of open and transparent government. The NJLP's platform, which can be found at [www.njlp.org](http://www.njlp.org), states: "We support the public policy behind the Open Public Meetings Act (NJSA 10:4-6) and the Right to Know Law (NJSA 47:1A-1). We note, however, that in actual practice, some individuals in government are reluctant to comply with these laws. We believe that those individuals should be held personally liable for attorney's fees and costs incurred in enforcing the law."

<sup>2</sup> The Open Public Meetings Act, N.J.S.A. 10:4-17, empowers your office to enforce monetary penalties against officials who knowingly violate the Act. Or, perhaps you may wish to correspond with the Council and work with it so that it complies with the Act in the future. If you decide to take no action, I specifically reserve my right to enforce the Council's future compliance through the civil remedies provided by N.J.S.A. 10:4-16.

<sup>3</sup> See Liebeskind v. Mayor and Mun. Council of Bayonne, 265 N.J. Super. 389, 394-95 (App. Div. 1993) (Appellate Division affirmed a trial court's requirement that a public body disclose its meeting minutes within two weeks after each meeting and at least three business days before the next meeting); and Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional Bd. of Educ., 212 N.J. Super. 328 (L.1986) ("Upon examination of the factors set forth, the court concludes that the board's minutes, in order to be promptly available as required by the Open Public Meetings Act, must be available within two weeks after any regular meeting.").

Thank you for your attention to this matter. I look forward to learning the results of your investigation and what action, if any, that you have elected to take.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff", with a stylized flourish at the end.

John Paff

cc. Hon. John J. Merla, Mayor and Council of Keyport Borough (with enclosures)  
Chairman, New Jersey Libertarian Party

Mayor  
John J. Merla

**Councilmembers**

Robert J. Bergen, President  
Richard J. Hassmiller  
William Ortman  
Joseph E. Sheridan  
George J. Walling, Sr.  
Joseph E. Wedick



Peter R. Valesi, P.E., CME  
Borough Administrator  
Director of Engineering

Allyson M. Cinquegrana, RMC  
Borough Clerk

Thomas P. Fallon, CPA, RMA  
Chief Financial Officer

November 16, 2006

Mr. John Paff  
PO Box 5424  
Somerset, New Jersey 08875-5424

RE: Open Public Records Request

Dear Mr. Paff:

I am responding to your request for records received on November 3, 2006:

1(a) The requested resolution does not exist because the "filing cabinet garage" incident was not discussed in executive session.

1(b) The requested records do not exist because the "filing cabinet garage" incident was not discussed in executive session.


2. The requested resolutions are enclosed.

3. The requested minutes have not yet been transcribed. They are expected to be transcribed and approved by the governing body by December 20, 2006 at which time they will be produced, with the exception of material that may be redacted in accordance with N.J.S.A. 47:1A-1 et seq.

4. The requested record is enclosed.

Thank you.

Very truly yours,

  
Allyson M. Cinquegrana, RMC  
Borough Clerk

AMC  
Enclosures

**WISNIEWSKI**  
**& ASSOCIATES, LLC**  
**ATTORNEYS AT LAW**

December 5, 2006

**VIA TELECOPIER & FIRST CLASS MAIL**

Luis A. Valentin, Prosecutor  
**Monmouth County Prosecutor's Office**  
71 Monument Park  
Freehold, N.J. 07728

**RE: Keyport Borough Council**  
**Open Public Meetings Act**

Dear Mr. Valentin:

I represent the Borough of Keyport in the capacity of Borough Attorney. I am writing this letter in response to Mr. John Paff's letter to your attention of November 24, 2006 wherein Mr. Paff complains that the Borough of Keyport may have violated the Open Public Meeting Act.

On or about November 3, 2006 Mr. Paff submitted an Open Public Records Act ("OPRA") request of borough records for, *inter alia*, certain closed session minutes of Borough Council meetings of September 9, 2006; October 3, 2006; and October 17, 2006. The Borough of Keyport provided a timely response to Mr. Paff's request.

In its response the Borough of Keyport indicated that it had not yet transcribed the requested minutes and they were expected to be transcribed and produced to Mr. Paff by December 20, 2006. The requested minutes have now been transcribed and are expected to be approved by the governing body at its December 5, 2006 meeting and, if approved, will be produced to Mr. Paff by December 8, 2006, with the exception of material that may be redacted in accordance with *N.J.S.A. 47:1A-1 et seq.*

The Borough of Keyport is a small town with limited resources and while it endeavors to ensure that meeting minutes are made promptly available to the public, there are competing demands on personnel who cannot devote all their time to transcription duties.

Furthermore, it is the Borough of Keyport's position that Mr. Paff's letter to you is misplaced and the New Jersey Government Records Council maintains jurisdiction over complaints of Mr. Paff's nature.

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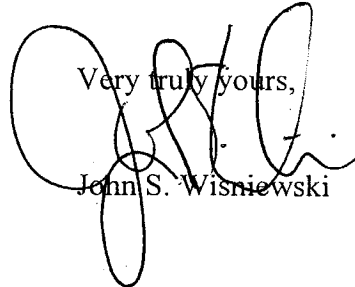
Williamsburg Commons 8G Auer Court East Brunswick, NJ 08816-5846

Tel 732-651-0040 Fax 732-651-0060 [www.wisniewskilaw.com](http://www.wisniewskilaw.com)

Luis A. Valentin, Prosecutor  
Monmouth Prosecutor's Office  
December 5, 2006  
Page 2

WISNIEWSKI  
& ASSOCIATES, LLC  
ATTORNEYS AT LAW

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,  
  
John S. Wisniewski

JSW:kre

Cc: The Hon. Mayor and Borough Council  
John Paff

## John Paff

P.O. Box 5424

Somerset, New Jersey 08875

E-mail – [CJSC@POBOX.COM](mailto:CJSC@POBOX.COM)

January 1, 2007

Telephone – 732-873-1251

Fax 908-325-0129

John Loughrey, Asst. Prosecutor  
Monmouth County Prosecutor's Office  
71 Monument Park  
Freehold, N.J. 07728-1261

RE: Keyport Borough Council  
Open Public Meetings Act

Dear Assistant Prosecutor Loughrey:

I am in receipt of John S. Wisniewski's December 5, 2006 letter, written on behalf of the Borough of Keyport. I wish to make two points in reply.

First, Keyport's position that my "letter to you is misplaced and the New Jersey Government Records Council maintains jurisdiction over complaints of [my] nature" is incorrect. At the time of my records request, the requested closed session minutes did not exist because they had not yet been transcribed. The Government Records Council lacks jurisdiction over matters where requested records do not exist. See, e.g. Toscano v. New Jersey Department of Law and Public Safety, Government Records Council, GRC Case No. 2005-188.

Second, since virtually every town complains about "limited resources" and "competing demands on personnel," these cannot be considered persuasive reasons for allowing short shrift to be given to the public's right to know. The Court in Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional Bd. of Educ., faced similar arguments and held that

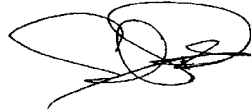
The [Open Public Meeting Act's] use of the word "promptly," not "reasonable time" or any equivalent term, makes clear that the legislative purpose of the Open Public Meetings Act is not served by mere desultory publication of minutes. A standard for publication of the minutes must be consistent with that purpose. Further, the standard must be made known so that it can be enforced and the public and the association, here, can have meaningful recourse to the remedies provided by the act itself. Accordingly, the court must determine the appropriate standard.

212 N.J. Super. 328, 332-33 (L.1986)

Accordingly, Keyport's Council should be required to announce and adhere to an objective and enforceable standard governing timely publication of its minutes.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Paff', with a large, stylized flourish at the end.

John Paff

- cc. Mayor and Council of Keyport Borough (*via email to [acinquegrana@keyportonline.com](mailto:acinquegrana@keyportonline.com)*)  
Chairman, New Jersey Libertarian Party (*via email*)  
John S. Wisniewski, Esq. (*via Fax only to 732-651-0060*)



**OFFICE OF THE COUNTY PROSECUTOR  
COUNTY OF MONMOUTH**

71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1789

732/ 431-7160

FAX 732/ 409-3673

FAX 732/ 409-4830

LUIS A. VALENTIN  
MONMOUTH COUNTY PROSECUTOR

June 21, 2007

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

Re: Open Public Meetings Act  
PC:06-0042

Dear Mr. Paff:

The Monmouth County Prosecutor's Office, Special Prosecutions Bureau, has thoroughly reviewed the aforementioned matter which pertains to your Open Public Meetings Act complaints against the Sea Girt Borough Council, Keyport Borough Council and Howell Township Council. The investigation reveals that you, as the complainant, monitor various borough governmental business via the Internet and should you observe a violation, you subsequently make an Open Public Records request ("OPRA"). If the request does not receive an expeditious response, you contact the Prosecutor's Office and seek an investigation. Further, it is the State's understanding, to date, the Keyport Borough, Sea Girt Borough and Howell Township have attempted to comply or did comply with your requests. Responses by each individual Council details a full explanation regarding noncompliance or reasons as to why such information cannot be disseminated (i.e. attorney client privilege).

Notwithstanding, the public policy behind the Open Public Meetings Act requires the public to have advance notice of all public meetings of public bodies except where general public interest or individual rights would be jeopardized. The public's right to know the process by which governmental decisions are made and the ability to redress governmental decision making in full detail are the purposes of the Open Public Meetings Act. When the public is prevented from being a part of this basic democratic process, the public confidence in governmental decisions and a general accountability for which all public officials should be held becomes endangered.

To be covered by the Open Public Meetings Act, a public body must be one which is organized by law and collectively empowered as a multi-membered voting body to spend public funds or affect individual rights. As such, the aforementioned entities, which are governing bodies, satisfy the definition and are, as a matter of law, public bodies subject to the Open Public Meetings Act.

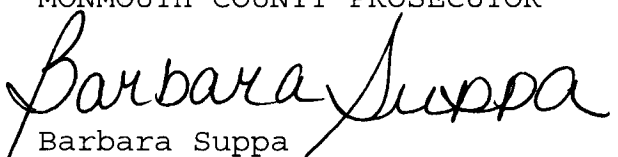
Further, if any member of the public believes that a governing body has violated any section of N.J.S.A. 10:4-6, et seq., Open Public Meetings Act, (hereinafter the "Act") it is incumbent upon the aggrieved member of the public to bring a proceeding in lieu of Prerogative Writ in Superior Court within forty five (45) days after the action sought to be voided has been made public. However, the public body, if they acknowledge their error, may take corrective or remedial action by acting de novo by holding a public meeting held in conformity with the Act. If a Judge finds that the actions taken at the Meeting do not conform to the provisions of the Act, then the Court shall declare such action void, according to N.J.S.A. 10:4-15A(b). Any person who knowingly violates any of the sections of the Act, shall be fine \$100.00 for the first offense and no less than \$100.00 and no more than \$500.00 for any subsequent offense recoverable by the State in a summary proceeding under the Penalty Enforcement Law. The Superior Court shall have the jurisdiction to enforce said penalty on complaint of the Attorney General or the County Prosecutor, but the Attorney General or the County Prosecutor may refer the matter to the Public Advocate.

Pursuant to N.J.S.A. 10:4-17 of the Act, there are no criminal sanctions for nonconformance and thus, the Monmouth County Prosecutor's Office has no statutory mandate in this area to make criminal arrests. Accordingly, the Monmouth County Prosecutor's Office will not be pursuing this matter and renders the investigation closed.

I thank you for your continued interest and should you have additional questions, I can be reached at 732/308-2927.

RESPECTFULLY SUBMITTED,

LUIS A. VALENTIN  
MONMOUTH COUNTY PROSECUTOR

  
By: Barbara Suppa  
Assistant Prosecutor

Attachment to John Paff's June 21, 2007 records request:

I ask for the following government records in accordance with N.J.S.A. 47:1A-1 et seq., N.J.S.A. 10:4-6 et seq. and the common law. I would like to purchase photocopies of

1. The minutes of any and all Borough Council nonpublic (i.e. closed or executive) meetings held on March 6, 2007, April 10, 2007, April 24, 2007, May 1, 2007 and May 21, 2007.
2. The resolutions, as required by N.J.S.A. 10:4-13, that authorized each of the above mentioned nonpublic meetings.
3. The minutes of any and all Borough Council public meetings held on April 10, 2007 and May 21, 2007.
4. Attached are "Page 1" from the Borough Council's nonpublic meetings held on September 19, 2006 and October 17, 2006. I received these pages from your office on December 13, 2006 in response to an earlier records requests. I note that redactions were made to both pages, but that nothing in the Borough's December 13, 2006 letter or the minutes themselves explained the legal basis justifying the redactions. Accordingly, I am re-requesting the same two pages at this time, but would like the Borough to a) consider whether any of the presently redacted elements can be disclosed, and b) to justify any redactions in a manner compliant with the law.
5. On November 24, 2006, I sent a letter to the Monmouth County Prosecutor's office, copied to the Keyport Borough Mayor and Council, complaining about the Borough Council's compliance with the Open Public Meetings Act. I wish to purchase photocopies of the following records, but specifically excluded from this request is the Borough Attorney's December 5, 2006 letter to the Monmouth County Prosecutor.
  - a. A copy of the first page of my November 24, 2006 letter (so as to verify that your office actually received it).
  - b. Any and all correspondence, including emails, that the Borough or someone on the Borough's behalf sent to me in response to my November 24, 2006 letter.
  - c. Any and all correspondence, including emails, from the Monmouth County Prosecutor's Office that relates to the issues raised in my November 24, 2006 letter.

- d. Any and all correspondence, including emails, from the Borough of Keyport, or any of its officers or employees, to the Monmouth County Prosecutor's Office that relates to the issues raised in my November 24, 2006 letter.
  
- e. Any and all correspondence, including emails, that relates to the issues raised in my November 24, 2006 letter which were sent or received by the Borough Clerk, Borough Administrator or any member of the Keyport Borough Council.

September 19, 2006  
Keyport, New Jersey

Approved for  
Release by U+G  
12/5/06

Minutes of a Closed Meeting of the Mayor and Council, Borough of Keyport, held on the above date in the Council Chambers, Municipal Complex, 70 W. Front Street, Keyport, NJ pursuant to the adoption of Resolution #299-06, at the Regular Meeting of the same date in accordance with the Open Public Meetings Act, P.L. 1975, Ch. 231.

Mayor Merla called the meeting to order at 7:04 P.M.

#### ROLL CALL

On Roll Call the following were present: Councilmembers Hassmiller, Walling, Wedick, Bergen (arrived 7:22 P.M.), Sheridan, Ortman. Others present: Mr. Ebner, Borough Attorney's Office.

#### DISCUSSION

##### Personnel

1. **Administration.** The Keyport Senior Center submitted a letter advising they would like to remain on summer hours throughout the year. Mayor and Council decided this request should be denied because the unions made the same request and it was denied.
2. **Fire Department.** This matter will be discussed in open session; it will be a long discussion and Mayor and Council need to be careful in how they address this publicly.
3. **Police Department.** There is a concern with light duty. The Borough Attorney prepared a memo regarding Police Officers who become [REDACTED] and policies that can be set, if Council so chooses. The Mayor said he received light duty policies from other towns.

A disciplinary matter was reported in the newspaper; the PBA President was contacted and requested to make a retraction to the article.

A final determination needs to be made on [REDACTED]. A week ago, the Police Committee sat with Chief Gajewski to hear his side and reason why he recommended the suspension. Councilman Wedick said the Police Committee after reviewing all of the facts on this matter back the Chief's decision; all agreed. A memo with the Mayor and Council's decision should be sent to [REDACTED].

Discovery is being collected for the Disciplinary action being taken on the three Police Officers for various reasons.

A salary ordinance amendment for the Police Chief will be introduced at the next meeting; he is approaching the maximum in the salary range. The new range should be \$50,000-\$125,000.

Councilman Bergen arrived at 7:22 P.M.

4. **Planning Board Secretary.** The new Business Administrator will address this matter. Someone needs to be trained before Mrs. Febo retires.

October 17, 2006  
Keyport, New Jersey

Approved for  
release by M+C  
12/5/06

Minutes of a Closed Meeting of the Mayor and Council, Borough of Keyport, held on the above date in the Council Chambers, Municipal Complex, 70 W. Front Street, Keyport, NJ pursuant to the adoption of Resolution #316-06, at the Regular Meeting of the same date in accordance with the Open Public Meetings Act, P.L. 1975, Ch. 231.

Mayor Merla called the meeting to order at 7:03 P.M.

#### ROLL CALL

On Roll Call the following were present: Councilmembers Hassmiller, Walling, Wedick, Bergen, Sheridan, Ortman (arrived 7:06 PM). Others present: Mr. Wisniewski, Borough Attorney and Mr. Valesi, Administrator.

#### DISCUSSION

##### Personnel

1. **Construction Code Office.** Mr. Valesi said he received a letter from [REDACTED] that he is not bringing charges against [REDACTED]. Mr. Valesi said he e-mail Council about this matter and there would be no public hearing. The Mayor said this was a waste of Council's time. There was a complaint made against [REDACTED] by a contractor. Mr. Valesi said things "get away" and take on a life of their own. Mr. Valesi said he dispensed of the contractor's issue in 12 minutes [REDACTED] seems to avoid conflict by smoothing things over. Mr. Valesi said matters need to be looked into before any action is taken. This matter should be dismissed and the Department Head held accountable.

Mr. Ortman arrived at 7:06 P.M. Mr. Valesi advised there is an advertisement for a Clerk Typist position posted.

2. **Public Works Department.** Bert Morris' last day of work will be October 31<sup>st</sup> and he will be officially retired on December 31<sup>st</sup>.

Mr. Valesi said disciplinary action was administered by him in the [REDACTED] matter (a demotion in position). Mr. Valesi said he contacted Councilman Walling and Councilman Bergen to find out the background and history of this employee. Councilman Hassmiller said he never agreed to a demotion for [REDACTED]; the demotion would be a \$60 loss in his salary. Councilman Bergen said there are questions regarding [REDACTED] job performance. He said he looked at the files kept by [REDACTED] and they are in disarray; one year estimates are being given to the residents. Mr. Sheridan asked if a demotion was discussed with [REDACTED] and his Department Head; yes. Mr. Valesi said he met with George Sappah, Supt of Public Works and [REDACTED] and advised the decision would be left up to Council. [REDACTED] is happy with decision and is glad to still have a job. He will be reassigned. Mr. Walling recommended a 5 day suspension and demotion. Mayor and Council agreed to the demotion. Mr. Valesi apologized to Council if they felt he overstepped any boundaries.

3. **Police Department.** Several memos were received from Chief

**Mayor**  
**Robert J. Bergen**

**Councilmembers**  
**Richard J. Hassmiller, President**  
**Christian Bolte**  
**Ezra Hill**  
**William Ortman**  
**Joseph E. Sheridan**  
**George J. Walling, Sr.**

*The Pearl of the Bayshore*<sup>SM</sup>  
**Keyport**  
NEW JERSEY

**Peter R. Valesi, P.E., CME**  
**Borough Administrator**  
**Director of Engineering**

**Valerie T. Hellweil, RMC**  
**Borough Clerk**

**Thomas P. Fallon, CPA, RMA**  
**Chief Financial Officer**

June 29, 2007

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

Re: Your Records Request of June 21, 2007

Dear Mr. Paff:

The requested closed session minutes for April 10, 2007 and April 24, 2007 are attached, with the exception of material that has been redacted in accordance with the attorney-client privilege exception to the Open Public Records Act (OPRA). *N.J.S.A.* 10:4-12, 47:1A-1.1. The remaining requested closed session minutes have not yet been approved by the governing body. It is expected that the remaining closed session minutes requested will be approved by the governing body on July 10, 2007 and will be available shortly thereafter with the exception of material that may be redacted in accordance with *N.J.S.A.* 47:1A-1 *et seq.*

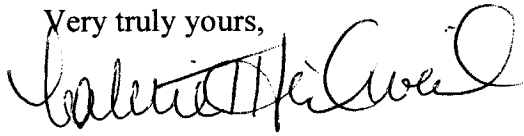
2. The requested resolutions authorizing the closed sessions are attached.
3. The requested public session minutes have not yet been approved by the governing body. It is expected that the remaining minutes requested will be approved by the governing body on July 10, 2007 and will be available shortly thereafter with the exception of material that may be redacted in accordance with *N.J.S.A.* 47:1A-1 *et seq.*
4. The redacted portions of Page 1 from the Borough's closed session minutes of September 19, 2007 and October 17, 2007 may not be disclosed pursuant to *N.J.S.A.* 47:1A-9, 10:4-12(b)(8).
5.
  - (a) See attached.
  - (b) None.
  - (c) See attached letter dated December 11, 2007.
  - (d) None.
  - (e) See email and letter from J. Paff to Borough of Keyport; December 7, 2006 email from Borough Clerk; December 13, 2007 email and letter from Borough Clerk finalizing response to OPRA request. Emails are not being supplied as same are not discoverable in accordance with the attorney client privilege and intra-agency

advisory, consultative material exceptions to the Open Public Records Act (OPRA).  
N.J.S.A. 10:4-12, 47:1A-1.1.

This letter is being sent to you via email at [PPF@POBOX.com](mailto:PPF@POBOX.com). The hard copies of these items will be mailed out on Monday, June 2, 2007. Should you wish to pick them up in order to avoid the cost of postage, please notify my assistant, Denise, at [dnellis@keyportonline.com](mailto:dnellis@keyportonline.com) or call her at 732-739-5124. I will be out of the office until July 9, 2007.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Valerie T. Heilweil". The signature is fluid and cursive, with a large loop at the end.

Valerie T. Heilweil, RMC  
Municipal Clerk  
Borough of Keyport

Approved  
5/1/07

April 10, 2007  
Keyport, New Jersey  
Closed Session

Minutes of the Closed Executive Session Meeting of the Mayor and Council, Borough of Keyport, held on the above date in the Council Chambers, Municipal Complex, 70 West Front Street, Keyport, pursuant to the adoption of Resolution #124-07, at the regular meeting of the same date in accordance with the Open Public Meetings Act, P.L. 1975, Chapter 231.

Mayor Bergen called the meeting to order at 7:02PM.

On Roll Call the following were present: Councilmembers Sheridan, Hassmiller, Ortman, Walling and Bolte, Mayor Bergen, Borough Attorney Wisniewski, and Administrator Valesi. Councilman Hill was absent.

Motion was made by Councilman Sheridan, seconded by Councilman Ortman with all ayes in favor of going into closed session at 7:05PM.

**LITIGATION**  
**Municipal Building**

[REDACTED]

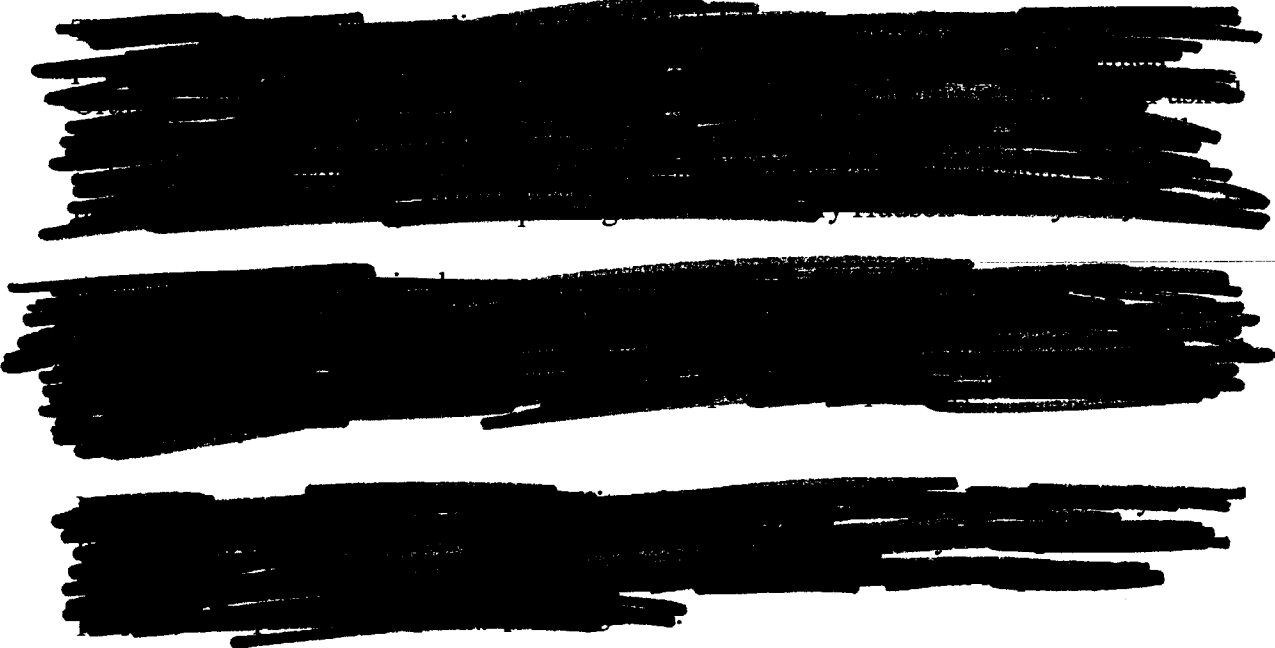
**PERSONNEL**  
**Police Department**

Councilman Ortman says a Police Committee meeting will be scheduled. Mayor stated that we need to find someone on a three-man shift that can check parking in the business district.

April 10, 2007  
Keyport, New Jersey  
Closed Session

**POTENTIAL LITIGATION**

**Loitering Of Day Workers**



**Defino Litigation**

Attorney Ken Ebner spoke about the DeFino litigation. The parties are coming in on April 18<sup>th</sup> at 10AM.

**PERSONNEL**

**Interview With Sgt. Anthony Gallo**

Interview began at 7:38PM.

Councilman Ortman asked Sgt. Gallo to go over his background in the Police Department.

Sgt Gallo stated:

- He was a Detective for three years beginning in 1997.
- He took the Sergeant's exam in 2002 and received the highest score.
- He is very familiar with case law.
- He ranked high in officer-initiated arrests.
- He feels he is aggressive and more hand-on than other officers.
- He ranked first on the Lieutenants exam.

Ortman asked whether or not there was anything Sgt. Gallo would like to see changed.

Sgt. Gallo responded:

- He would like to see more concern about appearance in uniforms.
- He would like to see more professionalism.
- He feels Sergeants need to be more hands-on and aggressive.

Councilman Walling agreed with Sgt. Gallo's standards of aggressiveness and said he knows that Sgt. Gallo is more aggressive than some of the other Sergeants.

Councilman Sheridan asked if Sgt. Gallo had been in the Air Force. Sgt. Gallo responded affirmatively.

Councilman Hassmiller mentioned that council hasn't decided whether to promote two or one to Lieutenant. He asked Sgt. Gallo how he would handle having to be inside. Sgt. Gallo said he felt ready for a change. Councilman Hassmiller asked why Sgt. Gallo did not want to take the Captain's test since he is hungry for advancement. Sgt. Gallo responded that he did not want to take the test against Capt. Mitchell. He felt that Capt. Mitchell had earned it was more deserving and more qualified. He said he would not feel comfortable taking it.

The Mayor asked why Sgt. Gallo felt he was more qualified and more deserving than any other Sergeant to be promoted to Lieutenant. Sergeant Gallo responded that he had come out number one on the test.

The Mayor asked what qualities differentiate Sgt. Gallo from others. Sgt. Gallo responded that he would not fail and that he felt he was smart and a hard worker.

The Mayor asked Sgt. Gallo what he does to make his squad more productive than others. Sgt. Gallo answered that he leads them and praises them.

The Mayor asked Sgt. Gallo "What file would be one where probable cause did not hold up in court?" Sgt. Gallo recited a case from 1999 or 2000 where he had arrested a 19 or 20 year old woman in possession of crack cocaine.

The Mayor then asked "How do you deal with a council that has the right to set goals and procedures in a case where you think there should be a different policy?" Sgt. Gallo answered that he did not care where direction comes from so long as it was lawful.

Councilman Walling asked "Are drugs a serious problem here in Keyport?" Sgt. Gallo replied that they were not as much of a problem as they used to be. He went on to say that Keyport does not have "drug zones" or areas where drugs are a major problem. He felt this was due to aggressive patrolling.

Sgt. Gallo's interview concluded at 8:14PM.

Captain Mitchell mentioned to Mayor and Council that a physical could be required as part of the interview process. He further stated that Holmdel requires a physical and that an officer could be eliminated either for not showing up for the physical or for not completing the process.

At 8:17PM motion was made and carried to return to open session after a five-minute recess.

Approved  
5/1/07

April 24, 2007  
Keyport, New Jersey  
Closed Session

Minutes of a Closed Executive Session Meeting of the Mayor and Council, Borough of Keyport, held on the above date in the Council Chambers, Municipal Complex, 70 West Front Street, Keyport, NJ, pursuant to the adoption of Resolution # 139-07, at the regular meeting of the same date in accordance with the Open Public Meetings Act, P.L. 1975, Chapter 231.

Mayor Bergen called the meeting to order at 7:03PM.

On Roll Call the following were present: Councilmembers Sheridan, Hassmiller (arrived 7:04PM) Ortman, Walling and Bolte, Mayor Bergen, Borough Attorney Wisniewski, and Administrator Valesi.

Motion was made by Councilman Sheridan, seconded by Councilman Ortman with all eyes in favor of going into closed session at 7:05PM.

**LITIGATION**

**Municipal Building**

[REDACTED]

**POTENTIAL LITIGATION**

**Proposed Ordinance - Smoking In Motor Vehicle With Children**

[REDACTED]

Councilman Ortman mentioned that this ordinance was brought to him by a member of the Board of Health.

**K. Hovnanian**

[REDACTED]

April 24, 2007  
Keyport, New Jersey  
Closed Session

**DEFEATED SHOOOL BUDGET**

We will be paying the Auditor to review the school budget. It was asked whether Council wanted a full meeting with the School Board. The Mayor suggested that it be a meeting with just the Finance Committee.

Councilman Walling asked "Who pays for the Auditor?" The Mayor explained that the Borough pays with authorization not to exceed \$2,500.

**PERSONNEL**

**Building Department Employee - Disciplinary Procedure**

It was recommended that the Borough Administrator talk with the Union. Apparently the employee has a witness to testify regarding the temporary employee who left.

**CONTRACT NEGOTIATION**

**Merla Water/Sewer Connection Fees**

Connection fees for Water/Sewer total \$31,590

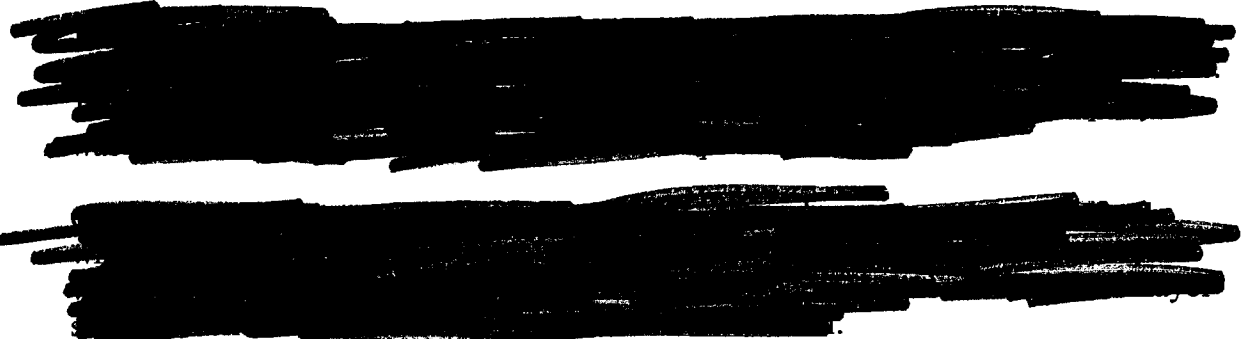
The Mayor proposed the following payment plan:

- \$5,000 up front
- Remaining 50% of full balance by December 1, 2007
- Other half of the balance by December 1, 2008

This plan would allow the Borough to get half of the money this year and half next year. The bill would go to the property owner.

**Public Works Lease**

Borough Administrator Valesi explained that his wife is involved in the family business which owns the property that we rent for our DPW location. He left the room due to this conflict while council discussed the situation.



April 24, 2007  
Keyport, New Jersey  
Closed Session

[REDACTED]

Borough Administrator Valesi returned at 7:33 PM once discussion of the DPW lease had concluded. The Mayor authorized Mr. Valesi to negotiate with the Mr. Merla on the proposed payment plan.

### **PERSONNEL**

#### **Interview With Sgt. George Casaletto**

Interview began at 7:34PM.

The Sergeant was asked to give some background information about himself. Sgt. Casaletto responded:

- He has been with the Department over twenty-four years.
- He started as a Special and a Correction Officer at the same time.
- He has always thought of himself as a leader.
- He believes strongly in community relations.

Councilman Ortman asked what he believed his leadership qualities to be. Sgt. Casaletto replied that it is tough to be a leader, especially with the older group of officers, some of whom are now leaving. He feels there is a good group of younger officers.

Councilman Ortman asked what would make Sgt. Casaletto be a good leader. Sgt. Casaletto responded:

- He has respect for the men under him.
- He is familiar with computers, which is important today in police work.
- He reads every report that comes through, not just those from his shift.

Councilman Ortman asked what changes the Sgt. would like to see. Sgt. Casaletto responded that he would like to see less head-bucking between the Police Department and the Council.

Councilman Walling expressed that he might have a conflict because his daughter and Sgt. Casaletto's daughter went to the Bahamas together. Borough Attorney Wisniewski explained that there is no conflict simply by being social acquaintances.

Councilman Walling then question Sgt. Casaletto about why he should become a Lieutenant instead of Sgt. Gallo. Sgt. Casaletto responded:

- He has been here longer.
- He has better computer capabilities than Sgt. Gallo.
- He mentioned again that because he has been a Detective, he reviews every case, not only those on his shift.

April 24, 2007  
Keyport, New Jersey  
Closed Session

Councilwoman Bolte expressed her concern over the possibility of her having a conflict because Sgt. Casaletto had pulled her over when she was twenty years old. Once again Borough Attorney Wisniewski explained that there was no conflict.

Councilman Hill was asked whether he had any questions; He responded that he did not.

Councilman Hassmiller was asked whether he had any questions. He, too, did not have any.

Councilman Sheridan said that he was impressed with the way Sgt. Casaletto handled the kids in the Step-Up Program at the school. He mentioned that the Sergeant was held in high regard.

The Mayor asked the Sgt. what he biggest weakness would be.  
Sgt. Casaletto said that he was not afraid to go to school and learn new things.

The Mayor said that Sgt. Casaletto has the perception of being a nice guy. He asked him whether he was capable of not being a nice guy. The Sgt. responded that yes, he was capable of not being nice.

Sgt. Casaletto said came here from Brooklyn. He loves Keyport and is proud of the town.

Councilman Ortman said both candidates come highly recommended by the Captain. He asked the Captain whether he had anything he would like to add. Captain Mitchell replied he did not. Councilman Ortman went on to say that he knows the Captain would like two Lieutenants.

The Mayor told the Captain that he must choose only one man to be promoted to Lieutenant in case only one Lieutenant position is approved by the Council. The Mayor asked Captain Mitchell to have his choice ready by the May 1<sup>st</sup> meeting.

The Mayor explained that the long term problem is that salaries have gotten to the point where structurally we just cannot afford to have three Administrators on the Police Department. Captain Mitchell said his goal is not to have three administrators.

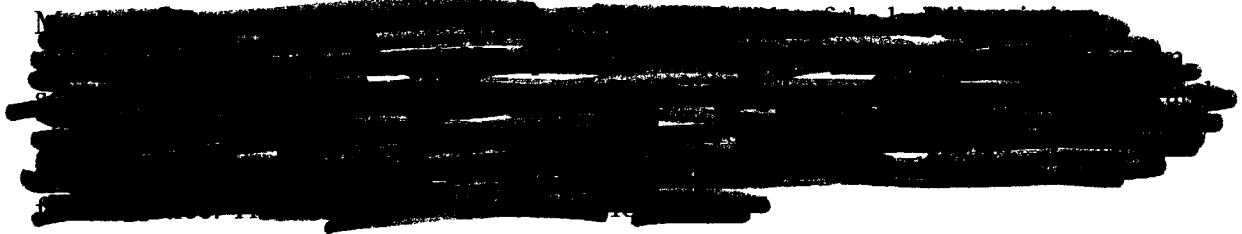
Interview was over by 7:48PM.

**POTENTIAL LITIGATION**

K. Hovnanian



April 24, 2007  
Keyport, New Jersey  
Closed Session



**PERSONNEL**

**Police Department Special Officers**

Councilman Hassmiller had a question regarding Specials. Twenty-five percent of the force could be Class II Specials. There is no limitation on Class I's. There is a problem that although we have five working Specials now, none are available to work days.

Motion was made at 7:56PM, and seconded with all in favor, for meeting to be adjourned into Open Session.