

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.).
- 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.
- 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.
- Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- 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.

1. About the Requester of the Documents:

Full Name: John Paff

Mailing Address: P.O. Box 5424

City: Somerset State: NJ ZIP 08875-5424

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

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

If you are represented by an attorney, please provide:

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

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

2. About the Custodian of Records:

Name of the public agency from which records were sought: Union Township in Union County

Name of custodian on whom records request was served: Eileen Birch

Telephone Number: 908-688-2800 E-Mail address (if used): _____

Name of custodian who denied records request: Same

Telephone Number: same Other Telephone (if used): _____

Fax Number: 908-851-4660 E-Mail address (if used): _____

3. About the Record Request:

Date your records request was provided to the custodian: June 20, 2005 22 23

Did you receive a reply to your request? Yes No 24

If so, state the date your request was denied: See supplement 25

Has there been any other complaint filed with the GRC concerning this record request or any document sought in it? 26
Yes No 27

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. 28

Date: _____ Case Number: _____ 29

Disposition: _____ 30

Have you ever before spoken with or written to the GRC or its staff about the record request or any document sought in it? 31 32

Yes Date: _____ No 33

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:

- Complete** the attached **Records Denied List** to describe the records to which you were denied access.
- 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.
- 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.
- Provide** any written arguments or other information you would like the Council to consider in deciding your complaint. 35

5. Verification of Complaint:

By signing this complaint, I affirm that: 37 38

- I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- The information I have provided is true to the best of my knowledge and belief;
- The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim; and
- 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. 39

Signature (required) 44

Date 45

MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENTATION TO: 46

Government Records Council, PO Box 819, Trenton, New Jersey 08625 47

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
Paff v. Union Township Committee***

Statement of Facts and Introduction of Exhibits:

1. At its meeting of May 24, 2005, the Union Township Committee passed Resolution 2005-125 (Exhibits A1 – A2). This resolution was passed as part of a settlement to a lawsuit Complainant had filed against the Township Committee in the Superior Court of New Jersey, Union County (Paff v. Union Township Committee, Docket No. L-3392-04).¹
2. In order to test the Township's compliance with Resolution 2005-125, I submitted a government records request (Exhibit B) on June 20, 2005.
3. Record Custodian Eileen Birch promptly responded to my request and extended me the courtesy of holding my request open until the records responsive to my request were prepared. See my confirming letter of June 21, 2005 (Exhibit C).
4. Thereafter, in early July 2005, Ms. Birch furnished me with two pages that purport to be "executive session minutes" for the Township Council's closed meetings of June 13, 2005 and June 14, 2005 (Exhibit D1 – D2)
5. On July 8, 2005, I wrote to the attorney for Union Township questioning whether the records produced were responsive to my request. My July 8, 2005 letter and an attachment to that letter, executive session minutes from the Franklin Township Redevelopment Agency, are attached as Exhibits E1 – E3.
6. On July 12, 2005, the attorney responded to my July 8, 2005 letter (Exhibit F).

Legal Argument:

According to Exhibit F, Union Township apparently prepares two categories of documents relating to minutes of the Township Committee's executive sessions: 1) the minutes themselves, and 2) documents, in the form of Exhibits D1 and D2, that identify the topics that were discussed in executive session.

Exhibit B clearly requested the actual "minutes" of the Committee's executive sessions. As such, the Custodian was required to provide me those actual minutes—and not the abbreviated documents. Of course, the Custodian would redact any privileged material from the minutes prior to releasing them to me. N.J.S.A. 47:1A-5(g), Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 556-57 (1997). See also, Paff v. Plainsboro Township, GRC Case No. 2005-29, Findings and Recommendations of July 14, 2005. The records responsive to my request should resemble Exhibits E2 - E3.

¹ The full text of the complaint, answer and other documents related to the lawsuit are on-line at the website of the Libertarian Party of Central New Jersey. www.lpcnj.org. Click on the "Open Government Task Force" link.

***New Jersey Government Records Council
Denial of Access Complaint – Supplement
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Custodian was obligated to provide me with the records I requested, redacted as necessary, and was not at liberty to provide me with substituted documents. Since she did not provide me with the requested records, she violated OPRA.

Requested Relief:

1. A declaration that the Custodian violated OPRA.
2. An order placing Custodian on "the matrix."
3. An Order directing Custodian to provide me with the minutes of the Township Committee's June 13, 2005 and June 14, 2005 executive session minutes, with necessary redactions.

Certification of Service:

On July 19, 2005, I served a copy of this Denial of Access Complaint, together with all the exhibits and attachments by mail to: Eileen Birch, Township Clerk, 1976 Morris Avenue Union, NJ 07083-3579

Dated: July 19, 2005

John Paff

Resolution

Whereas, in 1991, the New Jersey Supreme Court confirmed, in South Jersey Pub. Co., Inc. v. N.J. Expressway Auth., 124, N.J. 478, 491-92, that

*[G]overnmental secrecy shrouds corruption and engenders public distrust in government and its officials. Whether dishonesty does, or does not, exist is irrelevant. The important factor is that "secrecy" creates a belief that it exists which, if extensive enough, could destroy needed public support for government action. * * * The sole method of combating these notions is to demonstrate their falsity by opening the doors of government so that the truth may be viewed by all.*

Quoting Kugler, New Jersey's Right to Know: A Report on Open Government 175 (1974).

Whereas, while the Township Committee is neither corrupt nor dishonest, it agrees with the Supreme Court that the Township's doors should be opened as widely as possible so that the public can satisfy itself that the Township is being run in an honest and efficient manner. It is therefore

Resolved, that effective immediately, whenever the Township Committee excludes the public from its meetings in accordance with N.J.S.A. 10:4-12b, it shall make public versions of the minutes of those closed meetings, redacted only to the extent necessary to protect the public interest, available to the public no later than three weeks thereafter, and it is further

Resolved, that within six months from the effective date of this resolution, the Township Committee shall prepare, if not done so already, for each closed meeting held since January 1, 2000, public versions of the minutes of those meeting, redacted only to the extent necessary to protect the public interest, and it is further

Resolved, that for each element redacted, the public version of the closed meeting minutes shall include a statement setting forth, as specifically as possible (e.g., the parties to the negotiation or litigation discussed), the reason for the redaction, and it is further

Resolved, that the Township Committee shall semiannually, in August and February, review the minutes of its closed meetings held since January 1, 2000 and determine whether and the extent to which the public versions of those minutes, due the passage of time or intervening events, can be updated to disclose previously redacted material, the outcome of such reviews being recorded in the Township Committee's public meeting minutes, and it is further

Resolved, that these public versions, promptly updated as necessary, of closed meeting minutes shall be maintained in book form, along with the Township Committee's open session minutes, in the Clerk's office, where they shall be made available for inspection by any person, and it is further

Resolved, that this resolution be readopted each year by the Township Committee, and it is further

Resolved, that the Township Committee recommends the adoption of like resolutions by the Planning Board, Zoning Board of Adjustment and other "public bodies" of or within the Township of Union as that term is defined by N.J.S.A. 10:4-8.

I, Eileen Birch, Township Clerk for the Township of Union, in the County of Union, State of New Jersey, do hereby certify that the above is a true copy of RESOLUTION NO. 2005-125, passed at a TOWNSHIP COMMITTEE meeting of said Township, held on the 24th day of May, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Township of Union, this 24th day of May, 2005.

/s/ Eileen Birch
Township Clerk

Approved as to form by

/s/ Daniel Antonelli
Assistant Township Attorney

John Paff

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

Telephone – 732-873-1251

E-mail – paff@pobox.com

Fax – 908-325-0129

June 20, 2005

Eileen Birch, Clerk
Township of Union

(via Fax 908-851-4660)

Dear Ms. Birch:

Please accept this letter as my request for government records pursuant to the Open Public Records Act and common law. I would like to purchase photocopies of the minutes of all Township Committee executive sessions held on or after May 24, 2005.

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

Sincerely,

/s/ John Paff

John Paff

P.O. Box 5424
Somerset, New Jersey 08875-5424
E-mail – paff@pobox.com
June 21, 2005

Telephone – 732-873-1251

Fax – 908-325-0129

Eileen Birch, Clerk
Township of Union

(via Fax 908-851-4660)

Dear Ms. Birch:

Thank you very much for your prompt voicemail in response to my June 20, 2005 government records request. I understand that a) there was no closed Committee session on May 24, 2005; b) there were closed sessions of the Township Committee on June 13, 2005 and June 14, 2005; but that c) those closed session minutes will not be publicly available until June 29, 2005—after their approval at the June 28, 2005 Committee meeting.

If you could, I'd appreciate it if you could leave this request open until June 29, 2005 and send me the June 13 and June 14 minutes when they then become available.

Thank you very much.

Sincerely,

/s/ John Paff

EXECUTIVE SESSION MINUTES
June 13, 2005

PRESENT: Peter Capodice, Deputy Chairman
Anthony Terrezza
Clifton People, Jr.

ABSENT: Joseph Florio, Chairman
Brenda Restivo

also present: Frank Bradley, Township Administrator
Ronald Manzella, Assistant Administrator
Eileen Birch, Township Clerk
Daniel Antonelli, Assistant Township Attorney

LITIGATION:

Bapu Corp. I Clinton Manor:

This information will be available when the litigation is settled.

Love of Christ Church:

This information will be available when the litigation is settled.

approved: 06/28/05

/s/ Joseph Florio
Mayor

/s/ Eileen Birch,
Township Clerk, date 06/14/05

EXECUTIVE SESSION MINUTES
June 14, 2005

PRESENT: Joseph Florio, Chairman
Peter Capodice, Deputy Chairman
Anthony Terrezza
Clifton People, Jr.

ABSENT: Brenda Restivo

also present: Frank Bradley, Township Administrator
Eileen Birch, Township Clerk
Daniel Antonelli, Assistant Township Attorney

LITIGATION

Love of Christ Church:

This information will be available when the litigation is settled.

approved: 06/28/05

/s/ Joseph Florio
Mayor

/s/ Eileen Birch,
Township Clerk, date 06/15/05

John Paff

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

Telephone – 732-873-1251

E-mail – paff@pobox.com

Fax – 908-325-0129

July 8, 2005

Francis D. McIntyre, Esq.
500 Morris Ave
Springfield, NJ 07081

Re: Union Township Committee

Dear Mr. McIntyre:

I have a question about the manner in which the Township Committee is redacting its closed session minutes. The following exhibits are attached so that my question can be understood.

- Union's Executive Session Minutes from June 13, 2005
- Union's Executive Session Minutes from June 14, 2005
- Franklin Redevelopment Agency's¹ Executive Minutes for July 15, 2002.

As you can see, the Redevelopment Agency's minutes provided to the public are the **actual minutes** of the executive session, but with certain sentences redacted. Union's minutes, however, don't appear to be minutes at all. Rather, they are a simple listing of the items discussed during executive session followed, in each instance, with a boilerplate "This information will be available when the litigation is settled."

Do you agree that the Committee's June 13, 2005 and June 14, 2005 "minutes" do not comply with the Committee's May 24, 2005 resolution which states, in part, that "the minutes of . . . closed meetings, redacted only to the extent necessary to protect the public interest, [shall be made] available to the public"? If so, what procedural changes will you urge the Committee to adopt?

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

Sincerely,

John Paff

¹ I've chosen the minutes of the Redevelopment Agency from my home town to highlight the differences between the Agency's minutes and Union's minutes.

REDEVELOPMENT AGENCY OF FRANKLIN TOWNSHIP
SOMERSET COUNTY, NEW JERSEY

EXECUTIVE SESSION MINUTES

OF MEETING JULY 15, 2002

Executive Session began at 8:43 p.m.

Baker Residential:

Richard Murphy gave his presentation of Baker Residential regarding property on Somerset Street. He had a layout of 124 townhouse units with 2 bedrooms and garage. Two car families would park one car in the garage and the other in the driveway. [REDACTED] since the height is 39 feet and Franklin Township's requirement is 35 feet. The estimate would be approximately 25-30 school children. Street size for fire prevention equipment was discussed. They would have to be wider. [REDACTED]

[REDACTED] questioned about any associations involved, he stated it would be fee simple with a Homeowner's Association to maintain the buildings and having a master plan.

Somerset Henry Realty LLC:

Peter Lanfrit, the Attorney representing Somerset Henry Realty LLC, gave the presentation. His client will be closing on a project at the intersection of Rt. 27 and Henry Street which consists of 36 units. They propose to be the redeveloper of the adjoining property. He said that Somerset Henry Realty believes that they can do this new project in the same fashion. He had drawings of 116 units (townhouses), containing two bedrooms each. The maximum would be 25 school children. Mr. John Chadwick said that the section south of the Henry Street project is proposed for commercial in the redevelopment plan. He stated that in terms of residential, they are asking the Agency to recommend a zoning change to the Township Council. It took 7 months to go to all the Boards, Council, etc. for permits for putting this current project in place. The project at hand will have a Homeowners Association to direct the policies such as age restrictions, etc. He stated they are ideally suited for this project because of the good track record of the other project. They also discussed the street widths for fire equipment. They accommodate 2.5 cars per unit (including garage). No property will front on Route 27. [REDACTED] They would have conventional financing.

Regarding Sikora property, Mr. Daly stated this is the first time to have two developers competing and will be a hard decision to pick one. Ms. Babineau said the standard that

would be held is that the decision needs to be a reasonable one, and therefore upheld from a legal perspective. Both would change the Redevelopment Plan and may have to go to condemnation. Ms. Babineau said she thinks the Agency should ask for three years financials, stating that financials and experience are the two main things. Mr. Daly will send a letter to them requesting three years audited financials, Mr. Pezzello's updated experience and a timeline.

Gateway Redevelopers:

Mr. Daly spoke of the position of the Gateway Redevelopers. They claim in a letter that there is no way they will be able to comply with the 60-day timeline and would rather the Agency renegotiate the Agreement with a new timeline. Mr. Daly stated that there are two choices: send a letter to them stating that they are in default, or the Agency renegotiates the Agreement and comes up with a new timeline. The vote was as follows: Messrs. Huether, Sanders, Grippo, Barber, and Sumter all in favor of negotiating new timeline. Mr. Gianotto opposed stating that he thinks the Agency should cut its losses. The motion for Mr. Daly to send a letter was made by Deputy Mayor Grippo and seconded by Councilman Sumter.

Adjournment:

Motion to adjourn was made by Deputy Mayor Grippo and seconded by Councilman Sumter. The meeting adjourned at 10:31 p.m.

MCINTYRE & KIRSHENBAUM, LLC
ATTORNEYS AT LAW
500 MORRIS AVENUE
SPRINGFIELD, NJ 07081
(973) 467-3717
FAX: (973) 467-8554
WWW.MKLLC.COM

July 12, 2005

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

Re: Union Township Committee

Dear Mr. Paff:

I reviewed your July 8, 2005 letter. To answer your question directly, there is no procedural change needed or necessary. The executive session minutes are contemporaneously reviewed and information, consistent with the referenced Resolution and the requirements of the Open Public Records Act, is made available to the public. The method employed by Franklin's Redevelopment Agency is its own preferred means. It has no impact or serves as no guidance to the appropriate method employed by the Union Township Committee.

Very truly yours,

/s/ Francis D. McIntyre

cc: Eileen Birch, Township Clerk
Frank Bradley, Township Administrator

Enc.

Eileen, from the Union Township Clerk's office, informing him that 1) the requested N.J.S.A. 10:4-13 resolutions were contained within the public meeting minutes for February 10 and February 11, 2003 and that those minutes were available for \$4.12, but 2) that the executive session minutes for those dates would not be released unless and until such was authorized by Defendant Union Township Committee.

3. Upon receipt of the \$4.12 payment, the Record Custodian sent Plaintiff an August 5, 2004 letter, which states in part:

Enclosed please find the conference session minutes from February 10 and February 11, 2003 that you requested. Your request for the executive session minutes for those dates will go before the Township Committee on August 24, 2004 at the next scheduled Township meeting and the decision will be sent to you in writing. I will keep your original request to present to the Committee on August 24, 2004.

4. On August 9, 2004, acting in his capacity as Chairman of the Open Government Task Force of the Libertarian Party of Central New Jersey, Plaintiff submitted a report to the Defendant asserting that the Custodian's decision to condition release of the minutes upon Defendant's approval was inconsistent with the Open Public Meetings Act's mandate that meeting minutes be made "promptly available to the public." N.J.S.A. 10:4-14.

5. On September 1, 2004, Plaintiff received the requested executive session minutes along with an August 29, 2004 letter from Union Township Attorney Thomas Plaia, Esq. In his letter, Mr. Plaia stated that "the Township Committee has decided to release these minutes based on the subject matter no longer being confidential," and that "any future requests for Executive session minutes will be considered and decided on a case by case basis."

6. The February 10 and 11, 2003 executive session minutes were approved by

Defendant at its February 25, 2003 meeting.

7. On September 14, 2004 Plaintiff submitted, via both regular mail and fax, another government record request to the Union Township Record Custodian for the minutes and authorizing resolutions for executive sessions held in the months of November 2003 and June 2004. Plaintiff's September 14, 2004 cover letter stated:

In order to get the records as quickly as possible, I have both faxed and mailed this request to you. With the mailed copy, I have enclosed my check for "not more than twenty dollars" to cover your costs in producing these records and mailing them to me at the above address. Please fill in the appropriate figure in the numerical field of the check before depositing.

8. On September 17, 2004, Plaintiff received a September 16, 2004 letter from the Record Custodian stating in part:

I have received your records request for executive session minutes from November 2003 and June 2004. The Township Attorney will review these minutes and present his recommendation to the Township Committee at the next scheduled meeting on September 28, 2004.

I am returning your check and will contact you after the Committee has made their decision. If the minutes are released I will also include the cost for copies at that time.

WHEREFORE, Plaintiff demands judgment on the First Count:

- A. Declaring that Defendant's current practice of 1) not making its executive session minutes available to the public unless and until a specific request for them is made, and 2) then conditioning the release of those minutes upon Defendant's approval at a future meeting is inconsistent with the Open Public Meetings Act's mandate that meeting minutes be made "promptly available to the public." N.J.S.A. 10:4-14.
- B. Enjoining and restraining Defendant from continuing its current practice of 1) not making its executive session minutes available to the public unless and until a specific

request for them is made, and 2) then conditioning the release of those minutes upon Defendant's approval at a future meeting.

- C. Compelling Defendant to maintain public versions of its executive session minutes, redacted only if and to the extent necessary, on hand and readily available, in a manner similar to that by which public meeting minutes are maintained.
- D. Compelling Defendant to 1) at least monthly review the minutes of those executive sessions where the passage of time or changed events may require the reduction or elimination of presently redacted matter, and 2) to update the public versions of those minutes accordingly.
- E. Such other relief as this Court may deem just.
- F. Costs of suit.

**SECOND COUNT
(The February 10, 2003 and February 11, 2003 executive sessions)**

1. At its meeting on February 10, 2003, Defendant passed a resolution authorizing an executive session convening at about 8:30 p.m. The text of that resolution is set forth in Exhibit A.

2. The minutes of the February 10, 2003, 8:30 p.m. executive session reveal discussion of an issue not within the scope of the session's authorizing resolution—a personnel matter regarding the Department Head's Salary Ordinance for 2003.

3. At its meeting on February 11, 2003, Defendant passed a resolution authorizing an executive session convening at about 7:24 p.m. The text of that resolution is set forth in Exhibit B.

4. The minutes of the February 11, 2003, 7:24 p.m. executive session reveal

discussion of an issue that a) is not within the scope of the session's authorizing resolution, and b) not statutorily permitted to be discussed in executive session. The issue pertained to the Defendant's application for Extraordinary Aid.

WHEREFORE, Plaintiff demands judgment on the Second Count:

- A. Declaring that neither the personnel matter discussed in executive session on February 10, 2003 nor the Extraordinary Aid matter discussed in executive session on February 11, 2003 was permitted by those sessions' authorizing resolutions, and that by discussing these matters Defendant Union Township Committee violated the Open Public Meetings Act.
- B. Declaring that the February 11, 2003 executive session discussion of the Extraordinary Aid matter was not authorized by any of the exceptions under N.J.S.A. 10:4-12(b), and that by discussing this matter Defendant Union Township Committee violated the Open Public Meetings Act.
- C. Enjoining and restraining Defendant Union Township Committee from discussing matters during closed session when those matters are not authorized by both an exception within N.J.S.A. 10:4-12(b) and by the public resolution, passed in accordance with N.J.S.A. 10:4-13, that authorized that executive session.
- D. Such other relief as this Court may deem just.
- E. Costs of suit.

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.

VERIFICATION

I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: September 23, 2004

John Paff
Plaintiff

State of New Jersey

ss.

County of Somerset

On September 23, 2004, John Paff appeared before me and affixed his signature above in my presence.

(SEAL)

On motion of Mr. Capodice, seconded by Mr. Florio, and carried, the Committee moved to convene in Executive Session, the time being 8:30 P.M

WHEREAS, Section 8 of the open Public Meeting Act, Chapter 231, P.L. 1975, 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.

NOW, THEREFORE, BE IT RESOLVED by the Township of Union, County of Union, State of New Jersey, as follows:

1. The public shall be excluded from discussion of and action upon the hereinafter specified subject matter:
 - A. Pending or anticipated Litigation
 - B. Acquisition and/or leasing of land
2. The general nature of the subject matter to be discussed is as follows:
 - A. Pending or anticipated Litigation
 1. Franklin Street Floodwall
 - B. Acquisition and/or leasing of land
 1. Transit Village
3. It is anticipated at this time that the above stated subject matter will be made public:

Upon authorization of the Township Committee

4. This Resolution shall take effect immediately.

On motion of Mr. Capodice, seconded by Mr. Scanlon, and carried, the Committee moved to reconvene, the time being 9:00 P.M.

On motion of Mr. Capodice, seconded by Mr. Terrezza, and carried, the Committee moved to convene in Executive Session, the time being 7:24 P.M.

WHEREAS, Section 8 of the open Public Meeting Act, Chapter 231, P.L. 1975, 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.

NOW, THEREFORE, BE IT RESOLVED by the Township of Union, County of Union, State of New Jersey, as follows:

1. The public shall be excluded from discussion of and action upon the hereinafter specified subject matter:
 - A. Personnel
2. The general nature of the subject matter to be discussed is as follows:
 - A. Personnel
 1. 2003 Salary Ordinance
3. It is anticipated at this time that the above stated subject matter will be made public:

Upon authorization of the Township Committee
4. This Resolution shall take effect immediately.

On motion of Mr. Capodice, seconded by Mr. Terrezza, and carried, the Committee moved to reconvene and adjourn, the time being 7:35 P.M.



**CIVIL CASE INFORMATION STATEMENT
(CIS)**

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I — 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY
- 502 BOOK ACCOUNT
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

Track II — 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 602 ASSAULT AND BATTERY
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 699 TORT – OTHER

Track III — 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV — Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 613 REPETITIVE STRESS SYNDROME
- 701 ACTIONS IN LIEU OF PREROGATIVE WRIT

Mass Tort (Track IV)

- | | |
|----------------|--------------|
| 240 DIET DRUG | 264 PPA |
| 246 REZULIN | 601 ASBESTOS |
| 247 PROPULSID | 619 VIOXX |
| 248 CIBA GEIGY | |

999 OTHER (Briefly describe nature of action) _____

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

Verbal Threshold

Putative Class Action

Title 59

John Paff

P.O. BOX 5424

SOMERSET, NEW JERSEY 08875-5424

TELEPHONE - 732-873-1251

E-MAIL - PAFF@POBOX.COM

FAX - 908-325-0129

SEPTEMBER 23, 2004

Clerk, Superior Court
Union County, Law Division
Union County Courthouse
Elizabeth, New Jersey *(Via Hand Delivery)*

Re: Paff v. Union Township Committee

Dear Sir or Madam:

Enclosed is an original and two copies of a verified complaint, a civil case information statement, my \$200 check and a self-addressed stamped envelope.

Kindly file and return a stamped copy of the complaint in the enclosed envelope as soon after its entry as possible.

Thank you for your attention to this matter.

Sincerely,

John Paff

John Paff
PO Box 5424
Somerset, NJ 08875-5424
Telephone 732-873-1251
Plaintiff

JOHN PAFF

Plaintiff

vs.

UNION TOWNSHIP COMMITTEE

Defendant

:
:
: Superior Court of New Jersey
: Union County
: Law Division
:
: Docket no:
:
: Civil Action
:
: **SUMMONS**
:
:

The State of New Jersey to: ***Union Township Committee***
 1976 Morris Avenue
 Union, New Jersey

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court at 2 Broad Street, Elizabeth, New Jersey within 35 days from the date you received this summons, not counting the date you received it. A filing fee payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff whose name and address appear above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

DATED: September 24, 2004

Donald F. Phelan
Clerk of the Superior Court

Default has been entered as to this filed request and affidavit of default of the plaintiff.

RECEIVED/FILED
Superior Court of New Jersey

Nov. 17, 2004

Civil Case Management
Union County

John Paff
PO Box 5424
Somerset, NJ 08875-5424
Telephone 732-873-1251
Plaintiff

/s/ Elizabeth Domingo
Deputy Clerk, Superior Court
Union County

JOHN PAFF

Plaintiff

vs.

UNION TOWNSHIP COMMITTEE

Defendant

:
:
: Superior Court of New Jersey
: Union County
: Law Division

: Docket no: L-3392-04

: Civil Action

: **CERTIFICATION AND REQUEST**
: **FOR ENTRY OF DEFAULT**

John Paff, Plaintiff herein, certifies to the following:

1. The summons and complaint were personally served, pursuant to R.4:4-4(a)(8), upon the Clerk of the Defendant Union Township Committee on September 27, 2004 by Warren T. Kupchik, a competent adult not having a direct interest in this litigation. R.4:4-3(a). A true copy of Mr. Kupchik's Certification of Service is attached hereto.
2. Defendant has neither answered nor otherwise moved as to the complaint and the time within which Defendant may answer or otherwise move as to the complaint has expired and has not been extended.

I certify the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: November 15, 2004

/s/ John Paff

To: The Clerk of the Superior Court

Pursuant to R.4:43-1(a), you will please enter the default of Defendant Union Township Committee based on the reasons given in the foregoing certification.

Dated: November 15, 2004

/s/ John Paff

John T. Paff

P.O. BOX 5424
SOMERSET, NEW JERSEY 08875-5424
E-MAIL - CJSC@POBOX.COM
NOVEMBER 19, 2004

TELEPHONE - 732-873-1251

FAX - 908-325-0129

Union Township Clerk's Office
1976 Morris Avenue
Union, NJ 07083-3579

RE: Paff v. Union Township Committee
Docket No. L-3392-04

Dear Sir or Madam:

Pursuant to R.4:43-1, enclosed is a copy of the Certification and Request for Entry of Default that was entered against you on November 17, 2004.

Thank you for your attention to this matter.

Sincerely,

John T. Paff

Via US Certified Mail - RRR - #7001-1140-0000-7670-3524

8. Admitted as to the September 16 letter. Defendant is without sufficient information to admit or deny the remaining allegations set forth in paragraph 8 and leaves plaintiff to his proofs.

SECOND COUNT

- 1. Admitted
- 2. Denied
- 3. Admitted
- 4. Denied

WHEREFORE, defendant demands judgment dismissing plaintiff's complaint with costs of suit and such other relief as the Court may deem just.

FIRST SEPARATE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

Plaintiff complaint is frivolous within the meaning of N.J.S.A. 2A: 15-59.1 and has been instituted solely for the purpose of harassment, delay and malicious injury without any reasonable basis.

THIRD SEPARATE DEFENSE

Defendant violated no law, duty or obligation owed to Plaintiff.

FOURTH SEPARATE DEFENSE

Plaintiff's complaint is barred by the statutory limitation of the Open Public Meetings Act.

DESIGNATION OF TRIAL COUNSEL

Defendant hereby designates, Francis D. McIntyre, Esq. as Trial Counsel pursuant to Rule 4:25-4.

**MCINTYRE & KIRSCHENBAUM, LLC
ATTORNEY FOR PLAINTIFF**

BY: /S/ FRANCIS D. MCINTYRE, ESQ.

DATE: December 9, 2004

CERTIFICATION OF COUNSEL

Pursuant to Rule 4:5-1 the undersigned hereby certifies that at the time of filing this Answer, the matter in controversy is not the subject of any other action pending in any Court and/or Arbitration proceeding.

We hereby certify that a copy of the within document was filed with the clerk of the captioned court and with the county clerk, and that a copy of the same was served upon all interested parties within the time and manner provided by the Order dated December 6, 2004

**MCINTYRE & KIRSHENBAUM, LLC
ATTORNEY FOR PLAINTIFF**

BY: /S/ FRANCIS D. MCINTYRE, ESQ.

DATE: December 9, 2004

Resolution

Whereas, in 1991, the New Jersey Supreme Court confirmed, in South Jersey Pub. Co., Inc. v. N.J. Expressway Auth., 124, N.J. 478, 491-92, that

*[G]overnmental secrecy shrouds corruption and engenders public distrust in government and its officials. Whether dishonesty does, or does not, exist is irrelevant. The important factor is that "secrecy" creates a belief that it exists which, if extensive enough, could destroy needed public support for government action. * * * The sole method of combating these notions is to demonstrate their falsity by opening the doors of government so that the truth may be viewed by all.*

Quoting Kugler, New Jersey's Right to Know: A Report on Open Government 175 (1974).

Whereas, while the Township Committee is neither corrupt nor dishonest, it agrees with the Supreme Court that the Township's doors should be opened as widely as possible so that the public can satisfy itself that the Township is being run in an honest and efficient manner. It is therefore

Resolved, that effective immediately, whenever the Township Committee excludes the public from its meetings in accordance with N.J.S.A. 10:4-12b, it shall make public versions of the minutes of those closed meetings, redacted only to the extent necessary to protect the public interest, available to the public no later than three weeks thereafter, and it is further

Resolved, that within six months from the effective date of this resolution, the Township Committee shall prepare, if not done so already, for each closed meeting held since January 1, 2000, public versions of the minutes of those meeting, redacted only to the extent necessary to protect the public interest, and it is further

Resolved, that for each element redacted, the public version of the closed meeting minutes shall include a statement setting forth, as specifically as possible (e.g., the parties to the negotiation or litigation discussed), the reason for the redaction, and it is further

Resolved, that the Township Committee shall semiannually, in August and February, review the minutes of its closed meetings held since January 1, 2000 and determine whether and the extent to which the public versions of those minutes, due the passage of time or intervening events, can be updated to disclose previously redacted material, the outcome of such reviews being recorded in the Township Committee's public meeting minutes, and it is further

Resolved, that these public versions, promptly updated as necessary, of closed meeting minutes shall be maintained in book form, along with the Township Committee's open session minutes, in the Clerk's office, where they shall be made available for inspection by any person, and it is further

Resolved, that this resolution be readopted each year by the Township Committee, and it is further

Resolved, that the Township Committee recommends the adoption of like resolutions by the Planning Board, Zoning Board of Adjustment and other "public bodies" of or within the Township of Union as that term is defined by N.J.S.A. 10:4-8.

I, Eileen Birch, Township Clerk for the Township of Union, in the County of Union, State of New Jersey, do hereby certify that the above is a true copy of RESOLUTION NO. 2005-125, passed at a TOWNSHIP COMMITTEE meeting of said Township, held on the 24th day of May, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Township of Union, this 24th day of May, 2005.

/s/ Eileen Birch
Township Clerk

Approved as to form by

/s/ Daniel Antonelli
Assistant Township Attorney

The Star-Ledger

(1996-Current)

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Star-Ledger, The (Newark, NJ)

November 5, 2004

Libertarians sue Union Twp. over Political party wants towns to follow law on public information

Author: JASON JETT; STAR-LEDGER STAFF

Edition: UNION

Section: UNION

Page: 27

Estimated printed pages: 3

Article Text:

Union Township is the latest municipality to be sued by **Libertarian** Party officials seeking to have governing bodies comply with state public meetings and records laws.

Since 2002, the third party to Republicans and Democrats in Tuesday's national elections has filed more than a dozen lawsuits across New Jersey.

The drive has picked up support from nonmembers concerned about the flow of information from public officials to the residents they serve.

In Roselle Park, Jacob Magiera, a former Republican councilman, sent a letter and videotapes of alleged open public meetings violations to the Union County Prosecutor's Office.

The county's top law-enforcement agency found the Roselle Park Borough Council incurred violations during municipal council meetings Aug. 5, Aug. 19 and Sept. 2, and it warned of fines from \$100 to \$500 for future infractions.

"All parties are in agreement that the law has been violated, and have made assurances that retraining on issues arising under the Open Public Meetings Act will be undertaken to ensure no repetition of these violations," Assistant Prosecutor Ann Rubin wrote in a letter to Magiera that was forwarded to Roselle Park Borough Attorney William Lane.

The violations included passing a motion calling for a closed session without stating the nature of the subject to be discussed with any degree of specificity. Also, the nature of matters discussed in closed session were not justified by any of the exceptions to the open public meeting requirement.

Paraphrasing the state open public meetings law, Magiera had written: "The public body must first adopt a resolution at a meeting which is open to the public indicating generally what matters will be discussed in the closed session, and when the discussion will be disclosed to the public.

"Since the 11 items were not discussed before the public, I have no way of knowing when or if these 11 items will ever be disclosed to us," he added.

The Union Township Committee was sued Sept. 27 by John Paff, secretary of the Central Jersey chapter of the **Libertarian** Party, for failing to provide minutes of past executive sessions at public meetings.

Township attorney Thomas Plaia said the matter is moot because the documents were provided, and he called the suit a trial balloon.

"I was shocked because Mr. Paff recently made a request for executive session notes, which were reviewed by me," Plaia said of the suit. "I reported back to the township committee, and they gave me authority to release those executive session notes.

"What he requested was provided to him. I guess he did not think I got to him fast enough and filed suit," added Plaia. "Maybe he had no real interest in the executive session notes and simply was trying to make a test case."

Plaia noted Paff lives in Somerset County, and asked, "What interest does he have in Union and its day-to-day government?"

The borough attorney said the township closely guards executive session minutes because they could cause embarrassment to employees or reveal inappropriate details about contracts and pending litigation.

"I speak on behalf of the township, when I say we will continue to scrutinize any and all requests for executive session minutes," he said. "Executive session is not taken lightly in Union."

Paff said the township technically is in default because it failed to answer his complaint within the allowed 35 days, but the larger issue is obtaining a court interpretation of the suit.

"The Open Public Meetings Act requires minutes be promptly made available to the public," he said. "I would like to approach this as a citizen trying to make the system work better and would appreciate if he would not attack my motive but address the issues in the lawsuit.

"It's not just Union," added Paff. "Municipal governments ignore requests and push you around. The **Libertarian** Party's Open Government Task Force is trying to make public information readily available to people without requiring people to be confrontational.

"We want a system in which, if the Open Public Meetings Act says do this, that towns comply."

Paff said he knows of no cases in which municipalities were fined or otherwise penalized for violations.

"The fines are illusory," he said. "They have to be brought by the attorney general or county prosecutors, and they have a tendency to not find violations a high priority, and I find that unfortunate."



The Star-Ledger

Closed-door meetings data more available in Union Twp.

Edited minutes will be open to the public

Thursday, May 26, 2005

BY JASON JETT
Star-Ledger Staff

The Union Township Committee has resolved to make the public more aware of proceedings that go on behind closed doors.

The governing body adopted a resolution Tuesday to make redacted minutes available to the public within three weeks of closed sessions. The private discussions during public meetings typically involve legal, personnel or contractual matters.

"The township's doors should be opened as widely as possible so that the public can satisfy itself that the township is being run in an honest and efficient manner," began the resolution adopted in a unanimous vote.

The action ended the threat of a lawsuit by the Libertarian Party. John Paff, secretary of its Central Jersey chapter, was there to witness it.

"It was refreshing that they decided to take another look at their procedures," Paff said of committee members. "Most towns fight me tooth and nail, as if they do not want people to have the information.

"They (township officials) reviewed it and fixed it, and I commend them," he said.

The Libertarian Party has conducted a campaign throughout the state the past year to have municipal bodies comply fully with state public meetings and records laws.

Paff said litigation against the Perth Amboy City Council is in the appellate division of state Superior Court, and legal action is pending against the Franklin Township Redevelopment Agency and Highland Park Planning Board.

In addition to releasing minutes edited to protect personnel or officials in legal matters or contract negotiations, the township committee is to make available public versions of minutes for closed sessions dating to January 2000.

The resolution stated the minutes would be "redacted only to the extent necessary to protect the public interest," adding the reason for the edit should be given "as specifically as possible."

Finally, the minutes of closed sessions are to be reviewed semi-annually to determine whether the passage of time allows for them to be updated to disclose previously redacted material.

Like open-session minutes, the public versions of minutes from closed sessions are to be maintained in book form in the clerk's office for inspection by anyone who requests access.

Jason Jett reports on Union Township. He may be contacted at jjett@starledger.com or (908) 302-1509.