

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: PO 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: 908-325-0129

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: Borough of Far Hills

Name of custodian on whom records request was served: Linda Leidner, Borough Clerk

Telephone Number: 908-234-0611 E-Mail address (if used): _____

Name of custodian who denied records request: Linda Leidner

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

Fax Number: 908-234-0918 E-Mail address (if used): _____

3. About the Record Request:

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Date your records request was provided to the custodian: December 8, 2004 and January 11, 2005 23

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

If so, state the date your request was denied: December 15, 2004, January 21, 2005 and January 28, 2005 25

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

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By signing this complaint, I affirm that: 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)

Date

44
45

MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENTATION TO:

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

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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 –Records Denied List**

For GRC use only

Name of Complainant: _____

This is Page ___ of ____.

Please fill out this form describing the record (or portion of it) to which access has been denied, the response to your request, including the reason given for denial of access. Submit additional pages if necessary.

Item #	Description of record (or portion)	Response to request
1	See attached sheets for full explanation and exhibits.	See attached sheets for full explanation and exhibits.

***New Jersey Government Records Council
Denial of Access Complaint – Supplement
Paff v. Far Hills Borough***

Statement of Facts and Introduction of Exhibits:

1. At about noon on December 7, 2004, I visited Respondent's office to review the Borough Council's minutes.
2. The Borough Clerk wasn't in her office, but an assistant furnished me with a book containing the Council minutes.
3. During my review, I came across executive session minutes from a meeting I best recall¹ as being in August 2004. Among other things, the unredacted minutes recorded comments by the Far Hills Chief of Police indicating that one of the Borough's police officers, who was named in the minutes but whose name I cannot recall, was being disciplined. I recall the Chief specifically referring to the officer's "serious lack of judgment."
4. The next day, December 8, 2004, I submitted a request for those executive session minutes (Exhibit A).
5. On January 6, 2005², I received the Borough Attorney's denial of my request (Exhibit B).
6. On January 11, 2005, I resubmitted my request for the same government record. In this request (Exhibit C), I asserted that I was at least entitled to the executive session minutes in redacted form.
7. Exhibit D is the Borough Attorney's January 21, 2005 letter.
8. Exhibit E is the Borough Clerk's January 28, 2005 letter.
9. Exhibit F are the redacted minutes from the August 9, 2004 executive session that accompanied the Borough Clerk's January 28, 2005 letter. As can be seen, most of the first page and a portion of the second page have been excised from the document.

¹ I was later informed that the meeting minutes were from August 9, 2004.

² The postmark on the envelope containing the Borough Attorney's response was December 15, 2004, the same date that the response is dated. The envelope revealed that delivery was severely delayed due to the letter being addressed to "New Brunswick" instead of "Somerset."

**New Jersey Government Records Council
Denial of Access Complaint – Supplement
Paff v. Far Hills Borough**

Legal Argument:

Point 1: When a custodian redacts or excises a portion of a government record, OPRA burdens that custodian with proving that each and every part of the redacted or excised portion is exempt from disclosure.

Custodian has completely suppressed approximately a full page of the executive session minutes which are asserted to pertain to “matters of Police and Property Acquisition.”³

OPRA, however, does not authorize the redaction or excising of more than a record’s exempt portion. Rather, custodians are permitted to redact only “that portion which the custodian asserts is exempt from access” and are commanded to “promptly permit access to the remainder of the record.” N.J.S.A. 47:1A-5(g).

OPRA requires the custodian or her public agency to prove “that the denial of access is authorized by law.” N.J.S.A. 47:1A-6. Since Custodian’s suppression of a portion of the requested record is a “denial of access,” it is her burden to prove that each and every redacted or excised element is legally exempt from disclosure.

Point 2: Custodian violated OPRA by failing to provide the “specific basis” for suppressing the portion of the August 9, 2004 executive session minutes pertaining to “Property Acquisition.”

When a custodian is unable to comply with a request, she is required to furnish the requestor with the “specific basis” for her inability. N.J.S.A. 47:1A-5(g). In its January 17, 2003 Records Note entitled “Redacting Government Records,”⁴ the Council further explains that when “redactions are made to a record, the custodian [must] explain [in writing] why those elements of a record are redacted [and must also refer] to the OPRA exception being claimed.”

In her January 28, 2005 letter (Exhibit E), Custodian states that a portion of the material she excised from the Borough Council’s August 9, 2004 executive session minutes pertains to a pending “Property Acquisition” matter. Nothing in either of the Borough Attorney’s two letters (Exhibits B and D)—and nothing in the redacted minutes themselves—provide any further indication of the legal basis for the redaction. Accordingly, a pending “Property Acquisition” matter, which is not within any of OPRA’s express exemptions, is the sole justification given for suppressing part of the redacted material.

³ Clerk’s January 28, 2005 letter, Exhibit E.

⁴ See http://www.nj.gov/grc/records_notes/rngovrecords.html

***New Jersey Government Records Council
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Paff v. Far Hills Borough***

It is not Requestor's task to "read the tea leaves" or otherwise look beyond the stated reason in order to know the justification for a record's denial or redaction. A custodian who elects to deny or redact is obliged to refer to the specific exemption relied upon. Requestor asserts that the reason given for the redaction—that it pertains to a pending "Property Acquisition" matter—is insufficient, and that this insufficiency within itself violates the statutory "specific basis" mandate as interpreted by the Council's Records Note.

Point 3: Even if one searchingly looks behind and beyond the Custodian's stated justification for the redaction—that it pertains to a pending "Property Acquisition" matter—there is still no basis for suppressing all the material dealing with that matter.

OPRA exempts from disclosure that which is exempted "by any other statute." N.J.S.A. 47:1A-1. One of these "other statutes"—the Open Public Meetings Act (OPMA)—permits public bodies to exclude the public from that portion of a meeting where "[a]ny matter involving the purchase, lease or **acquisition of real property** with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed" is discussed. N.J.S.A. 10:4-12(b)(7). (emphasis supplied) If this is the statute upon which Custodian bases her redaction, it provides no justification for it.

A statute that allows a public body to exclude the public while discussing or even acting upon certain matters does not confer upon that body a right to suppress the minutes of those nonpublic meetings. As Requestor pointed out in his January 11, 2005 letter (Exhibit C), a public body must promptly disclose its executive session meeting minutes even if the purpose for holding the executive session was legitimate. See Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 556-57 (1997).

The only exception is "when full disclosure would subvert the purpose of the particular [Open Public Meetings Act] exception." Even then, total suppression is justified only in "unusual case[s]" where the public interest in the suppressed information is slight and where even minimal disclosure would cause great public harm. Ibid.

Nothing in the current record supports an assertion that suppression of each and every element of that portion of the minutes pertaining to the pending property acquisition matter is necessary to protect the public from great harm. Also, nothing in the current record suggests that the public interest in the suppressed information is negligible. Accordingly, the Custodian has failed, at least so far, to satisfy her burden of proving that each and every element she redacted or excised from the August 9, 2004 executive session minutes, due to pending property acquisition concerns, is legally exempt from disclosure.

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Point 4: Custodian's stated justification for redacting the balance of the excised portion of the minutes—that it pertains to a police matter and that the officer concerned has not consented to disclosure—is not a legitimate basis for suppressing all the material dealing with that matter.

In her January 28, 2005 letter (Exhibit E), Custodian asserts as a basis for her redaction that "[t]he police matter concerns an individual officer who has not consented to release of these minutes." In her December 15, 2004 letter (Exhibit D), Borough Attorney cites the "personnel exemption." Both Custodian and Borough Attorney are apparently relying on the exemption which states in pertinent part that "the personnel or pension records of any individual . . . shall not be made available for public access, **except that . . . personnel or pension records of any individual shall be accessible when required to be disclosed by another law . . .**" N.J.S.A. 47:1A-10 (Emphasis supplied).

Even if the Borough Council's executive session minutes that relate to a police officer are considered that officer's "personnel records" with the statute's meaning,⁵ those records are "required to be disclosed by another law"—the Open Public Meetings Act. As stated above, the OPMA, as construed by the Supreme Court, requires executive session minutes to be "promptly disclosed" to the extent disclosure does not subvert the purposes of the OPMA's exceptions. Payton, supra.

Accordingly, the personnel exemption embodied in N.J.S.A. 47:1A-10 provides no justification for the total suppression of the executive session minutes that pertain to the police officer. At most, Custodian is permitted to redact only those parts of the minutes that if disclosed would subvert the OPMA's purposes.

Since there is nothing in the current record supporting an assertion that suppression of each and every element of the minutes that pertain to the police officer is necessary to protect the public from great harm, Custodian has failed, at least so far, to satisfy her burden of proving that each and every element she redacted or excised from the August 9, 2004 executive session minutes is legally exempt from disclosure.

Requested Relief:

1. In accordance with Legal Argument, Point 2, Requestor seeks the Council's ruling that Custodian has violated the OPRA by failing or refusing to provide Requestor with the "specific basis" for denying or redacting that part of the Borough Council's August 9,

⁵ This is a doubtful proposition given Loigman v. Middletown Township, GRC Case No 2004-112, in which the requestor was furnished with the Township Committee's executive session minutes except those "portions of the meeting minutes not pertaining to Complainant's request." Apparently, the custodian did not even claim that the executive session minutes pertaining to the police chief's resignation were exempted by the personnel exemption.

***New Jersey Government Records Council
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2004 executive session minutes dealing with the pending “Property Acquisition” matter.

2. In accordance with Legal Argument, Points 3 and 4, Requestor seeks an Order of the Council directing Custodian to provide either unredacted minutes of the Borough Council’s August 9, 2004 executive session, or versions of those minutes redacted only to the extent permitted under Payton v. New Jersey Turnpike Authority, 148 N.J. 524 (1997) and other relevant case law.

Certification of Service:

On February 8, 2005, I served a copy of this Denial of Access Complaint, together with all the exhibits and attachments by mail to: Linda Leider, Clerk, Borough of Far Hills, P.O. Box 477, Far Hills, NJ 07931.

Dated: February 8, 2005

John Paff

John T. Paff

P.O. BOX 5424
SOMERSET, NEW JERSEY 08875-5424
E-MAIL - CJSC@POBOX.COM
DECEMBER 8, 2004

TELEPHONE - 732-873-1251

FAX - 908-325-0129

Record Custodian
Borough of Far Hills
6 Prospect St
Far Hills, NJ 07931-0477

Dear Sir or Madam:

Please accept this letter as my request for government records pursuant to the Open Public Records Act and the common law. Record requested:

Copy of page from Borough Council executive session minutes, from approximately August 2004, which contain comments of the chief of police to the effect that a police officer was disciplined because of his serious lack of judgment.

Enclosed is my check for "not more than three dollars." Kindly fill out the correct amount of the fee in the numerical portion of the check.

Thank you for your attention to this matter.

Sincerely,

John T. Paff

Woolson Sutphen Anderson & Nergaard

A Professional Corporation -- Attorneys at Law

11 EAST CLIFF STREET SOMERVILLE, NEW JERSEY 08876

TELEPHONE (908) 526-4050 • FACSIMILE (908) 526-4408

WILLIAM K SUTPHEN III

MARK S ANDERSON

MARYANN NERGAARD

CHERYL I BERESCHAK

JOSEPH N. GUTERL

DIANE W. McCONNELL
of Counsel

O. STANLEY WOOLSON
Retired

December 15, 2004

John T. Paff
P.O. Box 5424
New Brunswick, New Jersey 08875-5424

Re: Borough of Far Hills
Our file: 904-00admin

Dear Mr. Paff:

I serve as attorney for the Borough of Far Hills and received a copy of your December 8, 2004, letter addressed to the Records Custodian today requesting copies of Executive Session Minutes from "approximately August 2004" concerning discipline of a police officer.

Copies of the Minutes you requested cannot be provided as they concern an individual employee and are subject to the personnel exemption.

Very truly yours,

/s/ Maryann L. Nergaard

MLN:no

C: Linda Leidner, Municipal Clerk
Mayor and Borough Council Members
Peter Rayner, Personnel Officer

John Paff

P.O. BOX 5424
SOMERSET, NEW JERSEY 08875-5424
E-MAIL - CJSC@POBOX.COM
JANUARY 11, 2005

TELEPHONE - 732-873-1251

FAX - 908-325-0129

Linda Leidner, Clerk
Borough of Far Hills
6 Prospect St
Far Hills, NJ 07931-0477 (via Fax only to 908-234-0918)

Dear Ms. Leider:

I am in receipt of Borough Attorney Maryann L. Nergaard's December 15, 2004¹ letter denying my December 8, 2004 request for government records. I wish to renew my request for the requested² record. I make the present request under the Open Public Records Act (OPRA), the Open Public Meetings Act (OPMA) and the common law.

Initially, I wish to point out that I was granted unrestricted access to the Council's closed session minutes, including the requested minutes that refer to the police discipline issue, when I visited your office on December 7, 2004. So, it appears, at the very least, a bit incongruent for the Borough to disclose information one day and then deny access to the very same information on another day.

Second, I question the Borough's decision to suppress the entire document requested instead of at least releasing it to me in redacted form. As you are undoubtedly aware, the OPRA instructs record custodians, in appropriate cases, to "delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record." N.J.S.A. 47:1A-5(g). Is it your position that the entire requested page—even those parts that do not deal with the police officer discipline issue—cannot be disclosed?

Third, I invite your attention to South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478 (1991) and Payton v. New Jersey Turnpike Authority, 148 N.J. 524 (1997).

¹ Delivery was delayed for several weeks due to it being addressed to "New Brunswick" instead of "Somerset."

² A "copy of page from Borough Council executive session minutes, from approximately August 2004, which contain comments of the chief of police to the effect that a police officer was disciplined because of his serious lack of judgment."

In South Jersey Publishing, the Supreme Court, sets forth the purpose of the OPMA's personnel exception:

The purpose of the personnel exemption is to facilitate the process by which the public body makes personnel-type decisions, permitting the debate and deliberation to be conducted without public scrutiny or participation. But the exemption is designed to enable the public body to determine the appropriate action to be taken, not to withhold from the public either the public body's determination or the reasons on which its determination was based.

Id. at 493-94

It appears, therefore, that the OPMA's personnel exception served its purpose by allowing the Borough Council to debate the police discipline case out of public view. It also appears that that exception does not authorize a suppression of information informing the public the action taken and its reasons for taking it.

In Payton v. New Jersey Turnpike Authority, the Court expressed its view on how often closed session minutes should be partially or fully suppressed.

[I]f a public body legitimately conducts a meeting in closed session under any of the exceptions enumerated in N.J.S.A. 10:4-12b, it nevertheless must make the minutes of that meeting "promptly available to the public" unless full disclosure would subvert the purpose of the particular exception. If disclosure would subvert the purpose of an exception, then the subversion must be balanced against the applicant's interest in disclosure. We believe that only the unusual case will justify total suppression of the minutes of a closed session; such a case would require great harm to the public interest underlying the exception from even minimal disclosure as well as a negligible interest in disclosure.

In the vast majority of cases in which full disclosure would have an adverse impact on the purpose of the particular exception, other methods of maintaining confidentiality can be achieved, such as redacting the specific information that would undermine the exception. We stress, however, that, given the Legislature's strongly stated intent to effectuate broad public participation in the affairs of governmental bodies, few cases will require even partial nondisclosure.

Id. at 556-57

I doesn't seem to me that any provision of the OPMA would be "subverted" if the requested minutes, in unredacted form, were publicly disclosed. At the very least, I don't see how the current case could be thought of as an "unusual case" that justifies total information suppression.

Accordingly, I am re-requesting this closed session minutes page to give you an opportunity to review and reconsider your prior decision to suppress the record in its entirety.

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

Sincerely,

/s/ John Paff

cc. Maryann L. Nergaard, Esq. (*via fax only 908-526-4408*)

Woolson Sutphen Anderson & Nergaard

A Professional Corporation -- Attorneys at Law

11 EAST CLIFF STREET SOMERVILLE, NEW JERSEY 08876

TELEPHONE (908) 526-4050 • FACSIMILE (908) 526-4408

WILLIAM K SUTPHEN III

MARK S ANDERSON

MARYANN NERGAARD

CHERYL I BERESCHAK

JOSEPH N. GUTERL

DIANE W. McCONNELL
of Counsel

O. STANLEY WOOLSON
Retired

January 21, 2005

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

Re: Borough of Far Hills
Our file: 904-00admin

Dear Mr. Paff:

I serve as attorney for the Borough of Far Hills ("Borough") and received a copy of your January 11, 2005, letter to Linda Leidner, the newly appointed Borough Clerk, again requesting copies of Executive Session minutes from the Borough Council meeting of August 9, 2004. This request was originally set forth in your December 8, 2004, letter to which I responded. Unfortunately, this response was apparently delayed due to an error by my office in the address, for which I apologize.

Although you may have had "unrestricted access" to the Borough Council's Executive Session minutes during your December 8, 2004, visit, these minutes were not authorized for release by the Borough Council. Apparently, the former Borough Clerk placed them with the Regular Session minutes and did not properly maintain their confidentiality, as required.

The Council will review your request for release of the Executive Session minutes of August 9, 2004, at its next regular meeting on January 24, 2005. Following this meeting, copies of those portions of the minutes which can be released will be forwarded to you at the above address.

Very truly yours,
/s/ Maryann L. Nergaard

MLN:no

c: Linda Leidner, Municipal Clerk (Via Fax Only)
Mayor and Borough Council Members (Via Fax Only)
Peter Rayner, Personnel Officer (w/encl) (Via Fax Only)

BOROUGH OF FAR HILLS
P.O. BOX 477
FAR HILLS, NEW JERSEY 07931

January 28, 2005

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

Dear Mr. Paff:

In response to your letter of January 11, 2005 I would like to state that I was hired as the Borough Clerk here in Far Hills as of December 8, 2004.

Apparently you were given access to all of the minutes in the Clerk's office including Executive Session that were improperly attached to the Regular Session Minutes, which I was not aware of, as I had not even had a chance to become familiarized with those documents.

At a meeting of the Borough Council held on January 24, 2005 the council approved the release of the minutes of the Executive Session held on August 9, 2004, redacting the matters of Police and the Property Acquisition. The Police matter concerns an individual officer who has not consented to release of these minutes. The Property Acquisition matter is still pending. I have enclosed a copy of the Executive Session Meeting minutes of August 9, 2004 with these redactions.

If you have any further requests please feel free to contact me.

Very truly yours,

/s/ Linda Leidner
Borough Clerk

C: Maryann Nergaard, Borough Attorney
Mayor and Borough Council members
Peter Rayner, Personnel Officer

BOROUGH OF FAR HILLS
BOROUGH COUNCIL

EXECUTIVE SESSION
August 9, 2004

MINUTES

The Executive Session of the Borough Council of the Borough of Far Hills was convened at 8:59 p.m., Mayor Torsilieri presiding.



PERSONNEL CONSULTANT - PETER RAYNER

Councilman Greene reported that he had received a letter from Ms. Rayner regarding his services. Councilman Greene stated that 55,000.00 had been set aside for his personnel services for the year and that he has already exceeded this figure at this point. In his letter Mr. Rayner stated that it would take him 6-8 hours to complete preparations for the police contract.

Councilman Greene continued, if the Council would like Mr. Rayner to only make some recommendations on the police contract, his estimate would be between \$ 500.00 and \$600.00. If the Council would like him to actually do the negotiations it would be at least another 20 hours, if not more, at a cost of at least 51,600.00 for that work.

Councilman Greene stated he feels Mr. Rayner should perhaps give his view on the police contract and the Council could then take it to the next step. Councilwoman Errico stated that the one point she is afraid might turn out to be contentious is the health benefits. Ms. Nergaard stated the points she feels might be contentious are comp time, overtime, and education credits.

Mayor Torsilieri made a recommendation that Mr. Rayner only make recommendations on the police contract and not participate in any police negotiations, as he was not completely pleased with his performance. Mayor Torsilieri stated that in the past years the Police Committee have successfully handled police negotiations and the police contract.

The present contract will terminate December 31, 2004 and notice should be given to the Borough Council at least by September 1, 2004 by the police department. Copies of the present police contract will be provided to each council member. Councilman Greene stated that at the end of the year he will sit down and peruse the Employees' manual to see where costs can be cut with perhaps eliminating the use of time cards for part time workers.

As there was no further discussion to come before the Borough Council, a Motion was made by Councilman Searing, seconded by Councilwoman Rowland, that the Executive Session be adjourned to the Regular meeting. The Executive Session was adjourned to Regular meeting at 9:20 p.m.

Respectfully submitted,

/s/ Phyllis M. Stanaback
Borough Clerk

State of New Jersey
Government Records Council
101 South Broad Street
PO Box 819
Trenton, NJ 08625-0819 (via email message)

Re: Complaint Number 2005-30:

Dear Mr. John Paff:

The Government Records Council (GRC) acknowledges receipt of your Complaint, regarding John Paff vs. Borough of Far Hills, alleging that a Records Custodian has improperly denied you access to some or all of a government record sought under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq. The GRC has assigned your Complaint the Identification Number listed above. Please refer to this ID Number in all future correspondence to the GRC concerning this Complaint. Please be advised that Ms. Kimberly Gardner has been assigned as your Case Manager, please contact her directly at 609-292-7932 or via email kgardner@dca.state.nj.us

Pursuant to OPRA, the GRC has established a mediation program to facilitate resolution of disputes concerning access to public records. Please read the attached brochure describing the professional mediation services offered by the New Jersey Office of Dispute Settlement (ODS). While the law does not require you to mediate your case, mediation can resolve disputes quickly and, in this case, at no cost to you. Statements made during mediation are held confidential. An attorney or representative may accompany you, but is not at all required. If settlement is not reached, your complaint will be returned to the GRC for processing.

Please use the attached form to tell us if you choose to participate in mediation. Please sign the form and either mail it to the GRC, P.O. Box 819, Trenton, N.J., 08625 or fax it to us at 609-633-6337. The GRC will contact you or your representative to advise whether the Records Custodian consents to mediation. If so, the ODS mediator will contact you to schedule a mediation session at a time and place convenient for all parties.

If you do not mail or fax a signed copy of the consent form to the GRC within 5 business days after you receive this letter, the GRC will assume that you do not wish to participate in mediation and will proceed with formal investigation of your complaint. If you are unable to read the attachments, please respond via e-mail and we will provide them through other means.

Please do not hesitate to contact us if you have any questions about this action.

John Paff

P.O. BOX 5424
SOMERSET, NEW JERSEY 08875-5424
E-MAIL - CJSC@POBOX.COM
FEBRUARY 15, 2005

TELEPHONE - 732-873-1251

FAX - 908-325-0129

Kimberly Gardner, Case Manager
Government Records Council
101 South Broad Street
PO Box 819
Trenton, NJ 08625-0819 (via Fax only to 609-633-6337)

RE: Paff v. Far Hills Borough
GRC Complaint No. 2005-30

Dear Ms. Gardner:

Please be advised that I decline your offer of mediation in this case and ask that you please being with a formal investigation of my complaint.

Thank you for your attention to this matter.

Sincerely,

/s/ John Paff

BOROUGH OF FAR HILLS
6 Prospect Street - P.O. BOX 249
FAR HILLS, NEW JERSEY 07931

Tel: 908-234-0611

Fax: 908-234-0918

March 2, 2005

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

Dear Mr. Paff:

In response to your complaint filed with the State of New Jersey, Government Records Council I would like to reinforce the fact that I was hired as the Borough Clerk here in Far Hills as of December 8, 2004.

During your visit to Borough Hall on December 7, 2004, you were apparently given unrestricted access to all of the minutes in the Clerk's office by the newly-hired administrative secretary, who began work with the Borough on December 1, 2004. These minutes included unapproved Executive Session minutes that were improperly attached to the Regular Session Minutes.

At a meeting of the Borough Council held on January 24, 2005, the Council approved the release of the minutes of the Executive Session held on August 9, 2004, redacting portions of those minutes dealing with matters of Police Personnel/Attorney Client Privilege and Property Acquisition. The Police Personnel/Attorney Client Privilege matter concerns an individual officer who has not consented to the release of these minutes. The Borough Council has released the Property Acquisition portion of the minutes, redacting the property address as this matter is still pending. I have enclosed a revised copy of the Executive Session Meeting minutes of August 9, 2004, with these redactions.

If you have any further requests please feel free to contact me.

Very truly yours,

/s/ Linda Leidner
Borough Clerk

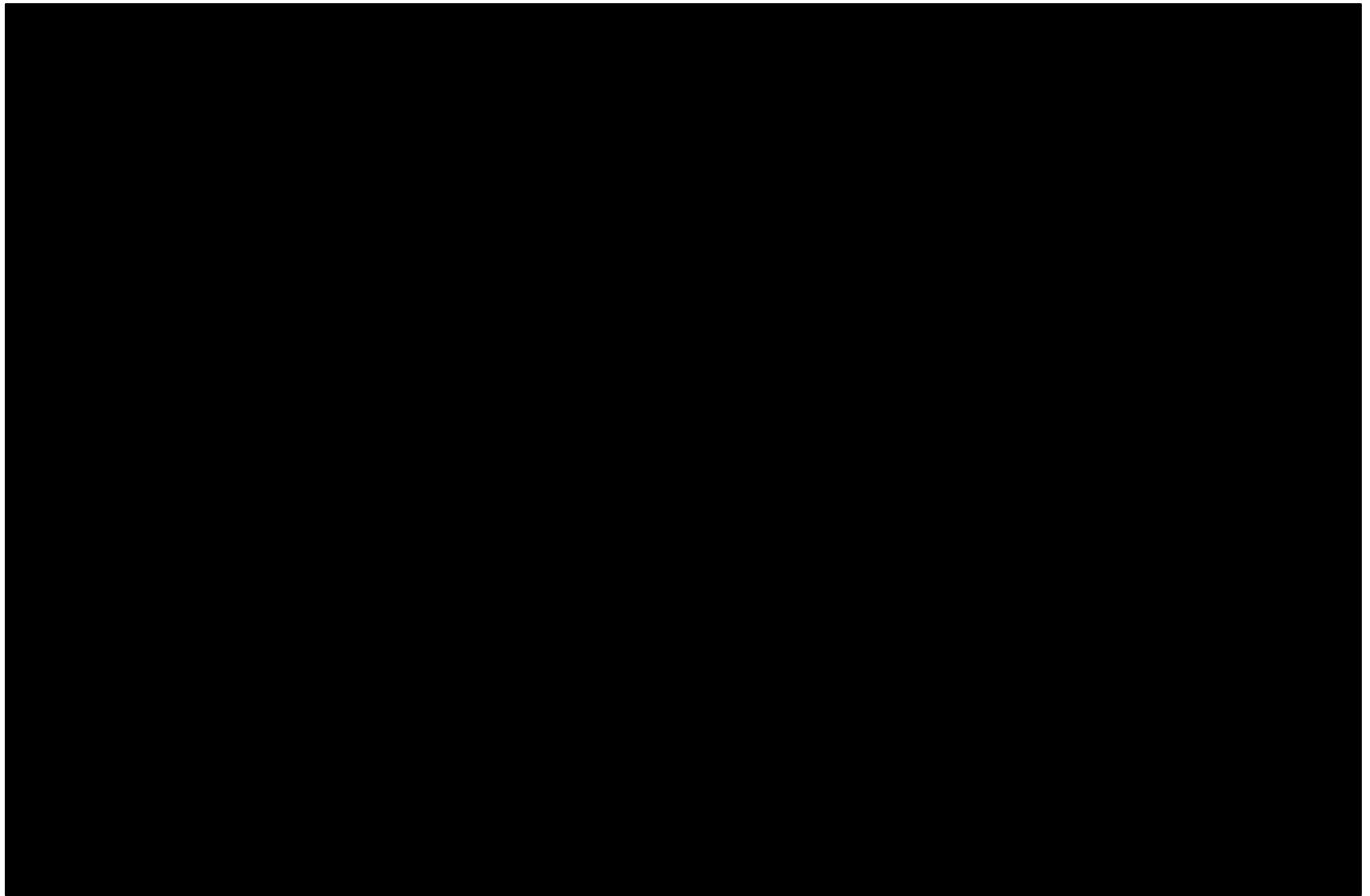
C: Maryann Nergaard, Borough Attorney
Mayor and Borough Council members
Peter Rayner, Personnel Officer

BOROUGH OF FAR HILLS
BOROUGH COUNCIL

EXECUTIVE SESSION
August 9, 2004

MINUTES

The Executive Session of the Borough Council of the Borough of Far Hills was convened at 8:59 p.m., Mayor Torsilieri presiding.



PROPERTY ACQUISITION

Ms. Nergaard stated that she had spoken to the Mayor briefly about his perceived value of property at [REDACTED]

[REDACTED] The reason for this inquiry is that the Borough had suggested some interest in purchasing this property to address their low and moderate needs.

Mr. Kerwin also stated that he thought it was under-assessed and will be reassessed probably in January. Ms. Nergard also stated that there has been a change in the way the assessors utilize standardized state information in the reassessments.

PERSONNEL CONSULTANT - PETER RAYNER

Councilman Greene reported that he had received a letter from Ms. Rayner regarding his services. Councilman Greene stated that 55,000.00 had been set aside for his personnel services for the year and that he has already exceeded this figure at this point. In his letter Mr. Rayner stated that it would take him 6-8 hours to complete preparations for the police contract.

Councilman Greene continued, if the Council would like Mr. Rayner to only make some recommendations on the police contract, his estimate would be between \$ 500.00 and \$600.00. If the Council would like him to actually do the negotiations it would be at least another 20 hours, if not more, at a cost of at least 51,600.00 for that work.

Councilman Greene stated he feels Mr. Rayner should perhaps give his view on the police contract and the Council could then take it to the next step. Councilwoman Errico stated that the one point she is afraid might turn out to be contentious is the health benefits. Ms. Nergaard stated the points she feels might be contentious are comp time, overtime, and education credits.

Mayor Torsilieri made a recommendation that Mr. Rayner only make recommendations on the police contract and not participate in any police negotiations, as he was not completely pleased with his performance. Mayor Torsilieri stated that in the past years the Police Committee have successfully handled police negotiations and the police contract.

The present contract will terminate December 31, 2004 and notice should be given to the Borough Council at least by September 1, 2004 by the police department. Copies of the present police contract will be provided to each council member. Councilman Greene stated that at the end of the year he will sit down and peruse the Employees' manual to see where costs can be cut with perhaps eliminating the use of time cards for part time workers.

As there was no further discussion to come before the Borough Council, a Motion was made by Councilman Searing, seconded by Councilwoman Rowland, that the Executive Session be adjourned to the Regular meeting. The Executive Session was adjourned to Regular meeting at 9:20 p.m.

Respectfully submitted,

/s/ Phyllis M. Stanaback
Borough Clerk

Woolson Sutphen Anderson & Nergaard

A Professional Corporation -- Attorneys at Law

11 EAST CLIFF STREET SOMERVILLE, NEW JERSEY 08876

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O. STANLEY WOOLSON
Retired

March 3, 2005

Kimberly D. Gardner, Case Manager
State of New Jersey
Government Records Council
101 South Broad Street
P.O. Box 819
Trenton, New Jersey 08625-0819

Re: Paff v. Borough of Far Hills, GRC Case No. 2005-30
Our file: 905-11paff

Dear Ms. Gardner:

I serve as attorney for the Borough of Far Hills (the "Borough" or "Far Hills") and have received a copy of your February 24, 2005, correspondence to the new Borough Clerk/Custodian, Ms. Linda Leidner, concerning a Complaint filed with the Government Records Council ("GRC") by John Paff, alleging a denial of access to government records pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA"). As requested in that correspondence, enclosed herewith is Borough's Statement of Information, together with related documentation. Please also accept this letter as a supplement to that Statement of Information, which is incorporated therein.

STATEMENT OF FACTS

The Borough of Far Hills has fewer than 900 residents, and its only full-time employees are members of the Borough Police Department. The former Borough Clerk, who served in that position for many years, resigned abruptly in mid-September 2004. Without the Borough's knowledge or consent, she apparently failed to properly handle and maintain the confidentiality of certain of the Council's Executive Session Minutes, specifically those of August 9, 2004. Even though those Executive Session Minutes had neither been approved nor released by the Borough Council, she placed them in the Minute Book with the Regular Session Minutes of the same date.

After her resignation in mid-September 2004, the Borough Council appointed an interim Clerk for several months while interviewing for a permanent

replacement. On October 29, 2004, the Council appointed Linda Leidner as the new part-time Borough Clerk, and she began in that position on December 8, 2004. On October 29, 2004, the Council also appointed Robin Collins as part-time administrative secretary. Ms. Collins began her work for the Borough in this capacity on December 1, 2004.

On December 7, 2004, one day before Ms. Leidner started as Borough Clerk, John Paff visited the Borough offices and requested access to Regular and Executive Session Minutes of the Borough Council. During this visit, he spoke with Ms. Collins, who had been employed by the Borough for less than one week. Ms. Collins had no training or familiarity with municipal records or with Borough procedures on that date and provided Mr. Paff with unrestricted access to the Minutes he requested. Because of her short tenure with the Borough, she had no way of knowing that the former Borough Clerk improperly handled the August 9, 2004 Executive Session Minutes, and Mr. Paff apparently was able to review those Executive Session Minutes in their entirety. These circumstances were conveyed to Mr. Paff on December 15, 2004, by my letter responding to a different request for access to public records made by him as Secretary of the Libertarian Party of Central New Jersey. A copy of that December 15, 2004, letter is attached as Exhibit A to this letter.

LEGAL ARGUMENT

As indicated below, the new Borough Clerk/Custodian, forwarded revised redacted Executive Session Minutes concerning the Property Acquisition matter to Mr. Paff on March 2, 2005. It is the Borough's position that the remaining portions of these Executive Session Minutes requested by the Complaint are not government records pursuant to OPRA, specifically N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-10. The Borough also argues that the inadvertent disclosure of these Executive Session Minutes under the specific circumstances which enabled Mr. Paff to examine them does not waive the Borough's rights to maintain their confidentiality, nor does it transform those Executive Session Minutes into government records. As these Minutes were not voluntarily disclosed by the Borough Council, the information contained therein remains confidential and privileged. See *Englewood Cliffs v. Englewood* 257 N.J.Super. 413, 457, f.n.5, (App.Div. 1992), *aff'd per curiam*, 132 N.J. 327 (1993).

Property Acquisition

The definition of "government records" contained within OPRA specifically excludes "information which, if disclosed, would give an advantage to competitors or bidders", N.J.S.A. 47:1A-1.1. By letter dated March 2, 2005, Ms. Leidner forwarded revised redacted Minutes to Mr. Paff concerning the Property Acquisition discussion held on August 9, 2004, omitting identification of the specific property in question. See Statement of Information and attachments thereto. The identifying information was redacted as its disclosure would harm the public interest by providing advance notice to the property owner or to real estate speculators as to the Borough's possible acquisition of the subject property before any decision is made. Clearly, this information is not a

government record under OPRA as it would provide "an advantage to competitors or bidders".

As the balance of the information concerning this Property Acquisition matter has now been released, the Borough respectfully requests that the GRC dismiss this portion of the Complaint without sanctions or costs.

Personnel/Attorney-Client Privilege

As indicated in the enclosed Statement of Information, the remaining portions of the Executive Session Minutes of the Far Hills' Borough Council Meeting of August 9, 2004, requested by the Complaint fall clearly within the OPRA exemptions to "government records". N.J.S.A. 47:1A-1.1 specifically exempts records within the attorney-client privilege, as well as public employee-related information "generated by or on behalf of public employers or public employees in connection . . . with any grievance filed by or against an individual". Likewise, "the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government records and shall not be made available for public access", except under certain limited circumstances. N.J.S.A. 47:1A-10.

The balance of the information requested by Mr. Paff is clearly from an exempt record as it concerns discipline of an individual police officer resulting from an internal investigation and includes comments from the Police Chief concerning his consultation with the Borough's Police Labor Counsel. This matter falls squarely within the exemptions provided by N.J.S.A. 47:1A- 1.1 and N.J.S.A. 47:1A-10. Contrary to Mr. Paff's arguments, the Open Public Meetings Act ("OPMA") recognizes that these records are exempt and that a public body may exclude the public from any Matters falling within the attorney-client privilege, N.J.S.A. 10:4-12b(7) and "[a]ny matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed in a public meeting", N.J.S.A. 10:4-12 b(8)

Our courts have recognized that a public employee has two rights if he "may be adversely affected by a personnel action or decision of his employer: (1) a right to privacy, that is, to a non-public discussion at a closed meeting, and (2) a right to a public discussion at an open meeting upon his request in writing." Jamison v. Morris School District Board of Education, 198 N.J.Super. 411, 415 (App.Div. 1985). In the present matter, the affected police officer has specifically exercised his privacy right in accordance with Jamison to a non-public discussion at a closed meeting and has advised the Borough that he will not consent to release of the portion of the Executive Session Minutes concerning him.

Mr. Paff's reliance upon *Payton v. New Jersey Turnpike Authority* 148 N.J. 524 (1997) is misplaced. *Payton* concerned a demand for information relating to a sexual harassment lawsuit filed against a public employer. The Court examined the plaintiff's request, noting that as she had filed suit, certain of the requested information had already been made public. The Court also recognized that liberal pretrial discovery rules also supported the plaintiff's request. In addressing the Authority's argument that the public meeting exceptions set forth in N.J.S.A. 10:4-12b precluded disclosure of the executive session minutes requested, the Court rejected the argument that the Authority could maintain confidentiality and avoid release of the minutes under the personnel exemption, given the specific set of facts presented.

The *Payton* Court specifically recognized that the public's right to disclosure had to be balanced against the purpose of the particular exception. "If disclosure would subvert the purpose of an exception, then the subversion must be balanced against the applicant's interest in disclosure." 148 N.J. at 557. The Court permitted disclosure as any confidentiality had already been breached by the Authority's public announcement of punishments of two supervisors and because of the "powerful public policy, expressed in the LAD, of eradicating discrimination". The interest of the Plaintiff, when balanced against the confidentiality interest of the Authority and the two supervisors, under these unique circumstances, required "full disclosure under this exception." 148 N.J. 557-558.

Unlike *Payton*, the confidentiality rights of Borough and the police officer outweigh the public's rights to disclosure of the information requested by the Complaint, and its disclosure would subvert the purpose of the exception. *Id.* A balancing of the interests, as required by *Payton*, supports the Borough's position that the requested documents are exempt from disclosure.

Likewise, *South Jersey Publishing Co., Inc. v. The New Jersey Expressway Authority*, 124 N.J. 478 (1991) and *Loigman v. Middletown Township*, GRC Case No. 2004-112 are also inapplicable to this case. *Loigman* concerned a request for a letter of resignation and minutes relating to the resignation of the Township Police Chief. The plaintiff in *South Jersey* requested disclosure of Executive Session Minutes and a Memorandum of Understanding, which apparently set forth certain negotiated terms and conditions of an individual's employment termination. As in *Payton*, in authorizing release and remand, the South Jersey Court balanced the "public interest against any competing interests respondents have advanced, including facilitation of public employee investigations and the confidentiality of personal information in an employee's personnel file." 124 N.J. at 498, 478.

Moreover, disclosure of the executive session minutes in both *South Jersey* and *Loigman* is expressly authorized by another law, namely Executive Order No. 11 (Nov. 15, 1974) which authorizes disclosure of certain public employee information when an employee leaves government service. 124 N.J. at 495-496. As the Borough police officer who is the subject of the

executive session minutes remains employed by the Borough and as he has asserted his confidentiality rights under Jamison, 198 N.J.Super. 411, disclosure is unwarranted.

For the above reasons, the Borough of Far Hills respectfully requests that the GRC determine that the records requested by Mr. Paff are exempt from disclosure and dismiss the Complaint.

By signing below, I certify that a copy of this letter, the Borough's Statement of Information and all attachments are being forwarded to John Paff by regular and certified mail.

Very truly yours,

/s/ Maryann L. Nergaard

MLN:dd

Enclosures

Via Hand Delivery

c: Mayor and Borough Council
Linda Leidner, Clerk, Borough of Far Hills (w/encls)
John Paff (w/encls) (Via Certified Mail/RRR & Regular Mail)

Woolson Sutphen Anderson & Nergaard

A Professional Corporation -- Attorneys at Law

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DIANE W. McCONNELL
of Counsel

O. STANLEY WOOLSON
Retired

December 15, 2004

John T. Paff, Secretary
Libertarian Party of Central New Jersey
P.O. Box 11853
New Brunswick, New Jersey 08906-1853

Re: Borough of Far Hills Our file:
904-00admin

Dear Mr. Paff:

I serve as attorney for the Borough of Far Hills and recently received a copy of your December 8, 2004, letter addressed to the Borough Clerk. Apparently, you visited the Borough on December 7, 2004, to examine certain minutes of the Borough Council.

The Borough of Far Hills has fewer than 900 residents, and its only full-time employees are members of the Borough Police Department. The former Municipal Clerk resigned abruptly in mid-September, 2004, and the Borough Council appointed an interim Municipal Clerk for several months while interviewing for a replacement. On December 13, 2004, Linda Leidner was sworn in as the new Municipal Clerk for the Borough of Far Hills.

The Borough Council also recently hired Robin Collins as part-time secretary. Ms. Collins started work in this capacity on December 1, 2004, and is the individual with whom you spoke during your recent visit to the Borough offices on December 7, 2004. As Ms. Collins had been employed by the Borough for less than one week on the date of your visit, she was unfamiliar with Borough procedures and records.

Because of these recent personnel changes in the Borough, there has naturally been some confusion and delay regarding Borough procedures and release of Council Minutes. In response to your request, as of the date of this letter, the Borough Council has not approved release of the Executive Session Minutes from its Regular Meeting of September 27, 2004.

With regard to your questions concerning the Executive Session Minutes of December 29, 2003, I have reviewed these minutes and note that the former Municipal Clerk erroneously omitted the additional reasons for the Executive Session discussion on the matter raised by Mr. Gilrane, which

Exhibit A-1

was protection of public safety and property and attorney/client privilege. Thank you for bringing this issue to our attention.

Very truly yours,

/s/ Maryann L. Nergaard

MLN:dd

c: Linda Leidner, Municipal Clerk (Via Fax Only)
Mayor and Borough Council Members (Via Fax Only)

John Paff

P.O. BOX 5424
SOMERSET, NJ 08875-5424
E-MAIL - CJSC@POBOX.COM
MARCH 24, 2005

TELEPHONE - 732-873-1251

FAX - 908-325-0129

Kimberly Gardner, Case Manager
Government Records Council
101 South Broad Street
PO Box 819
Trenton, NJ 08625-0819 (via mail and PDF file via email)

RE: Paff v. Far Hills Borough
GRC Complaint No. 2005-30

Dear Ms. Gardner:

Please accept this letter as my reply to Custodian's March 3, 2005 response to my Complaint.

A. I withdrawal that within Point 2 of my Complaint, only as it pertains to the property acquisition matter.

The minutes of the Borough Council's August 9, 2004 closed session that were provided to me on January 28, 2005 (see Complaint, Exhibits E, F1 - F2) are more heavily redacted than those recently provided to me on March 2, 2005 (See Item 9 of Custodian's response and corresponding attachments).

The more recent version contains a "Property Acquisition" heading and the following text, neither of which appeared on the earlier version:

Ms. Nergaard stated that she had spoken to the Mayor briefly about his perceived value of property at [redacted] The reason for this inquiry is that the Borough had suggested some interest in purchasing this property to address their low and moderate needs.

Mr. Kerwin also stated that he thought it was under-assessed and will be reassessed probably in January. Ms. Nergaard also stated that there has been a change in the way the assessors utilize standardized state information in the reassessments.

The more recent version allows me to make sense of why the redaction was done. It is now clear to me that the Borough has a legitimate concern that revealing the property's location would give an unfair advantage to the property owner or real estate speculators (Nergaard letter, March 3, 2005, p. 3). Accordingly, I withdraw my

complaint to the extent it pertains to the manner in which Custodian redacted the text regarding the property acquisition matter.

The two sets of redacted minutes, however, illustrate how important it is for closed session minutes to be carefully and narrowly redacted. Under Item D, below, I will argue that similarly redacted minutes ought to be provided so that I can make better sense of the police discipline matter.

B. Custodian's reliance on the exemptions in N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-10 is misplaced.

In her response, Custodian relies upon the following exceptions contained within N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-10 to shield the August 9, 2005 minutes, as they pertain to the police discipline matter, from public disclosure:

information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position.

and

Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access ...

(Nergaard letter, March 3, 2005, p. 3)

It must first be determined whether the term "grievance," as used in both of the above-quoted OPRA provisions, includes disciplinary actions against police officers.

"Grievances" are typically presented by employees, not by management, under the terms of a collective negotiation or collective bargaining agreement. See, e.g. Township of W. Windsor v. Public Employment Relations Comm'n, 78 N.J. 98 (1978). Police disciplinary complaints, to the contrary, are brought by the municipal administration against police officers for "incapacity, misconduct, or disobedience of rules and regulations . . ." N.J.S.A. 40A:14-147.

It would appear, therefore, that a police disciplinary matter against a Far Hills police officer, having been initiated by the Borough administration and not the officer, cannot be a "grievance" and, thus, neither of the two above-quoted OPRA provisions would apply.

Giving the Borough every possible benefit of the doubt, I researched whether the discipline of municipal police officers is a permissible subject of a collective negotiation agreement and thus possibly the proper subject of a grievance. I found that it is not a proper grievance subject "because of the availability of statutory appeal procedures for the review of discipline." State v. State Troopers Fraternal Association, 134 N.J. 393, 412 (1993).

Even if my research is wrong and there is no categorical rule against collective negotiation agreements encompassing police disciplinary matters, it is certainly possible for a municipality, in such an agreement, to reserve to itself full disciplinary power over its police officers. Borough of Stone Harbor v. Wildwood Local 59, Policemen's Benevolent Ass'n, 164 N.J. Super. 375 (App. Div. 1978), certif. denied, 81 N.J. 270 (1979).

As the requestor, I am not burdened with proving the absence of an exemption to disclosure. Rather, Custodian has "the burden of proving that the denial of access is authorized by law," N.J.S.A. 47:1A-6. If Custodian intends to argue that discipline of Far Hills police officers is somehow encompassed within an exempted grievance procedure, it is her burden to make that case and place the necessary, supporting evidence,--notably, the Borough police department's collective negotiation contract, if one exists--in the record.

Since no such argument has yet been made and no such evidence yet entered on the record, Custodian, as of yet, has not satisfied her burden of showing that either of the above-quoted OPRA exemptions apply.

C. The Open Public Meetings Act, not the Open Public Records Act, controls the conditions under and extent to which closed session minutes may be publicly revealed.

Once matters have been recorded in the closed session minutes of a public body, the Open Public Meetings Act, as construed by South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478 (1991) and Payton v. New Jersey Turnpike Authority, 148 N.J. 524 (1997), and not the Open Public Records Act, governs whether, when and the extent to which the minutes will be publicly disclosed. Those cases stand for the broad¹ proposition that closed

¹ Custodian's attempt to distinguish Payton and South Jersey Publishing based on their facts ought to be rejected. It is clear that both of those cases stand for general positions regarding accessibility of closed session minutes.

session minutes must be made promptly available to the public unless full disclosure would subvert the purpose of an Open Public Meetings Act exception that allows a body to meet in closed session. See, e.g. Payton at 557.

Custodian has offered nothing to show that disclosure of that portion of the minutes identifying the police officer disciplined, stating the quantum of discipline imposed or the reasons therefore would subvert any of the exceptions set forth within N.J.S.A. 10:4-12b.

Like the respondent in South Jersey Publishing, Custodian also "overstate[s] the Legislature's purpose in allowing public bodies to exclude the public from meetings at which personnel matters are to be discussed.

Unlike other provisions authorizing exclusion of the public, the apparent objective of which is to preserve the secrecy of confidential information, see, e.g., N.J.S.A. 10:4-12(b)(1) and (2), the personnel exemption focuses on free and uninhibited discussion about matters relating to the hiring, firing, performance, compensation, and discipline of public employees. Such discussions necessarily involve subjective comments and evaluations of employees by members of the public body, and their willingness to comment openly and freely about such matters would obviously be inhibited if the discussion were to be conducted publicly. The statutory exemption for personnel matters, recognizing the potentially-inhibiting effect of public debate about the qualifications, performance, merit, and shortcomings of specific employees, allows that debate to occur in executive session.

*The Act specifically requires, however, that the public maintain "reasonably comprehensible minutes" of all meetings including executive sessions to be "promptly available" to the public unless inconsistent with the provisions of the Act authorizing the public body to meet in executive session. N.J.S.A. 10:4-14. **The Legislature thereby expressed its strong policy favoring adequate disclosure of all actions taken by public bodies, whether at public meetings or executive sessions.***

*Contrary to respondent's contentions, we find no inconsistency between the exemption allowing personnel matters to be discussed and debated in executive session and the Act's mandate that adequate minutes of all meetings be available to the public. **The minutes***

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

Id. at 493-94. (Emphasis supplied.)

How can the policy expressed in South Jersey Publishing—that the public is entitled to “sufficient facts . . . to permit [it] to understand and appraise the reasonableness of the public body's determination”—be realized if Far Hills is permitted to suppress every detail related to its determination regarding this police officer, including his or her identity, the nature of his or her offense and the quantum of discipline imposed?

D. At the very least, I'm entitled to know that a police officer was disciplined.

The first page of the most recently disclosed version of the August 9, 2004 Borough Council closed session minutes is redacted by simply removing a big block of text. If I hadn't already seen the minutes and thus knew that they discussed a police discipline matter, I would be completely in the dark as to the nature of the redacted material.

Why cannot Custodian at least disclose carefully redacted minutes of the police discipline matter, in a manner similar to the way in which she redacted the minutes regarding the Property Acquisition matter?

Even if the law allowed the identity of the police officer, the nature of the offense and the quantum of discipline to remain confidential, I would at least be entitled to something like:

The police chief told the mayor and council that Officer [name redacted] broke departmental rules and displayed a serious lack of judgment by [nature of offense redacted]. Councilman Greene moved (Councilman Searing seconded) that Officer [name redacted] be disciplined in the following manner: [quantum of discipline redacted]. The motion passed by a unanimous roll call vote.

Even these skeletal minutes are preferable to the complete suppression I have thus far received. At the very least, isn't Custodian under a legal duty to provide such skeletal minutes?

E. The Borough's claim of attorney-client privilege should not be automatically honored.

On page 3 of Ms. Nergaard's March 3, 2005 letter, Custodian bases her suppression of some of the redacted matter upon the attorney-client privilege. Since I have been kept completely in the dark as to the contents of the redacted portions, it is impossible for me to challenge Custodian's assertion.

In Wilcox v. Township of West Caldwell, GRC Case No. 2003-142, the Council's Executive Director found that "[t]he attorney client privilege applies to confidential communications or correspondence between an attorney and his or her client, **be it an individual or entity.**" Executive Director's Recommendations, April 19, 2004. (Emphasis supplied.) I discern from this statement an underlying premise of the Executive Director that the attorney-client privilege is available to governmental entities, private corporations and individuals all to the same degree.

I assert that this view, while common, is fundamentally flawed. In support of this assertion, I rely upon "Government Officials as Attorneys and Clients: Why Privilege the Privileged?" by Melanie B. Leslie, 77 Ind. L.J. 469 (2002)².

Professor Leslie begins by asserting that the "instrumental justification" for applying the attorney-client privilege to government entities (i.e. that government entities are sufficiently similar to corporate entities to justify the privilege) is faulty but nonetheless "blindly accepted" by "courts and most scholars." Id. at 473. Next, the author recognizes that government entities, like private litigants, need the attorney-client privilege to allow them to prepare their cases in private. Otherwise, litigants against those entities could gain an unfair advantage by requesting documents revealing the entities' litigation strategies. She refers to this reasoning as the "level-playing-field justification" for applying the privilege to government entities. Ibid.

² A copy of this article will be furnished upon request.

The article then goes on to state

If only a limited government litigation privilege is justified, how did a broad government privilege develop? First, courts often misread precedent, quoting the language but ignoring the facts of the earliest cases sustaining government privilege claims. In fact, cases decided from 1965 (the year of the first reported opinion sustaining a federal government attorney-client privilege) to the early 1980s are consistent with a level-playing-field justification, and are often blatantly inconsistent with the traditional instrumental justification. But because those courts used perfunctory reasoning and broad language that seemed to validate a government privilege identical to the corporate one, the privilege slowly expanded. In the 1980s, as the Freedom of Information Act ("FOIA") provided a new source of privilege litigation, courts increasingly ignored the factual details of the early cases and began to validate broad government privilege claims.

Professor Leslie concludes, persuasively in my view, that "at most, government entities should be able to claim a limited litigation privilege that enables them to shield communications made in furtherance of trial preparation." Id. at 550.

Government agencies should receive less protection from the attorney-client privilege than their private counterparts because of a the public's competing interest in keeping watch over its governmental servants and those servants' propensity to degenerate into corruption if allowed to operate in secret. In Professor Leslie's words

[a]s Watergate and the Clinton scandals have shown us, secrecy in government comes at a cost. The promise of confidentiality may facilitate bad behavior, such as corruption and influence peddling. . . Too much government secrecy negatively affects the democratic process; citizens are deprived of the information they need to make informed choices.

Id. at 469.

As a citizen, I have a right to inform myself of public issues and judge public officials on the manner in which they address them. In order to best judge whether Far Hills officials handled this

police disciplinary matter competently and fairly, I would need to know the content of the purported conversation between the police chief and the Borough's labor counsel.

I ask, therefore, that before automatically branding this conversation's content as being within the attorney-client privilege, the Council consider and weigh the privilege's impact on the public interest. Perhaps after its analysis, the Council will apply the privilege more narrowly or not at all.

F. My common law right to the August 9, 2004 closed session minutes.

Since I first acquainted myself with the Open Public Records Act I have thought, perhaps incorrectly, that the Government Records Council has jurisdiction to determine a citizen's right to access government records under the provisions of OPRA but not under the common law. After rereading N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7, however, I am beginning to question my assumption.

Accordingly, to the extent that the Government Records Council has jurisdiction to determine my right to the requested records under the common law, I ask that it makes that determination.

Sincerely,

John Paff

cc. Maryanne L. Nergaard, Esq.
Linda Leidner, Clerk

(both via regular mail and PDF file via email)

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March 31, 2005

Kimberly D. Gardner, Case Manager
State of New Jersey
Government Records Council
P.O. Box 819
Trenton, New Jersey 08625-0819

Re: Paff v. Borough of Far Hills, GRC Case No. 2005-30
Our file: 905-ilpaff

Dear Ms. Gardner:

Thank you for the opportunity to respond to Mr. Paff's March 24, 2005 Reply to the Borough of Far Hills' Statement of Information.

The Complaint originated from a request for portions of the Borough Council's August 9, 2004 Executive Session Minutes. Mr. Paff initially requested those portions of the Minutes pertaining to (1) property acquisition and (2) discipline of an individual police officer. In Mr. Paff's March 24, 2005 Reply, he subsequently withdrew his request for the portion of the Minutes concerning the property acquisition matter. His request for the portion of the Minutes discussing the discipline of an individual police officer, however, remains to be considered by the Government Records Council (GRC)

The Borough maintains its position that the remaining portions of Mr. Paff's request are not "government records" pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (OPRA). The requested records concern the discipline of a Borough police officer and accordingly involve the individual officer's personnel record. N.J.S.A. 47:1A-10 clearly states that personnel and pension records are not available for public access. While there may not be a formal grievance pending by or against this police officer at this time, the requested records are undoubtedly personnel records and are not to be disclosed pursuant to N.J.S.A. 47:1A-10.

In addition to the exemptions provided by OPRA, the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. (OPMA) supports the Borough's position that the remainder of the requested records is exempt. Specifically, N.J.S.A. 10:4-12(b) (8) provides that a public body may

exclude the public from its discussions concerning the employment or discipline of a public officer or employee. In this case, the particular discussions taking place in the Executive Session involving the discipline of an individual police officer are just that - discussions. The Borough Council has not made any official decision nor has it taken any official action regarding the individual police officer.

Contrary to Mr. Paff's position, the Borough is not seeking to undermine the intent of OPMA by withholding information that appropriately belongs in a public forum. Rather, it is honoring the individual police officer's request to maintain the privacy of these discussions. The individual police officer is entitled to exercise this right of privacy. N.J.S.A. 10:4-12(b) (8) expressly protects these discussions from disclosure unless the individual officer requests a public discussion of the matter - Surely, it is not the intent of OPMA to compromise an individual's right to maintain the privacy of discussions of this nature particularly where, as here, no government decision or action has been taken.

In this case, the records requested are entitled to protection from disclosure because they are closed session minutes regarding personnel and because they are covered by the attorney-client privilege. N.J.S.A. 10:4-12(b)(7) protects from disclosure those discussions that fall within the attorney-client privilege. The portion of the minutes at issue involves discussions between the Borough Council and the Borough Police Chief wherein the Borough Police Chief briefed the Borough Council on his consultation with the Borough Police Labor Counsel. During this consultation, the Borough Police Labor Counsel dispensed legal advice to the Borough Police Chief that, even if relayed in a closed session, should remain privileged.

For the reasons stated herein, together with the Borough's Statement of Information and related documentation, the Borough of Far Hills respectfully requests that the GRC determine that the records requested by Mr. Paff are exempt from disclosure and dismiss the Complaint.

By signing below, I certify that a copy of this letter is being forwarded to Mr. John Paff by regular and certified mail.

Very truly yours,
/s/ Maryann L. Nergaard

c: Mayor and Borough Council
Linda Leidner, Municipal Clerk
John Paff

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 11, 2005 Council Meeting**

John Paff
Complainant

GRC Complaint No. 2005-30

v.

Borough of Far Hills
Custodian of Records

Records Requested: (As stated by the Complainant)

“Copy of page from Borough council executive session minutes, from approximately August 2004, which contain comments of the chief of police to the effect that a police officer was disciplined because of his serious lack of judgment.”¹

Request Made: December 8, 2004 & January 11, 2005

Response Made: December 15, 2004, January 21, 2005 and January 28, 2005

Custodian: Borough of Far Hills – Linda Leidner

GRC Complaint filed: February 8, 2005

Background

December 8, 2004

Written Open Public Records Act (OPRA) Request - Complainant seeks, “page from Borough council executive session minutes, from approximately August 2004, which contain comments of the chief of police to the effect that a police officer was disciplined because of his serious lack of judgment.”

December 15, 2004

Custodian responded to the request stating that, “the minutes requested cannot be provided as they concern an individual employee and are subject to the personnel exemption.”

January 11, 2005

Revised written OPRA request – Complainant seeks same information as the December 8, 2004 request, however he cites specific law to support the disclosure in whole or in part of the requested record.

¹ Request was resubmitted with cites from OPRA, Open Public Meetings Act, and common law.
Paff v. Borough of Far Hills, 2005-30 – Findings and Recommendations of the Executive Director

January 21, 2005

The Custodian's Counsel's response to the January 11, 2005 request stating that, "although he (Mr. Paff) had viewed these Executive Session Minutes during a December 7, 2004 visit to the Borough, these Executive Session Minutes had not been authorized for release by the Borough Council." The Counsel further advised that the former Borough Clerk failed to maintain their confidentiality, but that the Council would review his request at its January 24, 2005, meeting and forward redacted copies of the minutes.

January 28, 2005

The newly appointed Borough Clerk forwarded redacted copies of the minutes to the Complainant.

February 8, 2005

Denial of Access Complaint filed with the GRC – The Complainant stated that he was given access to review minutes when he visited the office on December 7, 2004. The Borough Clerk was not available, but an assistant gave him access to the minutes. During this review is where he saw unredacted minutes for the records at issue in this complaint. He stated that the records received were inappropriately redacted and that the redactions were not explained to him pursuant to the OPRA.

March 2, 2005

The Custodian revised and released redacted copies of the minutes. This portion of released minutes contained information regarding Property Acquisition that were previously redacted.

March 3, 2005

Custodian's Statement of Information – The Custodian stated the following information:

1. Redactions dealt with Personnel/Attorney-Client Privilege and Property Acquisition.
2. The matters discussed were appropriate pursuant to N.J.S.A. 10:4-12(b) (5), (7), and (8).
3. The minutes requested are exempt from disclosure under N.J.S.A. 47:1A-1.1 – attorney client privilege, matter which, if disclosed would give an advantage to competitors or bidders, and public employee-related information in connection with a grievance filed by or against an individual.
4. The minutes requested are exempt from disclosure pursuant to N.J.S.A. 47:1A-10 – exemption for personnel records of any individual in the possession of a public agency.
5. Revised minutes were released regarding the Property Acquisition matter that was previously redacted.
6. The portion of the minutes which discuss the Personnel/Attorney-Client Privilege matter is an exempt record under N.J.S.A. 47:1A-10 and cannot be released because it concerns discipline of an individual police officer resulting from an internal investigation...The employee who is the subject of this Executive Session discussion has refused to consent of release of the minutes.

March 24, 2005

Response to the Statement of Information from the Complainant that stated:

1. He withdrew his complaint as it pertained to the portion of the minutes dealing with Property Acquisition.
2. The exemptions utilized by the Custodian and their Counsel are inappropriately utilized.
3. The Open Public Meetings Act, not the Open Public Records Act states when Executive Session Meeting minutes may be disclosed.
4. He is entitled to know that a police officer was disciplined.
5. The Boroughs claim of attorney-client privilege should not be “automatically honored”.

March 31, 2005

Custodian and Counsel’s supplemental response, to the Complainant’s March 24, 2005 response. The Custodian’s Counsel maintains their position that the defense as presented in the Statement of Information as well as a clarification that N.J.S.A. 10:4-12 (b) (8) authorizes the Executive Session and what may be discussed and not disclosed unless the officer requests a public discussion of the matter.

Analysis

WHETHER the Custodian unlawfully denied access to the requested records?

OPRA provides that:

“all government records shall be readily accessible for inspection, copying, or examination by the citizens of this state, with certain exceptions...”
N.J.S.A. 47:1A-1.

OPRA further states:

“... [t]he public agency shall have the burden or proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6

The Custodian has identified and released redacted records to the Complainant regarding the request. However, after review of the Statement of Information and all supplemental submittals by the parties, a determination is needed of whether the requested information contained in the Executive Session minutes are disclosable in whole, in part, or non-disclosable pursuant to the OPRA.

The Custodian has not met their burden of proof for the denial pursuant to N.J.S.A. 47:1A-6. Therefore, to make this determination the Government Records Council should conduct an *in camera* inspection of the unredacted Executive Session minutes of August 9, 2004.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council request the unredacted copy of the August 9, 2004 Executive Session minutes be presented at the September 8, 2005 Government Council Meeting for an *in camera* inspection to determine if the requested information contained in the Executive Session minutes are disclosable in whole, in part, or non-disclosable pursuant to OPRA.

Prepared By: Kimberly Gardner
Kimberly Gardner, Case Manager

Approved By: Paul F. Dice
Paul F. Dice
Executive Director
Government Records Council

August 5, 2005



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

VINCENT P. MALTESE, Chair
MITCHELL E. FISHMAN
CHARLES A. RICHMAN
WILLIAM L. LIBRERA
ROBIN BERG TABAKIN

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Interim Decision on Access
August 11, 2005 Government Records Council Meeting

John Paff
Complainant
v.

Complaint No. 2005-30

Borough of Far Hills
Custodian of Record

At the August 11, 2005 public meeting, the Government Records Council ("Council") considered the August 5, 2005 Executive Director's Findings and Recommendations and all related documents submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. Therefore, the Council hereby finds that the un-redacted copy of the August 9, 2004 Executive Session minutes shall be presented at the September 8, 2005 Council's Meeting for an *in camera* inspection to determine if the requested information contained in the Executive Session minutes is disclosable in whole, in part, or exempt from disclosure pursuant to OPRA.

Interim Decision Rendered by the
Government Records Council
On The 11th Day of August, 2005

Vincent P. Maltese, Chairman
Government Records Council

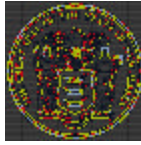
I attest the foregoing is a true and accurate record of the Government Records Council.



A handwritten signature in black ink, appearing to read "DeAnna Minus-Vincent", is centered on a light gray rectangular background.

DeAnna Minus-Vincent, Secretary
Government Records Council

Decision Distribution Date: August 19, 2005



State of New Jersey
GOVERNMENT RECORDS COUNCIL

VINCENT P. MALTESE, Chair
MITCHELL E. FISHMAN
CHARLES A. RICHMAN
WILLIAM L. LIBRERA
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August 22, 2005

Ms. Linda Leidner
Custodian of Records
6 Prospect Street
PO Box 477
Far Hills, New Jersey 07931

VIA FACSIMILE: 908-234-0918

Re: Paff v. Borough of Far Hills, GRC Case No. 2005-30

Dear Ms Leidner:

Pursuant to the Council's August 11, 2005 Interim Decision issued in the above referenced case and the provisions of the Open Public Records Act (N.J.S.A. 47:1A-7.c.), the Council will be conducting an *in camera* inspection of the unredacted copy of the August 9, 2004 Executive Session minutes. The Council will review the minutes and the redacted information contained therein during a closed meeting to determine whether the record(s) and/or redaction(s) fall within the statutory exemption(s) and/or privilege(s) that you have asserted as your basis for the denial of access in this case.

The Council has asked that you, as the Custodian, or your representative hand-deliver an unredacted copy of the minutes in a sealed envelope to the Council at its Thursday, September 8, 2005 meeting at 9:00 a.m. Along with the unredacted document(s), please include a certified index of each document(s) and/or each redaction(s) in the following manner:



Title & Date of Each Document	Number of Pages of Each Document	General Nature Description of Each Document	General Nature Description of Each Redaction Contained Therein (if applicable)	Claimed Statutory Exemption(s) and/or Privilege(s) for Each Document and/or Redaction	Explanation Why the Claimed Exemption(s) and/or Privilege(s) Applies to Each Document and/or Each Redaction

(The Council requires that the certified index of the document(s) and/or redaction(s) be presented in the table format provided above.)

Again, the requested document(s) are to be hand-delivered to the Council in a sealed envelope with a certified index of each document(s) and/or each redaction(s) on Thursday, September 8, 2005 at 9:00 a.m. at the Department of Community of Affairs office building at 101 South Broad Street, Trenton, New Jersey 08625.

Please do not hesitate to contact me with any questions or concerns you may have regarding this matter at 609-292-7932.

Sincerely,

Kimberly D. Gardner
Case Manager
NJ Government Records Council

cc: John Paff, Complaint (VIA E-MAIL: johnpaff@pobox.com)
Maryann L. Nergaard, Custodian's Counsel (VIA Fax: 908-526-4408)

**BOROUGH OF FAR HILLS
P.O. BOX 477
FAR HILLS, NEW JERSEY 07931**

Kimberly D. Gardner, Case Manager
State of New Jersey
Government of Record Council
101 South Broad Street
P.O. Box 819
Trenton, NJ 08625-0819

Re: John Paff v. Borough of Far Hills GRC Case
2005-30

VIA HAND DELIVERY

Dear Ms. Gardner:

In connection with the request of the Government Records Council ("GRC") for an *in camera* inspection of the unredacted copy of the August 9, 2004 Executive Session minutes of the Borough Council of the Borough of Far Hills, enclosed please find certified copies of the redacted and unredacted Executive Session minutes, together with a certified index of these documents and my Certification confirming my position as Acting Municipal Clerk and Custodian of Records, effective July 25, 2005.

As indicated in my Certification, this letter and accompanying documents are being hand delivered to the GRC in a sealed envelope by Melissa Looby, Administrative Assistant for the Borough of Far Hills, as I will be on vacation on September 8, 2005. In accordance with your instructions, these documents are not being forwarded to Complainant John Paff; however, I am forwarding a copy of this cover letter to him by certified mail, return receipt requested to the address provided in his Complaint.

Very truly yours,

/s/ Robin Collins
Acting Municipal Clerk

Enclosures

c: Mayor and Borough Council
John Paff (letter only)
(Via Certified Mail/Return Receipt Requested)

Woolson Sutphen Anderson & Nergaard

A Professional Corporation

11 East Cliff Street

Somerville, New Jersey 08876

(908) 526-4050 Main

(908) 526-4408 Facsimile

Attorneys for: Defendant Borough of Far Hills

JOHN PAFF,

Plaintiff(s),

vs.

BOROUGH OF FAR HILLS,

Defendant(s).

GOVERNMENT RECORDS COUNCIL

DOCKET NUMBER: GRC 2005-30

CERTIFICATION OF
ROBIN COLLINS

I, Robin Collins, of full age hereby certifies as follows:

1. I presently serve as Acting Municipal Clerk and Custodian of Records for the Borough of Far Hills, having been appointed to this position on July 25, 2005, upon resignation of the former Municipal Clerk and Custodian of Records, Linda Leidner.

2. I make this Certification in connection with the request, dated August 11, 2005, of the Government Records Council ("GRC") for an *in camera* inspection of the August 9, 2004, Executive Session minutes of the Borough Council of the Borough of Far Hills. Attached is a true copy of the redacted and unredacted portions of those August 9, 2004 Executive Session minutes, together with a certified index of these documents and redactions.

3. In accordance with the GRC's instructions, these documents are being hand-delivered to the GRC in a sealed envelope by Melissa Looby, Administrative Assistant for the Borough of Far Hills, as I will be on vacation on Thursday, September 8, 2005, the date requested by the GRC for delivery of these documents. Melissa Looby began employment with the Borough of Far Hills effective August 1, 2005.

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

Dated: 09/02/05

A handwritten signature in cursive script, appearing to read "Robin Collins", is written over a horizontal line.

Robin Collins,
Acting Municipal Clerk
Borough of Far Hills

Title & Date of Each Document	Number of Pages of Each Document	General Nature Description of Each Document	General Nature Description of Each Redaction Contained Therein (if applicable)	Claimed Statutory Exemption(s) and/or Privilege(s) for Each Document and/or Redaction	Explanation Why the Claimed Exemption(s) and/or Privilege(s) Applies to Each Document and/or Each Redaction
Borough of Far Hills Borough Council Executive Session 08/29/04	2	Minutes of Borough of Far Hills Borough Council Executive Session - Unredacted			
Borough of Far Hills Borough Council Executive Session 08/29/04	2	Minutes of Borough of Far Hills Borough Council Executive Session – Redacted	Attorney-Client Privilege Personnel	N.J.S.A. 10:4-12(b)(7); N.J.S.A. 10:4-12(b)(8) and N.J.S.A. 47:1A-10.	Discussion between the Council and Police Chief wherein Chief briefs the Council on his consultation with the Police Labor Counsel. The requested records concern the discipline of a Borough police officer and accordingly involve the individual officer's personnel record. The statute clearly states that personnel and pension records are not available for public access. Officer involved does not consent to release and has right to maintain

			Property. Acquisition. Address of Property. This redaction is not at issue.	N.J.S.A. 10:4- 2(b)(5)	<p>confidentiality of discussion. A public body may exclude the public from its discussions concerning the employment or discipline of a public officer or employee.</p> <p>This redaction is not at issue. Address cannot be released until public action taken to acquire Property, as it would provide impair Borough's ability to acquire the Property at reasonable cost and provide unfair advantage to current owner and land speculators.</p>
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I certify this is an index of the documents submitted to the GRC for an in camera inspection on September 8, 2005.

/s/ Robin Collins, Acting Municipal Clerk, Dated 09/02/05



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
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VINCENT P. MALTESE, Chair
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Final Decision on Access
September 8, 2005 Government Records Council Meeting

John Paff
Complainant
v.

Complaint No. 2005-30

Borough of Far Hills
Custodian of Record

At its September 8, 2005 public meeting, the Government Records Council (Council) conducted an *in camera* inspection of the following unredacted document for a determination on access in the Complainant's OPRA request:

- August 9, 2004 Executive Session Meeting Minute's

The Council conducted said review as concluded in their August 11, 2005 Interim Decision and pursuant to the provisions of N.J.S.A. 47:1A-7(c). Present during the *in camera* review were:

Council Members: Vincent Maltese
Mitchell Fishman
DeAnna Minus-Vincent
Robin Berg Tabakin

Government Records Staff: Paul Dice, Executive Director
Gloria Luzzatto, Assistant Executive Director
Catherine Starghill, In-House Counsel
Kimberly D. Gardner, Case Manager

Deputy Attorney General: Debra Allen

After completing the *in camera* review of the unredacted August 9, 2004 Executive Session Meeting Minutes in Closed Session, the Council concluded by a unanimous vote that the Open Public Meetings Act provisions N.J.S.A. 10:4-12(b)7 and N.J.S.A. 10:4-7 12(b)8 are applicable exemptions to the information contained in the three paragraphs of the requested August 9, 2004 Executive Session Meeting Minutes and therefore, not disclosable pursuant to N.J.S.A. 47:1A-9.



This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006.

Final Decision Rendered by the
Government Records Council
On The 8th Day of September, 2005



Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.



DeAnna Minus-Vincent, Secretary
Government Records Council

Decision Distribution Date: September 19, 2005