

**Union County Prosecutor's Office**  
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Theodore J. Romankow  
Prosecutor of Union County



Albert Cernadas, Jr.  
First Assistant Prosecutor

September 16, 2004

Jacob Magiera  
612 Sheridan Avenue  
Roselle Park, New Jersey 07204

**RE: August 5, 2004 Roselle Park Borough Council Meeting**

Dear Mr. Magiera:

I have reviewed the complaint you submitted by letter of August 31, 2004 in reference to a violation of the Open Public Meetings Act by the Roselle Park Borough Council on August 5, 2004. In addition, I have reviewed the videotapes of the three council meetings held on August 5, August 19, and September 2, 2004 and the memo prepared by John Paff of the Libertarian Party addressing this issue.

It has been determined that there were indeed violations of the Act by the Borough Council. First, the Council's practice of passing a memo-resolution calling for a closed session without stating the nature of the subject to be discussed with any degree of specificity violates N.J.S.A. 10:4-13.b. Second, the nature of the matters discussed in closed session do not always appear to be justified by any of the exceptions to the open public meeting requirement set forth in N.J.S.A. 10:4-12.b.

All parties are in agreement that the law has been violated and have made assurances that retraining on issues arising under the Open Public Meetings Act will be undertaken to ensure no repetition of these violations. Accordingly, the Union County Prosecutor's Office is advising all parties that should there be any future violations of the Act, summary proceedings will be initiated under N.J.S.A. 10:4-17. That statute provides for the imposition of a \$100 fine for a first offense and up to \$500 for any subsequent offense upon any person who knowingly violates any section of the Act.

Very truly yours,

THEODORE J. ROMANKOW  
Union County Prosecutor

By: /s/ ANN R. RUBIN  
Assistant Prosecutor

cc. William Lane, Esq.  
Borough Attorney

**LIBERTARIAN PARTY OF CENTRAL NEW JERSEY  
OPEN GOVERNMENT TASK FORCE  
PO Box 11853  
New Brunswick, NJ 08906  
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**LOCAL GOVERNMENT COMPLIANCE WITH OPMA AND OPRA**

ROSELLE PARK BOROUGH COUNCIL, UNION COUNTY  
September 2, 2004

*John Paff, Task Force Chairman  
Phone 732-873-1251*

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STATEMENT OF FACTS

On August 6, 2004, I faxed a request for government records (see Exhibit 1) to the Borough's record custodian. I received the requested records in a timely manner.

OBSERVATIONS AND RECOMMENDATIONS

*Observation No 1 The Board is required to provide more detail in its resolutions authorizing closed sessions.*

I examined several resolutions, as required by the Open Public Meetings Act, N.J.S.A. 10:4-13, passed by the Council before it went into closed session. Typical of those resolutions is the one passed at the February 5, 2004 which states that the closed session was being called to discuss "personnel and contract negotiations and other legal matters."

This form of resolution, however, is deficient in that it does not inform the public, with any degree of specificity, of which matters will be discussed during closed session.

In Council of New Jersey State College Locals, NJSFT, AFT/AFL-CIO, Local 2364 v. Trenton State College Bd. of Trustees, 284 N.J. Super. 108 (L.1995), the Court found that the defendant Board's practice of passing a very general resolution whenever it desired to go into closed session did not comply with Open Public Meetings Act in that it did not "afford the public any real knowledge of the Board's executive-session proceedings." The Court further stated:

*The Board's notice is framed so broadly that it does no more than tell the public that there will be a meeting in executive session. The notice merely recites the litany of exceptions which would allow it to proceed in closed session. No attempt is made to indicate which one or ones of these exceptions are relevant to a particular closed-session proceeding. This complete failure to delineate which subject or subjects will be discussed in closed session does not comply with the statutory mandate that the public know the general nature of the agenda.*

On July 15, 2004, a similar result was reached by Hon. Robert A. Longhi, A.J.S.C. in Paff v. Perth Amboy City Council, Docket No. MID-L-3470-04. Judge Longhi's Order (Exhibits 2 - 3) requires the Perth Amboy City Council to follow the guidelines set forth in the New Jersey State College case.

**Recommendation:** The Council needs to ensure that its closed session resolutions comply with N.J.S.A. 10:4-13, as construed by the courts.

Observation No 2 *Some of the matters discussed in closed session do not appear to be justified under any of the exceptions contained in N.J.S.A. 10:4-12(b).*

Here is a partial list of questions we have about the propriety of the closed sessions:

- ?? March 7, 2002: Report that "concrete coming down is a hazard . . . receiving estimates on the bird/plywood issue."
- ?? March 7, 2002: Report that a vendor "failed to submit a Performance Bond" and that "there have also been complaints" regarding the vendor's performance.
- ?? February 6, 2003: Report that "garages and fences are over the street line by eight feet."
- ?? May 6, 2004: Report that "there is a rat problem being Costa's and the barbershop which is being addressed."

**Recommendation:** The Council needs to ensure that only matters exempted by N.J.S.A. 10:4-12(b) are discussed in closed session.

Observation No 3 *Since we don't know the nature of the text redacted from the closed session minutes, we cannot determine whether the redaction was justified.*

In several cases, entire paragraphs were redacted from the closed session minutes. For example, see the "ATX Communications Contract" and "Ambulance Request" items in the May 6, 2004 closed session minutes. It is not clear why that material was redacted.

The Government Record Council's Record Note entitled "Redacting Government Records"<sup>1</sup> states:

### ***Explaining Why A Redaction is Made***

*When redactions are made to a record, the custodian can use either the request form to explain why those elements of a record are redacted, or use a separate document, depending on the circumstances, but also referring to the OPRA exception being claimed. This principle also applies if pages of information are redacted. Sometimes it is clear from inspection (a entry called "Social Security Number" has a black out over where the number would*

<sup>1</sup> See [http://www.state.nj.us/grc/records\\_notes/rngovrecords.html](http://www.state.nj.us/grc/records_notes/rngovrecords.html)

*appear). The bottom line is that the requester has a right to know the reason for the redaction, and the custodian has the responsibility to provide a reasonable explanation.*

**Recommendation:** The Council's Record Custodian needs to ensure that record requestors are provided with a reasonable explanation of why material is redacted.

Observation No 4 *Some of the matters discussed during closed session do not correspond with any of the exceptions stated in the authorizing resolution.*

By way of example, the resolution authorizing the May 6, 2004, 9:15 p.m. closed session states "ongoing litigation and contract negotiations" as its exception. However, issues such as the "rat problem" discussed above, and the issue of the additional ten cents needing to be included in the 2004 sewer user rate" do not appear to have anything to do with either contract negotiations or litigation.

**Recommendation:** The Council needs to ensure that the matters discussed in closed session correspond to the reasons stated in the sessions authorizing resolution.

Observation No 5 *The required language of the authorizing resolution, at least in the case of the August 5, 2004 meeting, was not announced to the public.*

At approximately 9:30 p.m. on August 5, 2004, I witnessed the Council pass its resolution authorizing closed session. As best as I can recall, one member said "Motion for closed session," another one said "second." The mayor said "all in favor, say aye," a round of "ayes" were voiced. In response to my record request, however, I was provided with a written resolution that stated that general nature of the matters to be discussed as being "litigation, personnel and contractual."

We assert that the Council has a responsibility to not only include its reasons for the closed session in the written resolution, but also to announce those reasons to the public.

A public body may exclude the public from the discussion of those subjects listed in N.J.S.A. 10:4-12, provided that prior to the closed meeting it **discloses to the public** the general nature of the subjects to be considered and the time and circumstances under which these discussions will ultimately be disclosed.

Houman v. Mayor and Council, 155 N.J. Super. 129, 148 (Law Div. 1977) (Emphasis supplied)

**Recommendation:** The critical portions of the resolution authorizing a closed session should be read aloud to the public before the resolution is voted upon.