

From: richedgar@hotmail.com
To: deputyuftnj@optonline.net
Subject: OPRA (minutes) request
Date: Fri, 17 Feb 2012 11:06:42 -0500

Upper Freehold Township

MONMOUTH COUNTY

P.O. BOX 89 - 314 ROUTE 539
CREAM RIDGE, NJ 08514

REQUEST FOR ACCESS TO GOVERNMENT RECORDS

For Municipal Use Only

Date Received: _____ Date of Response: _____

Name: _____ Richard Edgar _____

Address: _____ 8 Arneytown-Hornerstown Road, Cream Ridge NJ 08514 _____

Telephone: Day _____ 609-758-0975 _____

Evening _____

Information Requested:

Minutes of the following Upper Freehold Township Committee Meetings:

December 1, 2011

December 8, 2011

January 5, 2012

January 19, 2012

Electronic format is acceptable. I couldn't find a link to where these are posted on the website.

Note that your form is out of date with regards to the allowed cost per page of open public records copying. In *Smith v. Hudson* the court found that municipalities can charge no more than the actual cost of copying. The legislature also amended N.J.S.A. 47:1A-5.b to limit the costs to .05 cents per page.

See <http://www.nj.gov/grc/home/rules/pdf/OPRA%20Alert%20Vol%203%20Issue%201%20%28September%202010%29.pdf>

I don't have the time to attend meetings, but I like to keep track of what the town council is up to. Why not regularly post the minutes on the website?

Richard Edgar

* NOTE: the UFT OPRA form at http://uftnj.com/new%20open_public_records_request_form.htm has been updated to reflect the proper cost of copying sometime after I sent this email. (Kudos to the Municipal Clerk!)

From: <hidden>

To: deputyuftnj@optonline.net

Subject: RE: OPRA (minutes) request

Date: Thu, 1 Mar 2012 19:59:13 -0500

I submitted an OPRA request almost two weeks ago and have not received any response. I work during the day and can not attend board meetings because I am a Scoutmaster and have other meetings to go to. It should not be this hard for citizens to monitor what is going on in their own town. The minutes should be promptly posted on the website for all to view. Our website looks like a website from 1995! Why don't we modernize it to have a content management system running on it that will make it easy for anyone to update it and upload documents to it. A content management system will allow anyone with enough skills to use a word processor to update the website.

Richard Edgar



"The Heartland of New Jersey"

Upper Freehold Township

MONMOUTH COUNTY

314 Route 539, P.O. Box 89

CREAM RIDGE, NEW JERSEY 08514-0089

Tel: 609-758-7738

Fax: 609-758-1183

Township Committee
Stanley Moslowski, Jr.
LoriSue H. Mount
Robert Faber
Stephen J. Alexander
Dr. Robert A. Frascella

Business Administrator
Chief Financial Officer
Dianne Kelly, CPA/CMFO

Assessor
J. Stephen Walters, CTA

Tax Collector
Barbara Pater, CTC

Municipal Clerk
Dana L. Tyler, RMC

March 21, 2012

Richard Edgar
8 Arneytown Hornerstown Road
Cream Ridge, NJ 08514

Re: OPRA Request
Upper Freehold Township Minutes

Dear Mr. Edgar:

This letter is in response to the OPRA request you submitted for minutes of December 1, 2011, December 8, 2011, January 5, 2012 and January 19, 2012. The minutes will be on for approval at the next meeting on April 5, 2012. After they are approved I will release a copy to you. Just to let you know a meeting was not held on December 8, 2011. Also, minutes are not posted on our website and can not be released to the public until they are approved.

If you have any questions, please do not hesitate to contact me at 609-758-7738 ext. 224.

Very truly yours,

Dana L. Tyler RMC/CMC
Municipal Clerk

DLT:blt



Upper Freehold Township

MONMOUTH COUNTY

314 Route 539, P.O. Box 89
CREAM RIDGE, NEW JERSEY 08514-0089

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Dianne Kelly, CPA/CMFO

Assessor
J. Stephen Walters, CTA

Tax Collector
Barbara Pater, CTC

Municipal Clerk
Dana L. Tyler, RMC

April 10, 2012

Richard Edgar
8 Arneytown Hornerstown Road
Cream Ridge, NJ 08514

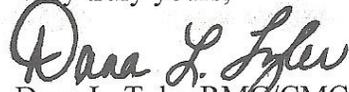
Re: OPRA Request
Upper Freehold Township Minutes

Dear Mr. Edgar:

This letter is in response to the OPRA request you submitted for minutes of December 1, 2011, December 8, 2011, January 5, 2012 and January 19, 2012. I have enclosed an audio recording of the 2012 Township Committee meetings. I am sorry for any inconvenience this may cause, but will send hard copies when they are approved.

If you have any questions, please do not hesitate to contact me at 609-758-7738 ext. 224.

Very truly yours,


Dana L. Tyler RMC/CMC
Municipal Clerk

DLT:blt



New Jersey Libertarian Party

PO Box 56

Tennent, NJ 07763

<http://njlp.org> (732)962-NJLP

May 18, 2012

Hon. LoriSue Mount, Mayor and members of the
Upper Freehold Township Committee
PO Box 89
Upper Freehold, NJ 08514-0089

Dear Mayor Mount and Township Committee:

The NJ Libertarian's Open Government Advocacy Project works to ensure transparency and accountability at all levels of government. We monitor, test, and criticize state and local government agencies for their compliance with the Open Public Records Act (OPRA) and the Open Public Meetings Act (OPMA).

When we find problems, we prefer to first communicate these problems to the municipality allowing them to take corrective actions. When a government body continually ignores these laws we are forced to take legal action, often resulting in expensive litigation and fines being levied against the government body.

The purpose of this letter is to inform the Upper Freehold Township Committee of problems found and request that they take actions to ensure compliance with the laws.

I have found several issues with the township committee OPMA and OPRA compliance.

Tardy and Incomplete Responses To OPRA Request

On February 17, 2012 I filed an OPRA request for meeting minutes for four sets of minutes from December 2011 and January 2012. After over two weeks I didn't hear anything back, I followed up with a March 1 email, and a phone call on March 5. I received my first response on March 21 indicating that I would receive the minutes after they were approved.

On April 10, 2012 I received a letter and audio CD containing the recordings of the January 19, February 12, February 16, March 1, and March 15 meetings. I've uploaded copies of my correspondence and the responses to <http://njlp.org/uploads/UFTOPRARrequest.pdf>.

The OPRA laws require a response within 7 days of the initial request. The first response to my request came four weeks after I submitted it. To date my initial request has not been fulfilled.

Timely Release of Meeting Minutes

It has been over five months since your December 1 meeting, yet I have seen no evidence that meeting minutes are available to the public yet.

In 2009, in the Paff v. Keyport, Judge Lawson set a limit of 30 days for minutes to be made available to the public. See <http://ogtf.lpcnj.org/2009/2009172pj/KeyportSuit.pdf>.

The excuse that meeting minutes not be released until they are approved is not justified. They can be released in an unapproved state with the term 'DRAFT' stamped on the top. This is in accordance with the OPRA Study Guide for NJ Municipal Clerks, Paragraph VI – I. See <http://njlp.org/uploads/OPRAStudyGuide.pdf>.

Vague Description of Reasons for Going Into Executive Session

The recordings I received contain either no or a vague resolution as to why they the council is going into executive session. The vague resolutions give the public no real sense of the rationale for going

into executive session. I understand that the Council needs to go into executive session, but they should inform the public, as precisely as possible the topics that are being privately discussed.

For example, suppose that a municipality is being sued by a Mr. Jones who was injured after he slipped and fell on what he claims to be negligently maintained municipal property. Since the lawsuit is already a public record, there is no public purpose served by vaguely describing a private discussion of it as "pending litigation." Rather, the resolution should at the very least describe the private discussion as "Discussion of slip and fall negligence suit, Jones v. Anytown, Docket No. XYZ-L-012345-11."

This way, the public has a very good sense of what the Council's private discussion is about while the ability of the Council to develop its lawsuit strategy is not undermined.

In January 2007, Middlesex County Superior Court Judge Alexander P. Waugh issued a written decision where he agreed with other court decisions that "closed session resolutions should contain as much information as is consistent with full public knowledge without doing any harm to the public interest."

Similarly in February 2011, the Appellate Division of the Superior Court of NJ in McGovern v. Rutgers held that a body must do more than "list the exceptions that would allow it to proceed in closed session." They held that the resolution to go into executive session "should contain as much information as is consistent with full public knowledge without doing any harm to the public interest." See <http://njlp.org/uploads/McGovern-v-Rutgers.pdf>.

A possible model resolution for going into executive session is attached. A similar model resolution was agreed upon in a consent agreement of John Paff v. Englewood Cliffs Board of Education, Docket No. BER-L-2148-12 and in discussions with the Upper Freehold Board of Education (see <http://www.lpcnj.org/OGTF/UFRBOE.pdf>) While it is not necessary to use this exact resolution it illustrates the extent of detail that should be included in a resolution to go into executive session.

Why not save the clerk the trouble of having to respond to requests for the minutes by posting them on the website for all to see? The UFT website is in terrible shape. Among other dead links, the link to the Agendas is broken. (See <http://uftnj.com/New%20Township%20Committee.htm>) It also looks like it only attempts to post 2012 agendas. What happens if I want to find out when a specific item in 2011 was discussed? Need I request all the minutes from 2011?

As a resident of Upper Freehold and a member of the NJ Libertarian Party Open Government Advocacy Project, I hope that we can provide a more open and accessible government to the citizens of our town. An open and transparent government is essential to a free society. More information about the Open Government Advocacy Project can be found at <http://njlp.org/opengovernment>.

Thank you for your attention to this matter, I look forward to your response.



Jay Edgar
chair at
njlp.org
Chair, NJLP

John Paff, Chair NJLP Open Government Advocacy Project
UF Township Attorney Granville M. Magee, Esquire

Upper Freehold Township Committee
RESOLUTION NO. _____
AUTHORIZING EXECUTIVE SESSION

WHEREAS, while the Sen. Byron M. Baer Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.) requires all meetings of the Upper Freehold Township Committee to be held in public, N.J.S.A. 10:4-12(b) sets forth nine (9) types of matters that may lawfully be discussed in "Executive Session," i.e. without the public being permitted to attend, and

WHEREAS, the Upper Freehold Township Committee has determined that _____ (insert number) issues shall be discussed during an Executive Session to be held on _____, 20____ at _____ P.M, and

WHEREAS, the nine (9) exceptions to public meetings set forth in N.J.S.A. 10:4-12(b) are listed below, and next to each exception is a box within which **the number** of issues to be privately discussed that fall within that exception shall be written, and after each exception is a space where additional information that will disclose as much information about the discussion as possible without undermining the purpose of the exception shall be written.

"(1) Any matter which, by express provision of Federal law, State statute or rule of court shall be rendered confidential or excluded from public discussion." The legal citation to the provision(s) at issue is: _____ and the nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____;

"(2) Any matter in which the release of information would impair a right to receive funds from the federal government." The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____;

"(3) Any material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal material of any educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by such institution or program, including but not limited to information relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or incompetent, his guardian) shall request in writing that the same be disclosed publicly." The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____;

"(4) Any collective bargaining agreement, or the terms and conditions of which are proposed for inclusion in any collective bargaining agreement, including the negotiation of terms and conditions with employees or representatives of employees of the public body" The collective bargaining contract(s) discussed are between the public body and _____;

"(5) Any matter involving the purchase lease or acquisition of real property with public funds, the setting of bank rates or investment of public funds where it could adversely affect the public interest if discussion of such matters were disclosed." The nature of the matter, described as specifically as possible without undermining the need for confidentiality is _____;

“(6) Any tactics and techniques utilized in protecting the safety and property of the public provided that their disclosure could impair such protection. Any investigations of violations or possible violations of the law.” The nature of the matter, described as specifically as possible without undermining the need for confidentiality is

_____;

“(7) Any pending or anticipated litigation or contract negotiation in which the public body is or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.” The parties to and docket numbers of each item of litigation and/or the parties to each contract discussed are

and nature of the discussion, described as specifically as possible without undermining the need for confidentiality is

_____;

“(8) Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance, 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 individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.” Subject to the balancing of the public’s interest and the employee’s privacy rights under South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, the employee(s) and nature of the discussion, described as specifically as possible without undermining the need for confidentiality are

_____;

“(9) Any deliberation of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act of omission for which the responding party bears responsibility.” The nature of the matter, described as specifically as possible without undermining the need for confidentiality is

_____;

WHEREAS, the length of the Executive Session is estimated to be _____ minutes after which the public meeting shall (circle one) reconvene and immediately adjourn or reconvene and proceed with business.

NOW, THEREFORE, BE IT RESOLVED that the Upper Freehold Township Committee will go into Executive Session for **only** the above stated reasons;

BE IT FURTHER RESOLVED that the Committee hereby declares that its discussion of the aforementioned subject(s) will be made public at a time when the public’s interest in disclosure is greater than any privacy or governmental interest being protected from disclosure. For each of the above items, the estimated date by which such disclosure can be made and/or the occurrence that needs to take place before disclosure can be made are listed below (attach separate sheet if necessary)

Subject of Discussion	Estimated Date	Necessary Occurrence

Subject of Discussion	Estimated Date	Necessary Occurrence

BE IT FURTHER RESOLVED that the Municipal Clerk, at the present public meeting, shall read aloud enough of this resolution so that members of the public in attendance can understand, as precisely as possible, the nature of the matters that will privately discussed.

BE IT FURTHER RESOLVED that the Municipal Clerk, on the next business day following this meeting, shall furnish a copy of this resolution to any member of the public who requests one at the fees allowed by N.J.S.A. 47:1A-1 et seq.

Mayor

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE RESOLUTION APPROVED BY THE UPPER FREEHOLD TOWNSHIP COMMITTEE AT ITS PUBLIC MEETING HELD ON

_____20____.

Municipal Clerk

* An editable version of this resolution can be downloaded from <http://njlp.org/uploads/UFTModelResolution.doc>