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July 6, 2015

Via Federal Express

Deputy Clerk of the Superior Court
Superior Court of New Jersey - Law Division
2 Broad Street
Elizabeth, NJ 07207

RE: New Jersey Foundation for Open Government, Inc., et al, v. Summit Housing Authority, et al.
UNN-L-1927-15

Dear Sir or Madam:

On behalf of the Plaintiffs, I enclose the original and one copy of our Response to Defendants. Please charge any filing fees to our **Superior Court Account No. 14282**.

Kindly file these documents..

This matter has been assigned to Judge James Hely, J.S.C., with a return date set as July 10, 2015. We will send a courtesy copy to Judge Hely as well via Federal Express.

Please contact us if we may be of any assistance. Thank you.

Respectfully,


Anthony H. Ogozalek, Jr.

Cc: Clerk of Superior Court, Law Division, Union County w/encls. (Via Federal Express)
William R. Connelly, Esq. w/encls. (Via Federal Express and Fax)
NJFOG (via email)

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July 6, 2015

Hon. James Hely, J.S.C.
Superior Court of New Jersey - Law Division
Union County Courthouse
2 Broad Street
Elizabeth, NJ 07207

RE: New Jersey Foundation for Open Government, Inc., et al, v. Summit Housing Authority, et al. UNN-L-1927-15

Dear Judge Hely:

Please accept this Letter Brief in lieu of a more formal brief in Reply to Defendants' Opposition and Answer concerning Counts One and Two of the Plaintiff's Verified Complaint, which seeks enforcement of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

RESPONSE

For the purposes of expediency, Plaintiffs rely on their brief in Support of their Verified Complaint and the filed Verified Complaint.

1. Defendants did not satisfy OPRA or Common law in their response to Plaintiffs' OPRA

Request.

A. Defendants admit they violated OPRA and Common Law in its Answer and Certification of Joseph M. Billy, Jr.

Defendant's Answer and Certification of Joseph M. Billy, Jr. (Billy) to Plaintiff's Verified Complaint validate Plaintiffs' legal actions and Defendants violated OPRA in failing to provide the requested documents to Plaintiffs. In fact, Defendants do not even address Plaintiffs' arguments articulated in their Answer and Certification of Billy.

In his certification, Billy admits to violating OPRA and only offers excuses/reasons as to why he did not provide the documents Plaintiffs' were entitled too. Billy states there were executive/closed meetings but no resolutions were ever written down or turned into a hard copy. Plaintiffs provided one such resolution with their Verified Complaint. (Exhibit A, Verified Complaint Exhibit 3).

Further in Billy's certification, the Defendant states he only provided a response to the OPRA request encompassing his time as Executive Director back to April 1, 2013. This certification is improper for three reasons.

The request by Paff, in no way limits the timeframe of the request to only April 1, 2013 (Exhibit B, Verified Complaint Exhibit 1). Plaintiffs' OPRA request is very clear, concise and to the point. It is not overly burdensome or confusing. Plaintiffs asked for the following:

1. *The minutes of the Summit Housing Authority's three most recent non-public (i.e. executive or closed) sessions for which minutes are available either in full or in a redacted version.*
2. *The motions or resolutions, as required by N.J.S.A. 10:4-13, that authorized each nonpublic session for which minutes were furnished in response to #1 above.*
3. *The motions or resolutions, as required by N.J.S.A. 10:4-13, that authorized all nonpublic sessions that were held after the date of most recent of the nonpublic sessions for which minutes were furnished in response to #1 above.*

On or about April 17, 2015 in an e-mail and e-mailed letter (Exhibit D, Verified Complaint Exhibit 2), Billy wrote:

"In response to your recent request for documents under OPRA and the Common Law Right to Access Requests, please be advised that the regular monthly agenda for meetings of the Board of Commissioners of the

Summit Housing Authority provides time for an Executive Session. The Board will motion and vote to enter into Executive Session, if needed, to discuss matters of litigation or personnel. Those sessions do not occur at each meeting, only when situations warrant. There are no pre-prepared resolutions authorizing entering into Executive Session.

Minutes of Executive Sessions are not maintained and therefore unavailable. “

Clearly, based on the Exhibits provided with this response and in Plaintiffs' Verified Complaint, Billy failed to respond appropriately to Plaintiffs' OPRA request. There is not one statement in the OPRA request by Plaintiffs' that says the request is limited to Billy's tenure.

The second reason for a violation of OPRA, is due to Plaintiffs being able to obtain, after the denial by Billy, from the Summit Housing Authority (SHA) website a copy of minutes, although not comprehensible, for executive session held on September 17, 2014, during Billy's term as Executive Director. (Exhibit C, Verified Complaint Exhibit 5),

Further, Plaintiffs were able to eventually find parts of what they requested online after the denial by Billy. This is unacceptable pursuant to OPRA and Common law. Additional documents may exist that Plaintiffs are unaware of due to Defendants' denial.

Finally, N.J.S.A. 47:1A-1 et seq. (OPRA) does not limit OPRA requests to the tenure or term of office of the Records Custodian. If the legislature meant for this to happen, it would be in the list of exceptions to OPRA. It would also go against public policy, as a public entity could change custodians frequently to avoid production of documents. In addition, Billy in his original response to Plaintiff Paff fails to mention that the denial is only for his tenure, this appears to be a last minute argument that carries no weight.

CONCLUSION

For all the reasons set forth above, in Plaintiff's previously filed Brief in Support of a its Verified Complaint and its Verified Complaint, Plaintiff respectfully requests the Court grant Counts One and Two of Plaintiffs' Order to Show Cause. Accordingly, Plaintiff requests the Court rule Defendants violated the Open Public Records Act and order whatever additional relief it deems appropriate.

Respectfully Submitted,

By: _____

Dated: _____

Anthony H. Ogozalek, Jr., Esquire

For the Plaintiffs

Cc: Clerk of Superior Court, Law Division, Union County w/encls. (Via Federal Express)
William R. Connelly, Esq. w/encls. (Via Federal Express and Fax)
NJFOG (via email)

EXHIBIT

A

RESOLUTION

Board Meeting Date
05-26-10

of the
SUMMIT HOUSING AUTHORITY

Date Submitted

RESOLUTION NO. 10-26-05-3

TITLE:

RESOLUTION TO GO INTO CLOSED SESSION TO DISCUSS POTENTIAL LITIGATION

Factual Contents Certified to by:

Budget Authorization Certified

to by: _____

Commissioner Poole Submitted the following Resolution:

WHEREAS, there is a need from time to time for the Housing Authority Board to go into closed session; and

WHEREAS, the Open Public Meetings Act allows a board to go into closed session to discuss potential litigation; and

WHEREAS, minutes of closed session business are taken and maintained separate from the minutes of the regular open public board meeting.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF SUMMIT:

1. That the minutes of the closed session shall become available to the public when the confidential nature of the matter is no longer deemed confidential or two years from the date of the meeting.
2. That this resolution shall be effective immediately.

Commissioner Halverstadt seconded the motion.

X – Indicates Vote		A.B. – Absent			N.V. – Not Voting				
RECORD OF COMMISSIONERS VOTE ON FINAL PASSAGE									
COMMISSIONER	AYE	NAY	N.V.	A.B.	COMMISSIONER	AYE	NAY	N.V.	A.B.
Halverstadt	X				White	X			
Kuhn	X				Zazzera	X			
Poole	X				Zimmermann				X
Shung	X								

I Hereby Certify that the above Resolution was adopted at a Commissioners Meeting of the Housing Authority on

Secretary/ Executive Director

EXHIBIT

B



John Paff <opengovtissues@gmail.com>

Record Request to the Summit Housing Authority

1 message

John Paff <paff@pobox.com>
To: jmbillyjr@summitnjha.org

Thu, Apr 9, 2015 at 5:24 PM

Please accept this e-mail as my request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records to me via e-mail to paff@pobox.com. Thank you.

Requested Records:

1. The minutes of the Summit Housing Authority's three most recent non-public (i.e. executive or closed) sessions for which minutes are available either in full or in a redacted version.
2. The motions or resolutions, as required by N.J.S.A. 10:4-13, that authorized each nonpublic session for which minutes were furnished in response to #1 above.
3. The motions or resolutions, as required by N.J.S.A. 10:4-13, that authorized all nonpublic sessions that were held after the date of most recent of the nonpublic sessions for which minutes were furnished in response to #1 above.

*John Paff
P.O. Box 5424
Somerset, NJ 08875
Voice: 732-873-1251
Fax: 908-325-0129
e-mail: paff@pobox.com*

EXHIBIT

C

MINUTES
SUMMIT HOUSING AUTHORITY
September 17, 2014

Commissioner Steven Spurr served as Acting Chairperson and called the meeting to order at 7:04 pm in the Janet Whitman Room in the Summit City Hall. The following Commissioners were present:

Commissioner Jeffrey Halverstadt, Commissioner Richard Poole, Commissioner Steven Spurr, and Commissioner Mary Zimmermann. Chairman Dennis White, Commissioner Pamela Kuhn, and Commissioner Coalter Pollock were absent. Also present were Joseph M. Billy, Jr., Executive Director, Michelle Salazar, Office Administrator and SHIA Legal Counsel William Connelly.

Mr. Billy read the Open Public Meetings Act Notice, "Adequate notice of this of this meeting has been provided by the Secretary of the Housing Authority of the City of Summit by preparing an Annual Notice dated December 11, 2013, setting forth the date, time and place of this meeting. Said notice was filed with the Clerk of the City of Summit, and forwarded to newspapers of local circulation.

Mr. Billy led those in attendance in a salute to the flag.

THE MINUTES OF THE July 23, 2014 REGULAR BOARD MEETING: were tabled since there were not enough commissioners present to approve the minutes.

EXECUTIVE SESSION: Commissioner Poole moved and Commissioner Halverstadt seconded a motion to go into Executive Session to discuss personnel and/or matters of litigation that may or may not be acted upon.

Upon roll call, all members voted affirmative.

RETURN TO PUBLIC SESSION: Commissioner Poole moved and Commissioner Halverstadt seconded a motion to return to Public Session. Upon roll call all members voted in the affirmative.

CHAIRPERSON'S REPORT: None.

REPORT OF THE EXECUTIVE DIRECTOR:

Mr. Billy updated the Board on the following topics:

- The Summer Senior BBQ was held on August 14, 2014. It turned out to be a beautiful day with about 75 attendees.
- The Summit Housing Authority is currently putting together their 5 year plan to be submitted to HUD.
- There have been two recent episodes of bed bugs at 12 Chestnut. Our exterminator was called in and they checked the surrounding units. All units were prepped and treated.

EXHIBIT

D



John Paff <opengovtissues@gmail.com>

RE: Record Request to the Summit Housing Authority

1 message

Joseph <jmbillyjr@summitnjha.org>
To: John Paff <paff@pobox.com>

Fri, Apr 17, 2015 at 12:04 PM

Mr. Paff,

Attached please find our response to your recent request.

Sincerely,

JOSEPH M. BILLY, JR.

Executive Director

Housing Authority of the City of Summit

512 Springfield Avenue

Summit, N.J. 07901

(908) 273-6413

(908) 273-3618 fax

From: opengovtissues@gmail.com [mailto:opengovtissues@gmail.com] On Behalf Of John Paff
Sent: Thursday, April 09, 2015 5:24 PM
To: jmbillyjr@summitnjha.org
Subject: Record Request to the Summit Housing Authority

Please accept this e-mail as my request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records to me via e-mail to paff@pobox.com. Thank you.

April 17, 2015

Dear Mr. Paff,

In response to your recent request for documents under OPRA and the Common Law Right to Access Requests, please be advised that the regular monthly agenda for meetings of the Board of Commissioners of the Summit Housing Authority provides time for an Executive Session. The Board will motion and vote to enter into Executive Session, if needed, to discuss matters of litigation or personnel. Those sessions do not occur at each meeting, only when situations warrant. There are no pre-prepared resolutions authorizing entering into Executive Session.

Minutes of Executive Sessions are not maintained and therefore are unavailable.

I hope this satisfies your request.

With best regards, I remain,

Sincerely yours,

Joseph M. Billy, Jr., Executive Director

Summit Housing Authority