

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
JAMES HELY
JUDGE



COURTHOUSE
ELIZABETH, NEW JERSEY 07207

NOT TO BE PUBLISHED WITHOUT

THE APPROVAL OF THE COMMITTEE ON OPINIONS

NEW JERSEY FOUNDATION FOR
OPEN GOVERNMENT, INC. and
JOHN PAFF

Plaintiffs,

v.

SUMMIT HOUSING AUTHORITY;
and JOSEPH M. BILLY, JR.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

DOCKET NO.: UNN-L-1927-15
CIVIL ACTION
OPINION

FILED

JUL 13 2015

JAMES HELY, J.S.C.

July 13, 2015

Honorable James Hely, J.S.C.

This is my decision on a matter brought before the Court by Order to Show Cause. Plaintiffs made a request of defendant Summit Housing Authority for specific records. Although Summit Housing Authority responded to the request, it did so essentially by claiming that no such records existed. Plaintiffs dispute that no such records existed. Hence, plaintiffs filed their Complaint with an Order to Show Cause.

In their original records request, plaintiffs requested: “[t]he minutes of the Summit Housing Authority’s three most recent nonpublic (i.e. executive or closed) sessions for which minutes are available either in full or in redacted version.”

Summit Housing Authority responded as follows: “[i]n 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 each meeting, only when situations warrant. There are no prepared resolutions authorizing entering into executive session. Minutes of executive sessions are not maintained and therefore are unavailable.”

In response to the Verified Complaint and Order to Show Cause, defendant Summit Housing Authority provided a certification of the executive director of the organization, Joseph M. Billy, Jr. Mr. Billy claims he responded to the plaintiffs’ request stating that there were no such minutes. However, in his certification, he acknowledges that the board “may have Minutes of executive sessions in the past” He claims that he viewed plaintiffs’ request as being limited to the time when he began serving as executive director on April 1, 2013. There was no such limitation in plaintiffs’ request for records.


Plaintiffs responded to defendant Summit Housing Authority’s opposition by showing that the plaintiffs were able to independently obtain a record of the board meeting dated May 26, 2010 which reflected that there were in fact past minutes of closed sessions. This record, independently obtained by the plaintiffs, demonstrates that there were records in Summit Housing Authority’s possession which were responsive to the original request by the plaintiffs for, “the minutes of the Summit Housing Authority’s three most recent nonpublic (i.e. executive or closed) sessions for which minutes are available either in full or in redacted version.”

Plaintiffs never had a time limitation on what they were seeking other than to say they wanted the three most recent records.

I specifically find that the Summit Housing Authority did not properly respond to plaintiffs' request under the Open Public Records Act. At oral argument, Defendant conceded that Summit Housing Authority is bound by the Open Public Records Act. Pursuant to N.J.S.A. § 41:1A-6, a requester who is denied access to information under the Act, may institute a Superior Court complaint and proceed in summary fashion. The public entity, such as Summit Housing Authority, shall have the burden of proving that the denial of access is authorized by law. Id. "If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requester who prevails in any proceeding shall be entitled to a reasonable attorney fee." Id. at § 41:1A-6.

On behalf of defendants, counsel argued that there was ambiguity in the request. I find no meaningful ambiguity. It was the executive director who thought it would be appropriate to limit the request to the time period in which he was executive director. There was no authority to do that. Open Public Record Act requests are not to be responded to in perfunctory manner. Such requests are not to be treated lightly or as a nuisance.

Defendants are ordered to specifically respond to plaintiffs' request within fourteen (14) days. Counsel for plaintiffs is directed to submit a certification of services for a reasonable attorney fee and cost as authorized by the statute. Defendant will then have five (5) days to comment upon that request.


James Hely, J.S.C.

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JAMES HELY, J.S.C.

NEW JERSEY FOUNDATION FOR
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Plaintiffs,

vs.

SUMMIT HOUSING AUTHORITY
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Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
UNION COUNTY

DOCKET NO.

UNN-L-1927-15

ORDER

THIS MATTER being brought before the Court pursuant to R.4:67-1(a) by
Anthony H. Ogozalek, Jr. of Beckman Ogozalek Londar by Verified Complaint and Order
to Show Cause for certain relief under the Open Public Records Act and the Court having
considered the papers submitted by the parties and having heard oral argument on

7/10/15, 2015 and for good cause shown,

IT IS on this 13 day of July, 2015

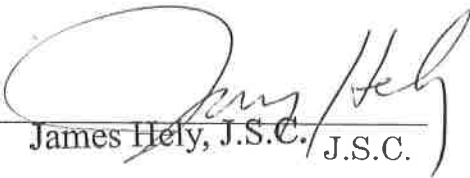
1. DECLARED that Defendant Billy, by failing to disclose any nonpublic
minutes and motions/resolutions in response to Paff's April 9, 2015 request violated
N.J.S.A. 47:1A-5(i).

2. ORDERED that Defendant Billy shall, within 14 days of his receipt of this Order, furnish Paff with the nonpublic minutes and motions/resolutions responsive to his April 9, 2015 request.

3. ORDERED that the violations of the Open Public Records Act set forth above render Plaintiff Paff the prevailing party in this action, entitling him to costs and a reasonable attorney fee in accordance with N.J.S.A. 47:1A-6.

4. ORDERED that the Second Count is dismissed given that the relief sought was provided under the First Count.

5. ORDERED that the Third and Fourth Counts of the Verified Complaint will be adjudicated in future proceedings.


James Hely, J.S.C. J.S.C.)

Opposed

Unopposed