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August 14, 2015

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

RE: New Jersey Foundation for Open Government, Inc., et al, v. Summit
Housing Authority, et al.
Docket No. UNN- L-1927-15

Your Honor:

We are submitting this Letter Brief in lieu of a more formal brief in
reply to Defendants' Opposition Letter Brief dated August 3, 2015
supplemented by Defendants' August 6, 2015 letter. Plaintiffs will respond
to each point in order presented in Defendants' August 3, 2015 submission.

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT
BE HEARD, OR SHOULD BE DISMISSED, AS IT IS
PROCEDURALLY IMPROPER.**

As stated in Defendants' August 6, 2015 letter, this argument was
made prior to Defendants becoming aware that Your Honor ruled on the

OPRA and common law counts of the lawsuit on July 13, 2015¹. Accordingly, this argument is inapplicable to this summary judgment motion.

Defendants' assertion that Plaintiffs "seek[] to further drive up attorneys' fees which may be awarded to Plaintiffs under the Open Public Records Act as well as in an attempt to recover additional attorneys' fees which are not permitted or awarded to the Plaintiffs under the Open Public Meetings Act" is false. Neither the Third nor Fourth Count prayer for relief clauses seeks any attorney fee award; only costs, as allowed by statute and court rules.

THE DEFENDANTS' FAILURE TO CREATE MINUTES OR RESOLUTIONS FOR EXECUTIVE SESSION MEETINGS IS NOT A VIOLATION OF THE OPEN PUBLIC RECORDS ACT.

As stated in Defendant's August 6, 2015 letter, this argument was made prior to Defendant becoming aware that Your Honor ruled on the OPRA counts of the lawsuit on July 13, 2015. Accordingly, it is inapplicable to this summary judgment motion.

THE SUMMIT HOUSING AUTHORITY HAS NOT VIOLATED THE OPEN PUBLIC RECORDS ACT AS IT PROVIDED A PROPER RESPONSE TO PLAINTIFFS' APRIL 9, 2015 REQUEST FOR DOCUMENTS

As stated in Defendant's August 6, 2015 letter, this argument was made prior to Defendant becoming aware that Your Honor ruled on the

¹The Court's July 13, 2015 Order resolved the First Count (Records Act) and the Second Count (common law) leaving only the Third and Fourth Counts (both Meetings Act) subject to the present summary judgment application.

OPRA counts of the lawsuit on July 13, 2015. Accordingly, the argument made that the April 9, 2015 request for records was "ambiguous and confusing" is moot because it was already adjudicated by the Court's July 13, 2015 Order.

PLAINTIFFS' RELIEF REGARDING THE OPEN PUBLIC MEETINGS ACT IS TOO BROAD AND NOT CONSISTENT WITH THE ACT.

Defendants' actual argument is contained within the last paragraph of the brief point, which is set forth below. The remainder of the brief point consists of an elementary and largely irrelevant summary of the Open Public Meetings Act.

As defense counsel stated at the summary action proceeding in July, the Summit Housing Authority has been appraised of the requirements of the Open Public Meetings Act and it is promptly taking actions to ensure that it always has resolutions and minutes for all meetings, including executive session meetings. The relief sought by the Plaintiffs have been voluntarily enacted and, therefore, there is no basis for any further relief and certainly no basis for any attorneys' fees and costs to be awarded for violation of the Open Public Meetings Act. However, the Plaintiffs' excessive strictures sought by way of injunctive relief against the Housing Authority are excessive and unnecessary as the Court has recognized that requiring too much information in the resolution may defeat the purpose of the closed/executive session. McGovern v. Rutgers, 211 N.J. 94, 111 (2012). The Plaintiffs seek to establish too fine a line not supported by the case law or by the Open Public Meetings Act.

As an initial matter, there is no evidence in the record indicating that the Housing Authority is "promptly taking actions to ensure" that it is now in

full compliance with the Open Public Meetings Act or that "[t]he relief sought is a basis for any further relief." Defendants' counsel is trying to insinuate these alleged "facts" into the records in a manner inconsistent with the Court's rules and practices.

"Facts intended to be relied on which do not already appear of record and which are not judicially noticeable are required to be submitted to the court by way of affidavit or testimony." Celino v. General Acc. Ins., 211 N.J. Super. 538, 544 (App. Div. 1986). ¶ 9 of the Order to Show Cause expressly held that "[t]he Court will entertain argument, and not testimony, on the return date of the order to show cause." Thus, the comments that Defendants' attorney made at the July 10, 2015 hearing are of no evidential value. Also, no certification or affidavit has been submitted detailing the manner in which the Authority is now allegedly complying with the Act. There is simply no evidence in the record regarding the Authority's alleged, post-lawsuit attempts to comply with the Meetings Act.

It would be inappropriate for this Court to let Defendants, whose recent failure to keep executive session minutes at all is clearly egregious, to be let off the hook based on nothing more than some vague bromides mouthed by Defendants' attorney at oral argument. As argued in Plaintiffs' opening summary judgment brief, a pattern of misconduct has been shown which permits injunctive and, at the very least, mandates declaratory relief.

Finally, the Housing Authority confusingly argues that because the McGovern court has found that "requiring too much information in the resolution may defeat the purpose of the closed/executive session" the court should reject Plaintiffs' attempt "to establish too fine a line not supported by the case law or by the Open Public Meetings Act."

Plaintiffs have never argued that the Housing Authority needs to put so much information in its executive session resolutions that the executive sessions themselves would be undermined. Rather, Plaintiff, after having encountered the Authority's recent, noncompliant resolutions (e.g., the March 25, 2015 resolution states only that the Authority "moved to enter into Executive Session" with absolutely no description of the topics to be privately discussed), seeks to have some standard established by the Court to guide the Authority (and protect the public) going forward. The appropriate standard is the "as much knowledge as possible" standard as fully argued in Plaintiff's opening summary judgment brief.

Respectfully,



Anthony H. Ogozalek, Jr., Esq.

cc. Civil Motions Clerk
William R. Connelly, Esq.