

Asbury Park Press

January 17, 2009

Judge rules in favor of citizen's OPRA request

By JIM McCONVILLE
KEYPORT BUREAU

A state Superior Court judge has ruled that the Borough Council did not correctly adhere to certain guidelines of the New Jersey Open Public Records Act.

Superior Court Judge Lawrence M. Lawson has ruled in the favor of the plaintiff John Paff, 51, of Franklin Township, in his lawsuit filed July 2007 against the Keyport Borough Council.

Paff contended that the town's public body had violated the state Open Public Records Act by not providing him with meeting minutes in a timely manner.

In his ruling issued Dec. 8, Lawson ruled favorably on three of Paff's five points, disagreed with one, and threw out another one of the challenges as being filed too late.

Paff also had argued that the council violated the Open Public Meetings Act by discussing possible ordinances privately, using the "potential litigation" exemption in the law to hold closed sessions.

Lawson heard arguments on Aug. 12, 2008, on the lawsuit that Paff filed in July 2007, regarding the minutes for council meetings of March 6, 2007, and April 21, 2007, and the closed sessions of April 10 and 24, 2007, meetings.

Paff contends that Keyport public officials are subverting the state's OPRA by failing to provide him with minutes of the two council meetings of March and April 2007.

Paff said he filed his request for the meeting minutes on June 21 of last year. He said he received a response from the borough June 29 indicating the minutes weren't yet available, he said, but a copy eventually was made available on July 21.

Lawson agreed with Paff that Keyport failed to fulfill his request for the Borough Council's closed and public meeting minutes within 30 days after the meeting, or prior to the next scheduled meeting.

Lawson also ruled favorably to Paff's claim that a plaintiff's right to know the identities of specific borough employees discussed during closed session outweighs the borough's need for confidentiality.

"Whether or not the Borough Council is allowed to redact from its closed meeting minutes the name of borough officials who were subjected to discipline, Judge Lawson ruled in my favor," Paff said. "He ruled that under OPRA, I am entitled to the names of the specific officers and employees who are disciplined."

Although Mayor Robert Bergen said he has not yet read Judge Lawson's full court decision, he said that Paff's OPRA suit was "largely unreasonable" and that Keyport tried to oblige his meeting minutes request.

"We felt that we were more than willing to comply with the law," Bergen said. "We did everything we could to get him the minutes in a reasonable time period."

Lawson did rule against Paff, saying that it is legal under the Open Public Meetings Act for the council to privately discuss borough ordinances under the "potential litigation" exception, as well as general employment and staffing matters under the "matters of personnel" exception.

Lawson threw out Paff's claim that Keyport had failed to provide him with a justifiable reason for denying his request for Borough Council e-mails, ruling that Paff's request was not filed within the 45 day deadline.

Finally, Lawson ruled that Paff as the prevailing party is entitled to recover his court costs from Keyport.

Judge Lawson's opinion, along with the trial briefs, exhibits and other case documents are on-line at <http://www.lpcnj.org/OGTF/KeyportSuit.pdf> (file is about 2.5 MB).
