

# John Paff

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November 24, 2006

Telephone – 732-873-1251

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Allyson M. Cinquegrana, Borough Clerk  
Borough of Keyport  
70 W Front St  
Keyport, NJ 07735

Dear Ms. Cinquegrana :

Enclosed is a copy of my November 24, 2006 letter, with attachments, to Monmouth County Prosecutor Luis A. Valentin that I ask that you distribute to Mayor Merla and members of the Borough Council.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Paff', with a large, stylized flourish at the end.

John Paff

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Somerset, New Jersey 08875

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Luis A. Valentin, Prosecutor  
Monmouth County Prosecutor's Office  
71 Monument Park  
Freehold, N.J. 07728-1261

RE: Keyport Borough Council  
Open Public Meetings Act

Dear Prosecutor Valentin:

I write both personally and in my capacity as the New Jersey Libertarian Party's "Open Government Advocate."<sup>1</sup> I believe that the Keyport Borough Council has violated the Open Public Meetings Act and ask that you investigate and take whatever action you deem appropriate.<sup>2</sup> Attached are five pages, consisting of Keyport's November 16, 2006 letter, sent in response to my government records request, and resolutions passed at the Borough Council's September 19, 2006, October 3, 2006 and October 17, 2006 meetings.

While the Borough Council met in nonpublic session on September 19, 2006, October 3, 2006 and October 17, 2006, I have been denied any and all access to the minutes of those nonpublic meetings until after they are "transcribed and approved by the governing body" on December 20, 2006.

N.J.S.A. 10:4-14 requires meeting minutes to be made "promptly available to the public to the extent that making such matters public shall not be inconsistent with" N.J.S.A 10:4-12(b). See also, Atty. Gen. F.O. 1-1998. While "promptly" has not been well defined, case law<sup>3</sup> strongly suggests that Keyport's withholding its September 19, 2006 minutes for more than three months (i.e. until December 20, 2006) is not "prompt" and thus violates the Open Public Meetings Act.

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<sup>1</sup> The New Jersey Libertarian Party (NJLP) is a longtime advocate of open and transparent government. The NJLP's platform, which can be found at [www.njlp.org](http://www.njlp.org), states: "We support the public policy behind the Open Public Meetings Act (NJSA 10:4-6) and the Right to Know Law (NJSA 47:1A-1). We note, however, that in actual practice, some individuals in government are reluctant to comply with these laws. We believe that those individuals should be held personally liable for attorney's fees and costs incurred in enforcing the law."

<sup>2</sup> The Open Public Meetings Act, N.J.S.A. 10:4-17, empowers your office to enforce monetary penalties against officials who knowingly violate the Act. Or, perhaps you may wish to correspond with the Council and work with it so that it complies with the Act in the future. If you decide to take no action, I specifically reserve my right to enforce the Council's future compliance through the civil remedies provided by N.J.S.A. 10:4-16.

<sup>3</sup> See Liebeskind v. Mayor and Mun. Council of Bayonne, 265 N.J. Super. 389, 394-95 (App. Div. 1993) (Appellate Division affirmed a trial court's requirement that a public body disclose its meeting minutes within two weeks after each meeting and at least three business days before the next meeting); and Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional Bd. of Educ., 212 N.J. Super. 328 (L.1986) ("Upon examination of the factors set forth, the court concludes that the board's minutes, in order to be promptly available as required by the Open Public Meetings Act, must be available within two weeks after any regular meeting.").

Thank you for your attention to this matter. I look forward to learning the results of your investigation and what action, if any, that you have elected to take.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff", with a stylized flourish at the end.

John Paff

cc. Hon. John J. Merla, Mayor and Council of Keyport Borough (with enclosures)  
Chairman, New Jersey Libertarian Party

Mayor  
John J. Merla

**Councilmembers**

Robert J. Bergen, President  
Richard J. Hassmiller  
William Ortman  
Joseph E. Sheridan  
George J. Walling, Sr.  
Joseph E. Wedick



Peter R. Valesi, P.E., CME  
Borough Administrator  
Director of Engineering

Allyson M. Cinquegrana, RMC  
Borough Clerk

Thomas P. Fallon, CPA, RMA  
Chief Financial Officer

November 16, 2006

Mr. John Paff  
PO Box 5424  
Somerset, New Jersey 08875-5424

RE: Open Public Records Request

Dear Mr. Paff:

I am responding to your request for records received on November 3, 2006:

1(a) The requested resolution does not exist because the "filing cabinet garage" incident was not discussed in executive session.

1(b) The requested records do not exist because the "filing cabinet garage" incident was not discussed in executive session.

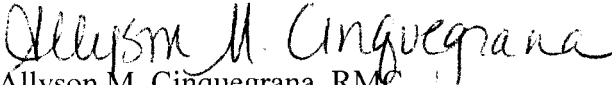
2. The requested resolutions are enclosed.

3. The requested minutes have not yet been transcribed. They are expected to be transcribed and approved by the governing body by December 20, 2006 at which time they will be produced, with the exception of material that may be redacted in accordance with N.J.S.A. 47:1A-1 et seq.

4. The requested record is enclosed.

Thank you.

Very truly yours,

  
Allyson M. Cinquegrana, RMC  
Borough Clerk

AMC  
Enclosures

**RESOLUTION**

**299-06**

**WHEREAS**, the Mayor and Council of the Borough of Keyport propose to discuss the following subjects:

**Personnel**

1. Administration
2. Fire Department
3. Police Department
4. Planning Board Secretary
5. Department of Public Works

**Possible Litigation**

1. Kara Homes
2. Tax Sale Certificates

**Labor Relations**

**Contract Negotiations**

1. Old Municipal Building
2. RFP-Vending Machines
3. Advertising on the Water Tower
4. Garbage Contract

**WHEREAS**, the Governing Body has determined that within the provisions of the Open Public Meetings Law, the Public should be excluded from the discussion of said subjects.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body that a meeting of the Mayor and Council shall be held forthwith from which the public shall be excluded in the Council Chambers, Borough Hall for the purpose of discussing the following subjects:

Personnel, Litigation and Contract Negotiations

**BE IT FURTHER RESOLVED** that the discussions on Personnel conducted at said Closed Session shall be disclosed when the matters discussed are resolved and this meeting shall continue in approximately 20 minutes.

Offered for adoption by Mr. Walling, second by Mr. Sheridan

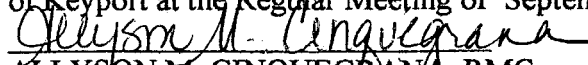
Roll Call Vote: Ayes: Councilmembers Hassmiller, Walling, Wedick, Bergen, Sheridan, Ortman

Nays: None

Abstain: None

Absent: None

I, Allyson M. Cinquegrana, Borough Clerk, do hereby certify this to be a true copy of a Resolution adopted by the Mayor and Council of the Borough of Keyport at the Regular Meeting of September 19, 2006.

  
ALLYSON M. CINQUEGRANA, RMC  
BOROUGH CLERK

**RESOLUTION**  
**308-06**

**WHEREAS**, the Mayor and Council of the Borough of Keyport propose to discuss the following subjects:

**Personnel**

1. Engineering
2. Police Department
3. Administration
4. NPP Coordinator

**Possible Litigation**

1. Kara Homes
2. Uptown Bar and Grille
3. Municipal Complex

**Labor Relations**

1. IUOE Contract

**Contract Negotiations**

1. Water/Sewer Emergencies
2. Water/Sewer Bill
3. Library
4. Garbage Contract
5. Old Municipal Complex

**WHEREAS**, the Governing Body has determined that within the provisions of the Open Public Meetings Law, the Public should be excluded from the discussion of said subjects.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body that a meeting of the Mayor and Council shall be held forthwith from which the public shall be excluded in the Council Chambers, Borough Hall for the purpose of discussing the following subjects:

Personnel, Litigation, Labor Relations and Contract Negotiations

**BE IT FURTHER RESOLVED** that the discussions on Personnel conducted at said Closed Session shall be disclosed when the matters discussed are resolved and with regard to Labor Relations when negotiations are completed and a contract executed and this meeting shall continue in approximately 20 minutes.

Offered for adoption by Mr. Sheridan, second by Mr. Walling

Roll Call Vote: Ayes: Councilmembers Walling, Wedick, Bergen, Sheridan, Ortman

Nays: None

Abstain: None

Absent: Councilman Hassmiller

I, Allyson M. Cinquegrana, Borough Clerk, do hereby certify this to be a true copy of a Resolution adopted by the Mayor and Council of the Borough of Keyport at the Work Meeting of October 3, 2006.



ALLYSON M. CINQUEGRANA, RMC  
BOROUGH CLERK

**RESOLUTION**  
**316-06**

**WHEREAS**, the Mayor and Council of the Borough of Keyport propose to discuss the following subjects:

**Personnel**

1. Construction Code Office
2. Department of Public Works
3. Police Department

**Possible Litigation**

1. Liability Exposure – Proposed Ordinances
2. Tax Appeals
3. Election Claim
4. Roder's Motors

**Labor Relations**

**Contract Negotiations**

1. Kara Homes
2. Seventh Street Lot

**WHEREAS**, the Governing Body has determined that within the provisions of the Open Public Meetings Law, the Public should be excluded from the discussion of said subjects.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body that a meeting of the Mayor and Council shall be held forthwith from which the public shall be excluded in the Council Chambers, Borough Hall for the purpose of discussing the following subjects:

Labor Relations and Contract Negotiations

**BE IT FURTHER RESOLVED** that the discussions on Personnel conducted at said Closed Session shall be disclosed when the matters discussed are resolved and this meeting shall continue in approximately 20 minutes.

Offered for adoption by Mr. Sheridan, second by Mr. Wedick

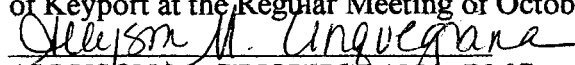
Roll Call Vote: Ayes: Councilmembers Hassmiller, Walling, Wedick, Bergen, Sheridan

Nays: None

Abstain: None

Absent: Councilman Ortman

I, Allyson M. Cinquegrana, Borough Clerk, do hereby certify this to be a true copy of a Resolution adopted by the Mayor and Council of the Borough of Keyport at the Regular Meeting of October 17, 2006.

  
ALLYSON M. CINQUEGRANA, RMC  
BOROUGH CLERK

WISNIEWSKI & ASSOCIATES, LLC  
ATTORNEYS AT LAW  
Williamsburg Commons  
8G Auer Court  
East Brunswick, NJ 08816-5846  
Tel 732-651-0040 Fax 732-651-0060  
www.wisniewskilaw.com

December 5, 2006

VIA TELECOPIER & FIRST CLASS MAIL

Luis A. Valentin, Prosecutor  
Monmouth County Prosecutor's Office  
71 Monument Park  
Freehold, N.J. 07728

RE: Keyport Borough Council  
Open Public Meetings Act

Dear Mr. Valentin:

I represent the Borough of Keyport in the capacity of Borough Attorney. I am writing this letter in response to Mr. John Paff's letter to your attention of November 24, 2006 wherein Mr. Paff complains that the Borough of Keyport may have violated the Open Public Meeting Act.

On or about November 3, 2006 Mr. Paff submitted an Open Public Records Act ("OPRA") request of borough records for, inter alia, certain closed session minutes of Borough Council meetings of September 9, 2006; October 3, 2006; and October 17, 2006. The Borough of Keyport provided a timely response to Mr. Paff's request.

In its response the Borough of Keyport indicated that it had not yet transcribed the requested minutes and they were expected to be transcribed and produced to Mr. Paff by December 20, 2006. The requested minutes have now been transcribed and are expected to be approved by the governing body at its December 5, 2006 meeting and, if approved, will be produced to Mr. Paff by December 8, 2006, with the exception of material that may be redacted in accordance with N.J.S.A. 47:1A-1 et seq.

The Borough of Keyport is a small town with limited resources and while it endeavors to ensure that meeting minutes are made promptly available to the public, there are competing demands on personnel who cannot devote all their time to transcription duties.

Furthermore, it is the Borough of Keyport's position that Mr. Paff's letter to you is misplaced and the New Jersey Government Records Council maintains jurisdiction over complaints of Mr. Paff's nature.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ John S. Wisniewski

JSW:kre

Cc: The Hon. Mayor and Borough Council  
John Paff

## John Paff

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January 1, 2007

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Luis A. Valentin, Prosecutor  
Monmouth County Prosecutor's Office  
71 Monument Park  
Freehold, N.J. 07728-1261

RE: Keyport Borough Council  
Open Public Meetings Act

Dear Prosecutor Valentin:

I am in receipt of John S. Wisniewski's December 5, 2006 letter, written on behalf of the Borough of Keyport. I wish to make two points in reply.

First, Keyport's position that my "letter to you is misplaced and the New Jersey Government Records Council maintains jurisdiction over complaints of [my] nature" is incorrect. At the time of my records request, the requested closed session minutes did not exist because they had not yet been transcribed. The Government Records Council lacks jurisdiction over matters where requested records do not exist. See, e.g. Toscano v. New Jersey Department of Law and Public Safety, Government Records Council, GRC Case No. 2005-188.

Second, since virtually every town complains about "limited resources" and "competing demands on personnel," these cannot be considered persuasive reasons for allowing short shrift to be given to the public's right to know. The Court in Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional Bd. of Educ., faced similar arguments and held that

The [Open Public Meeting Act's] use of the word "promptly," not "reasonable time" or any equivalent term, makes clear that the legislative purpose of the Open Public Meetings Act is not served by mere desultory publication of minutes. A standard for publication of the minutes must be consistent with that purpose. Further, the standard must be made known so that it can be enforced and the public and the association, here, can have meaningful recourse to the remedies provided by the act itself. Accordingly, the court must determine the appropriate standard.

212 N.J. Super. 328, 332-33 (L.1986)

Accordingly, Keyport's Council should be required to announce and adhere to an objective and enforceable standard governing timely publication of its minutes.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Paff', with a large, stylized flourish at the end.

John Paff

- cc. Mayor and Council of Keyport Borough (*via email to [acinquegrana@keyportonline.com](mailto:acinquegrana@keyportonline.com)*)  
Chairman, New Jersey Libertarian Party (*via email*)  
John S. Wisniewski, Esq. (*via Fax only to 732-651-0060*)