



## UNION COUNTY PROSECUTOR'S OFFICE

32 RAHWAY AVENUE  
ELIZABETH, NEW JERSEY 07202-2115  
(908) 527-4500  
Fax: (908) 289-1267

**THEODORE J. ROMANKOW**  
Prosecutor of Union County

**ALBERT CERNADAS, JR.**  
First Assistant Prosecutor

November 17, 2006

Tina Renna  
Union County Watchdog Association  
202 Walnut Avenue  
Cranford, New Jersey 07016

### **Re: Open Public Meetings Act and Freeholder Meeting Minutes**

Dear Ms. Renna:

Please accept this letter in response to your correspondence of March 27, 28 and July 25, 2006 regarding the Executive Session minutes of the Union County Board of Chosen Freeholders (the "Board"). In your correspondence you referenced the Executive Session minutes of May 26, September 22 and September 29, 2005 that you received from the Board. You had requested the regular Board meeting minutes including the resolutions for Executive Sessions and the minutes of the Executive Sessions.

In addition, you enclosed two different copies of the minutes of the Executive Session held on February 10, 2005 that the Board provided to you: (1) in response to your January 17, 2006 records request and (2) on March 26, 2006 in response to the subsequent complaint you filed against the Board with the Government Records Council .

It is your position that the Board violated *N.J.S.A.10:4-13* of the Open Public Meetings Act at the meetings held on the above dates in the following ways:

1. The Board should have passed resolutions rather than making motions calling for Executive Sessions.

2. The reasons for going into Executive Session were not adequately stated to provide the public with notice of the general nature of the subject to be discussed.

3. The minutes did not provide the public with information about the circumstances under which the matters discussed in executive session could be eventually be disclosed to the public.

I have discussed your complaints with members of the County Counsel's Office and received from the Office copies of the correspondence you sent requesting the Executive Session minutes as well as a copy of the documents filed by both parties in the Government Records Council action. Assistant County Counsel William Donegan also provided me with the attached form (Exhibit B) setting forth the language of the Board's standard motion for Executive Session with a blank space for the portion stating the general nature of the subject discussed. Although he advised me that the minutes did not reflect that the standard motion language was read into the record, he assured me that this was done and that you were present on a number of occasions when this occurred. Nevertheless, we discussed the importance of making sure that the minutes actually reflected the motion language placed on the record.

As to the use of a resolution vs. a motion to call for an Executive Session, I agree with the County Counsel's Office that they are essentially the same thing and that it is merely a matter of semantics to refer to it as a "motion." As the minutes of the regular meetings provided to me are replete with "resolutions" rather than "motions," consistency would suggest that the term "resolution" also be used to refer to the decision to go into Executive Session. However, a substantially similar section of New York's Open Public Meetings Law, provides that "pursuant to a **motion** identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only..."

More important are your complaints regarding the sufficiency of the resolution/motion language in setting forth the general nature of the subject to be discussed and the actual minutes of the Executive Sessions that describe the topics discussed. For example, the minutes of the regular Board meeting of September 22, 2005 reflect that the reason for the Executive Session on that date was "pending litigation" without any further detail. Similarly, the minutes of the Executive Session held on February 10, 2005 initially provided to you in response to your January 17, 2006 records request, list nine items of which eight are totally or partially redacted as either "attorney-client privileged communication" or "redacted relative to a personnel matter exempt under N.J.S.A. 47: 1A-10."

Open Public Meetings Act & Freeholder Minutes  
Letter to Tina Renna  
November 17, 2006  
Page 3

While *N.J.S.A. 10:4-12 b.* permits the Board to exclude the public from that portion of a meeting where “any pending or anticipated litigation” is discussed and from discussions concerning “any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer,” when a lawsuit has already been filed with the court and is, therefore, a matter of public record, there is no reason why the title of the case cannot be set forth in the resolution and in the Executive Session minutes. See *Payton v. New Jersey Turnpike Authority*, 148 *N.J.* 524(1997).

For example, items # 8 and 9 in the Executive Session minutes for February 10, 2005 were lawsuits that had already been filed in court at the time the Board meeting was held. Both lawsuits could have been referred to by their titles in the resolution/motion and in the Executive Session minutes. Furthermore, once such cases are settled or resolved by the Board, the nature of the settlement and the amount paid should be revealed to enable the public to make a sound judgment about the reasonableness of the Board’s action. See, *South Jersey Publishing v. N.J. Expressway*, 124 *N.J.* 478, 498 (1991).

I do not agree, however, with your position that the Open Public Meetings Act required the Board to disclose details of the plaintiff’s allegations in the *Alyssa Scala v. County of Union* lawsuit referred to in item #9 of the Executive Session minutes for February 10, 2005. At that time, the relationship between the plaintiff’s unproven allegations and the subsequent election of the freeholder named in the lawsuit was too tenuous to constitute a sufficient basis for a more detailed disclosure. Obviously, if the case had been later settled or resolved by the Board, disclosure should have been made as set forth above.

As the New Jersey Supreme Court noted in *Payton v. New Jersey Turnpike Authority*, 148 *N.J.* at 557, the Board must employ a balancing test in determining how much information should be disclosed in response to requests for minutes of the Board’s Executive Session meetings:

If disclosure would subvert the purpose of the particular exception to the general requirement of conducting public meetings, then the subversion must be balanced against the applicant’s interest in disclosure. We believe that only the unusual case will justify total suppression of the minutes of a closed session; such a case would require great harm to the public interest underlying the exception from even minimal disclosure as well as a negligible interest in disclosure.

Open Public Meetings Act & Freeholder Minutes  
Letter to Tina Renna  
November 17, 2006  
Page 5

Given the Legislature's purpose to provide the public with such access, it is clear that the Board should continually review and cross-reference the matters discussed in Executive Session so that the minutes can be updated in a timely fashion and the redacted portions of the minutes disclosed to the public to reflect with their current status. Based on my review of the minutes provided, there is a need for improvement in this area which can be accomplished through better communication between the Board and its counsel and those persons responsible for updating the Executive Session minutes and releasing them to the public.

By copy of this letter, I am advising the County Counsel's Office of our position on this matter. I trust that County Counsel will act upon the contents of this letter and that further action in this regard will not be necessary.

Very truly yours,

THEODORE J. ROMANKOW  
Prosecutor of Union County



By:  
Assistant Prosecutor

enclosure  
c: Robert Barry, Esq.  
Union County Counsel