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August 9, 2010

Government Records Council
P.O. Box 819
Trenton, NJ 08625-0819

RE: Paul S. Kaplan v. Township of Winslow
Complaint No. UNKNOWN
Our File No.: 8372

Dear Sir/Madam:

As Solicitor for the Township of Winslow ("Township"), a copy of the Denial of Access Complaint filed by Paul S. Kaplan against the Township has been forwarded to my attention. A mere cursory review of same reveals that Mr. Kaplan's Complaint involves allegations that the Township violated the Open Public Meetings Act ("OPMA"), N.J.S.A. 10:4-6 to - 21. Indeed, Mr. Kaplan admits as much when he states that the Mayor's request for ratification of a decision that was made at a prior meeting is a "possible violation of the Open Public Meetings Act (Sunshine Law), but not an O.P.R.A. violation." Mr. Kaplan's Complaint also makes specific reference to N.J.S.A. 10:4-6, and goes on to state that it is his belief that the conduct of the Winslow Township Governing Body violates OPMA. In conclusion, Mr. Kaplan asserts: "it is apparent to me that Winslow Township has chosen to violate the O.P.R.A. in an effort to cover-up and withhold information of a Open Public Meeting Act violation." Mr. Kaplan's specious allegations could not be farther from the truth.

The Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1, *et seq.*, enumerates the duties and responsibilities of the Government Records Council ("GRC"). To that end, the GRC is specifically mandated to:

- establish an informal mediation program to facilitate the resolution of disputes regarding access to government records;
- receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian;

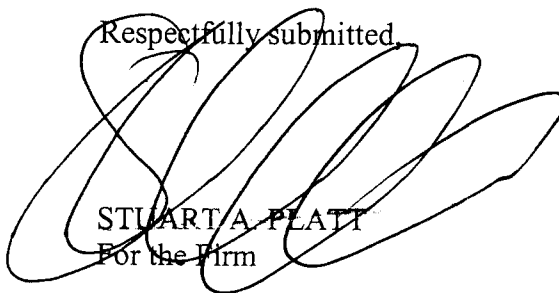
- issue advisory opinions, on its initiative, as to whether a particular type of record is a government record which is accessible to the public;
- prepare guidelines and an informational pamphlet for use by records custodians in complying with the law governing access to public records;
- prepare an informational pamphlet explaining the public's right of access to government records and the methods for resolving disputes regarding access, which records custodians shall make available to persons requesting access to a government record;
- prepare lists for use by records custodian of the types of records in the possession of public agencies which are government records;
- make training opportunities available for records custodians and other public officers and employees which explain the law governing access to public records; and
- operate an informational website and a toll-free helpline staffed by knowledgeable employees of the council during regular business hours which shall enable any person, including records custodians, to call for information regarding the law governing access to public records and allow any person to request mediation or to file a complaint with council when access has been denied.

N.J.S.A. 47:1A-7(b). To be sure, OPRA does not authorize the GRC to adjudicate whether there has been a violation of OPMA. Indeed, the GRC has specifically held on at least two separate occasions that it is without jurisdiction to determine whether a custodian has complied with OPMA or any statute other than OPRA. See Vincent Donato v. Borough of Emerson, GRC Complaint No. 2005-125 (interim order dated February 20, 2007), adopted in its entirety by way of final decision dated March 28, 2007; Thomas Allegretta v. Borough of Fairview, GRC Complaint No. 2005-132 (December 2006).

Mr. Kaplan has declined mediation. Accordingly, it is incumbent upon the GRC to first determine "whether the Complaint is within its jurisdiction or frivolous or without any reasonable factual basis." N.J.S.A. 47:1A-7(e); N.J.A.C. 5:105-2.1(d). For the reasons set forth above, it is clear that the subject Complaint is outside the GRC's jurisdiction. Therefore, it is respectfully requested that the GRC so find and that a written decision to that effect dismissing the Complaint be issued in accordance with the aforesaid statutory provision and regulation.

Thank you for your time and attention to this matter. Should you have any questions or concerns, or need any further information, please do not hesitate to contact me.

Respectfully submitted,



STUART A. PLATT
For the Firm

SP/jcde

cc: Debbie Puchakjian, RMC - Township Clerk (via e-mail)
Joseph Gallagher, Jr., Township Administrator (via e-mail)
Paul S. Kaplan (via certified: 7006 3450 0003 5592 3745 and regular mail)

August 10, 2010

Government Records Council

P.O. Box 819

Trenton, New Jersey 08625-0819

RE: Paul S. Kaplan vs. Winslow Township Open Public Records Act Complaint

No case number has been received as of yet.

I have received a copy of a letter dated August 9, 2010 from Stuart Platt of Marrazzo and Platt council for the defendant (custodian) for the above noted matter.

It is apparent that Mr. Platt is either not familiar with O.P.R.A. complaints or has chosen to address nothing in his letter in a hope that the G.R.C. will dismiss the matter without careful review.

With prior experience with the G.R.C., I have personal knowledge that the G.R.C. does extensive review of the complaints it receives. And such dribble from attorneys is hopefully not the norm. However I'm confident that the G.R.C. has successfully dealt with such nonsense on occasion in the past.

In review of my complaint the G.R.C. will able to identify that the complaint stems from two separate denials of the same email document requested.

The references (and videos provided to the G.R.C.) to the violations of the Open Public Meetings Act is merely to demonstrate that the email document being denied is not an intra-office memo as both rejection letters indicate. The documentation provided showing that a meeting took place by email (and by definition of the OPMA) makes this a valid complaint that the email record in question should be obtainable through the OPRA process.

I doubt there is any confusion on behalf of the G.R.C. regarding this complaint. However, please advise if further explanation is required.

Sincerely,

PK FILE COPY

Paul S. Kaplan

C.c. Marrazo & Platt via fax (856) 784-8050 and regular U.S. Mail