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Thursday, June 7, 2018

VIA eCOURTS

Superior Court of New Jersey

Somerset County Courthouse
North Bridge Street
Somerville, New Jersey 08876-1262

RE: KEEP A LIBRARY IN WATCHUNG and RICHARD STEINFELD v. BOROUGH OF WATCHUNG, COUNCIL, BOROUGH OF WATCHUNG, and ADMINISTRATOR, BOROUGH OF WATCHUNG
Docket Number: SOM-L-000710-18

Dear Judge:

My office represents the plaintiffs, Keep a Library in Watchung and Richard Steinfeld, in the above-captioned matter. Please accept this letter brief in lieu of a more formal brief in support of the plaintiff's application for summary relief as to Count Seven of the First Amended Complaint in Lieu of Prerogative Writs and for Declaratory and Injunctive Relief.

BACKGROUND

On April 19, 2018, the Council of the Borough of Watchung passed a resolution that called for the dissolution of the Watchung Borough Public Library. After it did so, my office filed five requests on behalf of Keep a Library in Watchung and Richard Steinfeld under the Open Public Records Act seeking to obtain information about the Watchung Borough Public Library and the legal propriety of the actions taken by the Council of the Borough of Watchung. Four of those requests

were responded to. The fifth request, which was faxed to the Borough of Watchung on May 16, 2018, was not and has not been responded to as of the date of this filing. It sought to obtain:

A copy of the resolution or ordinance that was passed by the governing body of the Borough of Watchung authorizing the Borough of Watchung to purchase the property located at 12 Stirling Drive.

This request was made because the property referred to in it, i.e., 12 Stirling Drive, is the very property upon which the Watchung Borough Public Library is situated, which was purchased by the Borough of Watchung in 1973.

On May 23, 2018, Regina Angelo, the Administrative Assistant for the Clerk of the Borough of Watchung, e-mailed my office to advise it that my clients' "request ha[d] been received" and was "being processed," but that an "extension to Monday, June 4th, [was] needed." This e-mail did not indicate that the record requested was in storage or archived.

In the interim, on June 1, 2018, Keep a Library in Watchung and Richard Steinfeld filed and served a Complaint in Lieu of Prerogative Writs and for Declaratory and Injunctive Relief upon the Borough of Watchung, the Council of the Borough of Watchung, and the Administrator of the Borough of Watchung to challenge the actions that were taken by the Governing Body of the Borough of Watchung on April 19, 2018.

On June 4, 2018, the Borough of Watchung had still not responded to the fifth request. Accordingly, Keep a Library in Watchung and Richard Steinfeld filed an Order to Show Cause and a First Amended Complaint in Lieu of Prerogative Writs and for Declaratory and Injunctive Relief. Count Seven of the First Amended Complaint in Lieu of Prerogative Writs seeks relief under the Open Public Records Act.

LEGAL ARGUMENT

JUDGMENT SHOULD BE ENTERED IN FAVOR OF KEEP A LIBRARY IN WATCHUNG AND RICHARD STEINFELD WITH RESPECT TO COUNT SEVEN OF FIRST AMENDED COMPLAINT IN LIEU OF PREROGATIVE WRITS AND AN ORDER SHOULD BE ENTERED REQUIRING THE BOROUGH OF WATCHUNG, THE COUNCIL OF THE BOROUGH OF WATCHUNG, AND THE ADMINISTRATOR OF THE BOROUGH OF WATCHUNG TO PROVIDE THE DOCUMENT REQUESTED UNDER THE OPEN PUBLIC RECORDS ACT

Keep a Library in Watchung and Richard Steinfeld respectfully submit that judgment must be entered in favor of Keep a Library in Watchung and Richard Steinfeld with respect to Count Seven of their First Amended Complaint in Lieu of Prerogative Writs and for Declaratory and Injunctive Relief and that an Order should be entered requiring the Borough of Watchung, the Council of the Borough of Watchung, and the Administrator of the Borough of Watchung to provide the document requested under the Open Public Records Act.

The Open Public Records Act mandates that “government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest.” Libertarian Party of Cent. New Jersey v. Murphy, 384 N.J. Super. 136, 139 (App. Div. 2006) (citing N.J.S.A. 47:1A-1). The purpose of the Open Public Records Act “is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.” Asbury Park Press v. Ocean County Prosecutor’s Office, 374 N.J. Super. 312, 329 (Law Div. 2004). It was enacted because “knowledge is power in a democracy” and because “without access to information . . . citizens cannot monitor the operation of our government or hold public officials accountable for their actions.” Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489, 502 (2011).

In this case, the document sought is a “government record” under the Open Public Records Act, which defines a “government record” as,

any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document,

information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof.

[N.J.S.A. 47:1 A-1.1.]

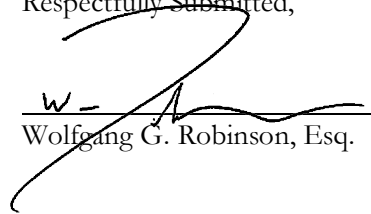
As such, a response was required within seven business days after May 16, 2018, i.e., by May 25, 2018. None was provided. Instead, on May 23, 2018, Regina Angelo, the Administrative Assistant for the Clerk of the Borough of Watchung, advised that more time was needed but that a response would be provided by June 4, 2018. June 4, 2018, has come and gone but the record has still not been produced. The failure to respond to Keep a Library in Watchung and Richard Steinfeld's request must, at this point, be "deemed denied" pursuant to N.J.S.A. 47:1A-5(i).

Accordingly, as the custodian of the record, the Borough of Watchung must now prove that its denial of access was justified. N.J.S.A. 47:1 A-6; Asbury Park Press v. Monmouth County, 406 N.J. Super. 1, 7 (App. Div. 2009). Respectfully it is not, the document requested is not confidential. It is a public record and must be disclosed because it contains "information" that may be necessary for the residents of the Borough of Watchung to "hold [its] public officials accountable for their actions" respecting the Watchung Borough Public Library. Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489, 502 (2011).

Therefore, for the foregoing reasons, Keep a Library in Watchung and Richard Steinfeld respectfully submit that the Superior Court of New Jersey should (1) enter an order requiring the Borough of Watchung, the Council of the Borough of Watchung, and the Administrator of the Borough of Watchung to provide the document requested under the Open Public Records Act, (2) enter judgment in favor of Keep a Library in Watchung and Richard Steinfeld with respect to Count Seven of their First Amended Complaint in Lieu of Prerogative Writs and for Declaratory and

Injunctive Relief, and (3) award Keep a Library in Watchung and Richard Steinfeld reasonable counsel fees as the prevailing party of this claim.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'W. G. Robinson', is written over a horizontal line. The signature is stylized and somewhat cursive.

Wolfgang G. Robinson, Esq.