

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation

Andrew Bayer Esq./ 033871988

Court Plaza South

21 Main Street, Suite 200

Hackensack, NJ 07601

(201) 488-8200

Attorneys for Plaintiffs

Englewood One Community Corp., Inc.,

<p>ENGLEWOOD ONE COMMUNITY, INC.,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>CITY OF ENGLEWOOD, and YANCY WAZIRMAS (in her official capacity as records custodian),</p> <p style="text-align: center;">Defendants,</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY</p> <p>DOCKET NO.: BER-L- _____</p> <p style="text-align: center;"><u>Civil Action</u></p> <p style="text-align: center;">VERIFIED COMPLAINT</p>
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Plaintiff Englewood One Community, Inc. (“Plaintiff”), by and through its attorneys Pashman Stein Walder Hayden P.C. by way of Complaint against Defendants, say:

1. This is an action alleging violation of the New Jersey Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1, *et seq.*, and the common law right of access, seeking records from the City of Englewood.

2. In order to learn more about matters of tremendous public interest related to the City of Englewood’s settlement agreement with Fair Share Housing Center and related municipal actions required of the City including a misguided and vastly overbroad overlay zoning ordinance, Plaintiff, through counsel, submitted two OPRA requests on August 15, 2023 and August 22, 2023, respectively, generally seeking emails from various Englewood officials. Since

receiving the OPRA requests, Defendants initially granted themselves several incremental extensions, which Plaintiff agreed to in good faith. Defendants repeatedly ignored their own deadlines, and often required Plaintiff to nudge them for a response or to provide an update. After several extensions, Defendants eventually produced a very small number of responsive documents, and on September 22, 2023, requested one final 1-week extension. The Clerk explained that her office needed 1 more week to completely respond to the OPRA requests because she had received about 2,000 emails from various custodians, and needed that time to review them prior to producing them to Plaintiff. Plaintiff agreed. On September 28, 2023 (over two months after receiving the OPRA requests) the Clerk sent an email advising – and despite her previous email that she was in possession of about 2,000 emails - that she apparently just now realized that Plaintiff’s OPRA requests asked for emails, but she her office would be preoccupied with the upcoming November election, and therefore, no further documents would be provided until at least November 30, 2020 (an extension of over 2 months). In other words, Englewood does not respond to OPRA requests during elections.

3. Plaintiff did not agree to this new 2-month extension, especially when the purported reason for it (the Clerk just realized Plaintiff’s OPRA requests asked for emails) was flatly contradicted by the Clerk’s prior email explaining she was in possession of about 2,000 emails potentially responsive to Plaintiff’s OPRA requests.

4. It has been approximately 2 months since Plaintiff filed its OPRA requests and Defendants have failed to provide any meaningful response. Given the pace at which Defendants have responded to the OPRA requests so far, and especially because the requested emails relate to an extremely controversial, and potentially very embarrassing, subject matter for certain public

officials (as discussed below), Plaintiff is seriously concerned that Defendants intend to keep delaying their response in hopes that Plaintiff will just forget about its Requests and the matter will just fizzle out. Accordingly, Plaintiff files this lawsuit to compel Defendants to fulfil his OPRA requests.

PARTIES

5. Plaintiff Englewood One is an independent not-for-profit corporation federal tax-exempt organization under Internal Revenue Code 501(c)(3) with its principal place of business located at P.O. 8126, Englewood, NJ. Englewood One's mission is to connect and share information about City government and the community and help residents access information and participate in the workings of City government. The organization operates a news platform that opens the doors of City government by informing, educating and promoting active participation around the important decisions by city officials that impact the residents' daily lives.

6. Defendant City of Englewood ("Englewood") is a municipal corporation of the State of New Jersey and is located at 2-10 North Van Brunt Street, Englewood, New Jersey.

7. Defendant Yancy Wazirmas (the "Clerk" and collectively with Englewood, the "Defendants") is the records custodian of Defendant Englewood. Upon information and belief, the Clerk maintains an office at 2-10 North Van Brunt Street, Englewood, New Jersey.

8. Englewood "ma[kes], maintain[s] or ke[eps] on file," or "receive[s] in the course of . . . its official business" government records, and is thereby subject OPRA.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction pursuant to N.J.S.A. 47:1A-6.

10. Venue is properly laid in Bergen County because Defendants are located in Bergen County and because the cause of action arose in Bergen County. R. 4:3-2(a).

FACTUAL ALLEGATIONS

11. On August 8, 2023, despite overwhelming public concern, Englewood adopted Ordinance No. 23-22 (the “Ordinance”) which drastically modified the zoning of the City and would now permit certain development which would significantly change the character of certain areas, supposedly in furtherance of the City’s *Mount Laurel* obligations. The City Council and other government bodies – which acknowledge the Ordinance is inconsistent with the City’s Master Plan - either could not or would not explain to the concerned residents the details behind how the new zoning plan came to pass and how and why the areas which would be impacted by the new zoning were selected. To get information the government would not provide, Plaintiff, through counsel submitted two (2) OPRA requests to Englewood.¹

12. On August 15, 2023, Plaintiff, through counsel, filed an OPRA request seeking:

1. Audio or video record of April 27, 2023 planning board meeting
2. Audio or video record of August 7, 2023 planning board meeting
3. Audio or video record of August 8, 2023 council meeting
4. Between the time period of January 1, 2019 to present,

¹ On September 22, 2023, Plaintiff and other concerned residents filed a Complaint in Lieu of Prerogative Writ, challenging the Ordinance and other related government actions. That matter is proceeding in this Court under the docket number BER-L-5110-23. The lawsuit challenges the Ordinance on several ground, including that the zoning is invalid. The lawsuit also alleges that certain government officials who were involved in the re-zoning plan have purchased, through an LLC, property within the City immediately prior to it being marked for “upzoning.”

all communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city planner, the city engineer, the Fair Share Housing Center and/or Banisch Associates Inc., concerning the following subject matters:

A. The litigation captioned In the Matter of the Application of the City of Englewood, Docket No. BER-L-4069-19

B. The Settlement Agreement dated November 1, 2022 between the City of Englewood and Fair Share Housing Center (the "Fair Share Housing Settlement Agreement")

C. The Report of the Special Master Regarding the Fairness of a Settlement Agreement between the City of Englewood and Fair Share Housing Center prepared by Banisch Associates, Inc.

D. Ordinance 23-22

E. Ordinance 23-21

F. Resolution 267-08-08-23

G. Resolution 268-08-08-23

5. All reports, memoranda and planning studies prepared by the city planner, John P. Szabo and/or Burgis Associates, in connection with the litigation captioned In the Matter of the Application of the City of Englewood, Docket No. BER-L-4069-19

Attached hereto as **Exhibit A** is a true and accurate copy of the August 15, 2023 OPRA request and Defendants' initial response.

13. On August 24, 2023 (the 7th business day after the request was received), Englewood’s “Licensing Clerk” emailed an initial response advising that Englewood needed to 4 week extension to continue gathering the information and for attorney review.” Exhibit A.²

14. On August 22, 2023, Plaintiff, through counsel, submitted a second OPRA request seeking:

1. All communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning the Special Council Meeting Scheduled for August 22, 2023.

2. All communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning the notice emailed to residents on or about August 21, 2023 from wisotskyforenglewood@gmail.com to residents with the subject line “There is NOT an official City meeting tonight”.

Attached hereto as **Exhibit B** is a true and accurate copy of Plaintiff’s August 22, 2023 OPRA request and Defendants’ initial response.

15. On August 31, 2023 (the 7th business day after the request was received), Englewood’s Licensing Clerk response that Defendants required a 2 week extension to respond to this Request “to continue gathering the information and attorney review.” Exhibit B.

16. On September 15, 2023, Plaintiff’s counsel sent a follow-up email to Defendants because the requested extension had expired, and no records or update was received. Attached hereto as **Exhibit C** is a true and accurate copy of the relevant email chain.

² Besides OPRA expressly requiring the municipality’s Custodian, and not its attorney, to “excise from a copy of the record that portion which the custodian asserts is exempt from access”, N.J.S.A. 47:1A-5(g), there is no good faith basis for Defendants to delay responding to the portions of Plaintiff’s requests seeking audio recordings of public meetings to conduct attorney review.

17. Later that day (September 15, 2023) Defendants sent an email attaching: (1) a link to the City’s website possessing “Affordable Housing Documents”; (2) a link to the City’s YouTube channel containing a video of the August 8, 2023 meeting, and (3) a link to download a video of the April 27, 2023 Planning Board meeting. Exhibit C.³

18. In other words, it took Defendants 4 weeks to provide Plaintiff with a hyperlink to its own website and YouTube Channel.

19. With respect to all other requested records – Items 4(a-g) and 5 of the August 15th Request and the entirety of the August 22nd Request – Defendants advised that they “are still gathering communications and still pending attorney review (sic)”. Exhibit C.

20. Later that day (September 15, 2023) Plaintiff’s counsel responded, thanking Defendants for their limited production, but also advising their failure to provide a specific time frame to complete their response was unacceptable. Accordingly, Plaintiff agreed to “one last and final extension of 9/21 to receive a response to both OPRA requests”. Exhibit C.

21. On Friday September 22, 2023, the day after the extended deadline for Defendants to provide a complete response, the Clerk sent an email that she “had [her] dates mixed up. Will be providing a response today.” Attached hereto as **Exhibit D** is a true and accurate copy of the relevant email chain.

22. Later that evening, at 5:04 p.m., the Clerk sent another email advising that she was “still in the office working on [Defendants’ response]. I have to weed through hundreds of emails.” Exhibit D.

³ Although two separate OPRA requests were submitted, the parties began communicating about both requests collectively at this point.

23. About an hour later, at 5:58 p.m., the Clerk sent another email that she was just “reminded” that she has to “put an agenda together” for a meeting scheduled for September 26, 2023. The Clerk asked for “one more week extension for me to finish going through **2,000 emails** produced[.]” The Clerk also asked, “**what besides emails** and items from Planner (still waiting on response) do I still owe you?” Exhibit D (emphasis added).

24. Plaintiff’s counsel responded shortly after, consenting to “a last and final extension (for real this time) until next Thursday. That will have given Englewood 5 weeks to respond to both OPRA requests.” Plaintiff’s counsel advised that except for the three internet links included in Defendants’ September 15th partial response, every single item on both OPRA requests remains open. Exhibit D.

25. On September 28, 2023, representing that there was apparently some misunderstanding and Defendants did not realize that Plaintiff’s OPRA request was seeking communications. *Compare, supra.* ¶ 27, Exhibit D (email from Clerk expressly referring to her collection and review of approximately 2,000 emails). The Clerk explained that apparently due to the upcoming November election, she and her staff would have no time to respond to OPRA requests, and therefore, Defendants were taking an extension until November 30th “to provide us time to weed through emails and properly review them.”

Dear Mr. Levy,

When you pointed out that links you were provided were not responsive to your request, we reviewed your request and realized you were not seeking copies of the actual resolutions and ordinances but the correspondence related to them.

IT is working to pull the records from the server, but because the search parameters you provided were vague and go back several years, it’s going to take them into next week to provide me with

those records.

It is anticipated that the majority of these records will fall under attorney/client privilege and will require careful review by the City's attorneys.

For now, we are extending our response time to November 30th to provide us time to weed through emails and properly review them. My time, and my staff's time, is limited in the next month as we prepare for the General Election and the efforts to provide you with a response in a shorter time frame will greatly disrupt the operations of my department.

Attached hereto as **Exhibit E** is a true and accurate copy of the relevant email.⁴

26. Plaintiff did not consent to the requested 2-month extension.

27. Shortly after on the same date, Defendants transmitted a small collection of records responsive to Plaintiff's OPRA requests over a series of 4 emails. The records provided included arguable unresponsive documents which clearly could have been produced much earlier without the need for several extensions. Attached hereto as **Exhibit F** are true and accurate copies of the 4 transmittal emails; the descriptions of the attached documents can be seen from the emails, but are not attached in the interest of brevity. By limited example, Defendants produced several copies of the invitations circulated to join the relevant Zoom Council meetings, and copy of the "Agenda Packet" of certain relevant Council meetings.

28. As of the time of this filing, Defendants have not produced any records in response to Items 4(a-g) and 5 of the August 15, 2023 OPRA request, and their response to all requested records in the August 22, 2023 OPRA request is materially incomplete.

⁴ There was no indication whether any official searched their personal email accounts, which they are known to use to conduct official business. *See e.g.* Exhibit B.

29. Prior to initiating this lawsuit, Plaintiff's counsel contacted Englewood's attorney to inform him about Englewood's improper handling of Plaintiff's OPRA requests and advised that Plaintiff would initiate litigation if Defendants did not respond to the OPRA requests in a timely manner. As of the time of this filing, Englewood's attorney has not responded to these communications.

FIRST COUNT
(Violation of OPRA)

30. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth at length herein.

31. Pursuant to N.J.S.A. 47:1A-1, all government records must be "readily accessible" to the citizens of this state unless specifically exempted by law.

32. The records requested by Plaintiff are "government records" as that term is defined by OPRA because they were "made, maintained or kept on file," or "received in the course of ... [Englewood's] official business." N.J.S.A. 47:1A-1.1.

33. Records must be produced "as soon as possible, but not later than seven business days after receiving the request." N.J.S.A. 47:1A-5(i)(1).

34. Where an agency fails to respond by the relevant deadline, "the failure to respond shall be deemed a denial of the request." N.J.S.A. 47:1A-5(i)(1).

35. Defendants failed to produce the responsive records within seven business days of the requests.

36. Instead, they unilaterally gave themselves repeated extensions to fulfill the requests. Then, they repeatedly failed to meet their own self-imposed deadlines, and most recently, unilaterally granted themselves a 2-month extension due to an upcoming election.

37. To date, more than two months have passed, and Defendants have still not produced any responsive records to several parts of Plaintiffs OPRA request.

38. Accordingly, Defendants have violated OPRA by:

- a. Failing to grant or deny access to the requested records within seven (7) business days as required by OPRA, in violation of N.J.S.A. 47:1A-5(i);
- b. Failing to make the records requested “readily accessible for inspection, copying, or examination” in violation of N.J.S.A. 47:1A-1;
- c. Failing to make records available by the date advised by the custodian, constituting a deemed denial pursuant to N.J.S.A. 47:1A-5(i)(1);
- d. Failing to grant access to non-exempt portions of government records, in violation of N.J.S.A. 47:1A-5(g);
- e. Failing to prove that the denial of access is authorized by law, in violation of N.J.S.A. 47:1A-6.

WHEREFORE, Plaintiff demands judgment against Defendants:

- a. Declaring said actions of Defendants to be in violation of OPRA, N.J.S.A. 47:1A-1 *et seq.* for failing to provide lawful access to government records;
- b. Directing Defendants to release the requested records to Plaintiff forthwith;
- c. Alternatively, if the Court believes that any information may be exempt from public access, directing Defendants to produce the records for *in camera* review;
- d. Ordering Defendants to preserve the requested records pending resolution of these proceedings or as otherwise required by law;

- e. Awarding counsel fees and costs pursuant to N.J.S.A. 47:1A-6; and
- f. For such other relief as the Court may deem just and equitable.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Englewood One Community Corp. Inc.

Dated: October 30, 2023

By: /s/ Andrew Bayer

Andrew Bayer

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, by his attorney, hereby certifies that the matter in controversy is the subject of the action pending in the Superior Court of New Jersey *Englewood One Community Corp. Inc. et. at. v. City of Englewood et. at.*, BER-L-5110-23. Except for this action, Plaintiff further certifies that he has no knowledge of any contemplated action or arbitration regarding the subject matter of this action and that Plaintiff is not aware of any other parties who should be joined in this action.

PASHMAN STEIN WALDER HAYDEN
A Professional Corporation,
Attorneys for Plaintiff,
Englewood One Community Corp. Inc.

Dated: October 30, 2023

By: /s/ Andrew Bayer

Andrew Bayer

VERIFICATION

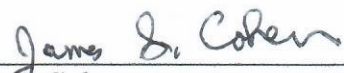
I, James S. Cohen, of full age, deposes and say:

1. I am a citizen of the State of New Jersey, and member of Englewood One Community Corp. Inc., Plaintiff in the foregoing Verified Complaint.

2. The allegations of the Verified Complaint are true. The said Verified Complaint is made in truth and good faith and without collusion, for the causes set forth herein.

3. All documents attached to the Verified Complaint and Brief are true copies and have not been redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents unless so stated.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



James S. Cohen

Dated: October 29 2023

EXHIBIT A

From: [Ana Paton](#)
To: [Zachary Levy](#)
Cc: [Yancy Wazirmas](#)
Subject: OPRA Request Received August 15, 2023
Date: Thursday, August 24, 2023 4:47:47 PM

EXTERNAL: This email originated from outside of the organization.

Levy,

In regard to the above referenced OPRA request, we are asking a four week extension, to continue gathering the information and for attorney review.

Best regards,
Ana

Ana Paton

Licensing Clerk/ Clerk's Office
2-10 North Van Brunt Street
Englewood, NJ 07631
apaton@cityofenglewood.org
(201)510-8213

From: Do Not Reply [mailto:noreply@govpilot.com]
Sent: Tuesday, August 15, 2023 1:57 PM
To: admin@govpilot.com; Ana Paton <apaton@cityofenglewood.org>; Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Simaza Kataw <skataw@cityofenglewood.org>
Subject: New: OPRA Request



City of Englewood
OPRA

Reference # OPR-2023-00422
Date: 8/15/2023 1:57:22 PM

Please be advised that a new OPRA request has been submitted via the online portal.

Please review at your earliest convenience and assign requests to appropriate departments. Note that when you begin reviewing request you will have 7 business days to approve or respond their request.

Requestor Information

Name: Zachary Levy

Address: 21 Main Street Suite 200

City: Hackensack State: NJ Zip: 07601

Phone # (201) 270-5474 Email: zlevy@pashmanstein.com

The request:

On behalf of a client, I am requesting the following records pursuant to OPRA and the common law right of access:

1. Audio or video record of April 27, 2023 planning board meeting
2. Audio or video record of August 7, 2023 planning board meeting
3. Audio or video record of August 8, 2023 council meeting
4. Between the time period of January 1, 2019 to present, all communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city planner, the city engineer, the Fair Share Housing Center and/or Banisch Associates Inc., concerning the following subject matters:
 - A. The litigation captioned In the Matter of the Application of the City of Englewood, Docket No. BER-L-4069-19
 - B. The Settlement Agreement dated November 1, 2022 between the City of Englewood and Fair Share Housing Center (the "Fair Share Housing Settlement Agreement")
 - C. The Report of the Special Master Regarding the Fairness of a Settlement Agreement between the City of Englewood and Fair Share Housing Center prepared by Banisch Associates, Inc.
 - D. Ordinance 23-22
 - E. Ordinance 23-21
 - F. Resolution 267-08-08-23
 - G. Resolution 268-08-08-23
5. All reports, memoranda and planning studies prepared by the city planner, John P. Szabo and/or Burgis Associates, in connection with the litigation captioned In the Matter of the Application of the City of Englewood, Docket No. BER-L-4069-19

The requestor has opted to receive the information by Email

Please log into [Govpilot](#) to view the application

EXHIBIT B

From: [Ana Paton](#)
To: [Zachary Levy](#)
Cc: [Yancy Wazirmas](#)
Subject: OPRA Request Received August 22, 2023
Date: Thursday, August 31, 2023 2:29:01 PM

EXTERNAL: This email originated from outside of the organization.

Levy,

In regard to the above referenced OPRA request, we are asking a two week extension, to continue gathering the information and attorney review.

Best regards,
Ana

Ana Paton

Licensing Clerk/ Clerk's Office
2-10 North Van Brunt Street
Englewood, NJ 07631
apaton@cityofenglewood.org
(201)510-8213

From: Do Not Reply [mailto:noreply@govpilot.com]
Sent: Tuesday, August 22, 2023 10:17 AM
To: admin@govpilot.com; Ana Paton <apaton@cityofenglewood.org>; Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Simaza Kataw <skataw@cityofenglewood.org>
Subject: New: OPRA Request



City of Englewood
OPRA

Reference # OPR-2023-00435
Date: 8/22/2023 10:16:47 AM

Please be advised that a new OPRA request has been submitted via the online portal.

Please review at your earliest convenience and assign requests to appropriate departments. Note that when you begin reviewing request you will have 7 business days to approve or respond their request.

Requestor Information

Name: Zachary Levy

Address: 21 Main Street Suite 200

City: Hackensack State: NJ Zip: 07601

Phone # (201) 488-8200 Email: zlevy@pashmanstein.com

The request:

On behalf of a client, i am requesting the following records pursuant to OPRA and the Common Law.

1. All communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning the Special Council Meeting Scheduled for August 22, 2023.
2. All communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning concerning the notice emailed to residents on or about August 21, 2023 from wisotskyforenglewood@gmail.com to residents with the subject line "There is NOT an official City meeting tonight".

The requestor has opted to receive the information by Email

Please log into [Govpilot](#) to view the application

EXHIBIT C

From: [Zachary Levy](#)
To: [Ana Paton](#)
Cc: [Yancy Wazirmas](#)
Subject: RE: OPRA Request Received August 22, 2023
Date: Friday, September 15, 2023 1:10:09 PM

Thank you, but I need a specific date for when I should expect to receive other documents. I will agree to one last and final extension of 9/21 to receive a complete response to both OPRA requests, which would have Englewood the initial seven business days, plus three weeks of extensions, to provide complete responses.

Zachary Levy

Associate
Pashman Stein Walder Hayden, P.C.
201.270.5474 Direct
zlevy@pashmanstein.com

From: Ana Paton <apaton@cityofenglewood.org>
Sent: Friday, September 15, 2023 12:30 PM
To: Zachary Levy <ZLevy@pashmanstein.com>
Cc: Yancy Wazirmas <ywazirmas@cityofenglewood.org>
Subject: OPRA Request Received August 22, 2023

EXTERNAL: This email originated from outside of the organization.

Good morning,

Below is the link to the City of Englewood "Affordable Housing Documents" Ordinance, Resolutions.

<https://www.cityofenglewood.org/1423/Affordable-Housing-Documents>

Below is the link for the YouTube for the Council Meeting of August 8, 2023

<https://www.youtube.com/@englewoodnjcitycouncilmeet5946/streams>

Below is the link for 4/27/23 Planning Board Meeting download

<https://www.dropbox.com/s/35iijddvrscocm/video1262096825.mp4?dl=0>

There was no Planning Board meeting on 8/7/23

We are still gathering communications and still pending attorney review.

Best regards,
Ana

Ana Paton

Licensing Clerk/ Clerk's Office
2-10 North Van Brunt Street
Englewood, NJ 07631
apaton@cityofenglewood.org
(201)510-8213

From: Zachary Levy [<mailto:ZLevy@pashmanstein.com>]
Sent: Friday, September 15, 2023 11:36 AM
To: Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Ana Paton <apaton@cityofenglewood.org>
Subject: RE: OPRA Request Received August 22, 2023

Good morning,

I have not received any response to this OPRA request yesterday as agreed. Englewood's response to my client's OPRA request (Reference # OPR-2023-00422) is also overdue pursuant to the extension I agreed to. My client requires the requested records for a time sensitive issue, so it will be a problem if Englewood's response keeps getting delayed further and further. If Englewood is able to make at least a partial response to both OPRA requests by COB today – both requests were submitted over three weeks ago, and many items request should be readily available - I can likely agree to another short extension for complete responses to be received. Can you please provide an update?

Thanks,

Zach

Zachary Levy

Associate
Pashman Stein Walder Hayden, P.C.
201.270.5474 Direct
zlevy@pashmanstein.com

From: Zachary Levy
Sent: Thursday, August 31, 2023 2:45 PM
To: Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Ana Paton <apaton@cityofenglewood.org>
Subject: RE: OPRA Request Received August 22, 2023

You're right. Sorry about that.

Zachary Levy

Associate

Pashman Stein Walder Hayden, P.C.

201.270.5474 Direct

zlevy@pashmanstein.com

From: Yancy Wazirmas <ywazirmas@cityofenglewood.org>

Sent: Thursday, August 31, 2023 2:38 PM

To: Zachary Levy <ZLevy@pashmanstein.com>; Ana Paton <apaton@cityofenglewood.org>

Subject: RE: OPRA Request Received August 22, 2023

EXTERNAL: This email originated from outside of the organization.

2 weeks is September 14th.

Yancy Wazirmas, RMC

City Clerk

City of Englewood

2-10 N. Van Brunt Street

Englewood, NJ 07631

Direct Line: 201-510-8212

Fax: 201-567-4395

Email: ywazirmas@cityofenglewood.org

www.cityofenglewood.org

****Summer Hours begin Monday, June 26th through September 1, 2023.****

Summer Hours Schedule:

Monday thru Thursday 8:30am – 5:00pm

Friday 8:30am – 1:30pm

From: Zachary Levy [<mailto:ZLevy@pashmanstein.com>]

Sent: Thursday, August 31, 2023 2:36 PM

To: Ana Paton <apaton@cityofenglewood.org>

Cc: Yancy Wazirmas <ywazirmas@cityofenglewood.org>

Subject: RE: OPRA Request Received August 22, 2023

We consent to a two week extension making the new deadline of September 7th. Given my client's time sensitive need for these records, please understand that your office should not expect our consent for any further extensions. I further ask that you produce responsive records on a rolling basis to the extent possible.

Zach

Zachary Levy

Associate

Pashman Stein Walder Hayden, P.C.

201.270.5474 Direct

zlevy@pashmanstein.com

From: Ana Paton <apaton@cityofenglewood.org>
Sent: Thursday, August 31, 2023 2:29 PM
To: Zachary Levy <ZLevy@pashmanstein.com>
Cc: Yancy Wazirmas <ywazirmas@cityofenglewood.org>
Subject: OPRA Request Received August 22, 2023

EXTERNAL: This email originated from outside of the organization.

Levy,

In regard to the above referenced OPRA request, we are asking a two week extension, to continue gathering the information and attorney review.

Best regards,
Ana

Ana Paton

Licensing Clerk/ Clerk's Office
2-10 North Van Brunt Street
Englewood, NJ 07631
apaton@cityofenglewood.org
(201)510-8213

From: Do Not Reply [<mailto:noreply@govpilot.com>]
Sent: Tuesday, August 22, 2023 10:17 AM
To: admin@govpilot.com; Ana Paton <apaton@cityofenglewood.org>; Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Simaza Kataw <skataw@cityofenglewood.org>
Subject: New: OPRA Request

City of Englewood
OPRA

Reference # OPR-2023-00435
Date: 8/22/2023 10:16:47 AM

Please be advised that a new OPRA request has been submitted via the online portal.

Please review at your earliest convenience and assign requests to appropriate departments. Note that when you begin reviewing request you will have 7 business days to approve or respond their request.

Requestor Information

Name: Zachary Levy

Address: 21 Main Street Suite 200

City: Hackensack State: NJ Zip: 07601

Phone # (201) 488-8200 Email: zlevy@pashmanstein.com

The request:

On behalf of a client, i am requesting the following records pursuant to OPRA and the Common Law.

1. All communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning the Special Council Meeting Scheduled for August 22, 2023.
2. All communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning concerning the notice emailed to residents on or about August 21, 2023 from wisotskyforenglewood@gmail.com to residents with the subject line "There is NOT an official City meeting tonight".

The requestor has opted to receive the information by Email

Please log into [Govpilot](#) to view the application

EXHIBIT D

From: [Zachary Levy](#)
To: [Yancy Wazirmas](#)
Cc: [Ana Paton](#)
Subject: Re: OPRA Request Received August 22, 2023
Date: Friday, September 22, 2023 6:30:15 PM

Thank you for the update. Since it is already the weekend and on account of the holiday on Monday, I'll consent to a last and final extension (for real this time) until next Thursday. That will have given Englewood 5 weeks to respond to both OPRA requests.

Except for the three internet links Ana emailed on September 15th, every item on both OPRA requests remains open.

Have a nice weekend,

Zach

Sent from my iPhone

On Sep 22, 2023, at 5:58 PM, Yancy Wazirmas
<ywazirmas@cityofenglewood.org> wrote:

EXTERNAL: This email originated from outside of the organization.

My City Manager just reminded me I have to put an agenda together for Tuesday's Special Meeting that has to go to the Council today.

Max one more week extension for me to finish going through 2,000 emails produced because of very vague word search provided.

In the meantime, what besides emails and items from Planner (still waiting for his response) do I still owe you?

Yancy Wazirmas, RMC
City Clerk
City of Englewood
2-10 N. Van Brunt Street
Englewood, NJ 07631

Direct Line: 201-510-8212
Fax: 201-567-4395
Email: ywazirmas@cityofenglewood.org
www.cityofenglewood.org

From: Yancy Wazirmas
Sent: Friday, September 22, 2023 5:04 PM

To: Zachary Levy <ZLevy@pashmanstein.com>; Ana Paton <apaton@cityofenglewood.org>
Subject: RE: OPRA Request Received August 22, 2023

Still in the office working on it. I have to weed through hundreds of emails.

Yancy Wazirmas, RMC
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City of Englewood
2-10 N. Van Brunt Street
Englewood, NJ 07631

Direct Line: 201-510-8212
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Email: ywazirmas@cityofenglewood.org
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From: Zachary Levy [<mailto:ZLevy@pashmanstein.com>]
Sent: Friday, September 22, 2023 10:02 AM
To: Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Ana Paton <apaton@cityofenglewood.org>
Subject: RE: OPRA Request Received August 22, 2023

Thank you. Can you also please tell me if/where city council meeting minutes are available online? On the "Agenda Center" page of the City's website, it looks like there are only about council 8 meetings which have their minutes available since 2022. There are none from 2023 except the January budget meeting.

Zachary Levy

Associate
Pashman Stein Walder Hayden, P.C.
201.270.5474 Direct
zlevy@pashmanstein.com

From: Yancy Wazirmas <ywazirmas@cityofenglewood.org>
Sent: Friday, September 22, 2023 9:29 AM
To: Zachary Levy <ZLevy@pashmanstein.com>; Ana Paton <apaton@cityofenglewood.org>
Subject: RE: OPRA Request Received August 22, 2023

EXTERNAL: This email originated from outside of the organization.

Had my dates mixed up. Will be providing you with a response today.

Yancy Wazirmas, RMC

City Clerk
City of Englewood
2-10 N. Van Brunt Street
Englewood, NJ 07631

Direct Line: 201-510-8212
Fax: 201-567-4395
Email: ywazirmas@cityofenglewood.org
www.cityofenglewood.org

From: Zachary Levy [<mailto:ZLevy@pashmanstein.com>]
Sent: Friday, September 15, 2023 1:10 PM
To: Ana Paton <apaton@cityofenglewood.org>
Cc: Yancy Wazirmas <ywazirmas@cityofenglewood.org>
Subject: RE: OPRA Request Received August 22, 2023

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Zachary Levy

Associate
Pashman Stein Walder Hayden, P.C.
201.270.5474 Direct
zlevy@pashmanstein.com

From: Ana Paton <apaton@cityofenglewood.org>
Sent: Friday, September 15, 2023 12:30 PM
To: Zachary Levy <ZLevy@pashmanstein.com>
Cc: Yancy Wazirmas <ywazirmas@cityofenglewood.org>
Subject: OPRA Request Received August 22, 2023

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Good morning,

Below is the link to the City of Englewood "Affordable Housing Documents" Ordinance, Resolutions.

<https://www.cityofenglewood.org/1423/Affordable-Housing-Documents>

Below is the link for the YouTube for the Council Meeting of August 8, 2023

<https://www.youtube.com/@englewoodnjcitycouncilmeet5946/streams>

Below is the link for 4/27/23 Planning Board Meeting download

<https://www.dropbox.com/s/35iijddvrscocm/video1262096825.mp4?dl=0>

There was no Planning Board meeting on 8/7/23

We are still gathering communications and still pending attorney review.

Best regards,

Ana

Ana Paton

Licensing Clerk/ Clerk's Office

2-10 North Van Brunt Street

Englewood, NJ 07631

apaton@cityofenglewood.org

(201)510-8213

From: Zachary Levy [<mailto:ZLevy@pashmanstein.com>]

Sent: Friday, September 15, 2023 11:36 AM

To: Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Ana Paton <apaton@cityofenglewood.org>

Subject: RE: OPRA Request Received August 22, 2023

Good morning,

I have not received any response to this OPRA request yesterday as agreed. Englewood's response to my client's OPRA request (Reference # OPR-2023-00422) is also overdue pursuant to the extension I agreed to. My client requires the requested records for a time sensitive issue, so it will be a problem if Englewood's response keeps getting delayed further and further. If Englewood is able to make at least a partial response to both OPRA requests by COB today – both requests were submitted over three weeks ago, and many items request should be readily available - I can likely agree to another short extension for complete responses to be received. Can you please provide an update?

Thanks,

Zach

Zachary Levy

Associate

Pashman Stein Walder Hayden, P.C.

201.270.5474 Direct

zlevy@pashmanstein.com

From: Zachary Levy

Sent: Thursday, August 31, 2023 2:45 PM

To: Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Ana Paton <apaton@cityofenglewood.org>

Subject: RE: OPRA Request Received August 22, 2023

Youre right. Sorry about that.

Zachary Levy

Associate

Pashman Stein Walder Hayden, P.C.

201.270.5474 Direct

zlevy@pashmanstein.com

From: Yancy Wazirmas <ywazirmas@cityofenglewood.org>

Sent: Thursday, August 31, 2023 2:38 PM

To: Zachary Levy <ZLevy@pashmanstein.com>; Ana Paton <apaton@cityofenglewood.org>

Subject: RE: OPRA Request Received August 22, 2023

EXTERNAL: This email originated from outside of the organization.

2 weeks is September 14th.

Yancy Wazirmas, RMC
City Clerk
City of Englewood
2-10 N. Van Brunt Street
Englewood, NJ 07631

Direct Line: 201-510-8212

Fax: 201-567-4395

Email: ywazirmas@cityofenglewood.org

www.cityofenglewood.org

****Summer Hours begin Monday, June 26th through September 1, 2023.****

Summer Hours Schedule:

Monday thru Thursday 8:30am – 5:00pm

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Cc: Yancy Wazirmas <ywazirmas@cityofenglewood.org>
Subject: RE: OPRA Request Received August 22, 2023

We consent to a two week extension making the new deadline of September 7th. Given my client's time sensitive need for these records, please understand that your office should not expect our consent for any further extensions. I further ask that you produce responsive records on a rolling basis to the extent possible.

Zach

Zachary Levy

Associate
Pashman Stein Walder Hayden, P.C.
201.270.5474 Direct
zlevy@pashmanstein.com

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Cc: Yancy Wazirmas <ywazirmas@cityofenglewood.org>
Subject: OPRA Request Received August 22, 2023

EXTERNAL: This email originated from outside of the organization.

Levy,

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Best regards,
Ana

Ana Paton

Licensing Clerk/ Clerk's Office
2-10 North Van Brunt Street
Englewood, NJ 07631
apaton@cityofenglewood.org
(201)510-8213

From: Do Not Reply [<mailto:noreply@govpilot.com>]

Sent: Tuesday, August 22, 2023 10:17 AM

To: admin@govpilot.com; Ana Paton <apaton@cityofenglewood.org>; Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Simaza Kataw <skataw@cityofenglewood.org>

Subject: New: OPRA Request

City of Englewood

OPRA

Reference # OPR-2023-00435

Date: 8/22/2023 10:16:47 AM

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Please review at your earliest convenience and assign requests to appropriate departments. Note that when you begin reviewing request you will have 7 business days to approve or respond their request.

Requestor Information

Name: Zachary Levy

Address: 21 Main Street Suite 200

City: Hackensack State: NJ Zip: 07601

Phone # (201) 488-8200 Email: zlevy@pashmanstein.com

The request:

On behalf of a client, i am requesting the following records pursuant to OPRA and the Common Law.

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The requestor has opted to receive the information by Email

Please log into [Govpilot](#) to view the application

<image001.gif>

EXHIBIT E

From: [Yancy Wazirmas](#)
To: [Zachary Levy](#)
Cc: [Ana Paton](#)
Subject: OPRA Response, Zachary Levy
Date: Thursday, September 28, 2023 12:57:54 PM

EXTERNAL: This email originated from outside of the organization.

Dear Mr. Levy,

When you pointed out that links you were provided were not responsive to your request, we reviewed your request and realized you were not seeking copies of the actual resolutions and ordinances but the correspondence related to them.

IT is working to pull the records from the server, but because the search parameters you provided were vague and go back several years, it's going to take them into next week to provide me with those records.

It is anticipated that the majority of these records will fall under attorney/client privilege and will require careful review by the City's attorneys.

For now, we are extending our response time to November 30th to provide us time to weed through emails and properly review them. My time, and my staff's time, is limited in the next month as we prepare for the General Election and the efforts to provide you with a response in a shorter time frame will greatly disrupt the operations of my department.

Regards,

Yancy Wazirmas, RMC
City Clerk
City of Englewood
2-10 N. Van Brunt Street
Englewood, NJ 07631

Direct Line: 201-510-8212
Fax: 201-567-4395
Email: ywazirmas@cityofenglewood.org
www.cityofenglewood.org

From: Zachary Levy [mailto:ZLevy@pashmanstein.com]
Sent: Friday, September 22, 2023 6:30 PM
To: Yancy Wazirmas <ywazirmas@cityofenglewood.org>
Cc: Ana Paton <apaton@cityofenglewood.org>
Subject: Re: OPRA Request Received August 22, 2023

Thank you for the update. Since it is already the weekend and on account of the holiday on monday, I'll consent to a last and final extension (for real this time) until next Thursday. That

will have given Englewood 5 weeks to respond to both OPRA requests.

Except for the three internet links Ana emailed on September 15th, every item on both OPRA requests remains open.

Have a nice weekend,

Zach

Sent from my iPhone

Zachary Levy

Associate

Pashman Stein Walder Hayden, P.C.

201.270.5474 Direct

zlevy@pashmanstein.com

On Sep 22, 2023, at 5:58 PM, Yancy Wazirmas
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In the meantime, what besides emails and items from Planner (still waiting for his response) do I still owe you?

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Direct Line: 201-510-8212
Fax: 201-567-4395
Email: ywazirmas@cityofenglewood.org
www.cityofenglewood.org

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To: Zachary Levy <ZLevy@pashmanstein.com>; Ana Paton

<apaton@cityofenglewood.org>

Subject: RE: OPRA Request Received August 22, 2023

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Direct Line: 201-510-8212
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Email: ywazirmas@cityofenglewood.org
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From: Zachary Levy [<mailto:ZLevy@pashmanstein.com>]
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To: Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Ana Paton <apaton@cityofenglewood.org>
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Associate
Pashman Stein Walder Hayden, P.C.
201.270.5474 Direct
zlevy@pashmanstein.com

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Had my dates mixed up. Will be providing you with a response today.

Yancy Wazirmas, RMC

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City of Englewood
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Associate
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201.270.5474 Direct
zlevy@pashmanstein.com

From: Ana Paton <apaton@cityofenglewood.org>
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<https://www.dropbox.com/s/35iijddvrscocm/video1262096825.mp4?dl=0>

There was no Planning Board meeting on 8/7/23

We are still gathering communications and still pending attorney review.

Best regards,
Ana

Ana Paton

Licensing Clerk/ Clerk's Office
2-10 North Van Brunt Street
Englewood, NJ 07631
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Zachary Levy

Associate
Pashman Stein Walder Hayden, P.C.
201.270.5474 Direct
zlevy@pashmanstein.com

From: Zachary Levy
Sent: Thursday, August 31, 2023 2:45 PM
To: Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Ana Paton <apaton@cityofenglewood.org>
Subject: RE: OPRA Request Received August 22, 2023

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Associate
Pashman Stein Walder Hayden, P.C.
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2 weeks is September 14th.

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Direct Line: 201-510-8212
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Zach

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Associate

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201.270.5474 Direct

zlevy@pashmanstein.com

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Cc: Yancy Wazirmas <ywazirmas@cityofenglewood.org>

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Best regards,

Ana

Ana Paton

Licensing Clerk/ Clerk's Office

2-10 North Van Brunt Street

Englewood, NJ 07631

apaton@cityofenglewood.org
(201)510-8213

From: Do Not Reply [<mailto:noreply@govpilot.com>]

Sent: Tuesday, August 22, 2023 10:17 AM

To: admin@govpilot.com; Ana Paton <apaton@cityofenglewood.org>; Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Simaza Kataw <skataw@cityofenglewood.org>

Subject: New: OPRA Request

City of Englewood

OPRA

Reference # OPR-2023-00435

Date: 8/22/2023 10:16:47 AM

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Requestor Information

Name: Zachary Levy

Address: 21 Main Street Suite 200

City: Hackensack State: NJ Zip: 07601

Phone # (201) 488-8200 Email: zlevy@pashmanstein.com

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Please log into [Govpilot](#) to view the application

<image001.gif>

EXHIBIT F

From: [Yancy Wazirmas](#)
To: [Zachary Levy](#)
Cc: [Ana Paton](#)
Subject: OPRA Response, Zachary Levy, Part 1
Date: Thursday, September 28, 2023 12:59:24 PM
Attachments: [\[Untitled\].pdf](#)
[Agenda Packet- 8-22-23 Special Meeting.pdf](#)
[Draft Agenda 8-22-23 Special Meeting_Redacted.pdf](#)
[FW_New OPRA Request.pdf](#)
[FW_Reverse 911 call-3_Redacted.pdf](#)
[FW_Special Council Meeting Scheduled for August 22 2023.pdf](#)
[Fwd_Agenda Packet- 8-22-23 Special Meeting.pdf](#)
[Fwd_Draft Agenda 8-22-23 Special Meeting_Redacted.pdf](#)
[Fwd_Mayor's Veto of Ord 23-22 2.pdf](#)
[Fwd_Reverse 911 call.pdf](#)
[Fwd_Special Council Meeting.pdf](#)
[Fwd_Webinar host invited you to be panelist for Special Council Meeting 8-22-2023.pdf](#)
[Mayor's Veto of Ord 23-22 .pdf](#)

EXTERNAL: This email originated from outside of the organization.

Dear Mr. Levy,

Response for this request will be provided in 4 parts.

The attachments in 2 of the emails marked "Draft" agenda were redacted. They fall under the exemption for "Intra-agency advisory, consultative or deliberative material."

In the email titled "FW_Reverse 911-3 call.pdf", a sentence was redacted because it contained "Intra-agency advisory, consultative or deliberative material."

Regards,

Yancy Wazirmas, RMC
City Clerk
City of Englewood
2-10 N. Van Brunt Street
Englewood, NJ 07631

Direct Line: 201-510-8212
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Subject: New: OPRA Request



City of Englewood

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1. All communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning the Special Council Meeting Scheduled for August 22, 2023.
2. All communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning concerning the notice emailed to residents on or about August 21, 2023 from wisotskyforenglewood@gmail.com to residents with the subject line "There is NOT an official City meeting tonight".

The requestor has opted to receive the information by Email

Please log into [Govpilot](#) to view the application

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From: [Yancy Wazirmas](#)
To: [Zachary Levy](#)
Cc: [Ana Paton](#)
Subject: OPRA Response, Zachary Levy, Part 2
Date: Thursday, September 28, 2023 1:07:03 PM
Attachments: [OPRA Request August 22 Redacted.pdf](#)
[RE Reverse 911 call-2 Redacted.pdf](#)
[RE Special Council Meeting Scheduled for August 22 2023-4 Redacted.pdf](#)
[There is NOT an official City meeting tonight.pdf](#)

EXTERNAL: This email originated from outside of the organization.

Dear Mr. Levy,

Redactions are as follows:

(1) email titled "FW Reverse 911-2 call.pdf", several sentences were redacted because they contained matter which is exempt as "Intra-agency advisory, consultative or deliberative material.";

(2) email titled "Re Special Meeting scheduled for August 22, 2023-4.pdf", portion from the City Attorney was redacted because it is exempt as "Attorney-client privileged communication."

Regards,

Yancy Wazirmas, RMC
City Clerk
City of Englewood
2-10 N. Van Brunt Street
Englewood, NJ 07631

Direct Line: 201-510-8212
Fax: 201-567-4395
Email: ywazirmas@cityofenglewood.org
www.cityofenglewood.org

From: Do Not Reply [<mailto:noreply@govpilot.com>]

Sent: Tuesday, August 22, 2023 10:17 AM

To: admin@govpilot.com; Ana Paton <apaton@cityofenglewood.org>; Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Simaza Kataw <skataw@cityofenglewood.org>

Subject: New: OPRA Request



City of Englewood

OPRA

Reference # OPR-2023-00435

Date: 8/22/2023 10:16:47 AM

Please be advised that a new OPRA request has been submitted via the online portal.

Please review at your earliest convenience and assign requests to appropriate departments. Note that when you begin reviewing request you will have 7 business days to approve or respond their request.

Requestor Information

Name: Zachary Levy

Address: 21 Main Street Suite 200

City: Hackensack State: NJ Zip: 07601

Phone # (201) 488-8200 Email: zlevy@pashmanstein.com

The request:

On behalf of a client, i am requesting the following records pursuant to OPRA and the Common Law.

1. All communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning the Special Council Meeting Scheduled for August 22, 2023.
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From: [Yancy Wazirmas](#)
To: [Zachary Levy](#)
Cc: [Ana Paton](#)
Subject: OPRA Response, Zachary Levy, Part 3
Date: Thursday, September 28, 2023 1:00:29 PM
Attachments: [d_There is NOT an official City Meeting Tonight 2 .pdf](#)
[d_There is NOT an official City meeting tonight.pdf](#)
[Re_Last nights meeting.pdf](#)
[Re_n Rezoning Engle_ood. Please_ote NO Redacted.pdf](#)
[Re_The Truth About Engle_ood s Affordable_ousing Settlement.pdf](#)
[Re_Tonights Meeting.pdf](#)
[Re_rgent Appeal_Support Mayor Wilde_s_eto of the Affordable_ousing Plan_Redacted.pdf](#)
[There is NOT an official City meeting tonight 2.pdf](#)
[There is NOT an official City meeting tonight.pdf](#)
[Webinar host invited you to be panelist for Special Council Meeting 8-22-2023 Cobb.pdf](#)
[Webinar host invited you to be panelist for Special Council Meeting 8-22-2023_offmann.pdf](#)

EXTERNAL: This email originated from outside of the organization.

Dear Mr. Levy,

The only redactions in these emails are for cell phone numbers.

Regards,

Yancy Wazirmas, RMC
City Clerk
City of Englewood
2-10 N. Van Brunt Street
Englewood, NJ 07631

Direct Line: 201-510-8212
Fax: 201-567-4395
Email: ywazirmas@cityofenglewood.org
www.cityofenglewood.org

From: Do Not Reply [<mailto:noreply@govpilot.com>]
Sent: Tuesday, August 22, 2023 10:17 AM
To: admin@govpilot.com; Ana Paton <apaton@cityofenglewood.org>; Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Simaza Kataw <skataw@cityofenglewood.org>
Subject: New: OPRA Request



City of Englewood
OPRA

Reference # OPR-2023-00435

Date: 8/22/2023 10:16:47 AM

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Please review at your earliest convenience and assign requests to appropriate departments. Note that when you begin reviewing request you will have 7 business days to approve or respond their request.

Requestor Information

Name: Zachary Levy

Address: 21 Main Street Suite 200

City: Hackensack State: NJ Zip: 07601

Phone # (201) 488-8200 Email: zlevy@pashmanstein.com

The request:

On behalf of a client, i am requesting the following records pursuant to OPRA and the Common Law.

1. All communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning the Special Council Meeting Scheduled for August 22, 2023.
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The requestor has opted to receive the information by Email

Please log into [Govpilot](#) to view the application

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From: [Yancy Wazirmas](#)
To: [Zachary Levy](#)
Cc: [Ana Paton](#)
Subject: OPRA Response, Zachary Levy, Part 4
Date: Thursday, September 28, 2023 1:00:24 PM
Attachments: [Webinar host invited you to be panelist for Special Council Meeting 8-22-2023 Maron.pdf](#)
[Webinar host invited you to be panelist for Special Council Meeting 8-22-2023 Rosenz elg.pdf](#)
[Webinar host invited you to be panelist for Special Council Meeting 8-22-2023 Wildes.pdf](#)
[Webinar host invited you to be panelist for Special Council Meeting 8-22-2023 Wilson.pdf](#)
[Webinar host invited you to be panelist for Special Council Meeting 8-22-2023 Wisots y.pdf](#)

EXTERNAL: This email originated from outside of the organization.

Dear Mr. Levy,

here are no redactions in the above emails.

his closes out this re quest.

Regards,

Yancy Wazirmas, RMC
City Clerk
City of Englewood
2-10 N. Van Brunt Street
Englewood, NJ 07631

Direct Line: 201-510-8212
Fax: 201-567-4395
Email: ywazirmas@cityofenglewood.org
www.cityofenglewood.org

From: Do Not Reply [<mailto:noreply@govpilot.com>]
Sent: Tuesday, August 22, 2023 10:17 AM
To: admin@govpilot.com; Ana Paton <apaton@cityofenglewood.org>; Yancy Wazirmas <ywazirmas@cityofenglewood.org>; Simaza Kataw <skataw@cityofenglewood.org>
Subject: New: OPRA Request



City of Englewood
OPRA

Reference # OPR-2023-00435

Date: 8/22/2023 10:16:47 AM

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Requestor Information

Name: Zachary Levy

Address: 21 Main Street Suite 200

City: Hackensack State: NJ Zip: 07601

Phone # (201) 488-8200 Email: zlevy@pashmanstein.com

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On behalf of a client, i am requesting the following records pursuant to OPRA and the Common Law.

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Andrew Bayer
Partner
abayer@pashmanstein.com
Direct: 732.405.3686



October 30, 2023

VIA ECOURTS

Hon. Carol V. Novey Catuogno, A.J.S.C.
Superior Court of New Jersey
10 Main Street
Hackensack, NJ 07302

**Re: *Englewood One Community Corp. Inc. v. City of Englewood et. al.*
Docket No. BER-L-**

Dear Judge Novey Catuogno:

This firm represents Englewood One Community Corp. Inc. (“Plaintiff”), the Plaintiff in the above-referenced matter. Plaintiff is a non-for-profit corporation tax-exempt organization under Internal Revenue Code 501(c)(3). Please accept this letter brief, in lieu of a more formal submission, in support of Plaintiff’s Order to Show Cause in this Open Public Records Act (OPRA) lawsuit. A Verified Complaint has also been filed.

PRELIMINARY STATEMENT

OPRA requires all agencies to produce requested records “as soon as possible, but not later than seven business days after receiving the request.” There may be certain circumstances that responding to an OPRA request within this time frame is not feasible and the requester and agency can compromise on a reasonable extension, but this does not obviate the agency’s requirements to still provide access to records as soon as possible.

In this case, after obtaining several week’s worth of incremental extensions to respond to Plaintiff’s two (2) OPRA requests – which are by no means extraordinary OPRA requests -

Bell Works
101 Crawfords Corner Road
Suite 4202
Holmdel, NJ 07733
Phone: 732.852.2481
Fax: 732.852.2482
www.pashmanstein.com

Court Plaza South
21 Main Street
Suite 200
Hackensack, NJ 07601
Phone: 201.488.8200
Fax: 201.488.5556

Hon. Carol V. Novey Catuogno, A.J.S.C.
October 30, 2023
Page 2



Defendants have now unilaterally granted themselves another two (2) month extension to respond for two purported reasons. *First*, and despite sending previous communications representing that she had received approximately 2,000 potentially responsive emails, the Clerk asserts that Defendants misunderstood Plaintiff's OPRA request and did not realize they asked for emails. *Second*, because there is an upcoming election in November, and it would be too disruptive for the Clerk's Office to respond to OPRA requests in the midst of their election preparations. It has now been over two (2) months since Plaintiff submitted its OPRA requests, and Defendants continue to evade their obligations under OPRA to make records available as soon as possible by asking for extension after extension, including for demonstrably false and illegitimate reasons (*i.e.* an upcoming election should not *enhance* the need to transparency in government) Accordingly, Plaintiff has no choice but to file this lawsuit seeking to compel Defendants to produce responsive records to its OPRA request without further undue delay.

STATEMENT OF FACTS

Plaintiff incorporates by reference the factual allegations set forth at length in the accompanying Verified Complaint. In sum, Plaintiff, through counsel, submitted two OPRA requests to Defendants on August 15, 2023 and August 23, 2023 respectively. *See* Exhibits A and B to the Verified Complaint. The OPRA requests sought access to various categories of records, including "communications" (*e.g.* emails) related to specific subject matter, and reports and other documents sent to/from the City Planner in connection with another pending litigation. Accordingly, under OPRA, access to the requested records was to be provided on or before August 24, 2023 and August 31, 2023, respectively.

Hon. Carol V. Novey Catuogno, A.J.S.C.
October 30, 2023
Page 3



Defendants took several incremental extensions, which Plaintiff’s counsel agreed to in good faith. It took Defendants approximately 1 month before producing *any* records; that initial “production” consisted of things like a hyperlink to Englewood’s website and a hyperlink to its YouTube Channel (*i.e.* it took Defendants 1 month to direct Plaintiff to its own website to locate a small portion of relevant records) where certain responsive information could be found.

Eventually, on September 22, 2023, the Clerk requested an extension of 1 week to finalize the City’s response to the remaining outstanding items. *See* Verified Complaint, Exhibit D. The Clerk represented that the final extension was necessary ***because she had received about 2,000 emails from the various custodians***, and she needed 1 more week to finalize her review of those 2,000 emails. *Id.* In that same email, the Clerk expressly recognized that all parts of Plaintiff’s OPRA requests for emails, and documents from the City Planner (who had apparently neglected the Clerk’s request to send her responsive records up until this time) were still owed. *Id.* Plaintiff’s counsel agreed to one last and final extension of until September 28, 2023 for Defendants to provide all outstanding records. *Id.*

On September 28, 2023, the Clerk sent an email to Plaintiff’s counsel, advising that her office would now need at least until November 30, 2023 to respond to Plaintiff’s OPRA requests. *Id.* Exhibit E. Apparently, and despite her previous email explaining that she was in possession of approximately 2,000 emails still in need of review, the Clerk asserted that she just now realized that the OPRA requests asked for copies of correspondences, and that “IT is working to pull the records from the server.” *Id.* Accordingly, “we are extending our response time to November 30th to provide us time to weed through emails and properly review them. My time, and my staff’s time, is limited in the next month as we prepare for the General Election and the efforts to provide

Hon. Carol V. Novey Catuogno, A.J.S.C.
October 30, 2023
Page 4

you with a response in a shorter time frame will greatly disrupt the operations of my department.”

Id. In other words, it would be too disruptive to respond to OPRA requests during an election.

Plaintiff did not consent to this 2-month extension.¹

As of the time of this filing – over two months since Plaintiff submitted its OPRA requests - Defendants have not produced any records in response to Items 4(a-g) and 5 of the August 15, 2023 OPRA request, and their response to all requested records in the August 22, 2023 OPRA request is materially incomplete. *See* Verified Complaint, ¶ 32.

LEGAL ARGUMENT

I. DEFENDANTS VIOLATED OPRA BY FAILING TO RESPOND TO HIS OPRA REQUESTS WITHIN THE STATUTORY DEADLINES AND REPEATEDLY FAILING TO BLOW THEIR OWN SELF-IMPOSED DEADLINES

“An informed citizenry is essential to a well-functioning democracy.” *Paff v. Twp. of Galloway*, 229 N.J. 340 (2017). This State has a long “history of commitment to public participation in government” and a “tradition favoring the public’s right to be informed about governmental actions.” *S. Jersey Pub. Co. Inc. v. N.J. Expressway Auth.*, 124 N.J. 478, 486-87 (1991). OPRA’s promise of accessible records enables “citizens and the media [to] play a watchful role in curbing wasteful government spending and guarding against corruption and misconduct.” *Sussex Commons Assoc., LLC v. Rutgers*, 210 N.J. 531, 541 (2012) (quoting *Burnett v. Cty. of Bergen*, 198 N.J. 408, 414 (2009)). In fact, the “bedrock principle” underlying

¹ Also on September 28, 2023 – approximately 5 weeks after receiving Plaintiff’s OPRA requests - Defendants produced a handful of records, such as council meeting agenda packets, and copies of Zoom meeting invitations. *See* Verified Complaint, Exhibit F. These documents could have easily been provided within the standard seven business day period had Defendants’ been diligent in their response.

Hon. Carol V. Novey Catuogno, A.J.S.C.
October 30, 2023
Page 5



OPRA is that “our government works best when its activities are well-known to the public it serves.” *Burnett*, 198 N.J. at 414.

OPRA provides that “*any* limitations on the right of access . . . shall be construed *in favor of the public's right of access.*” N.J.S.A. 47:1A–1 (emphasis added). Moreover, a records requester has no burden of proof in an OPRA case. Instead, OPRA makes it clear that the public agency alone bears the burden of proving that it did not violate OPRA. N.J.S.A. 47:1A-6. Defendants cannot meet this heavy burden of proof in this case.

As a general matter, OPRA requires a response to public records within seven business days. N.J.S.A. 47:1A-5(i)(1). The records that Plaintiff seeks are unequivocally subject to public access under OPRA; at no time have Defendants ever contended the OPRA requests are invalid or the things asked for are not government records. However, Plaintiff’s request has lingered for *months* and no meaningful response has been provided by Defendants. Despite the fact that Plaintiff followed up multiple times and has been cooperative, Defendants continue to grant themselves extension after extension, and it is clear that Defendants have not used that time diligently.

Importantly, the most recent reasons Defendants have given for why an extension is needed – apparently misunderstanding that Plaintiff’s OPRA requests asked for emails – is flatly contradicted by the Clerk’s prior email. The Clerk’s emails also represented that even after several extensions, some Englewood employees who are known to possess responsive records, such as the City Planner, have ignored her requests to send her responsive records so she may provide them to Plaintiff. Defendants’ dilatory response to Plaintiff’s OPRA request is unacceptable, and violates OPRA’s mandate to make records available “*as soon as possible*, but not later than seven

Hon. Carol V. Novey Catuogno, A.J.S.C.
October 30, 2023
Page 6

business days after receiving the request.” N.J.S.A. 47:1A-5(i)(1)(emphasis added).

Plaintiff thus files this lawsuit asking the Court to compel Defendants to respond to his OPRA requests immediately. Plaintiff also asks the Court to retain jurisdiction should he need to challenge any denial of access or redaction made to the responsive records. According to the Clerk, “it is anticipated that the majority of these records will fall under attorney/client privilege”, Verified Complaint, Exhibit E, and unless a proper privilege log is provided, Plaintiff may need to challenge documents being withheld and/or redacted.

II. PLAINTIFF IS A PREAVAILING PARTY ENTITLED TO AN AWARD OF ATTORNEY’S FEES

Plaintiff is statutorily entitled to a mandatory award of reasonable attorney’s fees and costs. See N.J.S.A. 47:1A-6 (“A requestor who prevails in any proceeding shall be entitled to a reasonable attorney’s fee.”). New Jersey law has long recognized the “catalyst theory” as one method to prove entitlement to an award of attorney’s fees under OPRA. *Mason*, 196 N.J. 51, 73 (2008). Under the catalyst theory, a plaintiff is entitled to attorney’s fees if they can demonstrate “1) a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved; and 2) that the relief ultimately secured by plaintiffs had a basis in law.” *Id.* at 76.

Here, Plaintiff made multiple valid OPRA requests for government records and Defendants violated OPRA by failing respond to them on a timely basis. This litigation, if successful, will serve as the catalyst for Plaintiff obtaining responses to his requests. Therefore, Plaintiff is entitled to an award of attorney’s fees and costs of suit.

CONCLUSION

Hon. Carol V. Novey Catuogno, A.J.S.C.
October 30, 2023
Page 7



For the foregoing reasons, Plaintiff asks the Court to enter an Order 1) declaring that Defendants are in violation of OPRA by unlawfully delaying responses to Plaintiff's OPRA requests; 2) directing Defendants to immediately respond to Plaintiff's OPRA requests and produce all non-exempt records; 3) and declaring Plaintiff a prevailing party entitled to an award of legal fees and costs of litigation. Plaintiff also asks the Court to retain jurisdiction, should Plaintiff need to challenge any denials of access or redactions that are made to the responsive records.

Respectfully submitted,
Pashman Stein Walder Hayden, P.C.

By: /s/ Andrew Bayer
Andrew Bayer, Esq

PASHMAN STEIN WALDER HAYDEN**A Professional Corporation****Andrew Bayer Esq./ 033871988**

Court Plaza South

21 Main Street, Suite 200

Hackensack, NJ 07601

(201) 488-8200

Attorneys for Plaintiffs

Englewood One Community Corp., Inc.,

<p>ENGLEWOOD ONE COMMUNITY, INC.,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>CITY OF ENGLEWOOD, and YANCY WAZIRMAS (in her official capacity as records custodian),</p> <p style="text-align: center;">Defendants,</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY</p> <p>DOCKET NO.: BER-L- _____</p> <p style="text-align: center;"><u>Civil Action</u></p> <p style="text-align: center;">ORDER TO SHOW CAUSE</p>
---	--

THIS MATTER being brought before the court by Pashman Stein Walder Hayden, a Professional Corporation, attorneys for Plaintiff Englewood One Community, Inc. (“Plaintiff”), Andrew Bayer, Esq. appearing, seeking relief by way of summary action pursuant to Rule 4:67-1(b), based upon the facts set forth in the Verified Complaint filed herewith; and the court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding pursuant to the common law right of access, and for good cause shown:

IT IS on this _____ day of _____, 2023, **ORDERED** that Defendants, City of Englewood and Yancy Wazirmas, in their official capacity as Records Custodian for City of Englewood, shall appear and show cause on the _____ day of _____, 2022 before the Superior Court at the Bergen County Courthouse, 10 Main Street, Hackensack,

NJ, at _____ a.m./p.m., or Virtually, or as soon thereafter as counsel can be heard, why judgment should not be entered:

1. Declaring said actions of Defendants to be in violation of OPRA by failing to provide timely access to the requested records;
2. Ordering Defendants to release the requested documents to Plaintiff immediately;
3. Ordering Defendants to preserve the requested documents pending resolution of these proceedings or as otherwise required by law;
4. Awarding counsel fees and costs; and
5. For such other relief as the Court may deem just and equitable.

AND IT IS FURTHER ORDERED that:

1. A copy of this Order to Show Cause and all supporting affidavits or certifications submitted in support of this application be served upon Defendants personally or by Certified Mail, Return Receipt Requested, within ____ days of the date the Plaintiff received this Order, in accordance with *R. 4:4-3* and *R. 4:4-4*, this being original process.
2. The Plaintiff must file with the court its proof of service of the pleadings on the Defendants no later than three (3) days before the return date.
3. Defendants shall file and serve a written answer and opposition papers to this Order to Show Cause and the relief requested in the Verified Complaint and proof of service of the same by _____, 2023. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and courtesy copies of the papers must be sent directly to the chambers of the Honorable Carol V. Novey Catuogno, A.J.S.C. A copy must be served on Plaintiff that same date.

4. The Plaintiff must file and serve any written reply to the Defendants' opposition to the Order to Show Cause by _____, 2023. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and copies of the reply papers must be sent directly to the chambers of the Honorable Carol V. Novey Catuogno, A.J.S.C.

5. If the Defendants do not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date.

7. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer and opposition papers and proof of service before the return date of the order to show cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at <http://www.judiciary.state.nj.us/prose/10153deptyclerklawref.pdf>. Include a \$175 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer and opposition papers to the Plaintiffs' attorney whose name and address appear above, or to the Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you

must file and serve your answer and opposition papers (with the fee) or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at <http://www.judiciary.state.nj.us/prose/10153deptyclerklawref.pdf>.

9. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause.

Honorable Carol V. Novey Catuogno, A.J.S.C.

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation
Andrew Bayer Esq./ 033871988

Court Plaza South
 21 Main Street, Suite 200
 Hackensack, NJ 07601
 (201) 488-8200

Attorneys for Plaintiffs
 Englewood One Community Corp., Inc.,

<p>ENGLEWOOD ONE COMMUNITY, INC.,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>CITY OF ENGLEWOOD, and YANCY WAZIRMAS (in her official capacity as records custodian),</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY</p> <p>DOCKET NO.: BER-L- _____</p> <p style="text-align: center;"><u>Civil Action</u></p> <p style="text-align: center;">ORDER</p>
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THIS MATTER being brought before the court by Pashman Stein Walder Hayden, P.C. (Andrew Bayer, Esq., appearing), attorneys for Plaintiff Englewood One Community, Inc. (“Plaintiff”), alleging violations of the Open Public Record Act (“OPRA”) against Defendants City of Englewood and Yancy Wazirmas in their official capacity as records custodian, and the Court having heard oral argument on _____, and having considered the submissions of the parties; and for the reasons stated on the record; and for good cause shown;

IT IS on this ____ day of _____, 2023, hereby **ORDERED** that:

- Defendants shall produce the produce the following records, which shall include but is not limited to records and communications on any custodian’s personal email accounts and electronic devices to the extent used to discuss official business, within _____ days:

- a. Between the time period of January 1, 2019 to present, all communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city planner, the city planner, the city engineer, the Fair Share Housing Center and/or Banisch Associates Inc., concerning the following subject matters: (i) The litigation captioned In the Matter of the Application of the City of Englewood, Docket No. BER-L-4069-19; (ii) The Settlement Agreement dated November 1, 2022 between the City of Englewood and Fair Share Housing Center (the “Fair Share Housing Settlement Agreement”); (iii) The Report of the Special Master Regarding the Fairness of a Settlement Agreement between the City of Englewood and Fair Share Housing Center prepared by Banisch Associates, Inc.; (iv) Ordinance 23-22; (v) Ordinance 23-21; (vi) Resolution 267-08-08-23; and (vii) Resolution 268-08-08-23.
- b. All reports, memoranda and planning studies prepared by the city planner, John P. Szabo and/or Burgis Associates, in connection with the litigation captioned In the Matter of the Application of the City of Englewood, Docket No. BER-L-4069-19.
- c. To the extent not produced already, all communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the

police chief concerning the Special Council Meeting Scheduled for August 22, 2023.

- d. To the extent not produced already, all communications, including but not limited to emails and text messages, sent to/from any member of the council, the mayor, the city manager, and/or the police chief concerning the notice emailed to residents on or about August 21, 2023 from wisotskyforenglewood@gmail.com to residents with the subject line “There is NOT an official City meeting tonight”.
2. If Defendants withhold any documents or communications on the grounds of attorney-client privilege or the work product doctrine, they shall produce to Plaintiff a privilege log along with their production of responsive records.
3. The Court retains jurisdiction over this matter concerning Plaintiff’s right to challenge any denials of access or redactions to responsive records once those records are produced by Defendants.
4. Plaintiff is a prevailing party entitled to an award of reasonable attorneys’ fees and costs of suit. If the Parties cannot resolve the amount of attorneys’ fees by _____, Plaintiff may submit a fee application to the Court.

Honorable Carol V. Novey Catuogno, A.J.S.C.

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-005843-23

Case Caption: ENGLEWOOD ONE COMMUNITY, INC. VS
CITY OF ENGLEW

Case Initiation Date: 10/30/2023

Attorney Name: ANDREW BAYER

Firm Name: PASHMAN STEIN WALDER HAYDEN, PC

Address: COURT PLAZA SOUTH, EAST WING 21 MAIN
ST, STE 200E

HACKENSACK NJ 076017054

Phone: 2014888200

Name of Party: PLAINTIFF : ENGLEWOOD ONE
COMMUNITY, INC.

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

Document Type: Verified Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

Does this case involve claims related to COVID-19? NO

**Are sexual abuse claims alleged by: ENGLEWOOD ONE
COMMUNITY, INC.?** NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

10/30/2023
Dated

/s/ ANDREW BAYER
Signed

