September 10, 2020

Hon. Gurbir Grewal
Office of the New Jersey Attorney General
P.O. Box 080
Trenton, NJ 08625-0080

Re: Trenton City Council – Possible violations of OPMA

Dear General Grewal:

Enclosed please find an op-ed letter to you from the Trentonian regarding possible violations by Trenton City Council of the Open Public Meetings Act (OPMA), see N.J.S.A 10:4-12, et seq. Please note that I wholeheartedly agree with its legal reasoning and feel equally that this matter warrants an investigation by your office.

Specifically, on September 3, 2020, the Trenton City Council met in secret with a developer (under the guise of Executive Session) to impermissibly discuss a potential sale of the historic Roebling Wire Works building, which I recall you visited for our annual Art All Night celebration, for $200,000. The move smacks in the face of the OPMA, which only provide for exceptions in

matter(s) involving the purchase, lease, or acquisition of real property with public funds…

N.J.S.A. 10:4-12(7)(b)(5).

But at Council’s Executive Session, the discussion focused on the sale of a public historic landmark building with private developer funds. Although no action was taken, the $200,000 considered price falls well below any such appraised value for the building. Moreover, the unprecedented invitation for a private person to participate in Council’s Executive Session, when no other public persons were allowed access, falls to the expected transparency mandated by OPMA.
It begs the question(s):

1) Who invited the private developer to come into Executive Session and were there any basis for the invite?
2) Was anything promised in exchange for the meeting?
3) Previously, the private developer was turned away by the Department of Housing and Economic Development and instructed that the historic building “was not for sale;” how did the private developer gain direct access to Council?

Secondly, City Council, during its Executive Session, voted to issue blanket so-called, “Rice Notices” for unspecified reasons and to an undisclosed group of City employees. The City Council elected to “supply the names later” as well as the reasons therewith for the “Rice Notices.” Indeed, the Council President stated in the audio recording obtained and published by the Trentonian that “Council will decide who gets the notices.” The “Rice Notice” itself offers no specificity other than a vague reference “to discuss the public disclosure of confidential applicant information (See attached).”

In this regard, it also begs the question(s):

1) Were “Rice Notices” properly issued during Council’s Executive Session and did it not require a subsequent Council vote during the public portion of their meeting?
2) Should the Rice Notices have contained specificity so that a recipient would clearly know why they were being summoned and whether to elect to have the discussion in public?
3) Was Council required to disclose to the Administration the names of all persons subject to the Rice Notice, once requested, so that the Administration as well as the employees’ Union Representatives could adequately protect any rights they may have with regard to the notice?

Accordingly, it is respectfully requested that your office investigate whether City Council violated OPMA with regard to a contemplated sale of City property; and whether any such Rice Notices discussed at their September 3, Executive Council meeting were proper.

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1 See Trenton Council launches ‘McCarthy’-like inquisition into alleged breach of confidential firefighter memo, Trentonian September 9, 2020
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In the meantime, should you have any questions or wish to discuss this further, please do not hesitate to contact me. Thank you for your consideration in this regard.

Very truly yours,

W. Reed Gusciora
Mayor

cc: Hon. Angelo Onofri, Mercer County Prosecutor
     Hon. Sheila Oliver, Commissioner, NJ Division on Community Affairs
     John Morelli, Trenton City Attorney
     Tina Vignal, DCA Monitor
     Adam Cruz, Business Administrator
Editorial: A letter to Gurbir Grewal concerning Trenton City Council

The Trentonian
Sep 10, 2020

Trenton City Council President Kathy McBride, center, speaks at a press conference in April, 2019. Behind her are council members, (l to r) Santiago Rodriguez, George Muschal, Marge Caldwell Wilson, and Robin Vaughn.

John Berry — Trentonian File Photo

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The Trentonian sent the following letter to New Jersey Attorney General Gurbir Grewal after Trenton City Council appeared to have violated open meeting laws. We felt it was necessary to call attention to council’s attempt to block public access to city business that should be and has always been conducted in the open, giving citizens the ability to know what elected officials are doing as they represent all of us.

September 10, 2020

Dear Mr. Grewal:

We write to you to ask that you investigate Trenton City Council’s flagrant, repeated and egregious violations of the Open Public Meetings Act (OPMA) and use your statutory authority to ask a court to impose penalties upon the City Council. The most recent violations came during the Sept. 3 meeting, which was conducted through the Microsoft Teams digital platform. The council adjourned into executive session under the guise of attorney-client privilege to discuss redevelopment and issuing Rice notices. On its face, those reasons for adjourning into executive session appeared consistent with N.J.S.A. 10:4-12(b)(7) and N.J.S.A. 10:4-12(b)(8), which allow for private discussion of contract negotiations and personnel matters, respectively.

However, The Trentonian learned that the executive session was used as a cover for legislators to hear a pitch from John Liu, president of Elite Spiders LLC, to purchase the historic Roebling Wire Works building for $200,000. It should be noted that the Wire Works building is of historic and civic importance to Trentonians, hosting the annual Art All Night festival, a signature event that brings tens of thousands of people to the area, and a range of other community gatherings.

The discussion on the potential sale of the Wire Works building was related by multiple sources who were concerned about the council’s illegal actions circumventing the OPMA. The Trenton council has routinely entertained important business proposals in public session. In fact, at the Sept. 1 workshop meeting, representatives from Verizon Wireless gave a lengthy public presentation to legislators about the benefits of bringing 5G to the capital city.

Mr. Liu’s pitch to purchase the Wire Works building should have been conducted the same way, as the Legislature created the OPMA because it recognized that “secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.”

There wasn’t a valid exception under OPMA for Mr. Liu’s presentation to take place behind closed doors.

In holding Mr. Liu’s presentation privately, the Trenton council deprived the public of its right to know and voice support or opposition for the potential sale of a building that has been conferred with so much meaning to the capital city. We have consulted with at least two prominent attorneys who litigate public-access issues in New Jersey, and both agreed that having a redeveloper make a pitch behind closed doors violates the OPMA.

This Trenton council’s move, however dubious, is not unprecedented in that other New Jersey government bodies have already been sanctioned for similarly situated violations of the OPMA. We direct you to a matter involving the Berkeley Heights Library Board of Trustees allowing an outside interested party into a closed session to discuss contract negotiations.

In March 2017, the Union County Prosecutor’s Office found the board’s cited exception under contract negotiations invalid as, “The purpose of the exception is to allow members of the governing body to discuss a contract among themselves, not with members of the organization with whom they are negotiating.”

As if hearing Mr. Liu’s pitch privately wasn’t bad enough, in the same executive session, an audio recording obtained and published on The Trentonian’s website showed the Trenton council voted during executive session 4 to 3 to issue Rice notices to city employees. When it reconvened to public session, the governing body did not make the public aware that it had conducted a secret vote to issue Rice notices to city employees.

Executive sessions are customarily reserved for discussion of items specifically exempted by the Legislature, but any vote should be conducted publicly, or in the least, the public should be made aware of the outcome of any vote conducted in executive session. This lack of transparency violates the spirit and intent of the OPMA as the public has a right to “be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies.”
Thirdly, and lastly, we write this with great concern about the apparent misdirection tactics employed by Trenton council president Kathy McBride. As you are aware, Ms. McBride has written to you and Angelo Onofri, the Mercer County prosecutor, asking your offices to conduct an investigation centered on what she contends amounted to leaks of “confidential and privileged” information regarding Mr. Liu’s redevelopment pitch.

Ms. McBride’s demand came a day after she attempted to compel a Trentonian reporter to reveal how he learned of the secret redevelopment pitch. The Trentonian told Ms. McBride that it would not violate a professional oath and provide her with sources and newsgathering materials, which as you know are explicitly protected under New Jersey’s shield law for journalists, also known as the newspaperman [or woman’s] privilege.

N.J.S.A. 2A:84A-21 ensures journalists the “privilege to refuse to disclose, in any legal or quasi-legal proceeding or before any investigative body, including, but not limited to, any court, grand jury, petit jury, administrative agency, the Legislature or legislative committee, or elsewhere.”

Ms. McBride, while fancying herself a legal or quasi-legal figurehead, must have realized the limitations of her powers, so she has asked for your office’s intervention in hopes that you may learn of and reveal The Trentonian’s sources. This request is a thinly veiled extension of some of the dictatorial tactics Ms. McBride has employed throughout her tenure, the majority which have been publicly documented and we will not recount here, in the name of brevity.

Still, it must be said that The Trentonian views Ms. McBride’s latest actions as a frightening assault on the freedom and independence of the press to report news that is in the public’s interest. To the extent that Ms. McBride views those who provide information that is in the public’s interest as illegal leakers, we see these sources as whistleblowers entitled to protection under the state’s Conscientious Employee Protection Act because they provided information on Trenton council’s blatant violations of OPMA.

They should not become targets of an unneeded investigation premised on Ms. McBride’s faulty understanding of the law. The information at issue was illegally discussed in executive session and should have always been public, so we would ask that you not engage in Ms. McBride’s desire to penalize whistleblowers for refusing to be complicit in her illegal actions depriving Trentonians of information that they had a right to under the OPMA.

For these reasons, we ask that you investigate the individuals who truly violated the law in this case. We believe we have uncovered at least two OPMA violations in one meeting, constituting a serial offense.

Under N.J.S.A. 10:4-17, your office can impose fines of $100 for first-time offenders and $500 on each council member for subsequent violations of the OPMA.
Members of this body have infamously remarked, “We are the law,” showing that they view themselves as above New Jersey’s legal requirements. They have shown that they cannot be convinced, cajoled, coerced or commanded – by a judge or anyone else – to do what they’re required to under the law.

While The Trentonian believes it would prevail in a lawsuit regarding these violations, OPMA does not contain a fee-shifting provision that incentivizes attorneys to take up such causes pro bono. That makes it difficult for citizens, and struggling publications, to hold government officials to task when they do not follow the law. Thus, your office is our last recourse in holding this governing body accountable to the mandates of OPMA.

Thanks for your attention to this matter.

— The Trentonian
Date: September 8, 2020

VIA INTEROFFICE MAIL

To: [Redacted]

Re: RICE NOTICE

Dear [Redacted]

A matter concerning your employment is scheduled to be discussed in closed session at a meeting of the Governing Body on September 15th and/or September 17th or shortly thereafter. The Governing Body intends to discuss the public disclosure of confidential applicant information.

If you wish to have this matter discussed in open session, please sign this statement and return to me prior to September 14, 2020. If you do not return this notice signed then the items will be discussed in executive session. Thank you.

Matthew H. Conlon, RMC
City Clerk
Trenton, New Jersey

REQUEST FOR PUBLIC DISCUSSION

I, [Redacted] hereby request that the matter involving the public disclosure of confidential applicant information be discussed openly at the meeting of the Governing Body on September 15, 2020 and/or September 17, 2020.

Signature [Redacted]