

M. James Maley, Jr.  
Attorney License No. 019561982

Law Offices  
MALEY & ASSOCIATES  
A Professional Corporation  
1150 Haddon Avenue  
Suite 210  
Collingswood, New Jersey 08108  
856-854-1515  
Attorneys for Plaintiff,  
Friends of Historic Flemington, LLC

BATCH NO:	439
DATE:	9-21-16
PAYMENT: CA / <input checked="" type="radio"/> CR / MO	
CK/MO #:	1260
AMOUNT:	250
PREPARER:	mal

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SUPERIOR COURT  
2016 SEP 21 AM 11:10  
HUNTERDON COUNTY  
CLERK'S OFFICE

FRIENDS OF HISTORIC FLEMINGTON, LLC
Plaintiffs,
v.
BOROUGH OF FLEMINGTON, and REBECCA NEWMAN, records custodian,
Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
HUNTERDON COUNTY  
DOCKET NO. L-416-16

CIVIL ACTION

**COMPLAINT IN LIEU OF  
PREROGATIVE WRIT**

Plaintiff, Friends of Historic Flemington, LLC, ("Plaintiff") by way of Complaint says:

**PARTIES**

1. Plaintiff, Friends of Historic Flemington, LLC, is a limited liability corporation with offices at 77 Jefferson Court, Flemington, NJ 08822, which is a group of citizens, professionals, business and property owners concerned about Flemington's historic buildings and historic district.

2. Defendant, Borough of Flemington, is a municipal corporation of the State of New Jersey, having offices at 38 Park Avenue, Flemington, New Jersey 08822 ("Borough").

3. Defendant, Rebecca Newman, is an individual who was employed by the Borough as its records custodian under the Open Public Records Act, N.J.S.A. 47:1A-1

("OPRA") at all relevant times for purposes of the matters set forth in this Complaint ("Records Custodian").

### **JURISDICTION**

4. Jurisdiction is appropriate under N.J.S.A. 47:1A-6, which allows any member of the public to file an action in Superior Court whenever the member of the public is denied access to a governmental record by a custodian of that record.

### **COUNT ONE**

### **VIOLATION OF OPRA**

5. Plaintiff repeats the allegations set forth in Paragraphs 1 through 4 as if fully set forth herein and incorporates the same herein by reference.

6. In adopting OPRA, the Legislature declared that it was the "public policy of the State that: government records shall be readily accessible for inspection, copying, or examination by the citizens of this State..." N.J.S.A. 47:1A-1.

7. It then set forth a procedure for how such governmental records shall be made available to the public.

8. A records custodian of a public body is obligated to "adopt a form for the use of any person who requests access to a government record held or controlled by the public agency." N.J.S.A. 47:1A-5(f).

9. A member of the public seeking access to a governmental record must fill out the form and deliver it either by way of hand delivery, mail or electronic transmission to the records custodian, who is obligated to "promptly comply with a request to inspect, examine, copy, or provide a copy of a government record." N.J.S.A. 47:1A-5(g).

10. OPRA requires that a records custodian grant access to the governmental record

“not later than seven business days after receiving the request...” and “[i]n the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request...” N.J.S.A. 47:1A-5(i).

11. This time period can be extended for a number of reasons.

12. First, the time for access can be extended where the governmental record sought is in storage or archived, provided that the records custodian advises the date upon which the record will be made available. N.J.S.A. 47:1A-5(i).

13. In such a situation, “[t]he date selected by the custodian then becomes the deadline for compliance” and “[a] custodian's failure to meet the promised deadline is then deemed a denial.” New Jersey Builders Ass'n v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 180–181 (App. Div. 2007).

14. In addition, “if a request ‘would substantially disrupt agency operations,’ ” the time period may be extended, provided that the records custodian attempted to “ ‘reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.’ ” Mason v. City of Hoboken, 196 N.J. 51, 78 (2008).

15. The Government Records Council has taken the position that in such a case, the time for responding to the records request can be extended so long as the records custodian has obtained consent from the requestor. Mason v. City of Hoboken, 196 N.J. 51, 78 (2008).

16. On June 23, 2016, Maley & Associates, P.C., on behalf of its client, Friends of Historic Flemington, LLC, submitted an OPRA request to the Borough of Flemington. (See Exhibit A).

17. This OPRA request was faxed to the Records Custodian. (See Exhibit B).

18. Maley & Associates followed up with the Records Custodian on July 7, 2016 and

was advised that no OPRA request had been received.

19. The June 23, 2016 OPRA request was then faxed again to the Records Custodian on July 7, 2016 ("July 7, 2016 OPRA Request"). (See Exhibit C).

20. On July 18, 2016, Maley & Associates, on behalf of its client, Friends of Historic Flemington, LLC, filed a second OPRA request ("July 18, 2016 OPRA Request"). (See Exhibit D).

21. On July 20, 2016, the Records Custodian requested an extension of time to respond to the July 7, 2016 OPRA Request so that the new deadline was July 29, 2016.

22. At the August 8, 2016 Council Meeting, Maley & Associates inquired into the status of the July 7, 2016 OPRA Request and July 18, 2016 OPRA Request.

23. The Records Custodian indicated at that meeting that when she had been contacted by Maley & Associates regarding this matter, she advised that she was doing the best that she can.

24. Maley & Associates then followed up with the Records Custodian by way of a letter dated August 16, 2016, advising that the "Borough's indefinite review of our Open Public Records Act ("OPRA") request and our requests under the common law cannot continue." (See Exhibit E).

25. In that same August 16, 2016 letter, Maley & Associates consented to a new deadline of August 25, 2016 for the Records Custodian to respond to both the July 7, 2016 OPRA Request and the July 18, 2016 OPRA Request. (See Exhibit E).

26. The Records Custodian responded to the August 16, 2016 letter by way of an email dated August 16, 2016, stating, "[a]s I have said multiple times during our many conversations, I am doing my very best to accommodate this request. ...Your request was

extremely lengthy and would take all of my time... We had a new person start Monday the 15<sup>th</sup> and I am doing my best to train and accommodate your request... Please understand I am doing the best I can." (See Exhibit F).

27. On August 17, 2016, the Records Custodian further responded to the July 7, 2016 OPRA Request and the July 18, 2016 OPRA Request, but failed to provide all of the documents requested. (See Exhibit G).

28. No further response was received from the Records Custodian.

29. The Records Custodian failed to provide access to all of the documents requested in the July 8, 2016 OPRA Request and the July 18, 2016 OPRA Request by the August 25, 2016 extension deadline.

30. The Records Custodian's failure to fully comply with the July 8, 2016 OPRA Request and the July 18, 2016 OPRA Request by the August 25, 2016 extension deadline constituted a denial of access under OPRA.

31. This denial was improper and in violation of OPRA.

32. OPRA provides that "[t]he public agency shall have the burden of proving that the denial of access is authorized by law." N.J.S.A. 47:1A-6.

33. It also provides that "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6.

34. Plaintiffs are entitled to immediate access to the records wrongfully denied, as well as to attorneys' fees.

WHEREFORE, Plaintiff requests that judgment be rendered and an order be entered as follows:

a. Declaring the Records Custodian wrongfully denied access to Plaintiff to the

records requested in the July 7, 2016 OPRA request and the July 18, 2016 OPRA Request; and

b. Compelling the Records Custodian to turn over immediately copies of records requested in the July 7, 2016 OPRA request and the July 18, 2016 OPRA Request; and

e. Awarding Plaintiffs reasonable attorney's fees, costs of suit; and

f. Granting such other relief as the Court deems just and equitable.

**MALEY & ASSOCIATES, P.C.**

Dated: September 20, 2016

By: \_\_\_\_\_

  
M. JAMES MALEY, JR.  
ERIN E. SIMONE  
Attorneys for Plaintiff

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, M. James Maley, Jr., Esquire is hereby designated as trial counsel on behalf of Plaintiff.

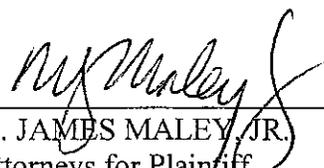
**CERTIFICATION PURSUANT TO RULE 4:5-1**

Pursuant to Rule 4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other Court or of a pending arbitration proceeding to the best of our knowledge and belief. To the best of our knowledge and belief, no other action or arbitration proceeding is contemplated. Furthermore, we know of no other parties that should be joined in the above action.

**MALEY & ASSOCIATES, P.C.**

Dated: September 20, 2016

By: \_\_\_\_\_

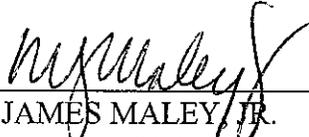
  
M. JAMES MALEY, JR.  
Attorneys for Plaintiff

**CERTIFICATION PURSUANT TO RULE 1:38-7(c)**

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

**MALEY & ASSOCIATES, P.C.**

Dated: September 20, 2016

By:   
\_\_\_\_\_  
M. JAMES MALEY, JR.  
Attorneys for Plaintiff



# BOROUGH OF FLEMINGTON OPEN PUBLIC RECORDS ACT REQUEST FORM

38 Park Avenue  
Flemington, New Jersey 08822  
Phone: (908) 782-8840  
Fax: (908) 782-0142



### Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

### Requestor Information – Please Print

First Name M. Michael MI \_\_\_\_\_ Last Name Maley

E-mail Address mmaley@maleyassociates.com

Mailing Address 1150 Haddon Avenue, Suite 210 Collingswood, NJ 08108

City Collingswood State NJ Zip 08108

Telephone 856-854-1515 FAX 856-858-2944

Preferred Delivery: Pick Up  US Mail  On-Site Inspect  Fax  E-mail

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I **HAVE NOT** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature *Michael Maley* Date June 23, 2016

### Payment Information

Maximum Authorization Cost \$ \_\_\_\_\_

Select Payment Method

Cash  Check  Money Order

Fees: Letter size pages - \$0.05 per page  
Legal size pages - \$0.07 per page  
Other materials (CD, DVD, etc) – actual cost of material

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

**Record Request Information:** Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

Please see the attached sheet.

#### AGENCY USE ONLY

Est. Document Cost \_\_\_\_\_

Est. Delivery Cost \_\_\_\_\_

Est. Extras Cost \_\_\_\_\_

Total Est. Cost \_\_\_\_\_

Deposit Amount \_\_\_\_\_

Estimated Balance \_\_\_\_\_

Deposit Date \_\_\_\_\_

#### AGENCY USE ONLY

**Disposition Notes**

Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open \_\_\_\_\_

Denied - Closed \_\_\_\_\_

Filled - Closed \_\_\_\_\_

Partial - Closed \_\_\_\_\_

#### AGENCY USE ONLY

Tracking Information		Final Cost
Tracking # _____	Total _____	
Rec'd Date _____	Deposit _____	
Ready Date _____	Balance Due _____	
Total Pages _____	Balance Paid _____	
<b>Records Provided</b>		
Custodian Signature _____		Date _____

## DEPOSITS

The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the documents requested will cost in excess of \$5 to reproduce.

Where a special service charge is warranted under OPRA, that amount will be communicated to you as required under the statute. You have the opportunity to review and object to the charge prior to it being incurred. If, however, you approve of the fact and amount of the special service charge, you may be required to pay a deposit or pay in full prior to reproduction of the documents.

### **YOUR REQUEST FOR RECORDS IS DENIED FOR THE FOLLOWING REASON(S):**

(To be completed by the Custodian of Records – check the box of the numbered exemption(s) as they apply to the records requested. If multiple records are requested, be specific as to which exemption(s) apply to each record. **Response is due to requestor as soon as possible, but no later than seven business days.**)

#### **N.J.S.A. 47:1A-1.1**

- Inter-agency or intra-agency advisory, consultative or deliberative material
- Legislative records
- Law enforcement records:
  - Medical examiner photos
  - Criminal investigatory records (however, N.J.S.A. 47:1A-3.b. lists specific criminal investigatory information which must be disclosed)
  - Victims' records
- Trade secrets and proprietary commercial or financial information
- Any record within the attorney-client privilege
- Administrative or technical information regarding computer hardware, software and networks which, if disclosed would jeopardize computer security
- Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein
- Security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software
- Information which, if disclosed, would give an advantage to competitors or bidders
- Information generated by or on behalf of public employers or public employees in connection with:
  - Any sexual harassment complaint filed with a public employer
  - Any grievance filed by or against an employee
  - Collective negotiations documents and statements of strategy or negotiating
- Information that is a communication between a public agency and its insurance carrier, administrative service organization or risk management office
- Information that is to be kept confidential pursuant to court order
- Certificate of honorable discharge issued by the United States government (Form DD-214) filed with a public agency
- Social security numbers
- Credit card numbers
- Unlisted telephone numbers
- Drivers' license numbers
- Certain records of higher education institutions:
  - Research records
  - Questions or scores for exam for employment or academics
  - Charitable contribution information
  - Rare book collections gifted for limited access
  - Admission applications
  - Student records, grievances or disciplinary proceedings revealing a students' identification
- Biotechnology trade secrets N.J.S.A. 47:1A-1.2
- Convicts requesting their victims' records N.J.S.A. 47:1A-2.2
- Ongoing investigations of non-law enforcement agencies (must prove disclosure is inimical to the public interest) N.J.S.A. 47:1A-3.a.
- Public defender records N.J.S.A. 47:1A-5.k.
- Upholds exemptions contained in other State or federal statutes and regulations, Executive Orders, Rules of Court, and privileges created by State Constitution, statute, court rule or judicial case law N.J.S.A. 47:1A-9
- Personnel and pension records (however, the following information must be disclosed:
  - An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation, and the amount and type of any pension received
  - When required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the US, or when authorized by an individual in interest
  - Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information N.J.S.A. 47:1A-10

#### **N.J.S.A. 47:1A-1**

- "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy."

*Burnett v. County of Bergen*, 198 N.J. 408 (2009). Without ambiguity, the court held that the privacy provision "is neither a preface nor a preamble." Rather, "the very language expressed in the privacy clause reveals its substantive nature; it does not offer reasons why OPRA was adopted, as preambles typically do; instead, it focuses on the law's implementation." "Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests."

**Executive Order No. 21 (McGreevey 2002)**

- Records where inspection, examination or copying would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.
- Records exempted from disclosure by State agencies' proposed rules.

**Executive Order No. 26 (McGreevey 2002)**

- Certain records maintained by the Office of the Governor
- Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing
- Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments
- Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation
- Information in a personal income or other tax return
- Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed
- Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing
- Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by regulation or EO 9.

**Other Exemption(s) contained in a State statute, resolution of either or both House of the Legislature, regulation, Executive Order, Rules of Court, any federal law, federal regulation or federal order pursuant to N.J.S.A. 47:1A-9.a.**  
(Please provide detailed information regarding the exemption from disclosure for which you are relying to deny access to government records. If multiple records are requested, be specific as to which exemption(s) apply to each record.)

**REQUEST FOR RECORDS UNDER THE COMMON LAW**

If, in addition to requesting records under OPRA, you are also requesting the government records under the common law, please check the box below:

A public record under the common law is one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it.

Yes, I am also requesting the documents under common law.

If the information requested is a "public record" under common law and the requestor has a legally recognized interest in the subject matter contained in the material, then the material must be disclosed if the individual's right of access outweighs the State's interest in preventing disclosure.

Please set forth your interest in the subject matter contained in the requested material:

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**Note that any challenge to a denial of a request for records under the common law cannot be made to the Government Records Council, as the Government Records Council only has jurisdiction to adjudicate challenges to denials of OPRA requests. A challenge to the denial of access under the common law can be made by filing an action in Superior Court.**

1. All government records are subject to public access under the Open Public Records Act ("OPRA"), unless specifically exempt.
2. A request for access to a government record under OPRA must be in writing, hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. N.J.S.A. 47:1A-5.g. The seven (7) business day response time does not commence until the records custodian receives the request form. If you submit the request form to any other officer or employee of the **Name of Agency**, that officer or employee must either forward the request to the appropriate custodian, or direct you to the appropriate custodian. N.J.S.A. 47:1A-5.h.
3. Requestors may submit requests anonymously. If you elect not to provide a name, address, or telephone number, or other means of contact, the custodian is not required to respond until you reappear before the custodian seeking a response to the original request.
4. The fees for duplication of a government record in printed form are listed on the front of this form. We will notify you of any special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by cash, check or money order payable to the **Name of Agency**.
5. **You may be charged a 50% or other deposit when a request for copies exceeds \$25.** The **Name of Agency** custodian will contact you and advise you of any deposit requirements. You agree to pay the balance due upon delivery of the records. Anonymous requests in excess of \$5.00 require a deposit of 100% of estimated fees.
6. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, **and** who is seeking government records containing personal information pertaining to the person's victim or the victim's family. This includes anonymous requests for said information.
7. By law, the **Name of Agency** must notify you that it grants or denies a request for access to government records within seven (7) business days after the agency custodian of records receives the request. If the record requested is not currently available or is in storage, the custodian will advise you within seven (7) business days after receipt of the request when the record can be made available and the estimated cost for reproduction.
8. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
9. If the **Name of Agency** is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form or other written correspondence and send you a signed and dated copy.
10. Except as otherwise provided by law or by agreement with the requester, if the agency custodian of records fails to respond to you within seven (7) business days of receiving a request, the failure to respond is a deemed denial of your request.
11. If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the **Name of Agency** to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.
12. Information provided on this form may be subject to disclosure under the Open Public Records Act.

For the purpose of this Request, the term "Project Area" refers to Block 22, Lots 4-9, 10 & 12; Block 23, Lots 1 & 7 on the official Tax Map of the Borough of Flemington.

For the purpose of this Request, the term "correspondence" shall include letters, emails, facsimiles or other written communications.

For the purpose of this Request, unless otherwise noted, the specified date periods are from January 2005 to the present.

1. Tax File for the individual Blocks and Lots within Project Area.
2. Tax Record Card(s) for the individual Blocks and Lots within Project Area.
3. Agenda, Minutes, Transcript and Audio Recording for April 26, 2010 Council Meeting.
4. Agenda, Minutes, Transcript and Audio Recording for Planning Board Meeting finding that the area in need of redevelopment authorized at the April 26, 2010 Council Meeting was recommended to be designated as an area in need of redevelopment.
5. Any exhibits provided to the Planning Board or Council related to the Project Area.
6. Council Resolution 2010-82.
7. Council Resolution 2010-94.
8. Council Ordinance 2010-14.
9. Union Hotel Preliminary Investigation for an Area In Need of Redevelopment Study dated June 2010 and prepared by Clarke Caton Hintz.
10. Agenda, Minutes, Transcript and Audio Recording for August 12, 2013 Council Meeting.
11. Council Resolution adopted August 12, 2013 related to the Project Area.
12. Agenda, Minutes, Transcript and Audio Recording for December 16, 2013 Planning Board Meeting.
13. Agenda, Minutes, Transcript and Audio Recording for January 28, 2014 Planning Board Meeting.
14. Planning Board Resolution adopted January 28, 2014 related to the Project Area.
15. Council Resolution adopted February 10, 2014 related to the Project Area.
16. Any and all Area in Need of Redevelopment Studies related to the Project Area.
17. The Redevelopment Plan for the Union Hotel/Union Hotel Redevelopment Plan and any associated amendments.
18. Any and all Redevelopment Plans, draft Redevelopment Plans, or amendments whether or not adopted, related to the Project Area.
19. Study of Expanded Union Hotel Area in Need of Redevelopment prepared by Clarke Canton Hintz and adopted by the Planning Board on December 16, 2013.
20. Redevelopment Agreement between Flemington Union Hotel, LLC and the Borough of Flemington, dated May 13, 2013.
21. Planning Board Resolution 2013-132.
22. The Request for Development Concept Proposals for the Union Hotel Property issued by the Borough on or about August 17, 2012
23. All responses submitted in response to Item 23.
24. Agenda, Minutes, Transcript and Audio Recording for the Council Meeting wherein the Redevelopment Committee provided its assessments, comments and recommendations to the responses identified in Item 24.
25. Any correspondence between the Redevelopment Committee or any of its individual members to any member of Council, the Mayor, or the Mayor and Council as a whole related to the Project Area and/or Items 23-24.
26. Any correspondence among the Redevelopment Committee or any of its individual members related to the Project Area and/or Items 23-24.
27. Resolution adopted September 27, 2010 establishing Redevelopment Committee.
28. Proof of Mailing of Notice to property owners sent regarding the redevelopment designation of the Project Area.
29. Planning Board file referencing the Project Area and any approvals.
30. Zoning Board file referencing the Project Area and any approvals.
31. Any and all drafts or executed Redevelopment Agreement(s) related to the Project Area.
32. Council Resolutions authorizing execution of any Redevelopment Agreements related to the Project Area.
33. Council Resolution 2012-193.
34. Council Resolution 2013-27.
35. Council Resolution 2013-78.
36. Council Resolution 2013-132.
37. Any and all drafts or executed Memorandum of Understanding(s) and any associated amendments related to the Project Area.
38. Any and all correspondence between the Borough and the New Jersey Department of Environmental Protection's Historic Preservation Office ("HPO").
39. Any and all Applications for Project Authorization submitted to the HPO.
40. Any and all Requests for Qualifications ("RFQs") related to the Project Area from January 2000 through the present.
41. Any and all Requests for Proposals ("RFPs") related to the Project Area from January 2000 through the present.
42. Any and all responses to the RFQs and/or RFPs identified in Items 41-42.
43. 2015 Reexamination of the Master Plan adopted August 24, 2015 and prepared by Clarke Caton Hintz.
44. Proof of Publication of Notices published in the local newspaper or newspaper used by the Borough related to the designation of the Project Area as an area in need of redevelopment.
45. Agenda, Minutes, Transcript and Audio Recording for all Planning Board Meetings related to the Project Area.
46. Agenda, Minutes, Transcript and Audio Recording for all Council Meetings related to the Project Area.
47. Any and all Resolutions related to the Project Area.
48. Any and all Ordinances related to the Project Area.

# Send Result Report



MFP  
KM-5050

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Job No. : 059724 Total Time : 0°05'14" Page : 005

## Completed

Document : doc20160623154721



### BOROUGH OF FLEMINGTON OPEN PUBLIC RECORDS ACT REQUEST FORM

38 Park Avenue  
Flemington, New Jersey 08822  
Phone: (908) 782-8840  
Fax: (908) 782-0142



#### Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

#### Requestor Information - Please Print

First Name M. Michael MI \_\_\_\_\_ Last Name Malley  
E-mail Address mmalley@malleyassociates.com  
Mailing Address 1150 Haddon Avenue, Suite 210  
City Collingswood State NJ Zip 08108  
Telephone (856) 854-1515 FAX (856) 858-2944  
Preferred Delivery: Pick Up  US Mail  On-Site Inspect  Fax  E-mail   
If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 17:28-3, I certify that I **HAVE NOT** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.  
Signature Mike Malley Date June 23, 2016

#### Payment Information

Maximum Authorization Cost \$ \_\_\_\_\_  
Select Payment Method  
Cash  Check  Money Order   
Fees: Letter size pages - \$0.05 per page  
Legal size pages - \$0.07 per page  
Other materials (CD, DVD, etc) - actual cost of material  
Delivery: Delivery / postage fees additional depending upon delivery type.  
Extras: Special service charge dependent upon request.

No.	Date and Time	Destination	Times	Type	Result	Resolution / ECM
001	06/23/2016 15:48	919087828840	0°05'14"	FAX	OK	200x200 Fine / Off

# Send Result Report



MFP  
KM-5050

Firmware Version 2GR\_2000.035.002 2010.07.23

Job No. : 060100 Total Time : 0°02'21" Page : 005

# Completed

Document : doc20160707104515



## BOROUGH OF FLEMINGTON OPEN PUBLIC RECORDS ACT REQUEST FORM

38 Park Avenue  
Flemington, New Jersey 08822  
Phone: (908) 782-8840  
Fax: (908) 782-0142



### Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

### Requestor Information - Please Print

First Name M. Michael Mi \_\_\_\_\_ Last Name Maley

e-mail Address mmaley@maleyassociates.com

Mailing Address 1150 Haddon Avenue, Suite 210

City Collingswood State NJ Zip 08108

Telephone (856) 854-1515 FAX (856) 858-2944

Preferred Delivery: Pick Up  US Mail  On-Site Inspect  Fax  E-mail

you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 17:28-3, I certify that I **HAVE NOT** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature [Signature] Date June 23, 2016

### Payment Information

Maximum Authorization Cost \$ \_\_\_\_\_

Select Payment Method

Cash  Check  Money Order

Fees: Letter size pages - \$0.05 per page  
Legal size pages - \$0.07 per page  
Other materials (CD, DVD, etc) - actual cost of material

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

No.	Date and Time	Destination	Times	Type	Result	Resolution / ECM
001	07/07/2016 10:45	99087820142	0°02'21"	FAX	OK	200x200 Fine / On

# Send Result Report



MFP  
KM-5050

Firmware Version 2GR\_2000.035.002 2010.07.23

Job No. : 060102 Total Time : 0°02'12" Page : 007

## Completed

Document : doc20160707110428

### MALEY & ASSOCIATES

A PROFESSIONAL CORPORATION

*Counsellors at Law*

1150 Haddon Avenue

Suite 210

Collingswood, New Jersey 08108-2003

[www.maleyassociates.com](http://www.maleyassociates.com)

P 856.854.1515

F 856.858.2944

M. James Maley, Jr.\*

Emily K. Givens

Erin E. Simone

John Terruso\*

M. Michael Maley\*

\* Admitted in PA & NJ

July 7, 2016

Borough of Flemington  
Open Public Records Act Request Form  
38 park Avenue  
Flemington, NJ-08822

Re: OPRA Request

No.	Date and Time	Destination	Times	Type	Result	Resolution / ECM
001	07/07/2016 11:05	99087820142	0°02'12"	FAX	OK	200x200 Fine / On

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M. Michael Maley\*

\* Admitted in PA & NJ

July 7, 2016

Borough of Flemington  
Open Public Records Act Request Form  
38 park Avenue  
Flemington, NJ 08822

Re: **OPRA Request**

To Whom it May Concern:

Enclosed please find our OPRA Request along with a confirmation page showing our request was faxed to you on June 23, 2015. Thank you. Please do not hesitate to contact me if you have any questions or comments to same.

Very truly yours,

**MALEY & ASSOCIATES**

A Professional Corporation

By: \_\_\_\_\_

M. Michael Maley



MMM/mw

Enclosure



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City Collingswood State NJ Zip 08108

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Preferred Delivery: Pick Up  US Mail  On-Site Inspect  Fax  E-mail

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I **HAVE NOT** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature *Michael Maley* Date June 23, 2016

### Payment Information

Maximum Authorization Cost \$ \_\_\_\_\_

Select Payment Method

Cash  Check  Money Order

Fees: Letter size pages - \$0.05 per page  
Legal size pages - \$0.07 per page  
Other materials (CD, DVD, etc) – actual cost of material

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Extras: Special service charge dependent upon request.

**Record Request Information:** Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

Please see the attached sheet.

#### AGENCY USE ONLY

Est. Document Cost \_\_\_\_\_

Est. Delivery Cost \_\_\_\_\_

Est. Extras Cost \_\_\_\_\_

Total Est. Cost \_\_\_\_\_

Deposit Amount \_\_\_\_\_

Estimated Balance \_\_\_\_\_

Deposit Date \_\_\_\_\_

#### AGENCY USE ONLY

**Disposition Notes**  
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open \_\_\_\_\_

Denied - Closed \_\_\_\_\_

Filled - Closed \_\_\_\_\_

Partial - Closed \_\_\_\_\_

#### AGENCY USE ONLY

Tracking Information		Final Cost	
Tracking #	_____	Total	_____
Rec'd Date	_____	Deposit	_____
Ready Date	_____	Balance Due	_____
Total Pages	_____	Balance Paid	_____
Records Provided			
Custodian Signature _____		Date _____	

## DEPOSITS

The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the documents requested will cost in excess of \$5 to reproduce.

Where a special service charge is warranted under OPRA, that amount will be communicated to you as required under the statute. You have the opportunity to review and object to the charge prior to it being incurred. If, however, you approve of the fact and amount of the special service charge, you may be required to pay a deposit or pay in full prior to reproduction of the documents.

### **YOUR REQUEST FOR RECORDS IS DENIED FOR THE FOLLOWING REASON(S):**

(To be completed by the Custodian of Records – check the box of the numbered exemption(s) as they apply to the records requested. If multiple records are requested, be specific as to which exemption(s) apply to each record. Response is due to requestor as soon as possible, but no later than seven business days.)

#### **N.J.S.A. 47:1A-1.1**

- Inter-agency or intra-agency advisory, consultative or deliberative material
- Legislative records
- Law enforcement records:
  - Medical examiner photos
  - Criminal investigatory records (however, N.J.S.A. 47:1A-3.b. lists specific criminal investigatory information which must be disclosed)
  - Victims' records
- Trade secrets and proprietary commercial or financial information
- Any record within the attorney-client privilege
- Administrative or technical information regarding computer hardware, software and networks which, if disclosed would jeopardize computer security
- Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein
- Security measures and surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software
- Information which, if disclosed, would give an advantage to competitors or bidders
- Information generated by or on behalf of public employers or public employees in connection with:
  - Any sexual harassment complaint filed with a public employer
  - Any grievance filed by or against an employee
  - Collective negotiations documents and statements of strategy or negotiating
- Information that is a communication between a public agency and its insurance carrier, administrative service organization or risk management office
- Information that is to be kept confidential pursuant to court order
- Certificate of honorable discharge issued by the United States government (Form DD-214) filed with a public agency
- Social security numbers
- Credit card numbers
- Unlisted telephone numbers
- Drivers' license numbers
- Certain records of higher education institutions:
  - Research records
  - Questions or scores for exam for employment or academics
  - Charitable contribution information
  - Rare book collections gifted for limited access
  - Admission applications
  - Student records, grievances or disciplinary proceedings revealing a students' identification
- Biotechnology trade secrets N.J.S.A. 47:1A-1.2
- Convicts requesting their victims' records N.J.S.A. 47:1A-2.2
- Ongoing investigations of non-law enforcement agencies (must prove disclosure is inimical to the public interest) N.J.S.A. 47:1A-3.a.
- Public defender records N.J.S.A. 47:1A-5.k.
- Upholds exemptions contained in other State or federal statutes and regulations, Executive Orders, Rules of Court, and privileges created by State Constitution, statute, court rule or judicial case law N.J.S.A. 47:1A-9
- Personnel and pension records (however, the following information must be disclosed:
  - An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation, and the amount and type of any pension received
  - When required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the US, or when authorized by an individual in interest
  - Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information N.J.S.A. 47:1A-10

#### **N.J.S.A. 47:1A-1**

- "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy."

*Burnett v. County of Bergen*, 198 N.J. 408 (2009). Without ambiguity, the court held that the privacy provision "is neither a preface nor a preamble." Rather, "the very language expressed in the privacy clause reveals its substantive nature; it does not offer reasons why OPRA was adopted, as preambles typically do; instead, it focuses on the law's implementation." "Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests."

**Executive Order No. 21 (McGreevey 2002)**

- Records where inspection, examination or copying would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.
- Records exempted from disclosure by State agencies' proposed rules.

**Executive Order No. 26 (McGreevey 2002)**

- Certain records maintained by the Office of the Governor
- Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing
- Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments
- Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation
- Information in a personal income or other tax return
- Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed
- Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing
- Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by regulation or EO 9.

**Other Exemption(s) contained in a State statute, resolution of either or both House of the Legislature, regulation, Executive Order, Rules of Court, any federal law, federal regulation or federal order pursuant to N.J.S.A. 47:1A-9.a.**

(Please provide detailed information regarding the exemption from disclosure for which you are relying to deny access to government records. If multiple records are requested, be specific as to which exemption(s) apply to each record.)

**REQUEST FOR RECORDS UNDER THE COMMON LAW**

If, in addition to requesting records under OPRA, you are also requesting the government records under the common law, please check the box below.

A public record under the common law is one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it.

Yes, I am also requesting the documents under common law.

If the information requested is a "public record" under common law and the requestor has a legally recognized interest in the subject matter contained in the material, then the material must be disclosed if the individual's right of access outweighs the State's interest in preventing disclosure.

Please set forth your interest in the subject matter contained in the requested material:

---

***Note that any challenge to a denial of a request for records under the common law cannot be made to the Government Records Council, as the Government Records Council only has jurisdiction to adjudicate challenges to denials of OPRA requests. A challenge to the denial of access under the common law can be made by filing an action in Superior Court.***

1. All government records are subject to public access under the Open Public Records Act ("OPRA"), unless specifically exempt.
2. A request for access to a government record under OPRA must be in writing, hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. N.J.S.A. 47:1A-5.g. The seven (7) business day response time does not commence until the records custodian receives the request form. If you submit the request form to any other officer or employee of the **Name of Agency**, that officer or employee must either forward the request to the appropriate custodian, or direct you to the appropriate custodian. N.J.S.A. 47:1A-5.h.
3. Requestors may submit requests anonymously. If you elect not to provide a name, address, or telephone number, or other means of contact, the custodian is not required to respond until you reappear before the custodian seeking a response to the original request.
4. The fees for duplication of a government record in printed form are listed on the front of this form. We will notify you of any special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by cash, check or money order payable to the **Name of Agency**.
5. **You may be charged a 50% or other deposit when a request for copies exceeds \$25.** The **Name of Agency** custodian will contact you and advise you of any deposit requirements. You agree to pay the balance due upon delivery of the records. Anonymous requests in excess of \$5.00 require a deposit of 100% of estimated fees.
6. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, **and** who is seeking government records containing personal information pertaining to the person's victim or the victim's family. This includes anonymous requests for said information.
7. By law, the **Name of Agency** must notify you that it grants or denies a request for access to government records within seven (7) business days after the agency custodian of records receives the request. If the record requested is not currently available or is in storage, the custodian will advise you within seven (7) business days after receipt of the request when the record can be made available and the estimated cost for reproduction.
8. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
9. If the **Name of Agency** is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form or other written correspondence and send you a signed and dated copy.
10. Except as otherwise provided by law or by agreement with the requester, if the agency custodian of records fails to respond to you within seven (7) business days of receiving a request, the failure to respond is a deemed denial of your request.
11. If your request for access to a government record has been denied or unfiled within the seven (7) business days required by law, you have a right to challenge the decision by the **Name of Agency** to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.
12. Information provided on this form may be subject to disclosure under the Open Public Records Act.

For the purpose of this Request, the term "Project Area" refers to Block 22, Lots 4-9, 10 & 12; Block 23, Lots 1 & 7 on the official Tax Map of the Borough of Flemington.

For the purpose of this Request, the term "correspondence" shall include letters, emails, facsimiles or other written communications.

For the purpose of this Request, unless otherwise noted, the specified date periods are from January 2005 to the present.

1. Tax File for the individual Blocks and Lots within Project Area.
2. Tax Record Card(s) for the individual Blocks and Lots within Project Area.
3. Agenda, Minutes, Transcript and Audio Recording for April 26, 2010 Council Meeting.
4. Agenda, Minutes, Transcript and Audio Recording for Planning Board Meeting finding that the area in need of redevelopment authorized at the April 26, 2010 Council Meeting was recommended to be designated as an area in need of redevelopment.
5. Any exhibits provided to the Planning Board or Council related to the Project Area.
6. Council Resolution 2010-82.
7. Council Resolution 2010-94.
8. Council Ordinance 2010-14.
9. Union Hotel Preliminary Investigation for an Area In Need of Redevelopment Study dated June 2010 and prepared by Clarke Caton Hintz.
10. Agenda, Minutes, Transcript and Audio Recording for August 12, 2013 Council Meeting.
11. Council Resolution adopted August 12, 2013 related to the Project Area.
12. Agenda, Minutes, Transcript and Audio Recording for December 16, 2013 Planning Board Meeting.
13. Agenda, Minutes, Transcript and Audio Recording for January 28, 2014 Planning Board Meeting.
14. Planning Board Resolution adopted January 28, 2014 related to the Project Area.
15. Council Resolution adopted February 10, 2014 related to the Project Area.
16. Any and all Area in Need of Redevelopment Studies related to the Project Area.
17. The Redevelopment Plan for the Union Hotel/Union Hotel Redevelopment Plan and any associated amendments.
18. Any and all Redevelopment Plans, draft Redevelopment Plans, or amendments whether or not adopted, related to the Project Area.
19. Study of Expanded Union Hotel Area in Need of Redevelopment prepared by Clarke Canton Hintz and adopted by the Planning Board on December 16, 2013.
20. Redevelopment Agreement between Flemington Union Hotel, LLC and the Borough of Flemington, dated May 13, 2013.
21. Planning Board Resolution 2013-132.
22. The Request for Development Concept Proposals for the Union Hotel Property issued by the Borough on or about August 17, 2012
23. All responses submitted in response to Item 23.
24. Agenda, Minutes, Transcript and Audio Recording for the Council Meeting wherein the Redevelopment Committee provided its assessments, comments and recommendations to the responses identified in Item 24.
25. Any correspondence between the Redevelopment Committee or any of its individual members to any member of Council, the Mayor, or the Mayor and Council as a whole related to the Project Area and/or Items 23-24.
26. Any correspondence among the Redevelopment Committee or any of its individual members related to the Project Area and/or Items 23-24.
27. Resolution adopted September 27, 2010 establishing Redevelopment Committee.
28. Proof of Mailing of Notice to property owners sent regarding the redevelopment designation of the Project Area.
29. Planning Board file referencing the Project Area and any approvals.
30. Zoning Board file referencing the Project Area and any approvals.
31. Any and all drafts or executed Redevelopment Agreement(s) related to the Project Area.
32. Council Resolutions authorizing execution of any Redevelopment Agreements related to the Project Area.
33. Council Resolution 2012-193.
34. Council Resolution 2013-27.
35. Council Resolution 2013-78.
36. Council Resolution 2013-132.
37. Any and all drafts or executed Memorandum of Understanding(s) and any associated amendments related to the Project Area.
38. Any and all correspondence between the Borough and the New Jersey Department of Environmental Protection's Historic Preservation Office ("HPO").
39. Any and all Applications for Project Authorization submitted to the HPO.
40. Any and all Requests for Qualifications ("RFQs") related to the Project Area from January 2000 through the present.
41. Any and all Requests for Proposals ("RFPs") related to the Project Area from January 2000 through the present.
42. Any and all responses to the RFQs and/or RFPs identified in Items 41-42.
43. 2015 Reexamination of the Master Plan adopted August 24, 2015 and prepared by Clarke Caton Hintz.
44. Proof of Publication of Notices published in the local newspaper or newspaper used by the Borough related to the designation of the Project Area as an area in need of redevelopment.
45. Agenda, Minutes, Transcript and Audio Recording for all Planning Board Meetings related to the Project Area.
46. Agenda, Minutes, Transcript and Audio Recording for all Council Meetings related to the Project Area.
47. Any and all Resolutions related to the Project Area.
48. Any and all Ordinances related to the Project Area.



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Preferred Delivery: Pick Up  US Mail  On-Site Inspect  Fax  E-mail

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Signature *Mike Maley* Date July 18, 2016

### Payment Information

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Select Payment Method

Cash  Check  Money Order

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For the purpose of this Request, the term "Project Area" refers to Block 22, Lots 4-9, 10 & 12; Block 23, Lots 1 & 7 on the official Tax Map of the Borough of Flemington.  
For the purpose of this Request, the term "correspondence" shall include letters, emails, facsimiles or other written communications.  
For the purpose of this Request, unless otherwise noted, the specified date periods are from January 2005 to the present.

1. Any and all correspondence between Jack Cust and/or any business in which Jack Cust is a member and the Borough, the Zoning Board, the Planning Board, any professionals appointed by the Borough, any Borough employees, and any Borough appointees or volunteers related to the Project Area.
2. Any and all correspondence between John J. Cust, Jr. and/or any business in which Jack Cust is a member and the Borough, the Zoning Board, the Planning Board, any professionals appointed by the Borough, any Borough employees, and any Borough appointees or volunteers related to the Project Area..
3. Any and all correspondence between Dave Minno and/or and the Borough, the Zoning Board, the Planning Board, any professionals appointed by the Borough, any Borough employees, and any Borough appointees or volunteers related to the Project Area..
4. Any and all correspondence between Robert (Bob) Benjamin and/or and the Borough, the Zoning Board, the Planning Board, any professionals appointed by the Borough, any Borough employees, and any Borough appointees or volunteers related to the Project Area..
5. Any and all correspondence between any of the parties identified in Requests 1-4 and Steven Romanowski related to the Project Area..
6. Any and all correspondence to/from the parties identified in Requests 1-5 in which the Borough was carbon copied or blind carbon copied related to the Project Area..

#### AGENCY USE ONLY

Est. Document Cost \_\_\_\_\_

Est. Delivery Cost \_\_\_\_\_

Est. Extras Cost \_\_\_\_\_

Total Est. Cost \_\_\_\_\_

Deposit Amount \_\_\_\_\_

Estimated Balance \_\_\_\_\_

Deposit Date \_\_\_\_\_

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#### N.J.S.A. 47:1A-1.1

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  - When required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the US, or when authorized by an individual in interest
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#### N.J.S.A. 47:1A-1

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**Executive Order No. 21 (McGreevey 2002)**

- Records where inspection, examination or copying would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.
- Records exempted from disclosure by State agencies' proposed rules.

**Executive Order No. 26 (McGreevey 2002)**

- Certain records maintained by the Office of the Governor
- Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing
- Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments
- Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation
- Information in a personal income or other tax return
- Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed
- Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing
- Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by regulation or EO 9.

**Other Exemption(s) contained in a State statute, resolution of either or both House of the Legislature, regulation, Executive Order, Rules of Court, any federal law, federal regulation or federal order pursuant to N.J.S.A. 47:1A-9.a.**  
(Please provide detailed information regarding the exemption from disclosure for which you are relying to deny access to government records. If multiple records are requested, be specific as to which exemption(s) apply to each record.)

**REQUEST FOR RECORDS UNDER THE COMMON LAW**

If, in addition to requesting records under OPRA, you are also requesting the government records under the common law, please check the box below.

A public record under the common law is one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it.

Yes, I am also requesting the documents under common law.

If the information requested is a "public record" under common law and the requestor has a legally recognized interest in the subject matter contained in the material, then the material must be disclosed if the individual's right of access outweighs the State's interest in preventing disclosure.

Please set forth your interest in the subject matter contained in the requested material:

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***Note that any challenge to a denial of a request for records under the common law cannot be made to the Government Records Council, as the Government Records Council only has jurisdiction to adjudicate challenges to denials of OPRA requests. A challenge to the denial of access under the common law can be made by filing an action in Superior Court.***

1. All government records are subject to public access under the Open Public Records Act ("OPRA"), unless specifically exempt.
2. A request for access to a government record under OPRA must be in writing, hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. N.J.S.A. 47:1A-5.g. The seven (7) business day response time does not commence until the records custodian receives the request form. If you submit the request form to any other officer or employee of the **Name of Agency**, that officer or employee must either forward the request to the appropriate custodian, or direct you to the appropriate custodian. N.J.S.A. 47:1A-5.h.
3. Requestors may submit requests anonymously. If you elect not to provide a name, address, or telephone number, or other means of contact, the custodian is not required to respond until you reappear before the custodian seeking a response to the original request.
4. The fees for duplication of a government record in printed form are listed on the front of this form. We will notify you of any special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by cash, check or money order payable to the **Name of Agency**.
5. **You may be charged a 50% or other deposit when a request for copies exceeds \$25.** The **Name of Agency** custodian will contact you and advise you of any deposit requirements. You agree to pay the balance due upon delivery of the records. Anonymous requests in excess of \$5.00 require a deposit of 100% of estimated fees.
6. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, **and** who is seeking government records containing personal information pertaining to the person's victim or the victim's family. This includes anonymous requests for said information.
7. By law, the **Name of Agency** must notify you that it grants or denies a request for access to government records within seven (7) business days after the agency custodian of records receives the request. If the record requested is not currently available or is in storage, the custodian will advise you within seven (7) business days after receipt of the request when the record can be made available and the estimated cost for reproduction.
8. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
9. If the **Name of Agency** is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form or other written correspondence and send you a signed and dated copy.
10. Except as otherwise provided by law or by agreement with the requester, if the agency custodian of records fails to respond to you within seven (7) business days of receiving a request, the failure to respond is a deemed denial of your request.
11. If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the **Name of Agency** to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.
12. Information provided on this form may be subject to disclosure under the Open Public Records Act.

# MALEY & ASSOCIATES

A PROFESSIONAL CORPORATION

*Counsellors at Law*

1150 Haddon Avenue

Suite 210

Collingswood, New Jersey 08108-2008

www.maleyassociates.com

P 856.854.1515

F 856.858.2944

M. James Maley, Jr.\*

Emily K. Givens

Erin E. Simone

John Terruso\*

M. Michael Maley\*

\* Admitted in PA & NJ

August 16, 2016

**VIA ELECTRONIC MAIL (RNEWMAN@HISTORICFLEMINGTON.COM) AND  
REGULAR MAIL**

Rebecca P. Newman, RMC, CTC, CMR

Borough of Flemington

38 Park Avenue

Flemington, New Jersey 08822

**Re: OPRA Request**

Dear Ms. Newman:

This letter is to advise you that Borough's indefinite review of our Open Public Records Act ("OPRA") requests and our requests under the common law cannot continue. The Borough is required, by law, to respond, in writing, to our requests and to produce the documents requested "as soon as possible, but not later than seven business days after receiving the request." N.J.S.A. 47:1A-5(g) and (i). To date, we have received miscellaneous documents, many of which are missing pages, and no formal response on the request forms.

Our initial request was forwarded on June 23, 2016 via facsimile. A copy of the confirmation page is attached for your reference. Our office followed up with you on July 7, 2016 and we were advised that no such request had been received by the Borough. Again, on July 7, 2016, our office forwarded our original request which was confirmed as received by your office that day.

On July 20, 2016, you contacted our office requesting an extension through July 29, 2016 and offering to "send what I have". We agreed to the extension conditioned on the forwarding of documents already assembled. We did not receive the partial set of documents until July 26, 2016.

On August 1, 2016, after the deadline of the requested extension, our office followed up for a second time. We also had the opportunity to review the documents forwarded on July 26. After our review, we discovered that nearly twenty (20) documents provided were missing

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pages. On August 2, 2016, we demanded the missing pages, a formal written response to our request and an update on the status of the document production. In reply, you advised that you "thought majority of everything was completed" and that you would "look into this today."

In a last attempt, on August 8, 2016, we emailed a written request for an update on the document production, a request for a formal written response and a date certain as to when the request would be completed. To date, we have received no response.

Moreover, on July 18, 2016, our office forwarded a second request for documents which supplemented the initial request. To date, your office has only verbally acknowledged receipt of that request. We have received no request for an extension, no written response, and no documents.

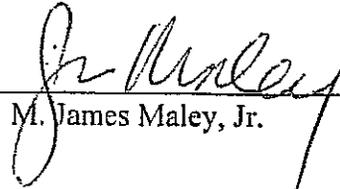
Finally, at the August 8 Council Meeting I again inquired as to our requests and was stopped from talking because I had exceeded my three (3) minutes speaking to the Council. Even though I mentioned the lack of responsiveness, there was no further information provided at the meeting.

Please be advised that if formal written responses to the July 7, 2016 and July 18, 2016 are not provided together with the requested documents by August 25, 2016 our office will take the necessary legal action to seek compliance with the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1 et seq.) and/or reasonable attorney's fees and/or applicable fines.

Very truly yours,

**MALEY & ASSOCIATES**  
A Professional Corporation

By: \_\_\_\_\_

  
M. James Maley, Jr.

MJM/mmm

cc: Barry S. Goodman (via e-mail and regular mail) (bgoodman@greenbaumlaw.com)

## Erin Simone

---

**From:** Michael Maley  
**Sent:** Monday, September 19, 2016 1:01 PM  
**To:** Erin Simone  
**Subject:** FW: OPRA Request

-----Original Message-----

From: rnewman@historicflemington.com [mailto:rnewman@historicflemington.com]  
Sent: Tuesday, August 16, 2016 3:40 PM  
To: Michael Maley  
Cc: bgoodman@greenbaumlaw.com  
Subject: RE: OPRA Request

Mr. Maley,

As I have said multiple times during our many conversations, I am doing my very best to accommodate this request. I sent you 700 pages already and I am still collecting data. Your request was extremely lengthy and would take all of my time. I am one person here in the office. We had a new person start Monday the 15th and I am doing my best to train and accomadate your request. You are more than welcome to have someone come down and review all of the records that we have here. Please understand I am doing the best I can. Thank you.

Rebecca

-----Original Message-----

From: "Michael Maley" <mmaley@maleyassociates.com>  
Sent: Tuesday, August 16, 2016 2:55pm  
To: "rnewman@historicflemington.com" <rnewman@historicflemington.com>, "bgoodman@greenbaumlaw.com" <bgoodman@greenbaumlaw.com>  
Subject: RE: OPRA Request

Please find the attachment to our August 16 letter inadvertently omitted in the email. Thanks.

Michael

We Moved - Not far, just two blocks over. Please be sure to update your records, see new address below in bold.

**M. Michael Maley**  
**MALEY & ASSOCIATES, P.C.**  
**1150 Haddon Avenue, Suite 210**  
**Collingswood, New Jersey 08108**  
**P. 856.854.1515**  
**F. 856.858.2944**  
**www.maleyassociates.com**

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unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy the original, and all copies of the original, message.

-----Original Message-----

From: Michael Maley

Sent: Tuesday, August 16, 2016 2:45 PM

To: 'rnewman@historicflemington.com' <rnewman@historicflemington.com>; 'bgoodman@greenbaumlaw.com' <bgoodman@greenbaumlaw.com>

Subject: OPRA Request

Ms. Newman and Mr. Goodman,

Please see the attached. Thanks.

Michael

We Moved - Not far, just two blocks over. Please be sure to update your records, see new address below in bold.

M. Michael Maley

**MALEY & ASSOCIATES, P.C.**

**1150 Haddon Avenue, Suite 210**

**Collingswood, New Jersey 08108**

**P. 856.854.1515**

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# EXHIBIT "G"

## Erin Simone

---

**From:** Michael Maley  
**Sent:** Monday, September 19, 2016 1:01 PM  
**To:** Erin Simone  
**Subject:** FW: OPRA  
**Attachments:** doc20160817131456.pdf

**From:** Michael Maley  
**Sent:** Wednesday, August 17, 2016 3:04 PM  
**To:** rnewman@historicflemington.com  
**Cc:** Barry Goodman, Esq.  
**Subject:** RE: OPRA

Ms. Newman,

Thank you for your email. I will review your response at length, but want to clarify a few of the points you address.

Initially, the July 18, 2016

Request was sent without the personal information on the top of the page. However, that problem was corrected and faxed approximately 15 minutes after the "blank" (see attached). There is no justification as to why this request has been dormant for 30 days.

As to Requests 23-25, please accept the clarification below:

22. The Request for Development Concept Proposals for the Union Hotel Property issued by the Borough on or about August 17, 2012
23. All responses submitted in response to Item **22**.
24. Agenda, Minutes, Transcript and Audio Recording for the Council Meeting wherein the Redevelopment Committee provided its assessments, comments and recommendations to the responses identified in Item **23**.
25. Any correspondence between the Redevelopment Committee or any of its individual members to any member of Council, the Mayor, or the Mayor and Council as a whole related to the Project Area and/or Items **22-23**.

As to item #30, it appears item #29 was researched and determined not to be "very broad" or needing "clarification". The only difference between the requests is that item #30 is requested from the Zoning Board. In the interest of bringing this to a conclusion, we seek the entirety of files maintained by the Zoning Board, its secretary, or solicitor that reference Block 22, Lots 4-9, 10 & 12; Block 23, Lots 1 & 7, separately or jointly.

Thanks.

Michael

M. Michael Maley  
MALEY & ASSOCIATES, P.C.  
1150 Haddon Avenue, Suite 210  
Collingswood, New Jersey 08108  
P. 856.854.1515  
F. 856.858.2944  
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-----Original Message-----

From: [rnewman@historicflemington.com](mailto:rnewman@historicflemington.com) [<mailto:rnewman@historicflemington.com>]

Sent: Wednesday, August 17, 2016 1:00 PM

To: Michael Maley <[mmaley@maleyassociates.com](mailto:mmaley@maleyassociates.com)>

Cc: Barry Goodman, Esq. <[bgoodman@greenbaumlaw.com](mailto:bgoodman@greenbaumlaw.com)>

Subject: OPRA

Dear Mr. Maley,

I have gone through your request and I have attached your original sheet with my comments on it. Items 23 & 24 do not make sense to me. We also do not have transcripts from any meeting as we just do minutes. Item # 30 is very broad and needs clarification. Item # 38 I will have to research. To my knowledge, SHPO has not been involved with the redevelopment of the Hotel area. There has been some contact recently but that pertains to 90 Main street which the Borough owns.

In regards to your second OPRA request, it was faxed to me with the top blank. I will speak to the Council and the professionals and get copies of any correspondence for you as soon as possible. Our Mayor is on vacation this week so I will not get his until next week sometime.

As far as the original request, I have copied everything I have on the Union Hotel. I have rescanned in everything and I will send you copies again. The email where you stated pages were missing had several duplicated items on it. I will send an email with all the items that I rescanned. Please let me know if there are any items you are missing from the original OPRA request. Thank you.

Rebecca

# MALEY & ASSOCIATES

A PROFESSIONAL CORPORATION

*Counsellors at Law*

1150 Haddon Avenue

Suite 210

Collingswood, New Jersey 08108-2003

www.maleyassociates.com

M. James Maley, Jr.\*

Emily K. Givens

Erin E. Simone

John Terruso\*

M. Michael Maley\*

\* Admitted in PA & NJ

P 856.854.1515

F 856.858.2944

September 20, 2016

Clerk, Law Division  
Superior Court of New Jersey  
Hunterdon County  
65 Park Avenue  
Flemington, NJ 08822

RECEIVED/FILED  
SUPERIOR COURT  
2016 SEP 21 A 10: 39  
HUNTERDON COUNTY  
DEPUTY CLERK

**Re: Friends of Historic Flemington, LLC v. Borough of Flemington  
And Rebecca Newman, Records Custodian**

Dear Sir or Madam:

Enclosed please find an original and two (2) copies of the following in regard to the above captioned matter:

1. Case Information Statement;
2. Complaint in Lieu of Prerogative Writ; and
3. Check #1260 in the amount of \$250.00 representing filing fee.

Kindly file same and provide a copy marked "filed" in the envelope provided. If you should have any questions, please do not hesitate to contact me. Thank you.

Very truly yours,

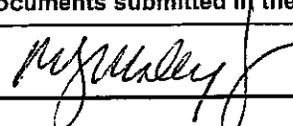
**MALEY & ASSOCIATES**

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By: *M. James Maley, Jr.*  
M. James Maley, Jr.

MJM/mw  
Enclosure

**Appendix XII-B1**

	<h2 style="margin:0;">CIVIL CASE INFORMATION STATEMENT (CIS)</h2> <p style="margin:0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> <b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</b></p>		<b>FOR USE BY CLERK'S OFFICE ONLY</b>
			PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO.
			AMOUNT:
			OVERPAYMENT:  BATCH NUMBER:
ATTORNEY / PRO SE NAME M. JAMES MALEY, JR.		TELEPHONE NUMBER (856) 854-1515	COUNTY OF VENUE Hunterdon <input checked="" type="checkbox"/>
FIRM NAME (if applicable) MALEY & ASSOCIATES, P.C.		DOCKET NUMBER (when available) L-416-16	
OFFICE ADDRESS 1150 Haddon Avenue Suite 210 Collingswood, NJ 08108		DOCUMENT TYPE Complaint	
		JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
NAME OF PARTY (e.g., John Doe, Plaintiff) Friends of Historic Flemington, LLC		CAPTION Friends of Historic Flemington, LLC. v. Borough of Flemington and Rebecca Newman, Records Custodian	
CASE TYPE NUMBER (See reverse side for listing)  701	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN	
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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS	
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION  N/A			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, FOR WHAT LANGUAGE?		
<b>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 <i>Rule 1:38-7(b)</i>.</b>			
ATTORNEY SIGNATURE: 			

HUNTERDON COUNTY JUSTICE CENTER  
CIVIL DIVISION  
65 PARK AVE  
FLEMINGTON NJ 08822

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (908) 237-5820  
COURT HOURS 8:30 AM - 4:30 PM

DATE: SEPTEMBER 22, 2016  
RE: HISTORIC FLEMINGTON VS BOROUGH OF FLEMINGTON  
DOCKET: HNT L -000416 16

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON MICHAEL F. ONEILL

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001  
AT: (908) 237-5822.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING. PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: MAURICE MALEY  
MALEY & ASSOCIATES PC  
1150 HADDON AVE STE 210  
COLLINGSWOOD NJ 08108-2003

JUTNERO