



**Minutes of the Government Records Council  
April 28, 2010 Public Meeting – Open Session**

The meeting was called to order at 9:51 a.m. at the Department of Community Affairs, Conference Room 126, Trenton, New Jersey. The Open Public Meetings Act statement was read.

The pledge of allegiance was recited while standing by all.

The meeting notice and fire emergency procedure was read by Ms. Tabakin.

Ms. Hairston called the roll:

Present: Robin Berg Tabakin, Chairwoman, Janice Kovach (designee of Department of Community Affairs Acting Commissioner Lori Grifa), and Harlynn Lack (designee of Department of Community Affairs Acting Commissioner Lori Grifa for the sole purpose of voting on the April 8, 2010 meeting minutes), and Kathryn Forsyth (designee of Department of Education Commissioner Bret Schundler).

GRC Staff In Attendance: Executive Director Catherine Starghill, In-House Counsel Karyn Gordon, GRC Secretary Brigitte Hairston, Case Managers: Dara Lownie, Frank Caruso, John Stewart, and Deputy Attorney General Debra Allen.

Ms. Tabakin read the Resolution for Closed Session (Resolution Number A 2010-01-26) to go into closed session pursuant to N.J.S.A. 10:4-12.b(7) to receive legal advice and discuss anticipated litigation in which the public body may become a party in the following matters:

1. Nancy Lewen v. Robbinsville Public School District (Mercer) (2008-211)

A motion was made to go into closed session by Ms. Kovach and seconded by Ms. Forsyth to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Ms. Kovach and seconded by Ms. Forsyth to end the closed session. The motion was adopted by a unanimous vote. The Council met in closed session from 9:54 a.m. until 10:14 a.m.

Open Session reconvened at 10:16 a.m. and Ms. Hairston called roll.

Present: Ms. Tabakin, Ms. Kovach, Ms. Lack and Ms. Forsyth.

A motion was made by Ms. Lack and seconded by Ms. Forsyth to approve the closed session minutes of the April 8, 2010 meeting. The motion passes by an unanimous vote.

A motion was made by Ms. Lack and seconded by Ms. Forsyth to approve the open session minutes of the April 8, 2010 meeting. The motion passes by an unanimous vote.

**Council Adjudication:**

The following complaints were presented to the Council for summary administrative adjudication:

1. Marc Gibson v. Middlesex County Adult Correctional Facility (2009-193)
2. Adrian Mapp v. Borough of Roselle (Union) (2009-227)
3. Adrian Mapp v. Borough of Roselle (Union) (2009-228)
4. William Donio v. NJ Department of Treasury, Division of Pensions & Benefits (2009-296)
5. Rich Guzzo v. Township of Greenwich (Warren) (2009-332)
6. Robert E LeMunyon v. University of Medicine and Dentistry of NJ (2009-333)
7. Christopher A Gray v. City of Camden (Camden) (2010-03)
8. John Martocci v. NJ Department of Corrections, Southern State Prison (2010-22)
9. David H Weiner v. County of Essex (2010-35)
10. Jay Thomas v. County of Bergen (2010-41)
11. Michael Brown v. County of Camden (2010-49)
12. Ralph S Price v. Township of Blairstown (Warren) (2010-50)
13. Steven Kossup v. Paterson Police Department (Passaic) (2010-52)
14. Michael Crook v. Atlantic County Prosecutor's Office (2010-56)
15. Kenneth Vercammen v. Township of Robbinsville, Police Department (Mercer) (2010-63)
16. Beverly Milgram Flowers v. NJ Judiciary, Lawyer's Fund for Client Protection (2010-66)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

The following complaints requiring individual adjudication were not put to a vote due to the lack of quorum:

1. James D'Andrea v. NJ Department of Community Affairs, Division of Local Government Services (2007-64)
2. William Gettler v. Wantage Regional Schools, Board of Education (Sussex) (2007-105)
3. Joyce Blay v. Jackson Board of Education (Ocean) (2007-177)
4. John Paff v. Borough of Lavallette (Ocean) (2007-209)
5. David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306)
6. John Bentz v. Borough of Paramus (Bergen) (2008-89)
7. J.C. v. NJ Department of Education, Deputy Commissioner's Office (2008-91)
8. Robert Verry v. Borough of South Bound Brook (Somerset) (2008-161)
9. Gertrude Casselle v. NJ Department of Community Affairs, Division of Community Resources (2008-248)
10. Ursula Cargill v. NJ Department of Education (2009-9)

11. Ursula Cargill v. State Ethics Commission (2009-10)
12. James Sage v. County of Monmouth Board of Chosen Freeholders (2009-43)
13. Jason Alt v. NJ Department of Education (2009-114)

**Thomas Johnston v. Township of Hillside, Municipal Council (2006-202)**

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council accept the Administrative Law Judge's Initial Decision dated March 31, 2010 in which the Judge approved the Settlement Agreement and Mutual Release signed by the parties or their representatives.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Richard Rivera v. Union City Board of Education (Hudson) (2008-112)**

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council accept the Administrative Law Judge's Initial Decision dated March 30, 2010 in which the Judge approved the Settlement Agreement and Release signed by the parties or their representatives.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

**Kreszentia Morris v. Borough of Victory Gardens (Morris) (2008-137)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian provided access to the invoices responsive to Item No. 1 of the Complainant's June 18, 2008 OPRA request, because the Custodian failed to simultaneously provide certified confirmation of her compliance to the GRC until March 9, 2010 and failed to legally certify to the search undertaken until March 12, 2010, the Custodian failed to fully comply with the Council's February 23, 2010 Interim Order pursuant to Jung & O'Halloran v. Borough of Roselle (Union), GRC Complaint Nos. 2007-299; 2007-307 (April 2009).
2. Because Item No. 1 and No. 2 of the June 17, 2008 request, Item No. 4 of the June 18, 2008 request (except the request for the resume) and the Complainant's June 20,

2008 request are not valid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), and because the Custodian did not unlawfully deny access to the resume responsive to request Item No. 4 of the Complainant's June 18, 2008 request pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's February 23, 2010 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Specifically, the Custodian disclosed all invoices responsive to Item No. 1 of the Complainant's OPRA request pursuant to the Council's February 23, 2010 Interim Order. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

#### **Nancy Lewen v. Robbinsville Public School District (Mercer) (2008-211)**

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian's Counsel on behalf of the Custodian and within the time period provided by the terms of the Council's Interim Order as extended, (a) certified that all attachments to the e-mails responsive to the request were disclosed to the Complainant on February 20, 2009 except for a few logo graphics which the agency was unable to print, and (b) delivered to the Council in a sealed envelope nine (9) copies of the requested unredacted documents and nine (9) copies of those same records in redacted form to serve as a redaction index, as well as a legal certification that the documents provided are the documents requested by the Council for the *in camera* inspection, the Custodian complied in a timely manner with the terms of the Council's December 22, 2009 Interim Order.

2. Because the *in camera* examination of an e-mail from Kathie Foster to Helen Payne dated November 12, 2007 at 8:13 a.m. revealed the Custodian unlawfully denied the Complainant access to said record pursuant to N.J.S.A. 47:1A-6., the Custodian must disclose the unredacted record to the Complainant within five (5) business days of the Council's Interim Order.<sup>1</sup>
3. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in paragraph 2 above within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

**Jesse Wolosky v. Township of Montague (Sussex) (2009-14)**

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council with amendments:

The Executive Director respectfully recommends the Council find that:

1. The Custodian provided the GRC with a legal certification and a copy of the revised Township OPRA request form on March 8, 2010. Therefore, the Custodian timely complied with the Council's February 23, 2010 Interim Order.
2. Although the Custodian's charge of \$5.00 per CD for the requested audio recording of the February 4, 2008 public meeting is not the actual cost and in violation of N.J.S.A. 47:1A-5.b. and the Township's OPRA request form was in violation of N.J.S.A. 47:1A-5.f., the Custodian certified that she provided the Complainant with

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<sup>1</sup> **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

a copy of the requested audio recording free of charge and amended the Township's OPRA request form in accordance with the Council's February 23, 2010 Interim Order in a timely manner. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Specifically, the Custodian provided the Complainant with a copy of the audio recording of the requested public meeting minutes at no charge following the filing of the instant complaint. The Custodian also revised the Township's OPRA request form by deleting the entire section entitled "Exceptions to public access to government records" in January 2009. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law because the Custodian's charge of \$5.00 per CD for the requested audio recording of the public meeting dated February 4, 2008 is not the actual cost and in violation of N.J.S.A. 47:1A-5.b. Additionally, the Township's OPRA request form was in violation of N.J.S.A. 47:1A-5.f. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

#### **Jesse Wolosky v. Sparta Board of Education (Sussex) (2009-56)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because the Complainant voluntarily withdrew his complaint from the Office of Administrative Law via letter to the GRC dated March 15, 2010. Therefore, no further adjudication is required.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

#### **Veronica Silkes v. Town of Dover (Morris) (2009-60)**

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian failed and refused to disclose to the Complainant all records responsive to the Complainant's January 14, 2009 OPRA request via the Complainant's preferred delivery method within five (5) business days from receipt of the Council's Interim Order and failed and refused to forward certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4 to the Executive Director within five (5) business days from receipt of the Council's Interim Order, the Custodian, Margaret Verga, has not complied with the terms of the Council's February 23, 2010 Interim Order and is in contempt of said Order.
2. Because the Custodian denied the Complainant access to the records relevant to the complaint via the Complainant's preferred delivery method and failed and refused to comply with the terms of the Council's Interim Order dated February 23, 2010 within the time period provided and continues to fail and refuse to comply with the terms of said Order, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional.
3. Although this Denial of Access Complaint did not bring about a change in the Custodian's conduct because the Custodian continues and refuses to comply with the terms of the Council's Interim Order dated February 23, 2010, pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant was successful in obtaining an Order by the Council stating that access was improperly denied. Further, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the Complainant was able to demonstrate a factual causal nexus between filing of the Denial of Access Complaint and the relief ultimately achieved, as well as show that said relief did have a basis in law because the Custodian is obligated to disclose all records responsive to the Complainant's January 14, 2009 OPRA request via the Complainant's preferred delivery method. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).
4. This complaint is referred to the Office of Administrative Law for determination of (a) whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, and (b) for the determination of reasonable prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Jesse Wolosky v. Andover Regional School District (Sussex) (2009-94)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's response to the Complainant's OPRA request was insufficient because she failed to specifically state whether the requested executive session meeting minutes were approved by the governing body at the time of the Complainant's request pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Township of Berkeley Heights (Union), GRC Complaint No. 2007-271 (November 2008).
2. Because the requested executive session meeting minutes were approved by the Andover Regional School District Board of Education at the time of the Complainant's OPRA request and did not constitute advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1., the Custodian has unlawfully denied access to the requested executive session meeting minutes. Further, the Custodian has failed to bear her burden of proving a lawful denial of access to the requested executive session meeting minutes pursuant to N.J.S.A. 47:1A-6.
3. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the seven (7) records responsive to determine the validity of the Custodian's assertion that the record constitutes inter-agency or intra-agency advisory, consultative or deliberative material which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.:
  - September 16, 2008 executive session meeting minutes.
  - October 7, 2008 executive session meeting minutes.
  - October 21, 2008 executive session meeting minutes.
  - November 4, 2008 executive session meeting minutes.
  - November 18, 2008 executive session meeting minutes.
  - December 2, 2008 executive session meeting minutes.
  - December 16, 2008 executive session meeting minutes.
4. **The Custodian must deliver<sup>2</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted document (see No. 3 above), a document or redaction index<sup>3</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4<sup>4</sup>, that the document provided is the document requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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<sup>2</sup> The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>3</sup> The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

<sup>4</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."



6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

**William Dusenberry v. New Jersey City University (2009-101)**

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that the Custodian has lawfully denied access to the requested outside activity questionnaires because they are personnel records exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-10 and New Jersey City University has an obligation to safeguard from public access a citizen's personal information when disclosure thereof would violate the citizen's reasonable expectation of privacy. *See* North Jersey Media Group, Inc. v. Bergen County Prosecutor's Office, 405 N.J.Super. 386 (App. Div. 2009).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

**Ricardo Gonzales v. Washington Township (Burlington) (2009-121)**

**Ricardo Gonzales v. Washington Township (Burlington) (2009-122)**

**Ricardo Gonzales v. Washington Township (Burlington) (2009-123)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that instant three (3) complaints should be dismissed because the Complainant has voluntarily withdrawn such in an e-mail to the GRC dated March 31, 2010.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

**Robert Verry v. Borough of South Bound Brook (Somerset) (2009-124)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Complainant's request for every e-mail and America Online Instant Messenger message sent to or sent from [MayorSBB@aol.com](mailto:MayorSBB@aol.com) during the week of July 24, 2005 fails

to seek specific identifiable government records because no content and/or subject is included, the Complainant's request is overly broad and is therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and the Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Accordingly, the Custodian has not unlawfully denied the Complainant access to said records. N.J.S.A. 47:1A-6. See Sandoval v. NJ State Parole Board, GRC Complaint No. 2006-167 (October 2008) and Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (March 2010).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Anthony Valente, Jr. v. Town of Harrison (Hudson) (2009-126)**

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that based upon established prior Court and GRC decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005) and the Council's decision in Feiler-Jampel v. Somerset County Prosecutor's Office, GRC Complaint No. 2007-190 (March 2008), the Complainant's request is overly broad and unclear since the Complainant does not name specifically identifiable records when he failed to be specific about the inspections, communications, vouchers, and extra work for which the vouchers relate. Despite this, the Custodian did act in good faith by providing the entire Streetscape Project file and offered the Complainant the opportunity to inspect said file to identify which records the Complainant wanted copied. Therefore, it is concluded that the Custodian did not unlawfully deny the Complainant access to the requested records when said request did not name specifically identifiable records.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

**Steven Duarte v. Township of Mansfield (Warren) (2009-130)**

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's March 13, 2009 OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to

N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

2. Because Item No. 2 of the Complainant's March 13, 2009 request failed to specifically name identifiable government records sought and would have required the Custodian to manually search through all of the agency's files and analyze, compile and collate the information contained therein, it is invalid under OPRA. See New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007).
3. The Council declines to order disclosure of the remainder of the records sought in the Complainant's March 13, 2009 OPRA request (copies of vouchers submitted to Mansfield Township from the engineering firm of Douglas Mace from August 1, 2006 through December 31, 2006), because these records were the subject of the revised April 29, 2009 OPRA request which the Complainant received on June 30, 2009.
4. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., the Custodian provided the Complainant with all records responsive to the April 29, 2009 request and request Item No. 2 of the Complainant's March 13, 2009 request is invalid because it is overly broad and fails to specify an identifiable government record. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Joseph Dinella v. Borough of Collingswood (Camden) (2009-142)**

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant's April 13, 2009 request failed to specifically name identifiable government records sought and would have required the Custodian to manually search through all of the agency's files and analyze, compile and collate the information contained therein, it is invalid under OPRA. See New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007).

2. Because the Custodian responded on the fifth (5<sup>th</sup>) business day after receipt of the Complainant's OPRA request stating that no record responsive to the Complainant's April 16, 2009 OPRA request for a copy of the loan agreement for the bridge loan to Lumberyard Redevelopment LLC nor any check for the disbursement of such a loan exists and subsequently certified in the Statement of Information that such records did not exist, and there is no credible evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005) and Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008). Additionally, the Custodian has borne her burden of proving a lawful denial of access and was under no obligation to provide the requested records to the Complainant since the requested record did not exist at the time of the Complainant's request pursuant to N.J.S.A. 47:1A-6.
3. Because request Item No. 4 of the Complainant's April 16, 2009 OPRA request seeks information rather than a specific identifiable government record, such request item is invalid under OPRA. Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007).
4. Although the Custodian responded in writing to the Complainant's April 16, 2009 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response was legally insufficient because she failed to respond to this request item. Therefore, the Custodian has violated N.J.S.A. 47:1A-5.g. See Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008).
5. Although the Custodian provided an insufficient response to the Complainant's April 16, 2009 request pursuant to N.J.S.A. 47:1A-5.g., the Custodian provided access to records responsive to request Items 1 and 5 of the Complainant's April 16, 2009 OPRA request, no records responsive to request Items No. 2 and 3 of the April 16, 2009 OPRA request exist, and request Item No. 4 is invalid under OPRA because it fails to specify identifiable government records. Moreover, the Complainant's April 13, 2009 request is also invalid under OPRA because it fails to name specifically identifiable records pursuant to New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Lack. The motion passed unanimously.

**John Torriero v. NJ Department of Children & Family Services (2009-145)**

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that the requested records are statutorily exempt from disclosure pursuant to the provisions of N.J.S.A. 9:6-8.10a, and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-9.a. and that no exception to the statutory exemption of N.J.S.A. 9:6-8.10a has been determined to apply based upon the evidence of record.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

**John Paff v. Borough of Lawnside (Camden) (2009-155)**

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian's Counsel provided the Complainant with a written response within the statutorily mandated seven (7) business days to seek an extension of time to fulfill said request, and because Counsel provided a date certain on which he would further respond to said request (ten business days beyond the statutory deadline), the Custodian's Counsel properly requested said extension pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Starkey v. NJ Department of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009).
2. The Custodian's failure to grant access, deny access, seek clarification, or request an additional extension of time within the extended deadline date results in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
3. Because the Complainant's OPRA request items no. 2-5 are not requests for specific identifiable government records and because the Custodian is not required to conduct research in response to an OPRA request, said request items are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), Taylor v. Elizabeth Board of Education (Union), GRC Complaint No. 2007-214 (April 2008), and Bart v. Passaic County Public Housing Agency, 406 N.J. Super. 445 (App. Div.

2009). Nevertheless, the Custodian indicated that no records responsive to said request items exist. Because the Custodian indicated that there are no records responsive to request items no. 2-5, the Custodian would have carried her burden of proving a lawful denial of access, had she provided such response to the Complainant within the extended timeframe, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

4. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide the Complainant with a subsequent written response within the extended deadline date, there is no evidence in the record that suggests the Custodian's delay in providing access to the requested records was intentional and deliberate. Additionally, the Custodian's Counsel ultimately provided the Complainant access to all records responsive that exist. Therefore, despite the Custodian's violation of OPRA, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
  
5. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian and Counsel failed to provide the Complainant with a further response to his OPRA request until after the filing of this complaint, despite the Complainant's repeated attempts to obtain such a response prior to the filing of this complaint. Further, the relief ultimately achieved had a basis in law. The Custodian was obligated to either grant access, deny access, seek clarification, or request an additional extension of time by March 25, 2009, the extended deadline date, pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Laura Danis v. Garfield Board of Education (Bergen) (2009-156)**

**Laura Danis v. Garfield Board of Education (Bergen) (2009-157)**

**Laura Danis v. Garfield Board of Education (Bergen) (2009-158)**

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's March 25, 2009 request, March 26, 2009 request No. 1 and March 26, 2009 request No. 2 either

granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s three (3) OPRA requests pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

2. Because the Complainant’s March 25, 2009 request seeks information rather than a specifically identifiable government record, the request is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. The unapproved, draft executive session meeting minutes dated January 27, 2009 and February 24, 2009 constitute inter-agency or intra-agency advisory, consultative, or deliberative material and thus are not government records pursuant to the definition of a government record and are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. and Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006). Accordingly, the Custodian has borne his burden of proving a lawful denial of access to the January 27, 2009 and February 24, 2009 draft minutes pursuant to N.J.S.A. 47:1A-6 because the requested draft executive minutes were not approved by the governing body at the time of the Complainant’s March 26, 2009 OPRA request No. 1.
4. The Custodian certified that he provided all records responsive to the Complainant on June 15, 2009 and there is no credible evidence in the record to refute the Custodians’ certification. Therefore, although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide a written response to the Complainant within the statutorily mandated time frame, he did not unlawfully deny access to the records responsive to the Complainant’s March 26, 2009 request No. 2 pursuant Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
5. Although the Custodian’s failure to provide a written response to the Complainant’s three (3) records requests within the statutorily mandated seven (7) business days resulted in a “deemed” denial, because the Complainant’s March 25, 2009 request is invalid under OPRA, because the Custodian bore his burden of proving a lawful denial of access to the minutes responsive to the Complainant’s March 26, 2009 OPRA request No. 1, and because the Custodian provided all records responsive to the Complainant’s March 26, 2009 OPRA request No. 2 on June 15, 2009, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
6. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006) and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the GRC is unable to determine whether the Complainant is a “prevailing party”

entitled to an award of reasonable attorney's fees. Specifically, the GRC cannot determine whether the filing of this complaint brought about a change (voluntary or otherwise) in the Custodian's conduct based on the lack of documentary evidence. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the filing of the Complainant's Denial of Access Complaint was the catalyst for a change in the Custodian's behavior and, if warranted, a determination of the amount of appropriate prevailing party attorney's fees.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Vesselin Dittrich v. Borough of Fort Lee, Construction Office (Bergen) (2009-163)**

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Because the Complainant's request does not identify with reasonable clarity the specific government records sought, said request is invalid under OPRA and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., by failing to provide the Complainant with a written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, the Complainant's request is ultimately invalid under OPRA because it does not identify with reasonable clarity the specific government records sought. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Thomas Caggiano v. Borough of Stanhope (Sussex) (2010-61)**



Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that this case should be dismissed based on Judge Dana's December 3, 2008 Judgment prohibiting any contact between Mr. Caggiano and officials of the Borough of Stanhope except for Mr. Caggiano's payment of tax and utility payments and 911 calls for emergencies.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Thomas Caggiano v. Borough of Stanhope (Sussex) (2010-67)**

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that this case should be dismissed based on Judge Dana's December 3, 2008 Judgment prohibiting any contact between Mr. Caggiano and officials of the Borough of Stanhope except for Mr. Caggiano's payment of tax and utility payments and 911 calls for emergencies.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Kovach and seconded by Ms. Forsyth. The motion passed unanimously.

**Complaints on Appeal:** None.

**Complaints Adjudicated on NJ Superior Court & NJ Supreme Court:** None.

**Executive Director's Report and New Business:** Ms. Starghill informed the Council members about the article she and Acting Commissioner Lori Grifa wrote for the NJ League of Municipalities magazine entitled, "Problems in Practice." The article will appear in the June issue of the magazine.

**Public Comment:** None.

A motion to end the Council's meeting was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Meeting adjourned at 10:55 a.m.

Respectfully submitted,

Robin Berg Tabakin, Chairwoman

Date Approved: May 27, 2010