

**Minutes of the Government Records Council
February 10, 2005 Public Meeting**

The meeting was called to order at 9:00 a.m at the Department of Community Affairs, Room 816, Trenton, New Jersey. The Open Public Meeting Act statement was read.

Ms. Luzzatto called the roll:

Present: Chairman, Vincent Maltese; Secretary, Virginia Hook; DeAnna Minus-Vincent (Designee of Commissioner Susan Bass Levin, Department of Community Affairs); DeAnna Minus-Vincent; Independent Council, Elnardo Webster; Staff Advisory, David Zipin; Deputy Attorney General, Debra Allen; Executive Director, Paul F. Dice; Assistant Executive Director, Gloria Luzzatto; Case Managers: Christopher Malloy, Kimberly Gardner, Colleen McGann; Erin Knoedler

Absent: Diane Schonyers

Mr. Maltese read the resolution to convene in closed session to receive legal advice concerning the complaints to be adjudicated that day. All members present approved the motion. The Council met in closed session from 9:15 a.m. to 11:15 a.m.

The Council reconvened in open session at 11:30 a.m. in Room 816 of the Department of Community Affairs, Trenton, NJ. The Open Public Meetings Act statement was read and attendees recited the Pledge of Allegiance.

Mr. Maltese read the list of cases appearing on the agenda as “Administrative Action Taken.” He also noted that two cases on the agenda would not be heard at this meeting: Jose Falto v. Union City Parking Authority (2004-144) and Fred Burnett v. County of Bergen (2004-6).

Mr. Maltese opened the hearing in the matter of Martin O’Shea v. Township of West Milford, GRC Complaint No. 2004-17. He stated that a verbatim record of the entire proceedings is being taken by a court reporter from Guy Renzi and Associates and by reference will become part of the minutes of the meeting. The parties in attendance for the hearing were:

Township of West Milford: William DeMarco
Complainant: Martin O’Shea

Dale Baranoski v. NJ Department of Law and Public Safety, Division of Criminal Justice (2003-5)

Ms. Luzzatto reviewed the background information of the case set forth in the Executive Director’s Findings and Recommendations with the recommendation that the Council dismiss the case on the basis that:

1. As opposed to the previous indices submitted by the DCJ, a review of the information provided in the January 18, 2005 Vaughn Index is sufficiently

- detailed for the each of the 16 documents listed to conclude that all the documents listed would be considered privileged and not subject to disclosure.
2. The Council should conclude that the DCJ has met the burden of proving that all 16 documents were properly withheld from disclosure pursuant to OPRA. An “in camera” review would not be warranted in this matter since the Vaughn Index provides sufficient information to explain the basis for the claimed privileges of all 16 documents. An “in camera” review is not warranted or appropriate in determining the existence of a record.
 3. The DCJ did not unreasonably deny access to government records and, therefore, the custodian’s actions did not rise to the level of a knowing and willful violation of OPRA under the totality of the circumstances.

Several administrative changes to the findings and recommendations concerning dates were noted for the record.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Daniel Meaders v. William Paterson University (2004-49)

Ms. Kimberly Gardner reviewed the background information of the case set forth in the Executive Director’s Findings and Recommendations with the recommendation that the Council dismiss the case on the basis that the Custodian and Custodian’s Counsel certified that the requested records was not an experiential requirement for those individuals identified in the records request. Therefore, the requested records were exempt from disclosure pursuant to N.J.S.A. 47:1A-10.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Janon Fisher v. Dept. of Law and Public Safety-Div. Of Law (2004-55)

Mr. Paul Dice reviewed the background information of the case set forth in the Executive Director’s Findings and Recommendations and stated that the Division of Law fully complied with the Council’s January 21, 2005 Interim Decision in their Request for a Stay by filing a January 27, 2005 Notice of Appeal with the Appellate Division of Superior Court. He stated further that based on this action the Council now does not have

now have jurisdiction in this complaint and should forego any further action pending the outcome of the appeal.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Janon Fisher v. Dept. of Law and Public Safety-Div. Of Law (2004-82)

Mr. Paul Dice reviewed the background information of the case set forth in the Executive Director's Findings and Recommendations and stated that the Division of Law fully complied with the Council's January 21, 2005 Interim Decision in their Request for a Stay by filing a January 27, 2005 Notice of Appeal with the Appellate Division of Superior Court. He stated further that based on this action the Council now does not now have jurisdiction in this complaint and should forego any further action pending the outcome of the appeal.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Barbara Schwarz v. Department of Human Services (2004-60)

Ms. Gloria Luzzatto reviewed the background information of the case set forth in the Executive Director's Findings and Recommendations with the recommendation that the Council dismiss the case because the Custodian's certifications met the burden of proving that pursuant to HIPAA and Executive Order 26, paragraph 4 the Custodian's denial of access to the requested records was proper and therefore, cannot be abrogated by the Open Public Records Act. Additionally, the Custodian certified that the Department of Human Services has no records responsive to the Complainant's request of the "Church of Scientology".

She stated further that the Council should find that the Department of Human Services' proposed rule does not fall within the category addressed by Executive Order 21. Therefore, Executive Order 21 provides no justification for the Department of Human Services to not consider the Complainant's e-mail as a valid OPRA request. The Council's June 10, 2004 decision should stand as written "that the Custodian violated NJSA 47:1A-5(g) by not recognizing the Complainant's e-mail as an OPRA request. However, the action of the Custodian did not unreasonably deny access under the totality of the circumstances.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Barbara Schwarz v. New Jersey Senate Democratic Office (2004-184)

Ms. Gloria Luzzatto reviewed the background information of the case set forth in the Executive Director's Findings and Recommendations. Mr. Maltese suggested that the Council consider dismissing the case upon receipt of a legal certification from the custodian that it has no records responsive to the request. The Council further adopted that in subsequent requests from Schwarz or other complainant's where the custodian has certified that they have no records responsive to an OPRA request the case will be dismissed and does not need to be voted by the Council to close it but will be shown on the agenda and reflected in the minutes.

Mr. Maltese suggested further that the custodian submit a certification confirming that none of the information sought by the Complainant falls under N.J.S.A. 47:1A-47 that the legislative records shall not apply to otherwise publicly accessible reports which is required by law to be submitted to the legislature or its members. Upon receipt of the certification, the Executive Director is authorized to close the case.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Barbara Schwarz v. NJ Office of Legislative Services (2004-185)

Ms. Gloria Luzzatto reviewed the background information of the case set forth in the Executive Director's Findings and Recommendations. Mr. Maltese suggested that the custodian submit a certification confirming that none of the information sought by the Complainant falls under N.J.S.A. 47:1A-47 that the legislative records shall not apply to otherwise publicly accessible reports which is required by law to be submitted to the legislature or its members. Upon receipt of the certification, the Executive Director is authorized to close the case.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Barbara Schwarz v. NJ Assembly Republican Office (2004-186)

Ms. Gloria Luzzatto reviewed the background information of the case set forth in the Executive Director's Findings and Recommendations. Mr. Maltese suggested that the custodian submit a certification confirming that none of the information sought by the Complainant falls under N.J.S.A. 47:1A-47 that the legislative records shall not apply to otherwise publicly accessible reports which is required by law to be submitted to the legislature or its members. Upon receipt of the certification, the Executive Director is authorized to close the case.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Prince Cuba v. Northern State Prison (2004-146)

Ms. Colleen McGann reviewed the background information of the case set forth in the Executive Director's Findings and Recommendations with the recommendations that the Council dismiss the denial of access complaint 1 on the basis of the November 19, 2004 voluntary withdrawal of the request by the Complainant and dismiss the denial of access complaint 2 on the basis that the Custodian was proper in withholding the release of the requested record until receiving payment for the copying fee from the Complainant.

Mr. Maltese agreed with the findings of the Executive Director, however, suggested that the GRC staff discuss the various procedures as it relates to inmates securing public documents with the Department of Corrections and to insure there is a process in affect whereby the prisoners are aware of how to go about asking for and paying for government documents. It was also noted by Mr. Maltese that a copy of the findings and recommendations be forwarded to the Commissioner along with a copy of the minutes.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Prince Cuba v. Northern State Prison (2004-161)

Ms. Kimberly Gardner reviewed the background information of the case set forth in the Executive Director's Findings and Recommendations with the recommendations that the Council dismiss the case since the Custodian provided the Complainant with an appropriate response explaining that the requested record was non-existent and therefore could not be released. Ms. Gardner noted that the Custodian responded in a timely manner.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Al-Ghanee Kamau v. Department of Corrections (2004-175)

Ms. Erin Knoedler reviewed the background information of the case set forth in the Executive Director's Findings and Recommendations with the recommendations that the Council dismiss the case on the basis that the records requested are not disclosable under N.J.S.A. 47:1A-9 pursuant to Executive Order 26 as they are medical records.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The voted passed by a majority:

Ayes: Ms. Hook, Ms. Minus-Vincent

Nays: Mr. Maltese

Michael Shasho v. Borough of Ramsey (2004-57)

Ms. Kimberly Gardner reviewed the background information of the case set forth in the Executive Director's Findings and Recommendations. She stated that Mr. Shasho requested all executive minutes of the Mayor and Council for the past 14 months from the date of his request. Mr. Shasho was given a written response stating that the minutes could not be released because the governing body had not approved them and anticipated the minutes would be approved and released by the end of April. He filed his complaint on April 13, 2004 and the complainant verbally acknowledged that he received the requested records, but did not feel that he received all records responsive to his request. Ms. Gardner stated further that the custodian certified all records responsive to the request were released to the Complainant. She stated that the Executive Director respectfully recommended that the Council dismiss this case on the basis that the Custodian certified that the records responsive to this request were released.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Jeannie Smith v. New Jersey Sports and Exposition Authority (2004-142)

Mr. Christopher Malloy reviewed the background information of the case set forth in the Executive Director's Findings and Recommendations. He stated that Ms. Smith requested Public spending information, including both capital and operating expenditures, for payments made by or on behalf of the Giants Stadium at the Meadowlands during calendar year 2003 or fiscal year 2003-2004. He stated further that to date there had been no written response from the Custodian to either the Complainant or the Government Records Council.

He stated that the Executive Director respectfully recommended that the Council find that the Custodian should disclose the documents responsive to the request, subject to appropriate redactions, in the medium requested and with special charges, should they apply, in accordance with N.J.S.A. 47:1A-1 et seq. Additionally, it was the Executive Director's recommendation that the Council conduct a hearing to determine if the Custodian's lack of response to the OPRA request constituted a denial of access and a knowing and willful violation of OPRA under the totality of the circumstances.

Mr. Maltese suggested to the Council that the Custodian disclose the documents within 15 business days and that in addition to sending a copy of the Council's decision to the Custodian a copy should also be sent to NJSEA Chief Operations Officer and Chief Executive Officer.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Frank Culmone v. Longport Police Department (2004-147)

William Hewitt v. Longport Police Department (2004-148)

Ms. Erin Knoedler reviewed the background information of the cases set forth in the Executive Director's Findings and Recommendations and stated that the Executive Director respectfully recommended that the Council dismiss these cases based on the following:

1. The records requested are not disclosable under N.J.S.A. 47:1A-10 as they are personnel and pension records and the Complainant is not an "individual in interest" of the records.
2. Although the Custodian was not aware of the request, the Chief of Police, as an employee of the public agency, has a statutory obligation to forward the request to

the Custodian so that she could fulfill the request within the statutory time frame established by OPRA.

3. The issue of a formal grievance being filed does not need to be addressed because the records are clearly not disclosable pursuant to N.J.S.A. 47:1A-10 as they are personnel and pension records.

Mr. Maltese suggested that the municipality be placed on the Matrix because an employee of the municipality did not forward the request Custodian.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director. The motion failed and Mr. Maltese re-phrased the motion to refer the case to Counsel for further amplification on the opinion concerning “individual in interest,” and hold any decision in the case until the March 10, 2005 Council’s public meeting. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent, Mr. Maltese

Nays: None

Luis Perez vs. Borough of Glassboro (2004-149)

Ms. Colleen McGann reviewed the background information of the case set forth in the Executive Director’s Findings and Recommendations. Ms. McGann stated that the Executive Director respectfully recommended that the complaint be dismiss on the basis of the Custodian’s certification that the requested records are not made, maintained and kept on file and are therefore, not government records pursuant to OPRA. Administrative change was noted in the findings and recommendations to change “September 30, 2005” to “September 30, 2004.” It was also noted that the Executive Director’s recommendation should reflect that the Complainant received all documents.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Thomas Seibert v. Readington Twp. ,Hunterdon County (2004-150)

Mr. Paul. F. Dice reviewed the background information of the case set forth in the Executive Director’s Findings and Recommendations. Mr. Dice stated that at issue were all payment vouchers for Parker McCay and Criscuolo for the years 2002, 2003, 2004 to date. He stated further that the custodian who is relying on township council is not able to comply with this request according to their submissions because redactions needed to

be made. Mr. Dice noted that special counsel for Readington Township informed the GRC that it was not able to get to the project until March 15, because he is engaged elsewhere in a court case. Counsel sent the 400 vouchers to the GRC and said that the Council should do an *in camera* review to determine what is discloseable and what is not. I advised Counsel unless he submitted an appropriate “Vaughn Index.” In conclusion, Mr. Dice respectfully recommended that the Council order the custodian and their Counsel to provide a proper “Vaughn Index” to the Executive Director within 15 business days from receipt of the Council’s decision.

Mr. Maltese moved to order that the Custodian and their Counsel provide to the Council no later than February 28, 2005 a “Vaughn Index” with respect to the documents requested and should they not response by February 28, 2005, the matter will be heard at the March meeting with a decision rendered based on what the Council has before them as of that date.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Fallstick v. Haddon Township Business Partnership (2004-158)

Ms. Kimberly Gardner reviewed the background information of the case set forth in the Executive Director’s Findings and Recommendations. She stated that the Executive Director respectfully recommends that the case be dismissed on the following basis:

1. The Custodian provided the Complainant with access to the requested records.
2. The Custodian did violate N.J.S.A 47:1A-5(i) by not responding in a timely manner. However, the Custodian’s actions do not rise to a level of knowing and willful violation of OPRA under the Totality of the circumstances. The Custodian should also be placed on the Matrix system.

Mr. Maltese suggested that the Executive Director communicate with the Mayor of Haddon Township expressing the Councils’ concerns.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Tina Renna v. County of Union (2004-162)

Mr. Christopher Malloy reviewed the background information of the case set forth in the Executive Director’s Findings and Recommendations. Mr. Malloy stated that the Executive Director respectfully recommends that the case be dismissed on the basis of the following:

1. The Statement of Information as well as the certification from Custodian’s counsel that the requested records do not exist.
2. The Custodian failed to respond within the statutory time period. However, the Custodian’s actions should not be found to be a knowing and willful violation of the OPRA under the totality of the circumstances.

Mr. Maltese recommended that the Custodian be placed on the Matrix.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent/DCA. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Loigman v. Township of Middletown (2004-165)

Ms. Colleen McGann reviewed the background information of the case set forth in the Executive Director’s Findings and Recommendations. Ms. McGann stated that the Complainant requested all correspondence relating to the resignation of one Rosa Garcia Crowley as an employee of Middletown Township, including any correspondence from or to her; all documents relating to a civil action in Superior Court, Garcia v. Parkinson, including but not limited to, settlement agreements, releases, confidentiality agreements, invoices, etc., any minutes of a Township Committee reflecting receipt of or action on said resignation, and discussions regarding said resignation. She stated further that the Executive Direction respectfully recommends that the Council dismiss the case on the basis that all documents that were made, maintained or kept on file in the course of the Township’s official business and responsive to the request were provided to the Complainant.

Mr. Maltese suggested having a fact-finding hearing on April 14, 2005 should the parties not reach an agreement on the information sought in above.

Mr. Maltese called for a motion to accept the Findings and Recommendations of the Executive Director as amended. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Mr. Dice had no personnel matters at this time.

Mr. Maltese asked for any comments, revisions, and modifications of the October 14, 2004 meeting. Not hearing any Mr. Maltese entertained the motion to accept the minutes as prepared all members present approved the motion.

The motion was made by Ms. Minus-Vincent and seconded by Mr. Hook.

Ayes: Ms. Hook, Ms. Minus-Vincent and Mr. Maltese

Nays: None

Having discussed all cases listed on the agenda, Mr. Maltese opened the meeting to public comment.

Martin O'Shea

He discussed the responsible authoritative body to monitor the Open Public Meetings Act.

The meeting was adjourned by consensus at 2:30 p.m.

Respectfully Submitted,



DeAnna Minus-Vincent, Secretary

Dated: August 11, 2005