

**MINUTES OF THE
GOVERNMENT RECORDS COUNCIL
May 13, 2004**

The meeting was called to order at 9:30 AM. at the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Luzzatto called the roll:

Present: Chairman Vincent Maltese, Virginia Hook, Bernard Spigner, Dale Caldwell (designee of Commissioner Susan Bass Levin, Department of Community Affairs)

Absent: Diane Schonyers, (designee of Commissioner William Librera, Department of Education.)

Mr. Maltese read a resolution to convene in closed session to receive legal advice concerning the complaints to be adjudicated that day. Ms. Hook moved to adopt the resolution that was seconded by Mr. Caldwell. All members present unanimously approved the motion. The Council met in closed session from 9:30AM to 10:45AM.

The Council reconvened in open session at 11:00AM in room 129 of the Department of Community Affairs, Trenton, New Jersey. The Open Public Meeting Act statement was read and attendees recited the Pledge of Allegiance.

Ms. Luzzatto called the roll:

Present: Chairman Vincent Maltese, Virginia Hook, Bernard Spigner, Dale Caldwell (designee of Commissioner Susan Bass Levin, Department of Community Affairs)

Also Present: Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, Deputy Attorney General Andrea Grundfest, GRC Attorney Advisor David Zipin, Staff Associates Chris Malloy, Anthony Carabelli, Erin Mallon, Kimberly Gardner

Absent: Diane Schonyers, (designee of Commissioner William Librera, Department of Education)

Mr. Maltese asked the Executive Director, Mr. Dice, for a report on personnel. Mr. Dice stated that the GRC received sixteen proposals in response to the RFQ's for the independent Council position. He stated that the RFQ's are in the process of being reviewed.

Mr. Maltese called for a motion to accept the Open Public Meeting Minutes from the April 8, 2004 meeting as prepared and amended. A motion was made by Mr. Spigner and seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Maltese

Nays: None

Abstain Mr. Caldwell

Absent: Ms. Schonyers

Mr. Maltese called for a motion to accept the Closed Session Meeting Minutes as prepared for the April 8, 2004. A motion was made by Mr. Spigner and seconded by Ms. Hook

Ayes: Ms. Hook, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: Mr. Caldwell

Absent: Ms. Schonyers

Mr. Dice presented the Executive Director's report. He reviewed the breakdown of cases and inquiries as follows:

Nineteen cases (19) scheduled for May 13; fourteen (14) cases scheduled for June 10, 2004; five (5) cases on appeal; six (6) cases at the Office of Administrative Law; fourteen (14) cases in mediation; sixteen (16) cases are a work in progress pending a specific agenda. Total closed cases two hundred fifty-four (254). Inquiries received since January 1, 2004: eighty-eight (88) in January; one hundred fifty eight (158) in February and March; seventy-four (74) in April; thirty-six (36) through May 12.

Mr. Dice discussed the outreach training programs scheduled/ and or completed with the following organizations: NJ League of Municipalities, AM/PM Services, NJ Clerks Association, Department of Education, HMFA, National Freedom of Information Conference. Mr. Maltese announced that he would be doing a live interactive web cast about the Government Records Council.

Mr. Maltese summarized the case and noted that the involved parties in the case voluntarily signed Agreements to Mediate and the Executive Director was recommending the Council and GRC staff to forego adjudicatory action pending the outcome of mediation.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Mr. Caldwell and seconded by Ms. Hook.

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent: Ms. Schonyers

John M. Ward v. Village of Ridgewood (2003-131)

Mr. Maltese summarized the case and noted that the Complainant and the Custodian voluntarily signed Agreements to Mediate and subsequently reached a settlement through mediation. He stated that the Executive Director was recommending that the Council dismiss the case since settlement had occurred through mediation

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Mr. Caldwell and seconded by Ms. Hook.

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent: Ms. Schonyers

Michael DeLuca v. Town of Gutenberg (2004-8)

Mr. Maltese stated that in an April 21, 2004, letter to the Office of Dispute Settlement, the requestor voluntarily withdrew his complaint and the Executive Director was recommending that the Council dismiss the complaint.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Caldwell

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent: Ms. Schonyers

Stephen Biss v. New Jersey Motor Vehicle (2004-13)

Mr. Maltese summarized the case and noted that the Complainant and the Custodian voluntarily signed Agreements to Mediate on March 8 & March 9, 2004 and that the parties reached a settlement in mediation on April 19, 2004. He stated that the Executive Director was recommending the Council dismiss the case since the parties reached a settlement in the case.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Caldwell

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent: Ms. Schonyers

Albert Poreda v. Hudson County (2004-14)

Ms. Luzzatto stated that the case was continued from the April 8, 2004 public meeting of the Government Records Council at which the Council ordered the Custodian to disclose all the requested information and explain in a certification to the Executive Director why the Council should not consider the Custodian's lack of response to the request is not a knowing and willful violation of the OPRA under the totality of the circumstances. Subsequent to the order, the Custodian's Counsel affirmed in a letter that to his knowledge and understanding all of the requested documents had been provided to the requestor and submitted documents to demonstrate that the responses had been submitted in a timely manner to the Complainant in response to the request. The Complainant advised that he had not received all requested information.

It was the Executive Director's recommendation the Council find that:

1. The Custodian Counsel 's certification on April 22, 2004 indicates that he had disclosed all requested information pursuant to N.J.S.A 47:1Aet seq.
2. The Complainant should provide a detailed list of all records they have or have not received to date and provide that within (5) business days of this order.

Mr. Maltese expressed concern that the certification came from Custodian's Counsel and not the Custodian of Records. He stated that the certification should come to the Council in a legal certification that includes the penalty provision and is signed by the Custodian. He expressed concern that should there be something wrong in the Attorney's certification, the attorney could claim attorney client privilege and the Council would not be able to impose sanctions or penalties on the attorney. Mr. Maltese suggested that the Executive Director's recommendation be amended to require the Custodian of records to submit a certification, containing the same information found in their attorney's letter in a legal certification format. Mr. Maltese suggested further that the Executive Director's recommendation in "2" be amended to order the Custodian, not the Complainant, to indicate what documents were provided or not provided to the Complainant. He remarked that it is the Custodian's burden to show what has been supplied to the Complainant. Ms. Hook reiterated and reinforced Mr. Maltese's suggestions. It was further suggested that the Custodian send a copy of their certification to the Complainant by certified mail with a return receipt.

Mr. Maltese called for a motion to accept the Executive Director's recommendation's with the suggested changes. A motion was made by Mr. Caldwell and seconded by Ms. Hook,

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent Ms. Schonyers

Louis Perry v. Township of Pennsauken (2004-19)

Ms. Luzzatto stated that the case involved a request for municipal boundary lines and was continued from the April 8, 2004 meeting at which the Council ordered the Custodian to:

1. Provide a certification to Executive Director Paul Dice within five (5) business days detailing what documents were provided to the requestor, and,
2. Provide a certification to Executive Director Paul Dice within (5) business days detailing what documents were not provided to the requestor and why.

She stated that in a certification dated April 22, 2004, drafted by the Custodian's counsel and signed by the Custodian, the Custodian certified that the Township of Pennsauken does not have the information that the Complainant was seeking; however they did provide him with a copy of the township map with boundary lines.

It was the Executive Director's recommendation that the Council dismiss the complaint on the basis that the Custodian certified in its April 22, 2004 correspondence to the

Government Records Council, that the documents which were referenced in the Complainant's November 19, 2003 OPRA request, do not exist.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Spigner

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent Ms. Schonyers

Geri Weimer v. Middletown Clerk (2004-22)

Mr. Dice stated that the complaint alleges a denial of access regarding four OPRA requests. The Complainant is seeking records, including payroll information, outside work contracts, vehicle assignment information and specific payroll information. Initially the Custodian requested clarification, the Complainant alleges that the information was provided and the Custodian claims they never received it. Since the positions of the parties could not be proved or disproved, it was the Executive Director's recommendation that:

1. The Council should order the Custodian to respond to the Complainant's letter dated January 22, 2004, which will be forwarded to the Custodian by the GRC staff, pursuant to N.J.S.A. 47:1A-1.1 et seq. The Custodian should comply with the order within five (5) business days.
2. The argument provided by the Custodian's counsel that records pertaining to work cards, overtime cards and attendance records are not disclosable pursuant to N.J.S.A. 47:1A-3 (a), N.J.S.A. 47:1A-1.1 and Executive Order #9 for security and criminal investigatory reasons needs further clarification. The Council should order the Custodian to provide a certification as to the specific reason these records should be considered "...criminal investigatory records..." and exempt from disclosure or should contain appropriate redactions, pursuant to N.J.S.A. 47:1A-1.1 et seq. The Custodian should provide definitive statements explaining the reasons the records are exempt. The Council should order the Custodian to comply with the request for a certification within five (5) business days from the receipt of the order.
3. Based upon the Statement of Information submitted by the Custodian's counsel, the invoices of "unpaid outside work for 2003" were submitted as supplemental information to the GRC. The Council should order the Custodian to provide a certification as to the records that are responsive to this request and certify that all records responsive to this request, with exceptions provided under OPRA, were disclosed to the Complainant. The Council should order the Custodian to comply with the certification within five (5) business days from the receipt of the order.

4. The Custodian's counsel argues that vehicle assignments are not disclosable for security and surveillance reasons pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-3 (a). The Council should order the Custodian to provide further explanation as to the relationship between vehicle assignments and security and surveillance techniques. The Council should order the Custodian to comply with the certification within five (5) business days from the receipt of the order.

Mr. Caldwell suggested that the Custodian outline the facts in specific detail. Mr. Maltese also suggested that the Custodian certify the facts and give the GRC supporting information as to why their security would be breached by the disclosure of this information and noted for the record it appeared that the Custodian did not respond to the requestor's request. He also suggested that all the information responsive to the council's order be submitted in the form of a certification. Mr. Maltese recommended that any further action on this case be postponed until the Custodian is instructed to perform in accordance with the recommendations of the Council. Mr. Maltese suggested further that the Custodian be given fifteen days to respond. Mr. Dice recommended that the Council adopt the Findings and Recommendation with the proposed amendments. Mr. Maltese also recommended that this case be noted in the Matrix.

Mr. Maltese called for a motion to accept the Executive Directors recommendations with the suggested modifications. A motion was made by Mr. Caldwell and seconded by Mr. Spigner. The motion was adopted by roll call.

Ayes:	Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese
Nays:	None
Abstain:	None
Absent	Ms. Schonyers

Larry Kreider v. Department of Transportation-Aeronautics (2004-24)

Mr. Dice recommended that the Council dismiss the complaint because Mr. Kreider received a copy of the requested documents and on April 26, 2004 withdrew his complaint. Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Caldwell. The motion was adopted by roll call:

Ayes:	Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese
Nays:	None
Abstain:	None
Absent	Ms. Schonyers

Lois Lebbing v. Middlesex County Department of Planning (2004-25)

Mr. Dice stated that both parties reached a settlement in the case through mediation on April 25, 2004. The Executive Director recommended that the Council dismiss the case based on the fact that the parties reached a settlement.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell

Nays: None

Abstain: Mr. Maltese

Absent: Ms. Schonyers

Lois Lebbing v. Middlesex County Department of Planning (2004-26)

Mr. Dice stated that both parties reached a settlement in the case on April 25, 2004 through mediation. The Executive Director recommended the Council dismiss the case based on the fact that the parties reached a settlement.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Mr. Caldwell. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell

Nays: None

Abstain: Mr. Maltese

Absent: Ms. Schonyers

Arthur Mourad v. Borough of Saddle River (2004-30)

Mr. Dice stated the case involved a request for the full first name, middle initial, last name and title of all Borough of Saddle River police officers. The Custodian denied the requestor's OPRA request claiming that the Borough of Saddle River does not provide information regarding their employees and also it contains personnel information that is exempt under OPRA.

The Executive Director recommended that the Council order the Custodian of records to provide the requestor with all the documents and information responsive to the request consistent with the provisions of N.J.S.A.47:1A-10 of the Open Public records Act (OPRA), subject to appropriate redaction.

Mr. Maltese recommended that the Custodian provide a written certification to the Executive Director within five business days from receipt of the decision that explains their response.

Mr. Maltese called for a motion to accept the Executive Directors recommendation with the suggested change. A motion was made by Ms. Hook and seconded by Mr. Caldwell. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent Ms. Schonyers

Reginald Cole v. Township of Montague (2004-33)

Ms. Luzzatto clarified and noted a correction to be reflected in the record under “response made” in the Findings and Recommendations should read “March 16, 2004” not “March 16, 2003.”

Ms. Luzzatto stated that the case involved a request for a title search report on a specific property in the Township of Montague. The request was made on November 12, 2003 and no indication in the record that there was a written response to the request. However, the facts indicate that there was on-going dialogue between the parties and that dialogue included the fact the document being sought did not exist at the time of the request. The information provided in the record reflects that the title report, which was being sought, did become available on December 3, 2003 but it was not provided to the requestor until March 16, 2004 because it needed approval through the Mayor’s office.

It was the Executive Director’s recommendation that the Council dismiss the complaint on the basis of:

1. The requested document was not in existence at the time of the request.
2. The Custodian went beyond what was required under OPRA by supplying a copy of the title document for Block 48 Lot 44 when it became available.
3. Under the circumstances present in the case, the Custodian’s actions did not rise to the level of a knowing and willful violation of OPRA.

Mr. Spigner stressed his concern about the untimely response in the case and how the Council should treat this issue. Mr. Maltese noted that while the circumstances did not rise to the level of a knowing and willful violation it was an untimely response and suggested it be noted on the GRC Matrix to be revisited in the future. Mr. Maltese asked Ms. Luzzatto to place the Custodian's name in the "Custodian of Record" in the Findings and Recommendations of the case.

Mr. Maltese called for a motion to accept the Executive Directors recommendation as modified by the Council members comments. A motion was made by Ms. Hook and seconded by Mr. Caldwell. The motion was adopted by roll call.

Ayes:	Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese
Nays:	None
Abstain:	None
Absent	Ms. Schonyers

Kathie Pontus vs. NJ Schools Construction Corporation (2004-34)

Mr. Dice stated that the case involved a request for copies in reference to a High School project and summarized the issues: The Custodian asserts that clarification was sought from the requestor regarding the request as no records could be found concerning the project in NJSCC and certified that two records, without redactions, were provided to the requestor on December 17, 2003 in response to the OPRA request of December 10, 2003. The Custodian also asserts that after receiving a copy of the requestor's Denial of Access Complaint, she re-evaluated the documents sent to the requestor and noticed that a section of the form was shaded, which may have appeared to be "blacked out," and also found more records regarding the OPRA request after conducting another search. Of the additional records found, three records were withheld and one record was redacted. The Custodian explained the basis for non-disclosure in a Vaughn Index submitted to the Government Records Council.

It was the Executive Director's recommendations that:

1. The Council should also accept that the Custodian certified no redactions were made to the records released on December 17, 2003.
2. The Council should order the Custodian to provide a certification as to if the records existed on December 10, 2003, the date of the original request, or if the records existed in NJSCC files after December 10, 2003. The Council should order that the Custodian comply with the order within five (5) business days after the receipt of the decision.
3. The Council should accept that the Vaughn Index as it has met the burden of proof in that the records were confidential because the records are "pre-decisional consultative, advisory and deliberative inter-agency documents" and should not be disclosed, pursuant to N.J.S.A. 47:1A-1.1 et seq.

Mr. Maltese suggested the Executive Director's recommendation be amended to read: That the Custodian certify why the first search did not reveal any records responsive to the request and what specific records were found in the second search responsive to the request.

Mr. Maltese called for a motion to accept the Executive Directors recommendation as written with the suggested changes. A motion was made by Mr. Caldwell and seconded by Ms. Hook. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent Ms. Schonyers

Geri Doukali v. Borough of Magnolia (2004-35)

Mr. Dice stated that the case involved a request for access to itemized cellular phone bills for the period January 2003 thru December 2003. The record reflects there is a document request dated January 22, 2003 to the borough, a denial of access complaint dated February 2004, and the Custodian's statement of information responding to the January 22 request; however, the GRC does not have a copy of the January 22 request for information and there is incomplete factual information provided in the case. It was the Executive Director's recommendation that the Council:

1. Order the Custodian to explain in a certification whether the requested records (itemized cell phone bills for January through December 2003) were made, maintained, and kept on file at the time of the request, pursuant to N.J.S.A. 47:1A-1 et seq.
2. Order the Complainant to provide proof that she submitted an OPRA request to the Borough of Magnolia dated February 4, 2004 for Itemized cell phone bills; January, 2003 thru December 2003.
3. Order the Custodian to explain why the requested bills were not disclosed immediately pursuant to N.J.S.A. 47:1A-5(e) and why the council should not consider this inaction a knowing and willful violation of the Act.
4. Order the Custodian to explain the justification of any redactions made on the bills provided to the Complainant.

Mr. Maltese discussed a similar situation in another case involving Passaic County and cell phone use. Mr. Maltese suggested that the council accept the Executive Director's recommendations.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent: Ms. Schonyers

Mr. Maltese stated that the Marc Kagan v. University of Medicine and Dentistry of N J (2004-38) case appearing on the Agenda would be postponed until the June 10, 2004 meeting.

Jeffrey Muska v. Millburn Township Board of Education (2004-41)

Ms. Luzzatto stated that the case involved a request for the final attorney bill from the attorney retained to investigate an impropriety in the Custodian department for the Millburn Board of Education. The Complainant also raises a timeliness issue in response to the request. She stated that pursuant to N.J.S.A. 47:1A-5(e) bills are to be available for immediate access. The Complainant did not receive the bill immediately, but did receive a redacted bill within seven (7) business days.

She stated further that in the Statement of Information, the Custodian asserted that pursuant to N.J.S.A. 47:1A-3 the bill in question is being investigated and therefore should not be disclosed. Also, the Custodian stated that the matter was submitted to fee arbitration and the bill was confidential pursuant to Court Rule R. 1:20A-5.

It was the Executive Director's recommendation the Council dismiss the complaint on the basis of:

1. The requested attorney fee bills are exempt pursuant to Court Rule R. 1:20A-5 and N.J.S.A. 47:1A-9.
2. The Custodian violated N.J.S.A. 47:1A-5(e) by not providing the Complainant immediate access to the requested bills. However, the Custodian did provide a redacted copy to the Complainant within seven (7) business days. Therefore, the Custodian's actions did not rise to the level of knowing and willful violation under OPRA.

Mr. Maltese remarked that the cited court rule supersedes OPRA pursuant sub-section 9. Mr. Maltese suggested that the GRC staff inform Mr. Muska that once the arbitration is completed the bill would be a public document available for inspection and that Mr. Muska may desire to make another request at that time.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Mr. Spigner and seconded by Ms. Hook The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent: Ms. Schonyers

Barbara Penn & Jacqueline Faber v. Margate City (2004-42)

Ms. Luzzatto stated that the case involved a request for certificates of occupancy for several units in the City of Margate and the information in the record indicates that they did receive the certificates of occupancy for all of the units with the exception of unit #2. The Custodian certified that unit #2 was not occupied at the time of the request and there was no certificate of occupancy available.

It was the Executive Director's recommendation the Council dismiss the complaint based on the following:

1. The Custodian certified that the records requested for units #3 and #5 were provided to the Complainant pursuant to N.J.S.A. 47:1A-1.1 et seq.
2. The Custodian certified that the record requested for unit #2 was not provided because according to the City's files, no one occupied the unit, therefore the record was not "...made, maintained or kept on file..." as requested by the Complainant (N.J.S.A. 47:1A-1.1 et seq).
3. There are no provisions in OPRA that address the validity of a record.

Ms. Luzzatto stated an issue of an untimely response was not made in the case the request was made on January 29, 2004 and a response was not made until April 2, 2004. Mr. Maltese recommended that the Custodian's name be added to the GRC Matrix. He added that in all of the cases where there is a timeliness issue the Custodian should be apprised that the Council did take notice of the untimely response.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Caldwell. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent: Ms. Schonyers

James Gross v. NJ Department of Health (2004-48)

Ms. Luzzatto stated that the case involved a request for a death certificate made to the New Jersey Department of Health. In the request the Custodian raised several issues: 1. They did not consider this to be an OPRA request because the individual making the request completed the application for a death certificate, not an OPRA request form; 2. The Custodian contends that Executive Order #18 governs the issuance of vital records copies and was controlling with respect to access.

It was the Executive Director's recommendation the Council find that:

1. The Complainant's request met the requirements of an OPRA request and should be considered a valid OPRA request pursuant to N.J.S.A. 47:1A-5 (g).
2. Executive Order #18 governs the disclosure of the requested vital records in this case and therefore said documents are exempt from public access under N.J.S.A. 47:1A-1.
3. N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-9 does not abrogate any exemption of a government record made pursuant to an executive order.
4. The case should be dismissed.

Mr. Maltese took exception to the recommendation stating that the Custodian could have issued a certification, which is permitted by Executive Order #18. He stated further it was his understanding that certifications may be issued for informational purposes only and it is noted on the certification that it cannot be used for any legal purpose or identification. He remarked that at a minimum, the Custodian could have issued a certification such as that which is permitted by Executive Order 18 in lieu of the information specifically requested in the OPRA request.

Mr. Dice stated that Executive Order 18 covers both certifications and death certificates. In terms of offering an alternative, the request was for the death certificate. He states further that the certificate provides certain things that a certification does not, and rather than pre-judge the requestor's intended use, the Custodian answered based on the document requested. He recommended that because of the fundamental difference between the certification and a death certificate the Council consider not the alternative, but the actual document sought. Mr. Maltese and Mr. Dice continued the discussion with Mr. Maltese calling for a motion to accept the Executive Director's recommendation as written. A motion was made by Mr. Spigner and seconded by Mr. Caldwell. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent: Ms. Schonyers

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

Mr. Dice stated that the Complainant and the Custodian voluntarily signed Agreements to Mediate. Based on same, the Executive Director recommended that the Council forego any adjudicatory action pending the outcome mediation.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Mr. Spigner and seconded by Ms. Hook.

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell, Mr. Maltese

Nays: None

Abstain: None

Absent: Ms. Schonyers

Mr. Maltese recused himself from discussion in the following case.

Michael Galdieri v. Jersey City Incinerator Authority (2003-153)

Mr. Dice stated that the case was continued from the March 11, 2004 meeting when the Council agreed that additional information was needed in the case since there were conflicting reports and information. Mr. Dice stated that the information was received and gave a factual accounting of what was in the record.

It was the Executive Director's recommendation that the Council order the Custodian to:

1. Item number 1 of "Relevant Records Requested" in the Supplemental Findings and Recommendations – The Custodian is to provide a certification listing all documents in its possession at the time of the Complainant's September 9, 2003 Open Public Records Act request and which is/are responsive to same. Said response shall not be limited to just personnel records.
2. Item number 2 of "Relevant Records Requested" in the Supplemental Findings and Recommendations – This portion of the complaint is dismissed based on the fact that James Murphy, (Assistant Executive Director/Administration) certified that these records did not exist at the time of the request. Therefore, the Council need not address the security defense raised by the Custodian.

3. Item number 3 of “Relevant Records Requested” in the Supplemental Findings and Recommendations – The Custodian is to provide access to the requested information pursuant to N.J.S.A. 47: 1A-1 et seq. Such access shall be made following the Custodian having provided the requestor with an estimate of copy costs if applicable, and the requestor’s acceptance of same.
4. Item number 4 of “Relevant Records Requested” in the Supplemental Findings and Recommendations – The Custodian is to provide access to the requested information pursuant to N.J.S.A. 47: 1A-1 et seq. Such access shall be made following the Custodian having provided the requestor with an estimate of copy costs if applicable, and the requestor’s acceptance of same.
5. Item number 5 of “Relevant Records Requested” in the Supplemental Findings and Recommendations – This portion of the complaint is dismissed based on the Custodian’s certification that these records never existed.

The Custodian is to provide responses to the Executive Director, Paul Dice, as ordered in “1,” “3” and “4” above within five (5) business days from receipt of the Interim Decision.

Mr. Spigner called for a motion to accept the Executive Director’s recommendations as written. A motion was made by Mr. Caldwell and seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell
Nays: None
Abstain: None
Absent: Ms. Schonyers
Recused: Mr. Maltese

Mr. Maltese called for new business and public comments. Hearing none, Mr. Maltese called for a motion to adjourn. A motion was made by Mr. Caldwell and seconded by Ms. Hook. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Mr. Caldwell. Mr. Maltese
Nays: None
Abstain: None
Absent: Ms. Schonyers

The meeting adjourned at 12:40PM.

Respectfully submitted,

/s/ Virginia S. Hook, Secretary

Dated: _____