

**Minutes of the Government Records Council  
July 14, 2005 Public Meeting - Open Session**

The meeting was called to order at 9:15a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Luzzatto called roll call for attendance:

Ayes: Ms. Schonyers, Ms. Minus-Vincent; Ms. Tabakin; Mr. Fishman; Mr. Maltese

Nays: None

Abstain: None

Present: Chairman Vincent Maltese, Ms. Robin Tabakin, Mr. Fishman Secretary DeAnna Minus-Vincent, Diane Schonyers (designee of Commissioner William Librera, Department of Education), DeAnna Minus-Vincent, (designee of Acting Commissioner Charles A. Richman, Department of Community Affairs) Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, Case Managers Chris Malloy, Kimberly Gardner, and Colleen McGann, In-House Counsel, Catherine Starghill, Deputy Attorney General Debra Allen.

The Council met in closed session from 9:25 a.m. to 10:30 a.m.

The Council reconvened in Open Session at 10:35am.

Ms. Luzzatto called roll call for attendance in Open Session:

Ayes: Ms. Schonyers, Ms. Minus-Vincent; Ms. Tabakin; Mr. Fishman; Mr. Maltese

Nays: None

Abstain: None

Mr. Maltese called for everyone to recite the Pledge of Allegiance.

Mr. Maltese presented to former Council Members Ms. Virginia Hook and Mr. Bernard Spigner, tokens of appreciation for their outstanding service to the Council and the people of New Jersey. Mr. Spigner and Ms. Hook made comments on their tenure as Council Members.

Approval of Minutes:

Mr. Dice presented the January 12, 2005 Closed and Open Session Minutes for approval of the Council.

Mr. Maltese called for a motion to accept the Closed and Open Session Minutes for January 12, 2005.

A motion was made by Mr. Fishman and seconded by Ms. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: Ms. Tabakin

Ms. Luzzatto presented the following cases for Administrative Disposition:

1. 2005-60 Louis Toscano v. Department of Personnel - settled in mediation.
2. 2005-56 Michael Jester v. Atlantic City Housing Authority – settled in mediation.
3. 2005-72 Frank Scarafile v. City of Union – settled in mediation.
4. 2005-75 Thomas Neff/Republican Office of the General Assembly – withdrawn.
5. 2005-96 Scott Wolman v. New Jersey Department of Treasury – withdrawn.
6. 2005-102, 103, 104 - John M. McCormack v. New Jersey Department of Treasury – entered mediation.
7. 2005-106 Donald Meyers v. Borough of Fairlawn – agreed to mediation
8. 2005-111 Kathleen Fazzari v. Plainfield Board of Education – agreed to mediation.
9. 2005-116 Gary Lipsius v. Governor’s Office – complaint withdrawn.
10. 2005-122 Daniel Newman v. Brick Municipal Utilities Authority – agreed to mediation.

**C.W. v. William Paterson University 2003-109**

Mr. Dice reviewed the parties’ respective positions and the GRC’s analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. Dice presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council re-affirm its November 9, 2004 Final Decision in its entirety and without amendment or qualification.

Mr. Maltese called for a motion to accept the Executive Director’s recommendation as written. A motion was made by Ms. Schonyers and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

**Cynthia Colella-Gallenthin v. Borough of Merchantville 2004-95**

Ms. Luzzatto reviewed the parties’ respective positions and the GRC’s analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Ms. Luzzatto presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council refer the case to the Office of Administrative Law to determine whether the failure to provide immediate access to the requested contract documents pursuant to N.J.S.A. 47:1A-5(e) constitutes a knowing and willful violation of the OPRA under the totality of the circumstances.

Mr. Maltese called for a motion to accept the Executive Director’s recommendation as written. A

motion was made by Mr. Fishman and seconded by Ms. Minus-Vincent. The motion was adopted by roll call.

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

**William Osterman v. City of Trenton 2004-96**

**William Osterman v. Trenton Police Department 2004-107**

Ms. Gardner reviewed the parties' respective positions on both cases and the GRC's analysis and issues in the cases as set forth in Findings and Recommendations of the Executive Director. Ms. Gardner presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council refer the cases to the Office of Administrative Law to determine the following:

1. The basis for the denial of access and whether a knowing and willful violation of OPRA exists due to the lack of response regarding the below listed requested records:
  - a) Statistical Data
  - b) Personnel Transfers
  - c) Case #2004-107 in its entirety
2. Whether a knowing and willful violation exists pursuant to OPRA under the totality of the circumstance for the Custodian's failure to comply with the November 9, 2004 order of the Government Records Council that stated the following:

The Custodian is to obtain the cost of providing copies of the requested purchase orders to the Complainant pursuant to N.J.S.A. 47:1A-5, and inform the Complainant of said costs. The Custodian is to provide the information to the Complainant and the Executive Director within five (5) business days after receipt of the Council's decision. The Complainant is to inform the Custodian within five (5) business days after receipt of the cost information whether or not he still wishes to receive the requested documents.

Mr. Maltese called for a motion to accept the Executive Director's recommendations as written. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

**Barbara Schwarz v. Department of Commerce 2004-124**

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

The Executive Director respectfully recommended that the Council dismiss this case on the basis that there were no records found in response to the request and the delay in providing the written response to the OPRA request does not rise to the level of a knowing and willful violation of OPRA under the totality of the circumstances.

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

**Rory Moore v. Town of Oldbridge 2004-141**

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

The Executive Director respectfully recommends that the Council dismiss this case on the basis that:

1. The Custodian certified that there were no records responsive to the questions presented in the Complainant's OPRA request.
2. While the Custodian failed to provide a timely written response pursuant to N.J.S.A. 47:1A-5(e) and 5(g), her actions should not be considered as rising to the level of a knowing and willful violation of OPRA under the totality of the circumstance.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as amended to include that the Custodian be placed on the matrix. A motion was made by Ms. Schonyers and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

**Lauren Pass/Westfield Leader v. New Jersey State Police 2004-152**

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

The Executive Director respectfully recommended that the Council dismiss the case on the basis that the requested records are exempt from disclosure under N.J.S.A. 47:1A-9(a) pursuant to N.J.A.C. 13:5-1.1.

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

**Richard Bernstein v. Borough of Ho Ho Kus 2005-13**

**Richard Bernstein v. Borough of Allendale 2004-195**

**Richard Bernstein v. Borough of Woodcliff Lake 2005-2**

**Richard Bernstein v. Borough of Park Ridge 2005-99**

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the cases as set forth in Findings and Recommendations of the Executive Director. Mr. Malloy presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council dismiss this cases on the basis that pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 the records should not be disclosed because of the unsolicited contact, intrusion or potential harm that may result.

Mr. Fishman reviewed his opinion on way he will be voting against the Findings and Recommendations of the Executive Director discussing the Balancing Test. Ms. Tabakin voiced her concerns, stressing the need for privacy in certain circumstances and her concern on security issues.

Mr. Maltese read into the record his opinions from a prepared written statement referencing the above cases and the Balancing Test. In this statement Mr. Maltese referenced the Balancing Test Doe v. Poritz 142 1.1, 1995 and the advice received from the Department of Law to the effect the that the Council may for the purpose of meeting the criteria established by Doe v. Poritz asked the requestor for his/her need for access to the records. His statement continued with his reasons why this request was denied. Primarily citing the section of OPRA dealing with privacy and security issues

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Maltese.

Nays: Mr. Fishman

Abstain: None

**Martin O'Shea v. Township of West Milford 2004-207 & 2004-31**

The Council conducted an *in camera* review in closed session. After completing the *in camera* review of the un-redacted invoice in closed session, the Council concluded by a unanimous vote that the Custodian had not met the burden of proof for the redactions made to said invoice pursuant to N.J.S.A. 47:1A-6 and that the Custodian shall disclose the requested document in its entirety within five (5) business days from receipt of the Council's decision. The Custodian is to confirm to Executive Director Paul Dice that said document was released to the Complainant within the specified time period.

Mr. Maltese called for a motion to accept the Council's conclusions. A motion was made by Ms. Minus-Vincent and seconded by Mr. Fishman. The motion was adopted by roll call.

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

Recused: Ms. Tabakin

**Jesse Rosenblum v. Borough of Closter 2005-16**

Ms. Gardner reviewed the parties' respective positions and the GRC's analysis and issues in the cases as set forth in Findings and Recommendations of the Executive Director. Ms. Gardner presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council order that the Custodian, within 10 business days of receipt of their decision, provide the Executive Director, the specific provisions of law under which they are claiming exemptions from disclosure of the DD214.

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

### **John Paff v. Township of Plainsboro 2005-29**

Ms. McGann reviewed the parties' respective positions and the GRC's analysis and issues in the cases as set forth in Findings and Recommendations of the Executive Director. Ms. McGann presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Custodian should redact the exempt information contained in the requested executive session minutes, providing a detailed and lawful basis for each redacted part thereof and provide access to those redacted minutes that have not already been released.
2. The Custodian violated N.J.S.A. 47:1A-5(g) by not providing a written reason for the denial of access to the requested executive session minutes.
3. The Custodian provided a timely response to the OPRA request, however the response was not sufficient concerning the response to the request for executive session minutes.
4. The Custodian shall comply with "1" directly above within ten (10) business days from receipt of the Council's decision and provide confirmation to the Executive Director.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as amended placing the Custodian on the matrix. A motion was made by Ms. Schonyers and seconded by Mr. Fishman. The motion was adopted by roll call.

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

### **Dorothy Argyros v. Township of Neptune 2005-37**

Ms. McGann reviewed the parties' respective positions and the GRC's analysis and issues in the cases as set forth in Findings and Recommendations of the Executive Director. Ms. McGann presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council dismiss this case on the basis that:

1. The Custodian's original denial of access to the requested record was lawful since the record was exempt under attorney-client privilege.
2. The Custodian lawfully denied access to the request for records in a timely manner and did not violate N.J.S.A. 47:1A-5(i).
3. Pursuant to N.J.S.A. 47:1A-7(b) the GRC does not have jurisdiction to regulate how a Township notifies its residents of its meetings or the accuracy of information being released.

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

**John Pusterhofer v. NJ Department of Education 2005-48**

Ms. Gardner reviewed the parties' respective positions and the GRC's analysis and issues in the cases as set forth in Findings and Recommendations of the Executive Director. Ms. Gardner presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council dismiss this case on the basis that:

1. There was an unlawful denial of access, however the Custodian has certified that the records responsive to the request have been released.
2. The Custodian's violation of N.J.S.A. 47:1A-5(i) does not rise to the level of a knowing and willful violation of OPRA under the totality of the circumstances.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as amended placing the Custodian on the Matrix. A motion was made by Mr. Fishman and seconded by Ms. Minus-Vincent. The motion was adopted by roll call.

Ayes: Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None

Abstain: None

Recused: Ms. Schonyers

**John Pusterhofer v. NJ Department of Education 2005-49**

Ms. Gardner reviewed the parties' respective positions and the GRC's analysis and issues in the cases as set forth in Findings and Recommendations of the Executive Director. Ms. Gardner presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council dismiss this case on the basis that:

1. The Custodian has certified that the records responsive to the request do not exist, therefore there was no unlawful denial of access.
2. The Custodian's violation of N.J.S.A. 47:1A-5(i) does not rise to a level of a knowing and willful violation of OPRA under the totality of the circumstances.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as amended placing the Custodian on the Matrix. A motion was made by Mr. Fishman and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Ms. Minus-Vincent, Ms. Tabakin, Mr. Fishman, Mr. Maltese.

Nays: None



Abstain: None

Recused: Ms. Schonyers

**Peter Runfolo v. Township of Scotch Plains 2005-64**

Ms. McGann reviewed the parties' respective positions and the GRC's analysis and issues in the cases as set forth in Findings and Recommendations of the Executive Director. Ms. McGann presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council:

1. Refer the case to the Office of Administrative Law to determine the following:
  - a. Whether there was a denial of access to government records pursuant to N.J.S.A. 47:1A-1 et. seq.
  - b. Whether the Custodian provided immediate access to invoices pursuant to N.J.S.A. 47:1A-5(e).
  - c. Whether the Custodian violated N.J.S.A. 47:1A-5(i) and N.J.S.A. 47:1A-5(g) in their response to the OPRA request.
  - d. Whether the Custodian's delay in access constitutes a knowing and willful violation of OPRA under the totality of the circumstances.

Find pursuant to N.J.S.A. 47:1A-7(b), which delineates the Council's powers and duties, the GRC does not have jurisdiction over the use of Senior Focus Initiative Funds or the content of the records provide

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

Ayes: Ms. Minus-Vincent, Ms. Tabakin, Ms. Schonyers, Mr. Maltese.

Nays: None

Abstain: None

Recused: Mr. Fishman

**Jeffrey Sauter v. Township of Colts Neck 2004-68**

Ms. McGann reviewed the parties' respective positions and the GRC's analysis and issues in the cases as set forth in Findings and Recommendations of the Executive Director. Ms. McGann presented the following recommendations of the Executive Director to the Council.

The Executive Director respectfully recommended that the Council:

1. Conduct an *in camera* inspection of the requested disciplinary records for which the Custodian claims an exemption at the Council's August 11, 2005 meeting.
2. Order the Custodian to provide a certification regarding the existence of documents responsive to the request in the possession of the Fire Department.
3. Refer the case to the Office of Administrative Law for a hearing to determine if the actions of the Custodian rise to the level of a "knowing and willful" violation of the law.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. The motion was adopted by roll call.

Ayes: Ms. Minus-Vincent, Ms. Tabakin, Ms. Schonyers, Mr. Fishman

Nays: None

Abstain: None

Recused: Mr. Maltese.

### **Richard Bernstein v. Borough of Harrington Park 2005-6**

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

The Executive Director respectfully recommended that the Council dismiss the case on the basis of:

1. The Custodian should have notified the Complainant of the reasons redactions were made pursuant to N.J.S.A. 47:1A-5(g).
2. The requested records should not be disclosed pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 because of the unsolicited contact, intrusion or potential harm that may result.
3. The Council does not have jurisdiction over the disclosure of the names of dog license owners pursuant to N.J.S.A. 47:1A-7(b).

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Ms. Minus-Vincent, Ms. Tabakin, Ms. Schonyers, Mr. Fishman

Nays: None

Abstain: None

Recused: Mr. Maltese.

Mr. Maltese called for:

Reports - None

Communications - None

New Business - None.

Public Statements:

Ms. Tina Renna - Cranford, New Jersey.

Ms. Renna decided to formally withdraw her complaint 2004-136 which had been sent to the Office of Administrative Law. Ms. Renna continued with several comments about the Office of Administrative

Law and her concerns.

Mr. John Paff – Somerset, New Jersey

Mr. Paff made reference to several cases listed on the agenda.

Mr. Martin O'Shea – West Milford, New Jersey

Mr. O'Shea made several comments on the cases listed on the agenda.

Mr. Maltese called for a motion to adjourn. A motion was made by Ms. Minus-Vincent and seconded by Mr. Fishman. Moved by consensus

Meeting adjourned 12:25pm

Respectfully submitted,



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DeAnna Minus-Vincent,  
Secretary

Dated: \_\_\_\_\_  
October 28, 2005