



**DRAFT**  
**Minutes of the Government Records Council**  
**August 10, 2006 Public Meeting – Open Session**

The meeting was called to order at 9:41 a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read. Ms. Hairston called the roll:

Present: Chairman Vincent Maltese, Secretary Robin Berg Tabakin, Michelle Richardson and Kathryn Forsyth.

GRC Staff: Executive Director Catherine Starghill, Brigitte Hairston, Kimberly Gardner, Christopher Malloy, Colleen McGann, Barry Roy, Designated Outside Counsel and Deputy Attorney General Debra Allen.

Mr. Maltese read the Resolution for Closed Session, Resolution Number 2006-08-10 to conduct an *in camera* inspection and receive legal advice in the following complaints:

1. Janon Fisher v. Department of Law & Public Safety, Division of Law (2004-55 & 2004-82) – *In Camera* Inspection
2. Cathy Cardillo v. City of Hoboken, Zoning Office (2005-158) – *In Camera* Inspection – NO QUORUM/NOT DISCUSSED
3. Tina Renna v. County of Union (2006-22) – *In Camera* Inspection
4. Dina Parave-Fogg v. Lower Alloways Creek Township (2006-51)

A motion was made by Ms. Tabakin seconded by Ms. Forsyth to go into closed session. The motion was adopted by a unanimous vote. A motion was then made to re-open the open session so Mr. Maltese could read the Resolution as amended above at 9:45 am. Mr. Maltese read the Resolution. A motion was made by to return to closed session by Ms. Tabakin and seconded by Ms. Forsyth. The motion was adopted by a unanimous vote.

The Council met in closed session from 9:48 a.m.until 10:29 a.m.

Open Session reconvened at 10:45 a.m. and Ms. Hairston called the roll:

In attendance:

Mr. Maltese, Ms. Tabakin, Ms. Forsyth, and Ms. Richardson.

The pledge of allegiance was recited.

Mr. Maltese called for a motion to approve the open and closed session minutes of July 13, 2006. A motion was made by Ms. Tabakin and seconded by Ms. Richardson. The motion passed unanimously.

Mr. Maltese stated that he was recusing himself from the following complaints:

- George Burdick, Jr. v. Franklin Township (2005-133)
- Cathy Cardillo v. City of Hoboken (2005-158)
- John McCormack v. NJ Department of Treasury (2005-58)
- John McCormack v. NJ Department of Treasury (2005-160)
- John McCormack v. NJ Department of Treasury (2005-164)
- Janet Hascup v. Waldwick Board of Education (2005-192)
- John Windish v. Mount Arlington Public Schools (2005-216)
- Irvin Beaver v. Township of Middletown (2005-243)

Ms. Tabakin stated that she was recusing herself from the following complaints:

- Richard Barber, Sr. v. UMDNJ University of Medicine & Dentistry (2006-105)
- D.T. v. Rockaway Township Board of Education (2005-203)

Ms. Starghill informed the Council that the following complaints would not be heard today:

- Cathy Cardillo v. City of Hoboken, Zoning Office (2005-158)
- Janet Hascup v. Waldwick Board of Education (2005-192)
- Jane Cowley v. The Township of Kingwood (2006-45)

**Council Adjudication:**

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

GRC Complaint Case and Number	Disposition
1. Jared P. DuVoisin v. City of Newark Department of Engineering (2006-83)	Complaint withdrawn
2. Mary Steinhauer-Kula v. Millville Board of Education (2006-85)	Complaint withdrawn
3. A.J. Nash v. Passaic County Freeholder	Unsubstantiated Written Request N.J.S.A. 47:1A-5.g

4. Rory Moore v. Old Bridge Township (2006-107)	Not a request for government records N.J.S.A. 47:1A-1.1.
5. Rory Moore v. Old Bridge Township (2006-109)	No records responsive to the request N.J.S.A. 47:1A-1.1.
6. Narinder Gautam v. New Jersey Department of Banking & Insurance (2006-109)	No records responsive to the request N.J.S.A. 47:1A-1.1.
7. Troy Delaine v. Riverfront State Prison, Department of Corrections (2006-131)	N.J.S.A. 47:1A-6 Pending action in Superior Court

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

The following complaints were presented to the Council for individual adjudication:

**Michael D'Antonio v. Borough of Allendale (2005-20)**

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 complied with the Council's Interim Order of July 13, 2006.

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

**Thomas Neff v. New Jersey Department of Law & Public Safety (2005-101)**

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 accept the initial decision of the OAL which finds that the Custodian acted in accordance with OPRA when he provided the Complainant with the records made, maintained, kept or received by OAG, but directed him to the designated records custodians for the several divisions within L&PS for the records sought that were made, kept and maintained by the individual divisions. Further, each of these divisions was by statute authorized and by regulation required to have its own designated custodian of records and nothing in OPRA required that there be one, central custodian with total responsibility for all of the records made, kept and maintained throughout the entire principal department of L&PS.

Mr. Maltese 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. Tabakin. The motion passed unanimously.

**David Herron v. Montclair Community Pre-k (2005-130)**

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

The Executive Director respectfully recommends the Council find that:

1. In consideration of all of these characteristics of the Pre-K taken together, the Pre-K is a public agency as provided for under OPRA and is obligated under the provisions of OPRA, including the provision which requires public agencies to create an official OPRA records request form (N.J.S.A. 47:1A-5.f.).
2. Since the Pre-K is a public agency under OPRA, the Custodian has unlawfully denied access to government records pursuant to OPRA. Thus, the Custodian should release the requested salaries of employees to the Complainant. The Custodian shall so comply within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.

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

**David Lyons v. Irvington Board of Education (2005-196)**

Mr. Malloy reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Malloy presented the recommendations to the Council which were amended as follows:

The Executive Director respectfully recommends that the Council find that:

1. The Custodian must provide the Executive Director a copy of the engagement letter detailing the Custodian's contractual relationship with its attorney(s).
2. If the engagement letter mentioned above does not require the attorney(s) to provide periodic billing information, then the Custodian must obtain a legal certification that the attorney(s) does not provide any such periodic billing information to the Custodian (even if not so required according to the terms of the engagement letter).
3. The Custodian must provide the Executive Director a legal certification indicating whether the attorney(s) representing the Board of Education receive pension benefits or other benefits from the school district or are entitled to receive same.

4. The Custodian must comply with items #1., 2., and 3. above within ten (10) business days from receipt of this Interim Order.
5. The original Custodian, as well as the current 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 written responses to any of the requests within the statutorily mandated seven (7) business days therefore creating a “deemed” denial.
6. Although neither the original Custodian nor the current Custodian responded in a timely manner, which resulted in a “deemed” denial, both Custodians’ did respond (on separate occasions) to the Complainant; seemingly attempting to answer the Complainant to the best of their knowledge. In view of the above, as well as the fact that the Custodian has certified that no records responsive to the requests exist, there is no evidence that either Custodian’s actions were consistent with the legal standards established for knowing and willful conduct by the New Jersey courts. Therefore, the Custodians’ 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 pursuant to N.J.S.A. 47:1A-11.a.

Mr. Maltese called for a motion to accept the Executive Director’s findings and recommendations as amended (adding #1-4). A motion was made by Ms. Tabakin and seconded by Ms. Forsyth. The motion passed unanimously.

**Tina Renna v. County of Union (2005-208)**

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

The Executive Director respectfully recommends the Council find that based on the contested facts in this case, this matter should be referred to the Office of Administrative Law to determine:

1. Whether there was a denial of access to government records pursuant to N.J.S.A. 47:1A-1 et. seq.?
2. Whether there is 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 findings and recommendations as written. A motion was made by Ms. Tabakin and seconded by Ms. Forsyth. The motion passed unanimously.

**Tina Renna v. County of Union (2006-22)**

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 that the Council find that:

1. The Custodian has complied with the Council's July 13, 2006 Interim Order in supplying the Council with the requested unredacted executive session minutes within ten (10) business days of receiving the Council's order.
2. The *in camera* inspection of the Minutes of the Executive Session – Regular Meeting – February 10, 2005 Board of Chosen Freeholders confirms that all of the redactions made by the Custodian were appropriate.

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

### **Narinder Gautam v. Department of Banking & Insurance (2006-49)**

Mr. Malloy reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Malloy presented the recommendations to the Council which were amended as follows:

The Executive Director respectfully recommends that the Council find that:

1. Based on the Council's rulings in Wilcox v. Township of West Caldwell, GRC Complaint No. 2004-28, (October 2004) and Perino v. Borough of Haddon Heights, GRC Complaint No. 2004-128, (November 2004), as well as N.J.S.A. 47:1A-1 (a public agency's responsibility and obligation to safeguard a citizen's right to privacy), the Custodian may not have unlawfully denied access to the one paragraph the Custodian wishes to redact. However, the Council should conduct an *in camera* inspection of the one paragraph to determine whether the Custodian has unlawfully denied access to this information or not.
2. In Hewitt v. Longport Police Department, GRC Case No. 2004-148 (March 2005), the Council determined that an "individual in interest" means the person who is the subject of the personnel file. Therefore, based on the fact that the OPRA request was made by the Department employee who actually underwent the examination, and is the subject of the report, the Complainant is entitled to the entire report, including maybe the one paragraph that the Custodian has deemed non-disclosable. Based upon the Council's decision in Hewitt, the Custodian unlawfully denied access to this record. It should, however, be noted that Custodian's Counsel informed the GRC staff that they were willing to disclose the report except for the one paragraph that is not disclosable.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as amended (*in camera* inspection added to #1). A motion was made by Ms. Forsyth and seconded by Ms. Tabakin. The motion passed unanimously.

### **Dina Parave-Fogg v. Lower Alloways Creek Township (2006-51)**

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:

1. The Custodian has not unlawfully denied access to the requested meeting minutes as the Custodian certifies that at the time of the request said minutes had not been approved by the governing body and as such, they constitute inter-agency, intra-agency advisory, consultative, or deliberative material and are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. However, the Custodian certifies providing the Complainant with the requested minutes on March 14, 2006 (eleven business days after receiving the records request).
2. The Custodian has not unlawfully denied access to the Complainant's request for incorrect test answers as she certifies that there are no records responsive since no testing materials are maintained by the Custodian and have been destroyed by the testing company as per a security agreement with the testing company.

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

### **Tina Renna v. Union County Alliance (2006-73)**

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 that the Council find that:

1. In considering the meaning of a public agency as explained by the court in The Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 368 N.J.Super. 425, 846 A.2d 659 (April 2004), the GRC decision in Fallstick v. Haddon Township Business Partnership, GRC Case No. 2004-73 (October 2004) and the characteristics of the Alliance's organizational structure, the Alliance is a public agency pursuant to N.J.S.A. 47:1A-1.1. Therefore, the Alliance is subject to the provisions of OPRA and is required to respond to OPRA requests for records.
2. The Custodian should respond to the OPRA request subject of this complaint pursuant to N.J.S.A. 47:1A-1.1 et. seq., either granting access or denying access to the requested records. In the event of a denial of access, the legal basis for any denial must be explained pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-6.
3. The Custodian shall comply with "2." above within seven (7) business days from receipt of this Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.

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

**Jeffrey Mourning v. New Jersey Department of Corrections (2006-75)**

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

The Executive Director respectfully recommends that the Council find that:

1. Based upon the Council's decision in Cuba v. NJ Department of Corrections, GRC Case No. 2004-146 (February 2005), and the fact that the Custodian's reason for withholding the records in that case mirrors the Custodian's reason for withholding the records in this case, there was no unlawful denial of access to said records.
2. Pursuant to the fact that the Custodian certified that she did not receive the Complainant's OPRA request until January 20, 2006 and consequently responded in a timely manner on January 24, 2006, she is not in violation of N.J.S.A. 47:1A-5.i. or N.J.S.A. 47:1A-5.g.
3. Pursuant to the fact that the employee who received the request did not advise the Complainant properly, thereby preventing the Complainant's request from reaching the Custodian, that employee in the Ombudsman's office (Bruce Tarin) is in violation N.J.S.A. 47:1A-5.h.

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

**Richard Barber, Sr. v. University of Medicine & Dentistry (2006-105)**

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:

1. The Custodian has not unlawfully denied access to the record of complaint disposition filed by the Complainant against James A. Archibald as it is confidential information generated by or on behalf of public employers or public employees in connection with any grievance filed by or against an individual pursuant to N.J.S.A. 47:1A-1.1.
2. Based on the wording of the Complainant's request, Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534 (March 2005), Gannett New Jersey Partners, LP v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2004), Bent v. Stafford Police Department, 381 N.J. Super 30 (October 2005), and Runfolo v. City of Summit, GRC Complaint No. 2005-87



(February 2006), the Custodian did not unlawfully deny access since the request for e-mails, letters, memos, and Central Administration and Purchasing Services files for various named individuals for specific periods of time did not list “identifiable” government records.

3. Since the Custodian legally certified that she cannot find the resolution and disposition record of the Sheldon Boyarsky’s legal complaint filed in 1993 against UMDNJ, she did not unlawfully denied access to the requested record. However, the Custodian is required to disclose such record when it is located.

Mr. Maltese 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. Richardson. The motion passed unanimously.

### **D.T. v. Rockaway Board of Education (2005-203)**

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 given the inconsistencies in the submissions by the parties, this complaint should be referred to the Office of Administrative Law for fact finding and legal conclusions consistent with the law outlined in this Findings and Recommendations on the following issues:

1. Whether the Custodian unlawfully denied access to the records requested on October 13, 2005?
2. Whether the Custodian properly responded to the Complainant’s October 13, 2005 request in a timely manner?
3. Whether the Custodian’s actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Mr. Maltese called for a motion to accept the Executive Director’s findings and recommendations as written. A motion was made by Ms. Richardson and seconded by Ms. Forsyth. The motion passed unanimously.

### **John McCormack v. New Jersey Department of Treasury (2005-58)**

Ms. McGann reviewed the GRC’s analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. McGann presented the recommendations to the Council which was amended as follows:

The Executive Director respectfully recommends the Council find that

1. Based on the Custodian’s redactions made to the resume of Mr. Suto, which are contrary to the language of Executive Order 26, and the Custodian’s failure to provide certified confirmation of compliance

pursuant to the Council's May 11, 2006 Interim Order, the Custodian has failed to comply with the Council's May 11, 2006 Interim Order.

2. In light of the legal standards set forth and the specific facts of this case, the Custodian's actions do not meet the legal standard for a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's actions do appear to be at least heedless regarding his knowledge of OPRA.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended (one word change). A motion was made by Ms. Richardson and seconded by Ms. Forsyth. The motion passed unanimously. Mr. Maltese recused himself from voting in this matter and left the room.

### **George Burdick, Jr. v. Franklin Township (2005-133)**

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

The Executive Director respectfully recommends the Council find:

1. The Custodian has not borne her burden of proving that the Hartmann Report is lawfully exempt from disclosure pursuant to N.J.S.A. 47:1A-6.
2. The Custodian's claim that the Hartmann Report is attorney-client privilege as defined in N.J.S.A. 47:1A-1.1 is unsubstantiated because the report was not prepared by an attorney for the Township.
3. The Custodian should release the requested Hartmann Report to the Complainant. In the event that redactions are made, the legal basis for any such redactions must be explained pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-6. The Custodian shall so comply within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Richardson and seconded by Ms. Forsyth. The motion passed unanimously. Mr. Maltese recused himself from voting in this matter and left the room.

### **John McCormack v. New Jersey Department of Treasury (2005-160)**

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not comply with the Council's July 13, 2006 Interim Order.
2. Without further legal explanation for redactions, the Custodian should release the requested resumes, in whole, pursuant to Executive Order 26. Therefore, the Custodian shall disclose the resumes within five (5)

calendar days and simultaneously provide certified confirmation of compliance to the Executive Director.

3. The Custodian's failure to comply with the Council's July 13, 2006 Interim Order is further evidence to be considered by the OAL in its hearing on the issue of whether the Custodian has knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.
4. The Council should proceed with the referral of this matter to OAL for a determination 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. Richardson and seconded by Ms. Forsyth. The motion passed unanimously. Mr. Maltese recused himself from voting in this matter and left the room.

#### **John McCormack v. New Jersey Department of Treasury (2005-164)**

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not comply with the Council's July 13, 2006 Interim Order.
2. The Custodian's failure to comply with the Council's July 13, 2006 Interim Order is further evidence to be considered by the OAL in its hearing on the issue of whether the Custodian has knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.
3. The Council should proceed with the referral of this matter to OAL for a determination of a knowing and willful violation of OPRA pursuant to the Council's July 13, 2006 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. Richardson. The motion passed unanimously. Mr. Maltese recused himself from voting in this matter and left the room.

#### **John Windish v. Mount Arlington Public Schools (2005-216)**

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

The Executive Director respectfully recommends that the Council uphold its Final Decision of April 11, 2006 because it is unreasonable to assume that every records custodian, especially those in small municipalities with limited photocopy equipment and other resources, are able to adequately or accurately determine the actual copying cost of government records when doing so requires an estimate of the number of government records which will be requested annually divided by an estimated annual actual cost of photocopy paper and ink.

Therefore, it is more likely, and consistent with the “golden rule of statutory interpretation” adopted by the Supreme Court of New Jersey in Dickinson, *supra.*, that the unreasonableness of a particular result arising from the selection of one among several possible alternative interpretations strongly militates in favor of the adoption of an interpretation that embraces a reasonable result. And, adopting the interpretation of the copying cost provision in OPRA which allows records custodians to charge the enumerated rates for copies of government records is the reasonable result.

Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. A motion was made by Ms. Richardson and seconded by Ms. Forsyth. The motion passed unanimously. Mr. Maltese recused himself from voting in this matter and left the room.

#### **Irvin Beaver v. Township of Middletown (2005-243)**

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:

1. As the Custodian did properly provide the Complainant with a written response to his September 13, 2005 request for information pursuant to N.J.S.A. 47:1A-5.g. and denied said request on the basis that it is not a request for identifiable government records, the Custodian has not unlawfully denied access to the Complainant’s request pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534 (March, 2005) and Russomano v. Township of Edison, GRC Case No. 2002-86 (July, 2003).
2. Since the Complainant's September 23, 2005 and October 7, 2005 requests do not fit within the permitted or required uses and disclosure of protected health information under HIPAA, the Custodian is proscribed from disclosing the "individual" records to the Complainant pursuant to HIPAA and N.J.S.A. 47:1A-9. And while the requested information may be partially disclosable under common law (pursuant to Michelson v. Wyatt 379 N.J. Super 611 (App. Div.)), the GRC is statutorily precluded from making a determination on access to government records under common law pursuant to N.J.S.A. 47:1A-8. Therefore, the Custodian has not unlawfully denied access under OPRA.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Richardson and seconded by Ms. Forsyth. The motion passed unanimously. Mr. Maltese recused himself from voting in this matter and left the room.

**Executive Directors Report:**

Ms. Starghill announced that Ms. Kimberly Gardner (Case Manager) accepted another position with the Federal Government and that Marion Davies (Case Manager) transferred to another state department.

Ms. Starghill also presented to the Council a Motion for Reconsideration of the Council's July 13, 2006 Interim Order in the matter of Gorman v. City of Gloucester City, GRC Complaint No. 2004-108. That motion was duly considered, discussed and unanimously denied.

**Public Comment:**

- 1) **Tina Renna**: Made comments on the following GRC Complaint Nos.: 2006-22, 2005-208 and 2006-73.
- 2) **Beth Mason**: Made comments regarding the following things: impressed with the Council's hiring and the overview of GRC; issue on bringing own copiers (glad the counsel is addressing the issue); would like to set up a meeting with Executive Director to discuss accommodating NJ Foundation for Open Government ("FOG") regarding its report of success and failures of the GRC and OPRA; gave a partial report to the council members authored by FOG; addressed special service charges under OPRA; issue of finding financial disclosure forms filed by municipal officials.
- 3) **Goerge Burdick**: Made comments on the following things: GRC Complaint No.: 2005-133; audio tapes and minutes; the way custodian's backdate request that should have been filled immediately; and should attorney's be held accountable.

Meeting adjourned at 12:41 p.m.

Respectfully submitted,

---

Robin Berg Tabakin, Secretary

Dated Approved:

