

**Minutes of the Government Records Council
Closed Session of August 11, 2005**

The Council convened in closed session at 9:15 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Chairman Vincent Maltese, DeAnna Minus-Vincent (designee of Acting Commissioner Charles Richman, Department of Community of Affairs), Diane Schonyers (designee of Commissioner Librera, Department of Education), Mitchell Fishman, Robin Berg Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, Case Managers: Chris Malloy, Kimberly Gardner, Marion Davies, and Colleen McGann.

Chairman Maltese stated that the first order of business for the Council would be *in camera* inspections for the following cases:

1. Sauter v. Township of Colts Neck (2004-68)
2. Sooy v. Department of Corrections (2004-215)

The unredacted documents in the above listed cases for viewing *in camera* were presented in a sealed envelope to the Case Manager Colleen McGann in the Open Session.

In Camera Inspection - Sauter v. Township of Colts Neck (2004-68):

Chairman Maltese recused himself and left the room during the *in camera* inspection. Present for the documents review were: Mitchell Fishman, Robin Berg Tabakin, DeAnna Minus-Vincent, Diane Schonyers, Paul Dice, Gloria Luzzatto, Colleen McGann, Catherine Starghill, Debra Allen. Ms. Luzzatto distributed document index, the asserted exemption and the specific citation of law and Executive Order referenced in the Custodian's index. Ms. Luzzatto read the entirety of the four unredacted documents claimed to be exempt. After discussion of the contents of the documents with legal counsel, the Council concluded that documents 1, 3 and 4 were disclosable in part pursuant to N.J.S.A. 47:1A-10. Pursuant to the OPRA, the portions of the documents considered disclosable were the name, title and position of the Police Chief. The Council concluded further that document 2 was exempt from disclosure under attorney-client privileges. Mr. Fishman expressed disagreement with the disclosure of any portion of document 1 pursuant to 10 of OPRA.

Mr. Maltese re-entered the meeting.

In Camera Inspection – Sooy v. Department of Corrections (2004-215) :

Present for the document review were: Vincent Maltese, Mitchell Fishman, Robin Berg Tabakin, DeAnna Minus-Vincent, Diane Schonyers, Paul Dice, Gloria Luzzatto, Colleen McGann, Catherine Starghill, Debra Allen. Ms. Luzzatto distributed a summary identifying the document to be reviewed, the asserted exemption, the specific citation of law referenced by the Custodian and a copy of the redacted e-mail. Ms. Luzzatto read the entirety of the requested e-mail without redactions. After discussion of the contents of

the redactions with legal counsel and considering whether there were any legal basis for non-disclosure under OPRA or advisory, consultative or deliberative privileges, the Council concluded that the redacted information contained in the requested record was neither “inter-agency or intra-agency advisory, consultative, or deliberative material” nor otherwise exempt from disclosure under the Open Public Records Act. N.J.S.A. 47:1A-1 et seq. and should be disclosed in its entirety.

The Council sought further legal advice in the following cases:

Paff v. Department of Labor (2003-128)

Ms. Starghill stated that the GRC received a decision in this case from the Superior Court, Appellate Division that may impact the standards used by the GRC in the investigation and adjudication of complaints. Mr. Dice noted that when this case was before the Council we were in the process of dealing with a backlog of cases and our standard for not seeking a document index and accepting a Custodian’s certification was different than the standard that we are practicing now. He stated that DAG Allen and Catherine Starghill would present an advisory opinion to the Council at the next meeting.

Burns v. Borough of Collingswood (2004-169)

Mr. Maltese recused himself and left the room during the discussion of this case. In light of the Paff v. Department of Labor Appellate decision, DAG Allen and Ms. Starghill advised that an *in camera* inspection should be conducted in this case. The Council considered the DOL and In-House counsels advise and determined that the case would be rescheduled to incorporate their legal advice into the case’s Findings and Recommendations.

Paff v. Division of Consumer Affairs (2004-103)

Ms. Starghill discussed the legal standards of the New Jersey courts for case reviews and reconsideration and recommended that the Council follow its precedent to reconsider the matter in this case since the Council’s decision may have been based upon an unsettled point of law relating to the validity of proposed rules that were given effect by EO 21. She further advised that the Council consider the Custodian’s alternative position for non-disclosure based on N.J.S.A. 47:1A-3.a. not addressed or relied upon in the Council’s January 13, 2005 final decision.

Mr. Maltese asked for a motion to adjourn the closed session. Mr. Fishman offered the motion, which was seconded by Ms. Minus-Vincent. All members present approved the motion.

The Closed Session concluded at 11:00 a.m.

Respectfully Submitted:



DeAnna Minus-Vincent, Secretary

Dated: October 28, 2005

