

**MINUTES OF THE GOVERNMENT RECORDS COUNCIL**  
**August 12, 2004**

The meeting was called to order at 9:15AM in 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, Charles Richman (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. Richman. All members present unanimously approved the motion. The Council met in closed session from 9:20AM to 10:15AM. The Council reconvened in open session at 10:30AM 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, Charles Richman (designee of Commissioner Susan Bass Levin, Department of Community Affairs)

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

Also Present: Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, Deputy Attorney General Karen Dumars, GRC Attorney Advisor David Zipin, Staff Associates Marion Davies, Chris Malloy, Erin Mallon, Kimberly Gardner.

Mr. Maltese asked for the Executive Director's report on personnel. Mr. Dice announced the resignation of Mr. Anthony Carabelli from the position of case manager and introduced Ms. Marion Davies as a new case manager. A replacement for Mr. Carabelli is being recruited. Mr. Dice states that an offer of employment has been tendered to a gentleman, whose name is being withheld at this time, for general counsel and we are awaiting a response and negotiations regarding the offer.

Mr. Maltese called for a motion to accept the Closed Session Meeting Minutes from the May 13, 2004 meeting as written. A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call:

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

Nays: None

Abstain: Mr. Richman

Mr. Maltese called for a motion to accept the Open Public Meeting Minutes for the May 13, 2004 meeting as written. A motion was made by Mr. Dice and seconded by Ms. Hook. The motion was adopted by roll call:

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

Nays: None

Abstain: Mr. Richman

Mr. Maltese called for a motion to accept the Closed Session Meeting Minutes from the June 10, 2004 meeting as written. A motion was made by Mr. Spigner and seconded by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Mr. Maltese called for a motion to accept the Open Public Meeting Minutes for the June 10, 2004 meeting as written. A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Mr. Maltese called for the report of the Executive Director, Mr. Dice. Mr. Dice presented the following Executive Director's monthly report: Current status of complaints: a total of

52 scheduled, twenty-four cases for the August Council meeting, twenty-four cases scheduled for the September meeting; four for the October meeting, six cases on appeal; six cases in the Office of Administrative Law; fifteen cases in mediation; eleven cases were work in progress. There is a monthly influx 15 complaints, 25 in July, and an average of 95 inquiries.

Mr. Dice also mentioned an article from the Daily Journal regarding a proposed ordinance in the City of Vineland for a flat rate for special service charges.

**DeBiasse vs. Madison Borough (2003-91)**

Mr. Dice reviewed the case stating it had been heard at the April 26, 2004 meeting where the Council directed the staff to intervene due to misunderstanding between the parties. Intervention by phone consultation with both parties was successful and the Complainant withdrew the complaint.

It was the Executive Director's recommendation that the Council dismiss the case on the basis of the Complainant's withdrawn 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. Spigner. The motion was adopted by roll call.

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

Nays: None

Abstain: None

Mr. Maltese proposed a single vote dismissing all cases that have been withdrawn or sent to mediation. This will allow more cases to be heard at each meeting.

Mr. Maltese called for a motion to accept the Executive Director's recommendation that the following cases be dismissed as withdraws: Kushner v. Borough of Riverdale (2004-4), Schmidt v. Borough of Rumson (2004-47), Biss v. Sussex County Regional Transportation Cooperative (2004-90), Rembis v. Clifton Board of Education (2004-97). A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call.

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

Nays: None

Abstain: None

Mr. Maltese called for a motion to accept the Executive Director's recommendation that the following cases be dismissed for mediation: Exantus v. Department of Health, Newark

(2004-86), Giuditta v. Township of West Orange (2004-88), McGee v. Township of East Amwell (2004-89), Russonmano v. Division of Motor Vehicle Commission (2004-92), Grant v. Montville Township Board of Education (2004-97), McBride v. Teaneck Township (2004-101). A motion was made by Mr. Spigner and seconded by Ms. Hook. The motion was adopted by roll call.

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

Nays: None

Abstain: Mr. Maltese (relating to 2004-86 and 2004-97)

### **Merino v. Borough of Ho-Ho-Kus**

Mr. Dice presented a final decision prepared by Deputy Attorney General Andrea Grundfest as the Council requested at the July 8, 2004 meeting. At Mr. Dice's request Mr. Maltese recapped the details of the vote of the Council from its July 8, 2004 meeting where the Council employed the seven-part test adopted by the courts to determine the disclosability of the names of individuals on a traffic summons. The Council voted three to two that the names should not be disclosed due to the concern that disclosure might result in unsolicited contact by the requestor to the individuals named in those summons. At that time counsel was instructed to prepare a narrative for inclusion in the recommendation and final decision, regarding the use of the seven-part test in this case. Mr. Dice presented the aforementioned narrative to the Council.

Mr. Maltese called for a motion to incorporate the narrative as presented into the Executive Director's Findings and Recommendations and Final Decision. A motion was made by Mr. Spigner and seconded by Ms. Hook. The motion was adopted by roll call.

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

Nays: None

Abstain: None

### **Ann Kozar v. Township of Woodbridge (2004-54)**

Mr. Malloy presented the details of the case involving the Complainant's request for a site plan, an attachment to a resolution and a Certificate of Occupancy to which she did not receive a written response. The Custodian contends that the Complainant was not denied access and that all records responsive to the request were released to the Complainant. The Complainant was given a verbal reply to her request for records. The Custodian certified that the Complainant received all records responsive to the request.

It was the Executive Director's recommendation that the Council dismiss the case on the basis of the Certification of the Custodian that all records responsive to the request had been released to the Complainant.

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

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

Nays: None

Abstain: None

### **Campbell v. Township of South Harrison (2004-62)**

Ms. Mallon reviewed the case indicating it was a continuation of discussion from the July 8, 2004 meeting where the Council voted unanimously to adopt items 1-4 of the July 2, 2004 Executive Director's Supplemental Findings and Recommendations. At that time the Council wanted to consider further information submitted by the Complainant on July 2 2004 prior to closing the case. In the new information submitted by the Complainant it was at issue that not all of the budget information requested was received from the Custodian and the Custodian did not respond in a timely manner. The Custodian certified that the Complainant received all available documents responsive to the request. Based on 1-3 of the Executive Director's Findings and Recommendations the case should be dismissed. Mr. Maltese requested that the Custodian be placed on the matrix of violations.

It was the Executive Director's recommendation that the Council dismiss the case on the basis that the Complainant received all documents responsive to the request.

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

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

Nays: None

Abstain: None

### **Drillman v. Bayonne Police (2004-64)**

Mr. Maltese recused himself and left the room leaving Mr. Spigner to officiate over the meeting. Ms. Luzzatto stated that this case involves a Denial of Access to an investigation

report. The Custodian stated that the document is not releasable as it was part of an ongoing criminal investigation and was in regard to a minor.

It was the Executive Director's recommendation that the Council dismiss the case on the basis that the Custodian has met the burden of proving that the requested records were a criminal investigatory record and are not disclosable per N.J.S.A. 47:1A-1.1.

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

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

Nays: None

Abstain: None

**Dabney Carter v. New Jersey State Parole Board (2004-66)**

Mr. Maltese returned to the meeting. Ms. Mallon presented to the Council that the Complainant in this case was requesting information related to a parole deliberation and hearing however there is no evidence that he made an OPRA request. The Custodian states that there was no OPRA request received however they did make mention of an administrative request submitted to the parole board for the information, which was released to the Complainant. These administrative requests had no bearing on the issue at hand as they were submitted outside of the time period of the Complainant's alleged OPRA request. Additional information was received from the Complainant on August 12, 2004 and was taken into consideration.

Mr. Maltese wished to make it clear that every written request for a government document is an OPRA request and should be treated as such.

It was the Executive Director's recommendation that the Council dismiss the case on the basis that there is no evidence that an OPRA request was filed and the Complainant did receive requested records.

Mr. Maltese called for a motion to adopt the entirety of said findings and recommendations amended to include the Complainant's additional information received on August 12, 2004. 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. Richman, Mr. Maltese

Nays: None

Abstain: None

**Diamond v. Camden County Prosecutor (2004-71)**

Mr. Malloy stated that this case involved a Denial of Access to a letter written to Atlantic City government officials regarding the legality of needle exchange programs in general. The Custodian's counsel asserted that the document was pre-decisional and was exempt from disclosure under advisory, consultative and deliberative material.

It was the Executive Director's recommendation that the Council dismiss the case on the basis that the document requested is advisory, consultative and deliberative material and therefore exempt from disclosure.

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. Richman. The motion was adopted by roll call.

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

Nays: None

Abstain: Mr. Spigner

**Smith v. Department of Corrections (2004-72)**

Ms. Mallon stated that this case involved an April 20, 2004 request for a list of attendees at the 24<sup>th</sup> Annual Conference on Public Sector Law Relations, a list of those state employees who attended and whether they attended in pay status or on their own time. The Complainant received 5 memos responsive to his request regarding 5 separate employees acknowledging their attendance in UN (union business) status. The Complainant did not feel that this information fully responded to his request. The Custodian certified that the Department of Corrections would not know what other state employees left work that day for the conference. The Conference was not hosted by the State or the Department of Corrections. The Complainant stated that he submitted a request on April 19 also, however the Custodian did not receive the request and the Complainant does not have proof of the written request. The Custodian did not respond to the request until May 5, 2004 notifying the Complainant of the cost for copies. Mr. Maltese asked that this Custodian be placed on the Matrix for timeliness.

It was the Executive Director's recommendation that the Council dismiss the case on the basis that all records responsive to the request have been released to the Complainant.

Mr. Maltese called for a motion to adopt the entirety of said findings and recommendations amended to place the Custodian on the Matrix for timeliness. 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. Richman, Mr. Maltese

Nays: None

Abstain: None

**Santos v. The New Jersey State Parole Board (2004-74)**

Ms. Mallon stated that this case involved a Complainant's June 6, 2004 request for parole eligibility information. The Complainant alleged that there was no response to his request however there is evidence that the Custodian sent a response on June 16, 2004 advising the Complainant of the copy costs and received no response therefore the documents were not disclosed.

It was the Executive Director's recommendation that the Council dismiss the case on the basis that the Custodian responded to the Complainant but did not receive the copy cost and was therefore not required to disclose the records requested.

Mr. Maltese called for a motion to adopt the entirety of said findings and recommendations 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. Richman, Mr. Maltese

Nays: None

Abstain: None

**Burlett v. Monmouth County Board of Freeholders (2004-75)**

Mr. Malloy stated that this case involved a request for an audiotape from a Freeholder meeting. The Complainant was informed via fax that the tape could not be released to her. The Custodian's counsel stated that the audiotape was not made available because they are not legally required to tape record any freeholders meeting and the tape only serves as a means to create a verbatim transcript of the meeting in a timely manner. The transcript was provided to the Complainant who alleges that the transcript is not verbatim and that she wished to receive a copy of the tape. The Custodian's counsel had not declared any exemptions under the law to support the withholding of this record.

It was the Executive Director's recommendation that the Council order the disclosure of the audiotapes with appropriate redactions pursuant to N.J.S.A. 47:1A-1 et. seq.

Mr. Maltese called for a motion to adopt the entirety of said findings and recommendations with an amendment imposing a deadline of 10 days to comply. A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call.

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

Nays: None

Abstain: None

**Jason Smith v. The State Police (2004-76)**

Ms. Gardner stated in her summary of the case that the request set forth in the Complainant's Denial of Access complaint was unclear. Furthermore, the Complainant had not provided written documentation of his request for records and therefore the Council staff was unable to determine what, if any, request for records had been submitted as a written request. The Custodian certified that after doing a complete and thorough search of their records they find no written request of any kind from the Complainant. After requesting verification of the request from the Complainant and receiving no response it has been determined that based on available evidence there was no written OPRA request made.

It was the Executive Director's recommendation that the Council dismiss the case on the basis that there was no written OPRA request made and therefore the Council lacks jurisdiction in this matter.

Mr. Maltese called for a motion to adopt the entirety of said findings and recommendations as written. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call.

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

Nays: None

Abstain: None

**DeWarren Hines v. New Jersey Department of Corrections (2004-81)**

Ms. Gardner stated that the Complainant is requesting records from an adjudication of an institutional correction from April 1979. The Custodian responded to the Complainant and in the statement of information certifies that the records requested have been destroyed in accordance with the Department of Corrections retention schedule and are therefore no longer maintained and kept on file.

It was the Executive Director's recommendation that the Council dismiss the case on the basis of the Custodian's certification that states the records responsive to the request no longer exist pursuant to the retention schedule of the Department of Corrections.

Mr. Maltese called for a motion to adopt the entirety of said findings and recommendations as written. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call.

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

Nays: None

Abstain: None

**Burlett v. Monmouth County Sheriff's Office (2004-85)**

Ms. Gardner stated that this case concerns an issue of timeliness. The Complainant did not feel that her request for 10 separate documents was in a timely manner. The Custodian asserts that he made numerous attempts to contact the Complainant via telephone but was unsuccessful in reaching her; leaving messages with coworkers. The Custodian did respond to the request within 7 days requiring an extension of time to compile the records sought however he did not provide the specific reason for the extension. Upon completion of the extensive work required to fulfill the request the Complainant received all documents requested on July 8, 2004.

It was the Executive Director's recommendation that the Council dismiss the case on the basis of the Custodian's certification that states that attempts were made to contact the Complainant within 7 days and there is no evidence of a knowing and willful violation of N.J.S.A. 47:1A-5(i).

Mr. Maltese called for a motion to adopt the entirety of said findings and recommendations 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. Richman, Mr. Maltese

Nays: None

Abstain: None

**Public Comment:**

There were no public comments. Mr. Maltese called for a motion to adjourn and by a consensus the meeting was adjourned at 12:30 PM..

Respectfully submitted,

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Virginia Hook, Secretary

Dated: 1/13/05