



**Minutes of the Government Records Council
October 19, 2006 Public Meeting – Open Session**

The meeting was called to order at 1:40 p.m. at the Department of Community Affairs, Conference Room 126, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Hairston called the roll:

Present: Vice Chairwoman & Secretary Robin Berg Tabakin, David Fleisher, Michelle Richardson (designee of Department of Community Affairs Commissioner Susan Bass Levin) and Kathryn Forsyth (designee of Department of Education Acting Commissioner Lucille Davy).

GRC Staff: Executive Director Catherine Starghill, Brigitte Hairston, Sayantani Dasguspta, Jyothi Pamidimukkala, Dara Lownie, Tiffany Mayers, Colleen McGann, Rebecca Steese, Designated Outside Counsel Barry Roy, and Deputy Attorney General Debra Allen.

Absent: Chairman Vincent Maltese

Ms. Tabakin read the Resolution for Closed Session (Resolution Number 2006-10-19) to conduct *in camera* inspections and receive legal advice in the following complaints:

John Paff v. Township of Old Bridge (2005-123)
Cathy Cardillo v. City of Hoboken, Zoning Office (2005-158)
Thomas Caggiano v. Borough of Stanhope (2006-27 et seq.)

A motion was made by Ms. Richardson and seconded by Ms. Forsyth to go into closed session. The motion was adopted by a unanimous vote.

The Council met in closed session from 1:44 p.m. until 2:10 p.m.

Open Session reconvened at 2:18 p.m. and Ms. Hairston called the roll:

In attendance:

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

The pledge of allegiance was recited.

Ms. Tabakin called for a motion to approve the open and closed session minutes of September 21, 2006 with amendments. A motion was made by Ms. Forsyth and seconded by Ms. Richardson. Mr. Fleisher abstained from the vote. The motion passed with a majority of three (3) Council members.

Council Adjudication:

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

GRC Complaint Case and Number	Disposition
1. John McCormack v. NJ Department of Personnel (2005-165)	No records responsive to the request
2. James Vogel v. Beach Haven Borough (2006-122)	No records responsive to the request
3. John Paff v. Middlesex County Municipal Joint Insurance Fund (2006-135)	Settled in Mediation
4. Ian Shearn v. NJ Department of Treasury (2006-139)	Settled in Mediation
5. Jesse Rosenblum v. NJ Department of Community Affairs, Bureau of Housing (2006-144)	Settled in Mediation
6. John Paff v. Borough of Kenilworth (2006-153)	Settled in Mediation
7. James Pryor v. City of Orange (2006-166)	Complaint Withdrawn

Ms. Tabakin 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. Richardson and seconded by Ms. Forsyth. The motion passed unanimously.

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

John Paff v. Township of Old Bridge (2005-123)

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

The Executive Director respectfully recommends that the Council find that:

1. **Redaction 1, page 1 (6 sentences):** This portion of the requested minutes is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 as attorney-client privileged information. Therefore, the Custodian lawfully denied access to this portion of the requested minutes pursuant to N.J.S.A. 47:1A-1.1. The ACD exemption does not apply to this information as claimed by the Custodian.
2. **Redaction 2, page 1 (1 sentence):** This portion is not exempt from disclosure because the statement made is neither attorney-client privileged

nor ACD as claimed by the Custodian. Therefore, the Custodian unlawfully denied access to this portion of the requested minutes.

3. **Redaction 3, page 1 (1 sentence):** This portion of the requested minutes is exempt from disclosure as ACD pursuant to N.J.S.A. 47:1A-1.1. and attorney-client privileged. Therefore, the Custodian lawfully denied access to this portion of the requested minutes pursuant to N.J.S.A. 47:1A-1.1.
4. **Redaction 4, page 2 (1 sentence):** This portion of the requested minutes is exempt from disclosure as ACD pursuant to N.J.S.A. 47:1A-1.1. with the exception of the speakers name, which should be disclosed. Therefore, the Custodian unlawfully denied access to the name of the speaker but lawfully denied access to the remainder of this redacted portion pursuant to N.J.S.A. 47:1A-1.1. The attorney-client privilege exemption does not apply to this information as claimed by the Custodian.
5. **Redaction 5, page 2 (5 sentences):** This portion of the requested minutes is exempt from disclosure as ACD pursuant to N.J.S.A. 47:1A-1.1. with the exception of the speakers name, which should be disclosed. Therefore, the Custodian unlawfully denied access to the name of the speaker but lawfully denied access to the remainder of this redacted portion pursuant to N.J.S.A. 47:1A-1.1. The attorney-client privilege exemption does not apply to this information as claimed by the Custodian.
6. **Redaction 6, page 2 (2 sentences):** This portion of the requested minutes is exempt from disclosure as ACD pursuant to N.J.S.A. 47:1A-1.1. with the exception of the speakers name, which should be disclosed. Therefore, the Custodian unlawfully denied access to the name of the speaker but lawfully denied access to the remainder of this redacted portion pursuant to N.J.S.A. 47:1A-1.1. The attorney-client privilege exemption does not apply to this information as claimed by the Custodian.
7. **Redaction 7, page 2 (1 sentence):** This portion of the requested minutes is exempt from disclosure as ACD pursuant to N.J.S.A. 47:1A-1.1. with the exception of the speakers name, which should be disclosed. Therefore, the Custodian unlawfully denied access to the name of the speaker but lawfully denied access to the remainder of this redacted portion pursuant to N.J.S.A. 47:1A-1.1. The attorney-client privilege exemption does not apply to this information as claimed by the Custodian.
8. **Redaction 8, page 2 (2 sentences):** This portion of the requested minutes is exempt from disclosure as ACD pursuant to N.J.S.A. 47:1A-1.1. with the exception of the speakers name, which should be disclosed. Therefore, the Custodian unlawfully denied access to the name of the speaker but lawfully denied access to the remainder of this redacted portion pursuant to N.J.S.A. 47:1A-1.1. The attorney-client privilege exemption does not apply to this information as claimed by the Custodian.
9. **Redaction 9, page 2 (1 sentence):** This portion of the requested minutes is exempt from disclosure as ACD pursuant to N.J.S.A. 47:1A-1.1. with the exception of the speakers name, which should be disclosed. Therefore, the Custodian unlawfully denied access to the name of the speaker but lawfully denied access to the remainder of this redacted portion pursuant to N.J.S.A. 47:1A-1.1. The attorney-client privilege exemption does not apply to this information as claimed by the Custodian.

10. **Redaction 10, page 2 (1 sentence):** This portion of the requested minutes is exempt from disclosure as ACD pursuant to N.J.S.A. 47:1A-1.1. with the exception of the speakers name, which should be disclosed. Therefore, the Custodian unlawfully denied access to the name of the speaker but lawfully denied access to the remainder of this redacted portion pursuant to N.J.S.A. 47:1A-1.1. The attorney-client privilege exemption does not apply to this information as claimed by the Custodian.
11. **Redaction 11, page 2 (1 sentence):** This portion of the requested minutes is exempt from disclosure as ACD pursuant to N.J.S.A. 47:1A-1.1. with the exception of the speakers name, which should be disclosed. Therefore, the Custodian unlawfully denied access to the name of the speaker but lawfully denied access to the remainder of this redacted portion pursuant to N.J.S.A. 47:1A-1.1. The attorney-client privilege exemption does not apply to this information as claimed by the Custodian.
12. **Redaction 12, page 2 (2 sentences):** This portion of the requested minutes is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 as attorney-client privileged information. Therefore, the Custodian lawfully denied access to this portion of the requested minutes pursuant to N.J.S.A. 47:1A-1.1. The ACD exemption does not apply to this information as claimed by the Custodian.
13. **Redaction 13, page 2 (2 sentences):** This portion of the requested minutes is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 as attorney-client privileged information. Therefore, the Custodian lawfully denied access to this portion of the requested minutes pursuant to N.J.S.A. 47:1A-1.1. The ACD exemption does not apply to this information as claimed by the Custodian.
14. **Redaction 14, page 2 (1 sentence):** This portion of the requested minutes is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 as attorney-client privileged information. Therefore, the Custodian lawfully denied access to this portion of the requested minutes pursuant to N.J.S.A. 47:1A-1.1. The ACD exemption does not apply to this information as claimed by the Custodian.
15. **Redaction 15, page 3 (1 sentence):** This portion of the requested minutes is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 as attorney-client privileged information. Therefore, the Custodian lawfully denied access to this portion of the requested minutes pursuant to N.J.S.A. 47:1A-1.1. The ACD exemption does not apply to this information as claimed by the Custodian.
16. The GRC recognizes that some of the information disclosed to the Complainant by the Custodian prior to the in camera inspection conducted by the GRC could qualify as advisory, consultative or deliberative material exemption under N.J.S.A. 47:1A-1.1. Thus, this information may have been properly redacted under N.J.S.A. 47:1A-5.g. (... the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record ...) and N.J.S.A. 47:1A-6 (... [t]he public agency shall have the burden of proving that the denial of access is authorized by law...).

17. **The Custodian shall comply with items “1.-15.” above within five (5) business days from receipt of this decision on the basis of the Council’s above determination and simultaneously provide certified confirmation to the Executive Director that the Custodian has complied with the Council’s decision.**

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

Cathy Cardillo v. City of Hoboken, Zoning Office (2005-158)

Ms. Starghill reviewed the GRC’s analysis and issues in the case as set forth in the *In Camera* 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 the building plans for the renovation of 901 Hudson Street, Hoboken, N.J. (5 pages) should be redacted or disclosed as follows:

- 1) **Page T-1** – This page is disclosable in its entirety. This document contains general information inclusive of: a symbols legend, general notes, zoning map location, architect firms name, address phone and fax numbers, site plan, ownership of documents notice, project description, project number, initials of the illustrator, and the initials of the person who “checked” the document.
- 2) **Page A-01** – The Basement and 1st Floor Demolition Plan. The demolition legend, demolition note at the top of the page, titles at the bottom of the page, and all items contained under the architect firm name should be disclosed. The remainder of the document, which includes the demolition schematics and plans, is exempt from disclosure and should be redacted pursuant to N.J.S.A.47:1A1.1. This information contains security information which would jeopardize the building and persons therein. The exempt portion of this document contains information about the removal and remainder of doors and windows which could jeopardize the security of the building and the persons residing in the building.
- 3) **Page A-02** – The 2nd Floor and 3rd Floor Demolition Plan. The demolition legend, demolition note at the top of the page, titles at the bottom of the page, and all items contained under the architect firm name should be disclosed. The remainder of the document, which includes the demolition schematics and plans, is exempt from disclosure and should be redacted pursuant to N.J.S.A.47:1A1.1. This information contains security information which would jeopardize the building and persons therein. The exempt portion of this document contains information about the removal and remainder of doors and windows which could jeopardize the security of the building and the persons residing in the building.
- 4) **Page A-03** - The Basement Floor Plan. The legend, general notes, title of the document and all items contained under the architect firm name should be disclosed. The remainder of the document, which includes the design

schematics and plans, is exempt from disclosure and should be redacted pursuant to N.J.S.A.47:1A-1.1. This information contains security information which would jeopardize the building and persons therein. The exempt portion of this document contains information about the removal and remainder of doors and window and the location of all rooms inside which could jeopardize the security of the building and the persons residing in the building.

- 5) **Page A-04** – The 1st Floor Plan. The legend, general notes, title of the document and all items contained under the architect firm name should be disclosed. The remainder of the document, which includes the design schematics and plans, is exempt from disclosure and should be redacted pursuant to N.J.S.A.47:1A-1.1. This information contains security information which would jeopardize the building and persons therein. The exempt portion of this document contains information about the removal and remainder of doors and window and the location of all rooms inside which could jeopardize the security of the building and the persons residing in the building.
- 6) **Page A-05** – The 2nd Floor Plan and the 3rd Floor Plan. The legend, general notes, title of the document and all items contained under the architect firm name should be disclosed. The remainder of the document, which includes the design schematics and plans, is exempt from disclosure and should be redacted pursuant to N.J.S.A.47:1A-1.1. This information contains security information which would jeopardize the building and persons therein. The exempt portion of this document contains information about the removal and remainder of doors and window and the location of all rooms inside which could jeopardize the security of the building and the persons residing in the building.
- 7) **The Custodian shall comply with items #1-6 above 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 *in camera* findings and recommendations as amended. A motion was made by Ms. Forsyth and seconded by Mr. Fleisher. Ms. Richardson recused herself from the vote. The motion passed with a majority of three (3) Council members.

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

Ms. Starghill reviewed the GRC’s analysis and issues in the case as set forth in the Supplemental 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 August 15, 2006.

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

Renee Averbach v. Millburn Board of Education (2005-220)

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

The Executive Director respectfully recommends the Council not reconsider this complaint and find that this complaint is moot since the Complainant voluntarily withdrew the complaint pursuant to a letter submitted to the Council dated October 4, 2006.

Ms. Tabakin called for a motion to accept the Executive Director's supplemental findings and recommendations. A motion was made by Ms. Richardson and seconded by Mr. Fleisher. The motion passed unanimously.

John Kahn v. NJ State Police (2005-254)

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 decision in Nero v. Hyland, 76 N.J. 213, 222 (1978), Executive Order 48 (Hughes 1968) and pursuant to the definition of a government record as defined in N.J.S.A. 47:1A-1.1., which excludes advisory, consultative and deliberative materials, the Custodian has lawfully denied access to the requested documents.

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

Thomas Caggiano v. Borough of Stanhope (2006-27 et seq.)

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

The Executive Director respectfully recommends that the Council find that these complaints are moot since the Complainant voluntarily withdrew these complaints pursuant to a letter to the Council dated October 4, 2006 and because the Council does not have authority to file these complaints for a determination of penalties on behalf of the Complainant with the New Jersey Superior Court.

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

Lesile Posnock v. Monmouth County Sheriff's Office (2006-44)

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 were amended as follows:

The Executive Director respectfully recommends the Council find that:

1. Pursuant to N.J.S.A. 47:1A-1.1, those documents that are not made, maintained or kept on file by the Monmouth County Sheriff's Office cannot be provided in response to this request and the Custodian has not unlawfully denied access to those records.
2. The Custodian should have, at least, informed the Complainant in writing that the Sherriff's Office does not hold the requested documents and directed the Complainant to contact those agencies named in the request. Therefore, the Custodian violated N.J.S.A. 47:1A-5.i., N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.h.
3. The Custodian's failure to inform the Complainant that those records could not be provided results in a deemed denial of access pursuant to N.J.S.A. 47:1A-5.i.
4. The Custodian has lawfully denied access to the death and suicide investigation reports held by the agency, including those that pertain to Nicholas Organek, pursuant to N.J.S.A. 47:1A-9.a. and Executive Order 26 Paragraph 4(b)1.
5. The Custodian in this case has not born the burden of proving that providing 71 pages of documents requires an extraordinary expenditure of time and effort for his agency. Thus, the Custodian has failed to prove that a special service charge is warranted in this case pursuant to N.J.S.A. 47:1A-5.c. and N.J.S.A. 47:1A-6. Therefore, the Custodian must provide those records that are disclosable to the Complainant, charging only the statutory copying costs prescribed for in N.J.S.A. 47:1A-5.b.
6. **The Custodian shall comply with "5." above within five (5) business days from receipt of this 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.

Joseph Sooy v. NJ Department of Corrections (2006-128)

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. Based on the GRC decision in DeLuca v. Town of Guttenburg, GRC Complaint No. 2006-25 (May 2006), the Custodian has violated N.J.S.A. 47:1A-5.i. and N.J.S.A. 47:1A-5.g. in failing to respond to the Complainant's request in writing within the statutorily mandated seven (7) business days resulting in a deemed denial of access.
2. While the Custodian asserts that the records are also exempt from disclosure as personnel records and exempt under N.J.S.A. 47:1A-10 and Executive Order 26, there is no evidence that these documents constitute a personnel record. This is especially true since the Complainant is not

requesting resumes, which are specifically addressed in Executive Order 26. Therefore, N.J.S.A. 47:1A-10 and Executive Order 26 do not apply to the requested records.

3. The requested interviewers' notes and score sheets are both pre-decisional and deliberative. Thus, based on the decision in In re Liquidation of Integrity Insurance Co., 165 N.J. 75 (2000) the requested notes and score sheets are advisory, consultative, and deliberative and do not fall under the definition of a government record pursuant to N.J.S.A. 47:1A-1.1. Therefore, the Custodian has lawfully denied access to the requested notes and score sheets.

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.

Martin O'Shea v. NJ Intergovernmental Insurance Fund (2006-137)

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

The Executive Director respectfully recommends the Council find that:

1. Based on the certified statements of the Custodian, the Custodian unlawfully denied access to requested resolutions and minutes within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5.i.
2. The Custodian failed to provide a written response to the Complainant's specific request, which resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.g.
3. The Custodian unlawfully denied access to resolutions and minutes, therefore, the Custodian did not bear their burden of proof pursuant to N.J.S.A. 47:1A-6.
4. **The Custodian shall disclose the requested minutes within seven (7) business days from receipt of the Council's Interim Order with appropriate redactions that the Custodian legally justifies and explains to the Complainant pursuant to N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-5.g. and simultaneously provide certified confirmation of such compliance to the Executive Director.**

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

Martin O'Shea v. West Milford Municipal Utilities Authority (2006-138)

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

The Executive Director respectfully recommends the Council find that:

1. Since the Custodian did not completely and properly bear her burden of proving that the denial of access is authorized by law at the time of the

denial as is required under N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-5.i., the Custodian has unlawfully denied access to the requested records by not properly denying access within the statutorily mandated seven (7) business day's timeframe.

2. OPRA provides that when the custodian of a government record asserts that part of the record is exempt from public access, the custodian must delete from a copy of the record that portion which the custodian asserts is exempt from access. The Custodian's failure to release at least redacted copies of the requested minutes to the Complainant resulted in a violation of N.J.S.A. 47:1A-5.g.
3. While the Custodian asserts that the requested minutes are exempt from disclosure stating that the Municipal Utilities Authority attorney advised the Custodian not to release any closed session minutes until all appeals have been exhausted, and then later indicating in the Statement of Information that the minutes have not been disclosed because they involve ongoing agreement negotiation with developers, easement negotiations relative to condemnation and potential litigation for unpaid fees, the Council should conduct an *in camera* review of the requested minutes to determine if said document, or portions therein are exempt from disclosure as the Custodian asserts.
4. The Custodian must deliver to the Council in a sealed envelop six copies of the requested unredacted documents (see #3 above), a document or redaction index detailing the documents and/or each redaction asserted and the Custodian's legal certification under penalty of perjury that the documents provided are the documents requested by the Council for the *in camera* no later than **five (5) business days from the distribution date of the Council's 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. Richardson and seconded by Ms. Forsyth. The motion passed unanimously.

Executive Directors Report:

Ms. Starghill discussed the proposed 2007 GRC meeting dates.

Public Comment:

None.

Meeting adjourned at 2:46 p.m.

Respectfully submitted,

Robin Berg Tabakin, Secretary

Date Approved: November 15, 2006