



**Minutes of the Government Records Council
November 15, 2006 Public Meeting – Open Session**

The meeting was called to order at 9:45 a.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: Vincent Maltese, Chairman, 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 Dasgupta, Jyothi Pamidimukkala, Dara Lownie, Tiffany Mayers, Colleen McGann, Rebecca Steese, Designated Outside Counsel Barry Roy, and Deputy Attorney General Debra Allen.

Absent: Ms. Robin Berg-Tabakin, Vice Chairwoman and Secretary

Mr. Maltese read the Resolution for Closed Session (Resolution Number 2006-11-15) to conduct *in camera* inspections and receive legal advice in the following complaints:

1. Jeffrey Smith v. NJ Department of Corrections (2005-84)
2. Thomas Allegretta v. Borough of Fairview (2006-132) *In-Camera Review*

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 9:47 a.m. until 10:16 a.m.

Open Session reconvened at 10:24 a.m. and Ms. Hairston called the roll.

In attendance:

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

The pledge of allegiance was recited.

Mr. Maltese called for a motion to approve the open and closed session minutes of October 12, 2006. A motion was made by Ms. Forsyth and seconded by Ms. Richardson. The motion passed with a majority of three (3) Council members. Mr. Maltese abstained from the vote because he did not attend the October meeting.

Council Adjudication:

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

GRC Complaint Case and Number	Disposition
1. Steven Kossup v. Essex County Prosecutor's Office (2006-84)	Complaint withdrawn
2. Papandrea/Straub v. Manasquan Board of Education (2006-127)	Settled in Mediation
3. Frank Shaineline v. Haledon Borough of Municipal Court (2006-132)	Judicial or legislative jurisdiction not within the scope of OPRA
4. Dwight D. deStefan v. River Vale Police Department (2006-140)	Settled in Mediation
5. John Kushner v. Pequannock Township Police Department (2006-162)	Complaint withdrawn

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

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

Jeffrey Smith v. NJ Department of Corrections (2005-84)

Ms. Lownie 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. Lownie presented the recommendations to the Council which were amended as follows:

The Executive Director respectfully recommends that the Council find that:

1. Pursuant to Gannett N.J. Partners, LP v. County of Middlesex, 379 N.J. Super. 205 (July 13, 2005) and North Jersey Newspapers Company v. Passaic County Board of Freeholders, 127 N.J. 9 (1992), the requested schedule of the Commissioner maybe exempt from public access on the basis that it implicates privacy interests of persons who meet with public officials. However, an *in camera* inspection is required to verify that this exemption from disclosure applies to the requested schedule of the Commissioner.
2. 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 timeframe.
3. **The Custodian shall provide unredacted copies of the schedule of the Commissioner for the period requested (January 1, 2004 through June 30, 2005) to the Council within five (5) business days.**

Mr. Maltese 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 Ms. Richardson. The motion passed unanimously.

Cynthia McBride v. Township of Hamilton (2005-86)

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 parties have complied with the Council's September 21, 2006 Interim Order.

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

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 Supplemental 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 Custodian's October 31, 2006 submission to GRC staff, the Custodian has complied with the Council's Interim Order by providing the Complainant the March 1, 2004 executive session minutes with redactions, as indicated in the Council's October 19, 2006 Interim Order, within five (5) business days from receipt of the Council's order.

Mr. Maltese 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.

Thomas Allegretta v. Borough of Fairview (2005-132)

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 following recommendations to the Council:

The Executive Director respectfully recommends that the Council find that regarding the closed session minutes of the Mayor and Council of the Borough of Fairview held on December 3, 2002 (authorizing #03-318):

1. Page 1: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of those in attendance at the meeting, the identities of the speakers and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of those in attendance at the meeting, the identities of the speakers and the page numbers

contained in Page 1 and the Custodian must provide access to this portion of the requested records.

2. Page 1, paragraph 1: This portion of the requested minutes is not exempt from disclosure. The Custodian has not provided a lawful basis for denial of access to this portion of the requested records as it does not constitute attorney-client privileged material (N.J.S.A. 47:1A-1.1.) as claimed by the Custodian. Therefore, the Custodian unlawfully denied access to Page 1, paragraph 1 and the Custodian must provide access to this portion of the requested record.
3. Page 1, paragraphs 2-6: The Custodian's claimed exemption for attorney-client privileged material (N.J.S.A. 47:1A-1.1.) does not apply to this portion of the requested minutes. While the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 1, paragraphs 2-6 of the requested minutes (with the exception of the identity of the speakers), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
4. Page 1, paragraphs 8-13: The Custodian's claimed exemption for attorney-client privileged material (N.J.S.A. 47:1A-1.1.) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 1, paragraphs 8-13 of the requested minutes (with the exception of the identity of the speakers), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
5. Page 1, paragraph 14: The Custodian lawfully denied access to Page 1, paragraph 14 of the requested minutes (with the exception of the identity of the speaker) as attorney-client privileged material, which is exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1. as ACD material.
6. Page 2: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 2 and the Custodian must provide access to this portion of the requested records.
7. Page 2, paragraphs 1-5: The Custodian lawfully denied access to Page 2, paragraphs 1-5 of the requested minutes (with the exception of the identity of the speakers) as attorney-client privileged material, which is exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1. as ACD material.
8. Page 2, paragraph 6: This portion of the requested minutes is not exempt from disclosure. The Custodian has not provided a lawful basis for denial of access to this portion of the requested records as it does not constitute attorney-client privileged material (N.J.S.A. 47:1A-1.1.) as claimed by the Custodian. Therefore, the Custodian unlawfully denied access to Page 2, paragraph 6 and the Custodian must provide access to this portion of the requested record.
9. Page 2, paragraph 7: The Custodian's claimed exemption for attorney-client privileged material (N.J.S.A. 47:1A-1.1.) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 1, paragraphs 8-13 of the requested minutes (with the exception of the identity of

the speakers), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

10. Page 2, paragraph 8: This portion of the requested minutes is not exempt from disclosure. The Custodian has not provided a lawful basis for denial of access to this portion of the requested records, as they do not constitute attorney-client privileged material (N.J.S.A. 47:1A-1.1.) as claimed by the Custodian. Therefore, the Custodian unlawfully denied access to Page 2, paragraph 8, and the Custodian must provide access to this portion of the requested record.
11. Page 2, paragraphs 9-14: The Custodian's claimed exemption for attorney-client privileged material (N.J.S.A. 47:1A-1.1.) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 1, paragraphs 8-13 of the requested minutes (with the exception of the identity of the speakers), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
12. Page 3: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 3 and the Custodian must provide access to this portion of the requested records.
13. Page 3: The Custodian's claimed exemption for attorney-client privileged material (N.J.S.A. 47:1A-1.1.) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 3 of the requested minutes (with the exception of the title of the document, the identities of the speakers and the page numbers), because it is ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
14. Page 4: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 4 and the Custodian must provide access to this portion of the requested records.
15. Page 4, paragraph 1, line 1: The Custodian has not provided a lawful basis for denial of access to Page 4, paragraph 1, line 1. This portion of the requested records does not contain attorney-client privileged material (N.J.S.A. 47:1A-1.1.) as claimed by the Custodian. Therefore, the Custodian unlawfully denied access to Page 4, paragraph 1, line 1 and the Custodian must provide access to this portion of the requested records.
16. Page 4: The Custodian's claimed exemption for attorney-client privileged material (N.J.S.A. 47:1A-1.1.) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 4 of the requested minutes (with the exception of Page 4, paragraph 1, line 1, the title of the document, the identities of the speakers and the page numbers), because it is ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
17. Page 5: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document,

- the identities of the speakers and the page numbers contained in Page 5 and the Custodian must provide access to this portion of the requested records.
18. Page 5, paragraphs 1-6: The Custodian's claimed exemption for attorney-client privileged material (N.J.S.A. 47:1A-1.1.) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 5, paragraphs 1-6 of the requested minutes (with the exception of the identity of the speakers), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
 19. Page 5, paragraphs 7-10: The Custodian lawfully denied access to Page 5, paragraphs 7-10 of the requested minutes (with the exception of the identity of the speakers) as attorney-client privileged material, which is exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1. as ACD material.
 20. Page 6: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 6, and the Custodian must provide access to this portion of the requested records.
 21. Page 6 paragraphs 1-6: The Custodian lawfully denied access to Page 6, paragraphs 1-6 of the requested minutes (with the exception of the identity of the speakers) as attorney-client privileged material, which is exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1. as ACD material.
 22. Page 6, paragraphs 7-10: The Custodian's claimed exemption for attorney-client privileged material (N.J.S.A. 47:1A-1.1.) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 6, paragraphs 7-10 of the requested minutes (with the exception of the identity of the speakers), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
 23. Page 6 paragraphs 11-15: The Custodian lawfully denied access to Page 6 paragraphs 11-15 of the requested minutes (with the exception of the identity of the speakers) as attorney-client privileged material, which is exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1. as ACD material.
 24. Page 7: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 7 and the Custodian must provide access to this portion of the requested records.
 25. Page 7: The Custodian lawfully denied access to Page 7 of the requested minutes (with the exception of the title of the document, the identities of the speakers and the page numbers) as attorney-client privileged material, which is exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1. as ACD material.
 26. Page 8: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers and the page numbers.

- Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 8, and the Custodian must provide access to this portion of the requested records.
27. Page 8: The Custodian lawfully denied access to Page 8 of the requested minutes (with the exception of the title of the document, the identities of the speakers and the page numbers) as attorney-client privileged material, which is exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1. as ACD material.
 28. Page 9: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers, and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 9 and the Custodian must provide access to this portion of the requested records.
 29. Page 9, paragraphs 1-7: The Custodian lawfully denied access to Page 9, paragraphs 1-7 of the requested minutes (with the exception of the identity of the speakers) as attorney-client privileged material, which is exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1. as ACD material.
 30. Page 9, paragraph 8: The Custodian's claimed exemption for attorney-client privileged material (N.J.S.A. 47:1A-1.1.) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 9, paragraph 8 of the requested minutes (with the exception of the identity of the speaker), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
 31. Page 9, paragraphs 9-19: The Custodian lawfully denied access to Page 9, paragraphs 9-19 of the requested minutes (with the exception of the identity of the speaker) as attorney-client privileged material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is also exempt from access pursuant to N.J.S.A. 47:1A-1.1. as information generated by a public employer containing statements of strategy and negotiating position and ACD material.
 32. Page 10: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 10 and the Custodian must provide access to this portion of the requested records.
 33. Page 10, paragraphs 1-14: The Custodian lawfully denied access to Page 10, paragraphs 1-14 of the requested minutes (with the exception of the identity of the speaker) as attorney-client privileged material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is also exempt from access pursuant to N.J.S.A. 47:1A-1.1. as information generated by a public employer containing statements of strategy and negotiating position and ACD material.
 34. Page 10: The Custodian has not provided a lawful basis for denial of access to the balance of Page 10. Therefore, the Custodian unlawfully denied access to Page 10 (with the exception of with the exception of Page 10, paragraphs 1-14,

- the title of the document, the identities of the speakers and the page numbers) and the Custodian must provide access to this portion of the requested records.
35. Page 11: The Custodian has not provided a lawful basis for denial of access to Page 11 of the requested record. Therefore, the Custodian unlawfully denied access to Page 11 and the Custodian must provide access to this portion of the requested records.

Regarding the closed session minutes of the Mayor and Council of the Borough of Fairview held on Decision 3, 2002 (authorizing #02-319):

36. Page 1: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of those in attendance at the meeting, the identities of the speakers and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of those in attendance at the meeting, the identities of the speakers and the page numbers contained in Page 1 and the Custodian must provide access to this portion of the requested records.
37. Page 1: The Custodian lawfully denied access to Page 1 of the requested minutes (with the exception of the title of the document, the identities of those in attendance at the meeting, the identities of the speakers and the page numbers) as information generated by a public employer containing statements of strategy and negotiating position, which are exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1, as ACD material.
38. Page 2: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 2 and the Custodian must provide access to this portion of the requested records.
39. Page 2, paragraphs 1-7: The Custodian lawfully denied access to Page 2, paragraphs 1-7 of the requested minutes (with the exception of the title of the document, the identities of those in attendance at the meeting, the identities of the speakers and the page numbers) as information generated by a public employer containing statements of strategy and negotiating position, which are exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1, as ACD material.
40. Page 2, paragraphs 8-15: The Custodian's claimed exemption for information generated on behalf of a public employer relating to collective negotiation strategy and negotiating position (N.J.S.A. 47:1A-1.1) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 2, paragraphs 8-15 of the requested minutes (with the exception of the identity of the speakers), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
41. Page 2, paragraph 16: The Custodian has not provided a lawful basis for denial of access to this portion the requested records. Therefore, the Custodian

- unlawfully denied access to Page 2, paragraph 16 and the Custodian must provide access to this portion of the requested records.
42. Page 2, paragraph 17: The Custodian's claimed exemption for information generated on behalf of a public employer relating to collective negotiation strategy and negotiating position (N.J.S.A. 47:1A-1.1) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 2, paragraph 17 of the requested minutes (with the exception of the identity of the speaker), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
 43. Page 2, paragraph 18: The Custodian has not provided a lawful basis for denial of access to this portion the requested records. Therefore, the Custodian unlawfully denied access to Page 2, paragraph 18 and the Custodian must provide access to this portion of the requested records.
 44. Page 3: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers, and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 3 and the Custodian must provide access to this portion of the requested records.
 45. Page 3, paragraphs 1-4: The Custodian's claimed exemption for information generated on behalf of a public employer relating to collective negotiation strategy and negotiating position (N.J.S.A. 47:1A-1.1) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 3, paragraphs 1-4 of the requested minutes (with the exception of the identity of the speaker), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
 46. Page 3, paragraph 5: The Custodian has not provided a lawful basis for denial of access to this portion the requested records. Therefore, the Custodian unlawfully denied access to Page 3, paragraph 5, and the Custodian must provide access to this portion of the requested records.
 47. Page 3, paragraphs 6-16: The Custodian's claimed exemption for information generated on behalf of a public employer relating to collective negotiation strategy and negotiating position (N.J.S.A. 47:1A-1.1) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 3, paragraphs 6-16 of the requested minutes (with the exception of the identity of the speaker), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
 48. Page 3, paragraph 17: The Custodian lawfully denied access to Page 3, paragraph 17 of the requested minutes (with the exception of the identity of the speaker) as information generated by a public employer containing statements of strategy and negotiating position, which are exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is also exempt from access pursuant to N.J.S.A. 47:1A-1.1. as attorney-client privileged material and ACD material.
 49. Page 4: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers, and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document,

the identities of the speakers and the page numbers contained in Page 4 and the Custodian must provide access to this portion of the requested records.

50. Page 4, paragraph 1: The Custodian lawfully denied access to Page 4, paragraph 1 of the requested minutes (with the exception of the identity of the speaker) as information generated by a public employer containing statements of strategy and negotiating position, which are exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is also exempt from access pursuant to N.J.S.A. 47:1A-1.1 as attorney-client privileged material and ACD material.
51. Page 4, paragraph 2: The Custodian lawfully denied access to Page 4, paragraph 2 of the requested minutes (with the exception of the identity of the speaker) as information generated by a public employer containing statements of strategy and negotiating position, which are exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is exempt from access pursuant to N.J.S.A. 47:1A-1.1 as ACD material.
52. Page 4, paragraphs 3-8: The Custodian lawfully denied access to Page 4, paragraphs 3-8 of the requested minutes (with the exception of the identity of the speaker) as information generated by a public employer containing statements of strategy and negotiating position, which are exempt from access pursuant to N.J.S.A. 47:1A-1.1. Additionally, this information is also exempt from access pursuant to N.J.S.A. 47:1A-1.1 as attorney-client privileged material and ACD material.
53. Page 4, paragraph 9: The Custodian has not provided a lawful basis for denial of access to this portion the requested records. Therefore, the Custodian unlawfully denied access to Page 4, paragraph 9 and the Custodian must provide access to this portion of the requested records.
54. Page 4, paragraphs 10-14: The Custodian's claimed exemption for information generated on behalf of a public employer relating to collective negotiation strategy and negotiating position (N.J.S.A. 47:1A-1.1) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 4, paragraphs 10-14 of the requested minutes (with the exception of the identity of the speaker), because they are ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
55. Page 5: The Custodian has not provided a lawful basis for denial of access to the title of the document, the identities of the speakers, and the page numbers. Therefore, the Custodian unlawfully denied access to the title of the document, the identities of the speakers and the page numbers contained in Page 5 and the Custodian must provide access to this portion of the requested records.
56. Page 5: The Custodian's claimed exemption for information generated on behalf of a public employer relating to collective negotiation strategy and negotiating position (N.J.S.A. 47:1A-1.1) does not apply to this portion of the requested minutes. Although the Custodian did not provide the Complainant with the proper basis for denying access, access was lawfully denied to Page 5 of the requested minutes (with the exception of the identity of the speaker), because it is ACD material, which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
57. Page 6: The Custodian has not provided a lawful basis for denial of access to Page 6 of the requested record. Therefore, the Custodian unlawfully denied

access to Page 6 and the Custodian must provide access to this portion of the requested records.

- 58. The Custodian shall comply with “1. - 57.” within five (5) business days from receipt of this decision on the basis of the Council’s above determination and provide certified confirmation to the Executive Director that the Custodian has complied with the Council’s decision.**

Mr. Maltese 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 Ms. Forsyth. The motion passed unanimously.

George Garton, III. V. NJ Department of Health & Senior Services (2005-169)

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian would not have unlawfully denied access to the requested surveyor’s notes as they are exempt from public access pursuant to Governor McGreevey’s Executive Order 26, except that the Custodian’s failure to provide a written response to said request resulted in a “deemed” denial pursuant to N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i.
2. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne her burden of proving a lawful denial of access to the two page surveyor’s response, which was partially provided to the Complainant in the Custodian’s Statement of Information.
3. As the Custodian attempted to release the two page surveyor’s response to the Complainant, but provided only page 2, the Custodian should release page one, with appropriate redactions, if any, and a legal justification for each redacted part thereof.
4. **The Custodian should comply with (3) above within five (5) business days from receipt of the Council’s Order and simultaneously provide certified confirmation of compliance to the Executive Director.**
5. Based upon the fact that the Custodian attempted to clarify (via telephone) what records the Complainant was seeking, and therefore, did not completely ignore the Complainant’s OPRA request (although the Custodian’s written response to the request was untimely pursuant to OPRA), there is no evidence that the Custodian’s actions were consistent with the legal standards established for knowing and willful conduct by the New Jersey courts. Therefore, the Custodian’s 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 written. A motion was made by Mr. Fleisher and seconded by Ms. Forsyth. The motion passed unanimously.

James Donato v. Township of Union (2005-182)

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, but the Council asked that Deputy Attorney General Allen present research at the next meeting regarding the type of research of government records required by records custodian versus the type of research of government records not required by records custodians when responding to OPRA records requests. No vote was taken.

Leslie Posnock v. Monmouth County Sheriff's Office, Law Enforcement (2006-44)

Ms. McGann 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 the Council find that based on the Custodian's October 26, 2006 submission to GRC staff, the Custodian has complied with the Council's Interim Order by providing the Complainant with the 71 pages of documents responsive to the Complainant's OPRA request within five (5) business days from receipt of the Council's order.

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 Mr. Fleisher. The motion passed unanimously.

Jane Cowley v. The Township of Kingwood (2006-45)

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 September 21, 2006 Interim Order.

Mr. Maltese 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 Mr. David Fleisher. The motion passed unanimously.

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

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 September 21, 2006 Interim Order.

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

Richard Kasper v. Washington Township School Board (2006-57)

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 September 21, 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 Mr. Fleisher. The motion passed with a majority vote of three (3) Council members. Mr. Maltese recused himself.

Luis Perez v. Borough of Glassboro (2006-79)

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 fees established in Glassboro Code Book, Article I A(5)(b) do not override the copying rates outlined in OPRA pursuant to N.J.S.A. 47:1A-9.a.
2. Based on the inordinate charge of \$0.75 for legal sized copies in violation of N.J.S.A. 47:1A-5.b and the Custodian's failure to provide immediate access to the requested 2006 Municipal Budget pursuant to N.J.S.A. 47:1A-5.e., the Custodian has unlawfully denied access to the requested records.
3. The Custodian must charge the enumerated copying fees established in N.J.S.A. 47:1A-5.b. for legal-sized paper copies of the 2006 Municipal Budget requested under the provisions of OPRA and release the requested 2006 Municipal Budget to the Complainant.
4. **The Custodian shall comply with "3." above within five (5) 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. Richardson and seconded by Ms. Forsyth. The motion passed unanimously.

James Vogel v. Borough of Beach Haven (2006-113)

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 deny access to government records pursuant to N.J.S.A. 47:1A-1.1 because they were not made, maintained or kept on file at the time of the OPRA request.

2. The Custodian properly notified the Complainant that the requested minutes could not be provided since the records did not exist at the time of the request. Therefore, the Custodian has not violated N.J.S.A. 47:1A-5.i.
3. Pursuant to N.J.S.A. 47:1A-7.b., which delineates the Council's powers and duties, the GRC does not have the authority to regulate whether a Township properly notifies its residents of its meetings.
4. The Custodian has not violated N.J.S.A. 47:1A-5.g. in not providing the Complainant with a copy of the request at the time the request was made.

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.

Philip Donohue v. Salem County Vocational Technical High School (2006-164)

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

The Executive Director respectfully recommends the Council find that as the Custodian certifies that no records responsive to the Complainant's request exist, there would not have been an unlawful denial of access. However, the 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 a written response to his May 4, 2006 request within the statutorily mandated seven (7) business days, therefore creating a "deemed" denial.

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.

Executive Director's Report:

Ms. Starghill had no report.

Public Comment:

None.

A motion to end the Council's meeting was made by Ms. Forsyth and seconded by Ms. Richardson. The motion passed unanimously.

Meeting adjourned at 11:08 a.m.

Respectfully submitted,

Vincent Maltese, Chairman

Date Approved: