

**Minutes of the Government Records Council
December 12, 2002**

The meeting was called to order at 9:30 a.m., the Open Public Meeting Act statement was read, and attendees said the Pledge of Allegiance.

Mr. Pfeiffer called the roll:

Present: Chair Vincent Maltese; Matthew U. Watkins; Secretary Virginia Hook; and Vice Chair Bernard Spigner. Mr. Watkins is serving as designee of Department of Community Affairs Commissioner Susan Bass Levin.

Absent: Dr. Dwight Pfennig, the designee of Department of Education William Libera.

Also Present: Deputy Attorney General Barbara Conklin, Acting Executive Director Marc Pfeiffer, and GRC Staff Marc Leavitt and Joseph Greer.

Mr. Maltese indicated that the Council would convene in Executive Session in accordance with the Open Public Meetings Act. Mr. Maltese informed the audience that he would recuse himself from any portion of the Executive Session or and regular session relating to a Complaint concerning the City of Clifton due to a conflict of interest arising from the fact that his law firm represents the City in other matters Mr. Maltese read a copy of Resolution Number 01-02 authorizing close session as well as statement as to the reason for rescuing himself from any discussion involving the City of Clifton.

Ms. Hook moved Resolution Number 01-02, with a second by Mr. Spigner. The motion was adopted by a roll call:

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

Nays: None

The Council convened in Closed Session at 9:35.

The Council reconvened in regular session at 10:40 A.M.

Roll Call: Present: Mr. Maltese, Matthew U. Watkins, Virginia Hook, Dr. Dwight Pfennig and Bernard Spigner.

Absent: None

Also Present: Barbara Conklin, Marc Pfeiffer, Marc Leavitt and Joseph Greer.

Mr. Maltese called for adoption of the minutes of the October 10, 2002 meeting as prepared. Mr. Spigner moved to adopt the minutes, with a second by Ms. Hook.

Roll Call: Ayes: Mr. Watkins, Dr. Pfennig, Ms. Hook, Mr. Spigner and Mr. Maltese.

Mr. Pfeiffer reported under Old Business, that Richard Gutman's request for guidance on redactions is still under review however, he anticipates being able to provide a response within the next two weeks.

Mr. Pfeiffer read a copy of the Executive Director's report.

Mr. Pfeiffer indicated that there were five matters to discuss under New Business.

▪ **Complaint 2002-33**

Mr. Pfeiffer described Complaint 2002-33, Serrano v. South Brunswick Township. Mr. Pfeiffer recommended that the Council defer action on this matter to provide the staff and the Attorney General's office an opportunity to consider a letter regarding the Executive Director's Findings and Recommendations received the day before from Thomas J. Cafferty, Esq., on behalf of Mr. Serrano and The Home News.

Mr. Maltese called for a motion to defer consideration of Complaint 2002-33 until January's meeting. Ms. Hook moved to defer with a second by Dr. Pfennig.

Roll Call: Ayes: Mr. Watkins, Dr. Pfennig, Ms. Hook and Mr. Maltese

Nays: Bernard Spigner.

Complaint 2002-33 was deferred until January's meeting.

▪ **Complaints 2002-46 and 2002-55**

Mr. Pfeiffer described Complaints 2002-46 and 2002-55, both involving the City of Paterson Police Department. Mr. Pfeiffer reported that both complaints concern the \$150 fee charged by the Police Department for a printout of one day's incident log or "blotter". The Police Department has reported that the fee represented \$75 for a programmer's time and \$75 for computer time. Mr. Pfeiffer stated that the \$150 fee does not, in his opinion, meet OPRA's standard of "extraordinary expenditure of time and effort." Mr. Pfeiffer further stated that the complainants' attorney provided copies of similar printouts from other municipalities, which had been made available at OPRA's standard per-page copy rate. Mr. Pfeiffer recommended that Paterson refund complainant Linda Ellen Fisher the \$150 within 30 days, less any per-page copy cost, and provide a copy of the printout to Douglas Krisburg at OPRA's standard per-page copy rate.

Mr. Maltese requested an opinion from Ms. Conklin regarding the procedure by which the Council could address the issue of complainants' legal fees. Ms. Conklin stated that reasonable legal fees are awarded to prevailing parties under OPRA. Ms. Conklin suggested that if the requesters' attorney and the custodian do not reach an agreement regarding the amount of reasonable legal fees within 20 days, the Council could allow the Complainant's counsel to submit a written application for fees supported by the attorney certification typically required in Superior Court proceedings. Mr. Maltese called for a motion to accept the Findings and Recommendations (F&R) of the Executive Director in Complaints 2002-46 and 2002-55, with

the following additions: 1) the City of Paterson shall refund complainant Linda Ellen Fisher \$150 within 30 days minus OPRA's per-page copy fees; and 2) the complainant's attorney shall attempt to reach accord with the City regarding reasonable attorney fees within 20 days. Ms. Hook moved to accept the F&R with the foremention additions, with a second by Mr. Spigner.

Roll Call: Ayes: Mr. Watkins, Dr. Pfennig, Ms. Hook, Mr. Spigner and Mr. Maltese.

Nays: None

Complaints 2002-46 and 2002-55 were adjudicated.

Mr. Pfeiffer recommended that the Council's order become effective five days after execution to allow the Custodian time to apply for a stay of the Council's decision if the Custodian so desired.

▪ **Complaint 2002-25**

Mr. Pfeiffer described Complaint 2002-25, Janon Fisher v. County of Passaic, which concerns a request for the unlisted cell phone numbers of certain County officials. Mr. Pfeiffer stated that the County denied the request because disclosure of the numbers would compromise its ability to communicate with key employees in the event of an emergency. Mr. Pfeiffer noted that Mr. Fisher had not requested the cell phone billing statements that are disclosable, subject to lawful redaction. Mr. Pfeiffer recommended that the Complaint be dismissed for the reasons set forth in the F&R.

Mr. Maltese questioned why the Director of Nutrition needed an unlisted number but, after discussion, the Chair deferred to the County's judgment regarding its emergency needs.

Mr. Maltese called for a motion to accept the F&R. Ms. Hook moved to accept the F&R with a second by Mr. Watkins.

Roll Call: Ayes: Mr. Watkins, Dr. Pfennig, Ms. Hook, Mr. Spigner and Mr. Maltese.

Nays: None



The F&R of Complaint 2002-25 was accepted by the Council.

▪ **Complaint 2002-33**

Mr. Maltese informed the Council that he would have to recuse himself from consideration of discussion regarding Complaint 2002-33, Janon Fisher v. Clifton. Mr. Maltese reiterated that he has a conflict of interest with respect to this matter. Mr. Maltese appointed Mr. Spigner as temporary Chair and exited the room.

Mr. Pfeiffer stated that the City of Clifton submitted a letter to the GRC indicating that it will release a copy of the 911 tapes. Mr. Pfeiffer recommended that the Council delay action pending the submission of the 911 tapes to the requester.

Ms. Conklin suggested the Council obtain a written withdrawal from the complainant.

Mr. Spigner stated that with a decision or action by the Council, the City could not delay production of the tape indefinitely and that parties would have to adhere to any deadlines the GRC imposed for the Council to consider the matter settled.

Mr. Pfeiffer advised that the parties had been working under a condensed schedule in order to be placed on this meeting's agenda. Mr. Pfeiffer stated that this type of difficulty could be avoided by imposing a deadline on submissions further in advance from the Council meeting.

Mr. Spigner called for a motion to accept the Executive Director's recommendation to defer consideration of Complaint 2002-33. Ms. Hook moved to accept the recommendation with a second by Dr. Pfennig.

Roll Call: Ayes: Mr. Watkins, Dr. Pfennig, Ms. Hook and Mr. Spigner.

Nays: None

The Council deferred consideration of Complaint 2002-33.

Mr. Maltese returned to the meeting and opened the meeting for public comment.

Mr. Maltese placed a 5-minute limit on individual comments.

Patricia Jacob, resident of Paterson, discussed the difficulty in obtaining records from the Township of Totowa. Mr. Maltese suggested that Ms. Jacob meet with GRC staff member Joseph Greer following the meeting to discuss her concerns in detail

Mr. Maltese thanked Ms. Jacob for her comments.

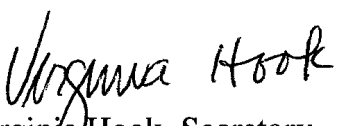
Dr. Pfennig moved to adjourn, with a second by Mr. Spigner.

Roll Call: Ayes: Mr. Watkins, Dr. Pfennig, Ms. Hook, Mr. Spigner and Mr. Maltese.

Nays: None

Mr. Maltese adjourned the meeting at 11: 30 a.m.

Respectfully Submitted,


Virginia Hook, Secretary
Government Records Council