



**Minutes of the Government Records Council  
December 14, 2006 Public Meeting – Open Session**

The meeting was called to order at 9:39 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, Ms. Robin Berg-Tabakin, Vice Chairwoman and Secretary, David Fleisher, Michelle Richardson (designee of Department of Community Affairs Commissioner Susan Bass Levin) and Kathryn Forsyth (designee of Department of Education Commissioner Lucille Davy).

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

Mr. Maltese read the Resolution for Closed Session (Resolution Number 2006-12-14) to conduct an *in camera* review and receive legal advice in the following complaints:

1. Robert Gorman v. Gloucester City (2004-108)
2. Thomas Caggiano v. Borough of Stanhope (2006-2)
3. Steven Siebenlist v. NJ Department of Health & Senior Services (2006-81)
4. Jeffrey Smith v. NJ Department of Corrections (2005-84) – *In Camera* Review

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

The Council met in closed session from 9:41 a.m. until 10:09 a.m.

Open Session reconvened at 10:16 a.m. and Ms. Hairston called the roll.

In attendance:

Mr. Maltese, Ms. Tabakin, 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 November 15, 2006. An amendment to the Open Session Minutes was raised and a motion was made by Ms. Forsyth and seconded by Ms. Richardson. Ms. Tabakin abstained from the vote because she did not attend the November meeting. The motion passed by a majority of four (4) Council members.

**Council Adjudication:**

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

GRC Complaint Name and Number	Disposition
1. Steven Kossup v. NJ Department of Treasury, Division of Pensions and Benefits	Complaint withdrawn
2. Peter Apanovitch v. Township of Montclair (2006-111)	Complaint withdrawn
3. Peter Apanovitch v. Township of Montclair (2006-112)	Complaint withdrawn
4. Steven Kossup v. NJ Department of Treasury, Division of Pensions & Benefits (2006-118)	Complaint withdrawn
5. Tyrone Jamison v. Somerset county Community Action program (2006-123)	<u>N.J.S.A. 47:1A-5f</u> and <u>N.J.S.A. 47:1A-5g</u> Not a valid OPRA request
6. John Paff v. Township of Jefferson (2006-133)	Settled in mediation
7. John Paff v. Haddon Township (2006-156)	Settled in mediation
8. Kathleen Fallstick v. Haddon Township Business Partnership (2006-161)	Complaint withdrawn
9. Angel Cordero v. City of Camden Board of Education (2006-177)	Complaint withdrawn
10. Steven Kossup v. Essex County Sheriff's Department (2006-187)	Complaint withdrawn
11. John Paff v. Borough of South Bound Brook (2006-190)	Complaint withdrawn
12. Richard Rivera v. Passaic County Prosecutor's Office (2006-192)	No records responsive to the request exist
13. Eric Taylor v. City of Camden Board of Education (2006-215)	Complaint withdrawn

Mr. Maltese called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. A motion was made by Mr. Fleisher and seconded by Ms. Richardson. The motion passed unanimously.

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

**Robert Gorman v. Gloucester City (2004-108)**

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 only accept the October 17, 2006 Initial Decision of the ALJ in part. The Council should accept the ALJ's finding that the tape is not exempt as a criminal investigatory record (as was stipulated by the parties). The Council should reserve decision on the other findings made by the ALJ until such time as the Council has had the opportunity to conduct an *in camera* inspection, including review of such supporting documentation as is requested by the Council for the *in camera* inspection, to confirm that the tape is exempt from disclosure as advisory, consultative or deliberative material.

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. Mr. Maltese recused himself from the vote. The motion passed by a majority of four (4) Council members.

**Joseph Haelig v. Seaside Heights Business Improvement District (2005-50)**

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 accept the initial decision of the Administrative Law Judge ("ALJ") in which the ALJ concludes that the Complainant failed to produce any evidence from which a reasonable finder of fact could conclude that the failure of the Custodian to respond to the several requests for records was a knowing and willful violation of the statute warranting the imposition of civil monetary penalties. As such, the ALJ granted a summary decision in favor of the Custodian to the extent the Complainant seeks the imposition of statutory penalties.

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

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

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 substantially complied with the Council's November 15, 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. Forsyth and seconded by Ms. Tabakin. The motion passed unanimously.

**Cathy Cardillo v. City of Hoboken (2005-158)**

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 complied with the Council's October 19, 2006 Interim Order within the required time frame.

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. Mr. Maltese and Ms. Richardson recused themselves from the vote. The motion passed by a majority of three (3) Council members.

**George Garton, II 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 Supplemental 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 based on the Custodian's November 29, 2006 certification, she has complied with the Council's November 15, 2006 Interim Order by releasing the requested surveyor's notes with appropriate redactions and a legal justification for each redacted part thereof.

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

**Jennifer Dressel v. Monroe Township Board of Education (2005-249)**

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 while the Custodian's reasons for denying access to a portion of the requested documents are compelling, there is insufficient evidence to determine if the documents, or portions, thereof, are exempt from access. Therefore, the Council should perform an *in camera* inspection of the following requested records:

1. Letter dated February 20, 2002 from Jerry Tague, Director of Facilities for the Monroe Township schools to Jim Morton, A.I.A., of MRM Architecture with enclosed wetland maps prepared by Tom Aufferorde of EcolSciences, Inc.
2. Letter dated February 6, 2002 from Mr. Tague to Mr. Paul authorizing investigation of proposed sites to determine the approximate extent of wetlands
3. Letter dated February 6, 2006 from Mr. Paul to Mr. Tague setting forth proposal to provide environmental consulting services for four (4) properties

4. Privileged and confidential notes dated February 5, 2002 prepared by Mr. Tague regarding new high school property investigation
5. Letter dated February 4, 2002 from Mr. Paul to Mr. Tague regarding the evaluation of prospective high school sites
6. Letter dated January 28, 2002 from Mr. Tague to Mr. Morton identifying block, lot, and acreage for two potential building sites
7. Memo dated August 20, 2001 from Mr. Tague to Mr. Holliday regarding a future building site deemed unacceptable due to railroad tracks and wetlands
8. Jerry Tague's letter of October 8, 2002 to Thomas Auffenorde
9. McCarter & English, Esqs. letter dated August 14, 2002
10. Jerry Tague's letter of August 7, 2002 to Gary Hall of McCarter & English
11. Meeting notes dated July 31, 2002
12. Telephone conversation log dated July 26, 2002 signed by Jerry Tague re: telephone conversation with Gary Hall, Esq.
13. Jerry Tague's letter of July 19, 2002 to Jim Morton
14. Thomas Auffenorde's letter of July 17, 2005 to Jerry Tague
15. USGS Site Location prepared by EcolSciences, Inc. for Block 14, Lots 12.01 and 12.02
16. Photograph log for Block 14, Lots 12.01 and 12.02
17. Letter dated July 16, 2002 from Jerry Tague to Gary Hall
18. Letter dated July 11, 2002 from Jerry Tague to Thomas Auffenorde
19. Letter dated May 3, 2002 from Thomas Auffenorde to Jerry Tague
20. Letter dated July 10, 2002 from Gary T. Hall, Esq. to Jerry Tague together with Attorney's Affidavit and application forms
21. Application for a Letter of Interpretation – Block 14, Lot 12
22. Draft letter dated May 3, 2002 from Thomas Auffenorde to Mark Fedorowycz with enclosures, including draft letter to Sharon Doerfler, Clerk, re: Freshwater Wetlands Letter of Interpretation (LOI) Application Checklist and Fee Table, USGS Site Location, Block 14, Lot 12 prepared by EcolSciences, Inc and attachments, and photograph log
23. Facsimile cover sheet from Jerry Tague to Gary Hall, Esq. (undated)
24. Letter dated May 13, 2002 from Feist Engineering re: Topographic Mapping of Block 14, Lot 12
25. Project meeting notes dated April 25, 2002
26. Letter dated April 11, 2002 from Jerry Tague to Ken Paul of EcolSciences, Inc with proposal of April 12, 2002 signed by Mr. Tague on April 11, 2002
27. Letter dated April 8, 2002 from James E. Morton to Dr. Ferrie re: Project #02103 with attachments
28. Letter dated March 18, 2002 from Jerry Tague to Jim Morton
29. Telephone conversation log dated March 14, 2002 signed by Jerry Tague re: conversation with Mike Rogers
30. Meeting notes dated March 13, 2002 with attached maps
31. Letter dated March 12, 2002 from Jerry Tague to Thomas Auffenorde with attachments
32. Letter dated March 12, 2002 from James E. Morton to Jerry Tague
33. Letter from Jim Morton to Jerry Tague with maps (2 pages) attached
34. Telephone conversation log dated March 1, 2002 signed by Jerry Tague re: Edward "Ned" Barclay

35. Letter dated March 13, 2002 from EcolSciences, Inc. to Jerry Tague re: Block 14, Lots 10.02, 11.01, 11.02 and 12 with maps attached
36. Letter dated February 22, 2002 from Jerry Tague to Thomas Auffenorde

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 Mr. Fleisher. Mr. Maltese and Ms. Forsyth recused themselves from the vote. The motion passed by a majority of three (3) Council members.

### **James Donato v. Jersey City Police Department (2005-251)**

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the 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:

1. The rate established in the Custodian's municipal code does not qualify as "a fee prescribed by law or regulation" as was contemplated in OPRA under N.J.S.A. 47:1A-5.b. Additionally, the Custodian has not demonstrated with any certainty that the copying fee established in its municipal code represents the actual cost of duplication as is required in N.J.S.A. 47:1A-5.c.
2. Given the specific statutory language of N.J.S.A. 39:4-131, the additional fee of up to \$5.00 for the first three pages and \$1.00 per page thereafter may only be added to the enumerated OPRA copying rates listed in N.J.S.A. 47:1A-5.b. to cover the administrative costs of mailing the reports when the records request is not made in person.
3. If the Custodian believes that a special service charge is warranted pursuant to N.J.S.A. 47:1A-5.c. because an extraordinary expenditure of time and effort is required to fulfill this records request, then the Custodian must address the fourteen (14) point criteria established by the GRC for evaluating special service charges. **The Custodian shall provide the Executive Director certified responses to the fourteen (14) point criteria established by the GRC for evaluating special service charges or a certification that there will be no special service charge assessed to the Complainant within five (5) business days from receipt of this Interim Order.**
4. Absent adequate justification for a special service charge, the Custodian unlawfully imposed a charge of \$5.00 for the first page and \$1.00 for each page thereafter for the auto accident reports requested by the Complainant.

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. Mr. Maltese and Ms. Richardson recused themselves from the vote. The motion passed by a majority of three (3) Council members.

### **Thomas Caggiano v. Borough of Stanhope (2006-2)**

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian is in violation of N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. for not providing the Complainant with a written response to his request within the statutorily mandated seven (7) business days, therefore resulting in a "deemed" denial.
2. The Custodian is also in violation of N.J.S.A. 47:1A-5.e. for not providing immediate access to the requested bills.
3. The Custodian has not borne her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6 as changes in personnel and stating that the records had previously been provided are not lawful reasons for a denial of access pursuant to Caggiano v. Borough of Stanhope, GRC Complaint No. 2005-211 et seq. (January 2006.)
4. If the Custodian required clarity regarding the requests, she should have sought clarification, within the statutorily mandated seven (7) business days required to respond, from the Complainant pursuant to Cody v. Middletown Township Public Schools, GRC Complaint No. 2005-98 (December 2005.)
5. The Custodian shall release the requested records to the Complainant with appropriate redactions, if any, and a legal justification for each redacted part thereof, and/or seek clarification of the portions of the Complainant's request which are unclear.
6. The Custodian should 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.
7. Based on the fact that the original Custodian informed the Complainant via two separate letters dated November 22, 2005 and December 12, 2005 that the Borough would not respond to any future OPRA requests until the GRC had ruled on the eleven (11) denial of access complaints pending before the Council, it is possible that the original Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless, or unintentional. As such, this case should be referred to the Office of Administrative Law for determination of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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

### **Luiz Perez v. Borough of Glassboro (2006-79)**

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 complied with the Council's November 15, 2006 Interim Order within the required time frame.

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. Tabakin. The motion passed unanimously.

**Steven Siebenlist v. NJ Department of Health & Senior Services, Division of Health Care Quality & Oversight (2006-81)**

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 recommendations to the Council which were amended as follows:

The Executive Director respectfully recommends that the Council find that:

1. The redacted sentence on page one (1) appears to be a direct quote from an incident report dated 2/13/04 at 18:25. Therefore, this sentence is exempt from disclosure as "information received by the department ... concerning serious preventable adverse events, near-misses, preventable events and adverse events that are otherwise not subject to mandatory reporting ... [and] shall not be ... considered a public record under [OPRA]" pursuant to N.J.S.A. 26:2H-12.25(f)(2).
2. The Custodian shall disclose the redacted paragraph on page two (2) of the survey's notes except for that end of the first sentence beginning with the word "therefore" which discusses the hospital's incident report which is exempt from disclosure as "information received by the department ... concerning serious preventable adverse events, near-misses, preventable events and adverse events that are otherwise not subject to mandatory reporting ... [and] shall not be ... considered a public record under [OPRA]" pursuant to N.J.S.A. 26:2H-12.25(f)(2). This portion of the last paragraph on page (2) of the survey's notes consists of only nine (9) words.
3. The Custodian shall comply with "2" 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 amended. A motion was made by Ms. Tabakin and seconded by Ms. Forsyth. The motion passed unanimously.

**Scott Fegley v. NJ Department of Environmental Protection (2006-91)**

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

The Executive Director respectfully recommends the Council find that:

1. Although access was ultimately granted by the Custodian on May 30, 2006, the Complainant was not given a written reason for a delay or a lawful basis



for denial of access to the requested report of disposition of certification PS052636 pursuant to N.J.S.A. 47:1A-5.g. These documents were not provided to the Complainant within the statutorily required seven (7) business day time period for response as required under N.J.S.A. 47:1A-5.i. Therefore, pursuant to N.J.S.A. 47:1A-5.g. and 5.i., the Custodian's actions are deemed an unlawful denial of the requested report of disposition of certification PS052636.

2. Pursuant to Executive Order 21, the proposed rule *N.J.A.C. 7:1D-4.2(a)*, and the decision in Sooy v. New Jersey Department of Corrections, GRC Complaint No. 2006-128 (October 2006), the Custodian has lawfully denied access to the requested scoring forms.

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

### **John Paff v. City of Plainsfield (2006-103)**

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. 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 time frame.
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 and shall promptly permit access to the remainder of the record under N.J.S.A. 47:1A-5.g. Therefore, 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. **The Custodian shall disclose the requested executive session minutes with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, within five (5) business days from receipt of this Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director if the requested closed session minutes were approved by the governing body prior to the date of this OPRA request.**
4. **The Custodian shall not disclose the requested executive session minutes if those minutes were not approved by the governing body prior to the date of this OPRA request because such meeting minutes are exempt from disclosure as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1. and Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006). The**

**Custodian shall provide certified confirmation to the Executive Director that the minutes were not approved by the governing body prior to the date of this OPRA request within five (5) business days from receipt of this Interim Order.**

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

**Tina Renna v. County of Union (2006-124)**

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 due to the significant question of whether or not the requested records were released with or without the redactions of the names of the employees being given taxpayer funded privileges of home internet service and laptop computers, this case should be referred to the Office of Administrative Law (OAL) for a hearing to resolve the contested facts. If determined via a fact finding hearing, that the requested records were released without the redactions of the names, as the Custodian certified, then such determination will make this complaint moot.

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

**John Paff v. Borough of South Bound Brook (2006-158)**

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. The Custodian has unlawfully denied access to the Complainant's request for resolutions and executive minutes for the months of April 2003, May 2004 and October 2005, due to the Custodian's failure to respond to the Complainant's request, thus resulting in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.i.
2. **The Custodian shall disclose the requested resolutions and minutes with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, within five (5) business days from receipt of this Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.**
3. **The Custodian shall not disclose the requested executive session minutes if those minutes were not approved by the governing body prior to the date of this OPRA request because such meeting minutes are exempt from disclosure as advisory, consultative or**

**deliberative material pursuant to N.J.S.A. 47:1A-1.1. and Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006). The Custodian shall provide certified confirmation to the Executive Director that the minutes were not approved by the governing body prior to the date of this OPRA request within five (5) business days from receipt of this Interim Order.**

4. Based on the Custodian's failure to respond to the Complainant after one hundred and thirty-six (136) business days and the Custodian's failure to respond to the GRC after several attempts, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this case should be referred to the Office of Administrative Law for determination of a knowing and willful violation of OPRA under the totality of the circumstances.

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

**Wilma Thomas v. Plainfield Board of Education (2006-185)**

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 recommendations to the Council which were amended as follows:

The Executive Director respectfully recommends the Council find that:

- 1) The Custodian's failure to provide the Complainant with a written response to her request within the statutorily mandated seven (7) business days resulted in a "deemed" denial, thus violating N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i.
- 2) Pursuant to the Council's decision in Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115, the Custodian should have obtained a written agreement from the Complainant extending the seven (7) business day time frame required under OPRA if the Custodian required additional time to produce the records responsive.
- 3) Based on the Custodian's certification wherein he acknowledges the receipt of the Complainant's OPRA request and his failure to respond to the Complainant for forty-five (45) business days, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the case should be referred to the Office of Administrative Law for determination of a knowing and willful violation of OPRA under the totality of the circumstances.

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

**Complaints Adjudicated on Appeal in Superior Court:**

- (1) **Robert Tombs v. Brick Township Municipal Authorities (2003-123)**  
The Council's final decision was appealed by the Complainant (Mr. Tombs).  
The Court affirmed the Council's decision.
- (2) **Jesse Rosenblum v. Borough of Closter (2005-16)**  
The Council's final decision was appealed by the Complainant (Mr. Rosenblum). The Court affirmed the Council's decision.

**Motion for Reconsideration:**

- (1) **Jeffrey Smith v. NJ Department of Corrections (2005-84)**  
The Custodian motioned for the Council to reconsider its November 15, 2006 Interim Order directing the Custodian to provide the requested records for an *in camera* inspection. The Council duly considered the motion for reconsideration and unanimously voted to deny it.

**Executive Director's Report:**

Ms. Starghill reported that one Case Manager (Colleen McGann) had transferred out of the GRC to another division within the Department of Community Affairs.

**Public Comment:**

- (1) Beth Mason, President of the NJ Foundation for Open Government.
- (2) Thomas Caggiano, Resident of the Borough of Stanhope, NJ.

A motion to end the Council's meeting was made by Ms. Tabakin and seconded by Mr. Fleisher. The motion passed unanimously.

Meeting adjourned at 11:20 a.m.

Respectfully submitted,

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Vincent Maltese, Chairman

Date Approved: 02/28/2007