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STATE OF NEW JERSEY

GOVERNMENT RECORDS COUNCIL

GOVERNMENT RECORDS COUNCIL MEETING

PUBLIC SESSION

TRANSCRIPT OF PROCEEDINGS

AT: DEPARTMENT OF COMMUNITY AFFAIRS

101 South Broad Street - Conf. Rm 129

Trenton, New Jersey 08625-0819

DATE: WEDNESDAY, JULY 25, 2007

TIME: 9:39 A.M. TO 11:21 A.M.

20 GUY J. RENZI & ASSOCIATES
21 GOLDEN CREST CORPORATE CENTER
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23 TRENTON, NEW JERSEY 08690-1700
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2

1 COUNCIL MEMBERS:

2

3 VINCENT P. MALTESE, Chairman

4 DAVID FLEISHER, Secretary

5 KATHRYN FORSYTH

6 JANICE L. KOVACH

7 ROBIN BERG TABAKIN

8

9 COUNCIL PROFESSIONALS:

10

11 DEBRA ALLEN, ESQ.

12 MEAGHAN TUOHEY-KAY, ESQ.

13 CATHERINE STARGHILL, ESQ., Executive Director

14 KARYN GORDON, ESQ.

- 15 BRIGITTE HAIRSTON
- 16 JYOTHI PAMIDIMUKKALA
- 17 DARA LOWNIE
- 18 JOHN STEWART, ESQ.
- 19 TIFFANY L. MAYERS
- 20 FRANK CARUSO

21

22

23

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1 CHAIRMAN MALTESE: Good morning,
2 ladies and gentlemen. Welcome to our July 2007
3 meeting. This meeting was called pursuant to the
4 provisions of the Open Public Meetings Act.
5 Notices of this meeting were faxed to the Newark
6 Star Ledger, The Trenton Times, Courier-Post in
7 Cherry Hill, the Secretary of State and e-mailed
8 to Mr. Thomas Caggiano and the New Jersey

9 Foundation for Open Government on July 20, 2007.

10 Proper notice having been given, the
11 Secretary is directed to included this statement
12 in the minutes of this meeting.

13 In the event of a fire alarm
14 activation, please exit the building following
15 the exit signs located within the conference
16 rooms and throughout the building. The exit
17 signs will direct you to the two fire evacuations
18 stairways located in the building. Upon leaving,
19 please follow the fire wardens, which can be
20 located by their yellow helmets. Please follow
21 the flow of traffic away from the building.

22 Why don't we do a roll call to see
23 who's here.

24 MS. HAIRSTON: Vince Maltese?

25 CHAIRMAN MALTESE: Present.

8

1 MS. HAIRSTON: Robin Berg Tabakin?

2 MS. TABAKIN: Here.

3 MS. HAIRSTON: Janice Kovach?

4 MS. KOVACH: Here.

5 MS. HAIRSTON: Kathryn Forsyth?

6 MS. FORSYTH: Here.

7 MS. HAIRSTON: Dave Fleisher?

8 MR. FLEISHER: Here.

9 CHAIRMAN MALTESE: Great. Whereas,
10 N.J.S.A. 10:4-12 permits a public body to go into
11 closed session during a public meeting and
12 whereas the Public Records Council has deemed it
13 necessary to go into closed session to discuss
14 matters which are exempt from public discussion
15 under the Open Public Meetings Act and whereas
16 the regular meeting of the Council will reconvene
17 at the conclusion of the closed meeting.

18 Now therefore be it resolved that
19 the Council with convene in closed session
20 pursuant N.J.S.A. 10:4-12.b.7 to discuss Seibert
21 v. Readington Township, Burns v. The Borough of
22 Collingswood, Joe Truland v. The Borough of
23 Madison, Valenzuela v. The Township of Irvington,
24 and Johnston v. The Township of Hillside.

25 Be it further resolved which the

9

1 Council will disclose to the public the matters
2 discussed were determine in closed session as
3 soon as possible after final decisions are issued
4 in these cases.

5 Will someone make that motion,
6 please?

7 MS. TABAKIN: So moved.

8 MR. FLEISHER: Second.

9 CHAIRMAN MALTESE: Roll call,
10 please.

11 MS. HAIRSTON: Vince Maltese?

12 CHAIRMAN MALTESE: Yes.

13 MS. HAIRSTON: Robin Berg Tabakin?

14 MS. TABAKIN: Yes.

15 MS. HAIRSTON: Janice Kovach?

16 MS. KOVACH: Yes.

17 MS. HAIRSTON: Kathryn Forsyth?

18 MS. FORSYTH: Yes.

19 MS. HAIRSTON: Dave Fleisher?

20 MR. FLEISHER: Yes.

21 CHAIRMAN MALTESE: Thank you.

22 Ladies and gentlemen, we're in

23 closed session now, please.

24 (Whereupon, the Council went into

25 closed session. The time is 9:41 a.m.)

10

1 (Back in public session. The time

2 is 10:29 a.m.)

3 CHAIRMAN MALTESE: Welcome to our

4 July 2007 meeting. Won't you please join me in

5 the Pledge of Allegiance.

6 (The Pledge of Allegiance is recited

7 by all.)

8 CHAIRMAN MALTESE: Thank you very

9 much.

10 Roll call, please.

11 MS. HAIRSTON: Vince Maltese?

12 CHAIRMAN MALTESE: Present.

13 MS. HAIRSTON: Robin Berg Tabakin?

14 MS. TABAKIN: Here.

15 MS. HAIRSTON: Janice Kovach?

16 MS. KOVACH: Here.

17 MS. HAIRSTON: Kathryn Forsyth?

18 MS. FORSYTH: Here.

19 MS. HAIRSTON: Dave Fleisher?

20 MR. FLEISHER: Here.

21 CHAIRMAN MALTESE: Okay. Now we do

22 have a quorum to vote on the January 2007

23 minutes, do we not?

24 MS. STARGHILL: Yes.

25 CHAIRMAN MALTESE: Thank you very

11

1 much.

2 I'll entertain a motion to accept

3 the closed and open session minutes as written

4 for the January 31, 2007 meetings?

5 MR. FLEISHER: So moved.

6 CHAIRMAN MALTESE: Second?

7 MS. STARGHILL: It can be you Robin,

8 you listened to the tape.

9 MS. TABAKIN: Oh, it's that one. I

10 didn't realize it was -- so moved, second.

11 CHAIRMAN MALTESE: Thank you.

12 Roll call.

13 MS. HAIRSTON: Vince Maltese?

14 CHAIRMAN MALTESE: Yes.

15 MS. HAIRSTON: Robin Berg Tabakin?

16 MS. TABAKIN: Yes.

17 MS. HAIRSTON: Janice Kovach?

18 MS. KOVACH: Recused.

19 MS. HAIRSTON: She recused.

20 Kathryn Forsyth?

21 MS. FORSYTH: Abstain.

22 MS. HAIRSTON: Dave --

23 MS. STARGHILL: From January?

24 MS. FORSYTH: Yeah, I can't vote on

25 that, I wasn't here.

12

1 MS. STARGHILL: Right, okay. We

2 still of quorum, you're right.

3 MR. FLEISHER: Yes.

4 CHAIRMAN MALTESE: Thank you.

5 And we have the June 27th, 2007

6 closed session minutes.

7 MS. STARGHILL: Yes, Mr. Chairman.

8 I want to draw your attention to an amendment

9 that was made. The motion's closed. Janice made

10 the motion, but wasn't here to vote for it. That

11 was a misprint, so I just deleted that she wasn't

12 here to vote for it.

13 CHAIRMAN MALTESE: Okay, thank you.

14 MS. STARGHILL: And the revised copy

15 is in your packet.

16 CHAIRMAN MALTESE: And you may want

17 to explain why we don't have open session

18 minutes.

19 MS. STARGHILL: Because -- actually

20 that was last meeting -- because we now have a

21 court reporter and the transcript -- we have not

22 received our transcript as of yet for that

23 meeting, however.

24 CHAIRMAN MALTESE: Okay. So right

25 now we're approving the closed session minutes

13

1 for the June 27th meeting?

2 MS. STARGHILL: Yes.

3 MR. FLEISHER: So moved.

4 CHAIRMAN MALTESE: Thank you.

5 Second?

6 MS. FORSYTH: Second.

7 CHAIRMAN MALTESE: Thank you.

8 Roll call.

9 MS. HAIRSTON: Vince Maltese?

10 CHAIRMAN MALTESE: Yes.

11 MS. HAIRSTON: Robin Berg Tabakin?

12 MS. TABAKIN: Yes.

13 MS. HAIRSTON: Janice Kovach?

14 MS. KOVACH: Yes.

15 MS. HAIRSTON: Kathryn Forsyth?

16 MS. FORSYTH: Yes.

17 MS. HAIRSTON: Dave Fleisher?

18 MR. FLEISHER: Yes.

19 CHAIRMAN MALTESE: You have before
20 you the Administrative Council Adjudication on 13
21 matters.

22 MS. TABAKIN: I have to correct
23 this.

24 CHAIRMAN MALTESE: I'm sorry?

25 MS. TABAKIN: This is June 27th?

14

1 CHAIRMAN MALTESE: June 27th.

2 MS. TABAKIN: I have to abstain.

3 CHAIRMAN MALTESE: Did you vote?
4 What did you say?

5 MS. TABAKIN: I said, yes.

6 CHAIRMAN MALTESE: Let the record
7 reflect that Robin was absent at that time and
8 abstained thus from the vote.

9 We have before us thirteen items for
10 Administrative Council Adjudication. I'll
11 entertain a motion?

12 (Administrative Council Adjudication

13 13 items taken in one motion.)

14 MS. KOVACH: So moved.

15 CHAIRMAN MALTESE: Thank you.

16 Second?

17 MS. FORSYTH: Second.

18 CHAIRMAN MALTESE: Thank you.

19 Roll call.

20 MS. HAIRSTON: Vince Maltese?

21 CHAIRMAN MALTESE: Yes.

22 MS. HAIRSTON: Robin Berg Tabakin?

23 MS. TABAKIN: Yes.

24 MS. HAIRSTON: Janice Kovach?

25 MS. KOVACH: Yes.

15

1 MS. HAIRSTON: Kathryn Forsyth?

2 MS. FORSYTH: Yes.

3 MS. HAIRSTON: Dave Fleisher?

4 MR. FLEISHER: Yes.

5 CHAIRMAN MALTESE: Did any

6 individual complain adjudications?

7 I'm sorry, did I cut you short? I

8 apologize.

9 MS. HAIRSTON: Who second that

10 motion?

11 MS. FORSYTH: I believe -- I think I

12 did.

13 CHAIRMAN MALTESE: Kathryn Forsyth.

14 Lassiter v. The New Jersey

15 Department of Environmental Protection.

16 MS. STARGHILL: The Executive

17 Director essentially recommends that Council find

18 that the complaint be dismissed since the

19 Complainant withdraw the matter from the Office

20 of Administrative Law.

21 CHAIRMAN MALTESE: Okay. Short and

22 sweet.

23 MR. FLEISHER: So moved.

24 MS. KOVACH: Second.

25 CHAIRMAN MALTESE: Roll call.

16

1 MS. HAIRSTON: Vince Maltese?

2 CHAIRMAN MALTESE: Yes.

3 MS. HAIRSTON: Robin Berg Tabakin?

4 MS. TABAKIN: Yes.

5 MS. HAIRSTON: Janice Kovach?

6 MS. KOVACH: Yes.

7 MS. HAIRSTON: Kathryn Forsyth?

8 MS. FORSYTH: Yes.

9 MS. HAIRSTON: Dave Fleisher?

10 MR. FLEISHER: Yes.

11 CHAIRMAN MALTESE: Seibert vs.

12 Readington Township.

13 MS. STARGHILL: The Executive

14 Director respectfully recommends that the Council

15 find the Custodian fully complied with the

16 provisions of the Council's February 10th, 2005

17 Interim Order by delivering to the Council a

18 redaction index in a timely manner.

19 Second, the denial of access

20 complaint should be dismissed because the

21 Custodian advised the GRC on July 23rd, 2007 that

22 the request of records may be made available to

23 the Complainant in unredacted form because the

24 legal matters encompassed by the services

25 described in the bills have since been the

17

1 subject of settlement, trial or other

2 adjudication and/or disposition.

3 CHAIRMAN MALTESE: All right.

4 Motion?

5 MS. KOVACH: So moved.

6 CHAIRMAN MALTESE: Second, please?

7 MS. TABAKIN: Second.

8 CHAIRMAN MALTESE: Thank you. Roll

9 call.

10 MS. HAIRSTON: Janice Kovach?

11 MS. KOVACH: Yes.

12 MS. HAIRSTON: Robin Berg Tabakin?

13 MS. TABAKIN: Yes.

14 MS. HAIRSTON: Kathryn Forsyth?

15 MS. FORSYTH: Yes.

16 MS. HAIRSTON: Dave Fleisher?

17 MR. FLEISHER: Yes.

18 MS. HAIRSTON: Vince Maltese?

19 CHAIRMAN MALTESE: Yes.

20 MS. HAIRSTON: I apologize.

21 CHAIRMAN MALTESE: Bonanno v.

22 Garfield Board of Education.

23 MS. FORSYTH: I'm going to recuse

24 myself.

25 CHAIRMAN MALTESE: All right.

18

1 Let the record reflect that Kathryn

2 Forsyth is recusing herself.

3 MS. LOWNIE: The Executive Director

4 respectfully recommends the Council find that:

5 One, the Custodian lawfully redacted

6 the social security numbers from the requested

7 certificates and transcripts pursuant to N.J.S.A.

8 47:1A-1.1.

9 Two, based on the Council's

10 decision -- and this should read the full

11 citation which is Rich Bernstein v. Borough of

12 Park Ridge, GRC Complaint No. 2005-99 (July

13 2005) -- the Custodian lawfully redacted the home
14 addresses from the requested certificates and
15 transcripts.

16 Three, the Custodian's redaction of
17 the individual grades contained in the requested
18 transcript is lawful pursuant to N.J.S.A.
19 47:1A-10. However, the Custodian's reliance on
20 the Family Education Rights and Privacy Act, also
21 known as FERPA, of 1974 is misplaced because FERPA
22 does not apply to the Board of Education with
23 regard to transcripts of its employees.

24 Four, the Custodian has not complied
25 with the Council's March 28th, 2007 Interim Order

19

1 because in the Custodian's certification dated
2 April 20th, 2007 (the Custodian's compliance
3 deadline after the GRC granted a 10 business day
4 extension), the Custodian does not include the
5 legal explanation and statutory citation for the
6 denial of access for the redacted information as

7 required under N.J.S.A. 47:1A-6. Additionally,
8 the Custodian fails to grant access to the
9 requested diplomas or provide a legal explanation
10 for the denial of access to said records.

11 Five, conflicting evidence exists
12 with regard to the question of whether the
13 requested diplomas are maintained by the Board of
14 Education. Because on December 8th, 2006, the
15 Custodian certified that the requested diplomas
16 may be on file with the Board of Education
17 depending on how long the employee has been with
18 the District; however, on May 17th, 2007, the
19 Custodian certifies that no diplomas are on file
20 as said records have never been required for
21 employment with the District.

22 Due to the conflicting statements
23 and the Custodian's certification, this complaint
24 should be referred to the Office of
25 Administrative Law for a hearing to resolve

1 contested facts and determine whether the

2 Custodian maintains these records making the

3 Custodian's denial of same unlawful under OPRA.

4 CHAIRMAN MALTESE: Thank you very

5 much.

6 Any comments?

7 Motion?

8 MS. TABAKIN: So moved.

9 CHAIRMAN MALTESE: Thank you.

10 Second?

11 MR. FLEISHER: Second.

12 CHAIRMAN MALTESE: Thank you.

13 Roll call.

14 MS. HAIRSTON: Vince Maltese?

15 CHAIRMAN MALTESE: Yes.

16 MS. HAIRSTON: Robin Berg Tabakin?

17 MS. TABAKIN: Yes.

18 MS. HAIRSTON: Janice Kovach?

19 MS. KOVACH: Yes.

20 MS. HAIRSTON: Kathryn Forsyth?

21 Dave Fleisher?

22 MR. FLEISHER: Yes.

23 MS. TABAKIN: I'll get her.

24 CHAIRMAN MALTESE: Yes, thank you.

25 Okay. The next matter is Cristina

21

1 Kumka v. The City of Englewood.

2 MR. CARUSO: The Executive Director

3 respectfully recommends the Council find that:

4 One, pursuant to N.J.S.A. 47:1A-5.g.

5 and N.J.S.A. 47:1A-5.i., the Custodian failed to

6 respond in writing to OPRA Request No. 1 within

7 seven business days, and completely failed to

8 respond to OPRA Requests No. 2 and 4 resulting in

9 a deemed denial.

10 Number two, pursuant to N.J.S.A.

11 47:1A-6, the Custodian has not born their burden

12 of proving a lawful denial of access to

13 Complainant's requests of No. 1, No. 2 and No. 4.

14 Three, based on the New Jersey

15 Superior Court's holding in The Times of Trenton

16 Publishing Corp., the Lafayette Yard Community

17 Development Corp., 368 N.J. Super. 425 (App. Div.

18 2004), the Council's decision in Joseph Haley v.
19 Seaside Heights Business Improvement District,
20 GRC Complaint No. 2005-50 December of 2006 and
21 the evidence provided in the Englewood Economic
22 Development Corporation's Certificate of
23 Incorporation and Ordinance 86-20, the EEDC is a
24 public agency pursuant to N.J.S.A. 47:1A-1.1.
25 Therefore, the EEDC is subject to the provisions

22

1 of OPRA and is required to respond to OPRA
2 requests for records.

3 Four, the Custodian has failed to
4 bear her burden of proving that denial of access
5 to Request No. 3 was authorized by law, N.J.S.A.
6 47:1A-6.

7 Five, because the Custodian failed
8 to respond to the Complainant either directing
9 the Complainant to the proper Custodian of Record
10 or forwarding the OPRA request to the EEDC, the
11 Custodian has violated N.J.S.A. 47:1A-5.h.

12 Six, because the Custodian failed to
13 respond in writing to Request No. 1 within a
14 statutorily mandated timeframe pursuant to
15 N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.,
16 failed to bear the burden of proving that the
17 EEDC was not a public agency subject to OPRA,
18 failed to direct the Complainant to the EEDC or
19 forward the request pursuant to N.J.S.A.
20 47:1A-5.h. and completely failed to respond to
21 Requests No. 2, No. 3 and No. 4, it is possible
22 that the Custodian's actions were intentional and
23 deliberate with knowledge of their wrongfulness
24 and not merely negligent, heedless, or
25 unintentional. As such, this complaint should be

23

1 referred to the Office of Administrative Law for
2 determination of a knowing, willful violation of
3 OPRA under the totality of the circumstances.

4 CHAIRMAN MALTESE: Uh-huh. So,
5 Frank, I gather there's no doubt in your mind
6 that Cristina Kumka was the prevailing party in

7 this case; is that right?

8 MR. CARUSO: Absolutely.

9 CHAIRMAN MALTESE: I see you didn't
10 choose to talk about legal fees, though. Is
11 there a reason?

12 MS. STARGHILL: We only raise it
13 when the Requestor raises it because the
14 Requestor might not be requesting surrendering
15 party's fees. In the past that's been the
16 situation.

17 CHAIRMAN MALTESE: Well, my
18 suggestion would be that if we're going to refer
19 the matter to OAL for a knowing and willful
20 determination, that we also have the OAL deal
21 with that issue to see whether or not --

22 MS. STARGHILL: Even when the
23 Requestor has not made application or the intent
24 made known -- the intention for application of
25 attorney fees?

1 CHAIRMAN MALTESE: I think it's
2 important that we do what needs to be. I recall
3 there are some cases out there which suggest that
4 we have the authority to go beyond the relief
5 requested by the Requestor. And in this case,
6 this is very clear to me that this Complainant is
7 the prevailing party and thus would be entitled
8 to legal fees if applied for them. The fact that
9 they were not specifically applied for, in my
10 view, should trigger a further inquiry. And I'm
11 suggesting if we're going to send it for OAL for
12 knowing and willful, we also let the judge
13 wrestle with that issue.

14 MS. STARGHILL: I think we need more
15 advice from the Office of Attorney General to
16 determine whether we are obligated to go so far
17 as to extend our authority in regards to
18 privileges or something that's only permissive
19 under the statute versus something like asserting
20 an exemption for which we have legal implications
21 if we don't assert because then maybe we would
22 end up ordering disclosure of an otherwise

23 unlawfully discloseable item for record.

24 MS. ALLEN: This one I would have to

25 look at the Administrative Procedures Act. I'm

25

1 not sure if you can transmit a matter to OAL --

2 I said I would have to look at the

3 Administrative Procedures Act to see if the

4 Council is sort of bound by the four corners of

5 the complaint to see if you can transmit issues

6 that have not been established, you know, within

7 the complaint.

8 CHAIRMAN MALTESE: Okay.

9 MS. STARGHILL: Which is different,

10 again, from us raising exemptions precluding us

11 from disclosing -- ordering disclosure of a

12 record that is -- could not under the law be

13 disclosed.

14 CHAIRMAN MALTESE: Well, can we then

15 adopt the recommendations as written and reserve

16 on the issue of prevailing --

17 MS. STARGHILL: Yes.

18 MS. ALLEN: Sure.

19 CHAIRMAN MALTESE: -- party's

20 entitlement based on research? Maybe you could

21 come back to us next month and let us know that?

22 MS. STARGHILL: Yes.

23 CHAIRMAN MALTESE: All right, any

24 other comments?

25 All right. I'll ask for a motion,

26

1 please to accept the recommendations as amended?

2 MS. TABAKIN: So moved.

3 CHAIRMAN MALTESE: Thank you.

4 Second, please?

5 MR. FLEISHER: Second.

6 CHAIRMAN MALTESE: Thank you, sir.

7 Roll call.

8 MS. HAIRSTON: Vince Maltese?

9 CHAIRMAN MALTESE: Yes.

10 MS. HAIRSTON: Robin Berg Tabakin?

11 MS. TABAKIN: Yes.

12 MS. HAIRSTON: Janice Kovach?

13 MS. KOVACH: Yes.

14 MS. HAIRSTON: Kathryn Forsyth?

15 MS. FORSYTH: Yes.

16 MS. HAIRSTON: Dave Fleisher?

17 MR. FLEISHER: Yes.

18 CHAIRMAN MALTESE: Thank you.

19 Oswald v. Township of Hamilton.

20 MR. CARUSO: The Executive Director

21 respectfully recommends the Council find that:

22 One, pursuant to N.J.S.A. 47:1A-5.g.

23 and N.J.S.A. 47:1A-5.i., the Municipal Clerk's

24 response to the Complainant's September 20th,

25 2006 OPRA request was inadequate because it

27

1 merely stated that the requested records had been

2 previously provided.

3 Two, pursuant to N.J.S.A. 47:1A-6,

4 the Municipal Clerk has borne her burden proving

5 the lawful denial of access to the Complainant's

6 September 20th, 2006 OPRA request.

7 Three, the Municipal Clerk shall

8 disclose all records responsive to the

9 Complainant's September 20th, 2006 OPRA request.

10 Four, the Municipal Clerk shall

11 provide the three above within five business days

12 from receipt of the Council's Order and

13 simultaneously provide certified confirmation of

14 compliance pursuant to New Jersey Court Rule

15 1:4-4 (2005) to the Executive Director.

16 Five, the Municipal Clerk's actions

17 do not rise to a level of knowing and willful

18 violation of OPRA and unreasonable denial of

19 access under the totality of the circumstances.

20 However, the Municipal Clerk's actions appear to

21 be negligent and heedless since she is vested

22 with the legal responsibility of granting and

23 denying access in accordance with the law.

24 CHAIRMAN MALTESE: Okay.

25 Any comments from members of

1 Council?

2 If not, I'll entertain a motion,

3 please?

4 MS. FORSYTH: So moved.

5 CHAIRMAN MALTESE: Thank you.

6 Second, please?

7 MS. KOVACH: Second.

8 CHAIRMAN MALTESE: Thank you.

9 Roll call, please.

10 MS. HAIRSTON: Vince Maltese?

11 CHAIRMAN MALTESE: Yes.

12 MS. HAIRSTON: Robin Berg Tabakin?

13 MS. TABAKIN: Yes.

14 MS. HAIRSTON: Janice Kovach?

15 MS. KOVACH: Yes.

16 MS. HAIRSTON: Kathryn Forsyth?

17 MS. FORSYTH: Yes.

18 MS. HAIRSTON: Dave Fleisher?

19 MR. FLEISHER: Yes.

20 CHAIRMAN MALTESE: Thank you.

21 Johnson v. The Borough of Oceanport.

22 MR. CARUSO: The Executive Director

23 respectfully recommends the Council find that:

24 One, the Custodian violated N.J.S.A.

25 47:1A-5.g. and N.J.S.A. 47:1A-5.i., because

29

1 although the Custodian responded in writing

2 within the statutorily mandated seven business

3 days, she failed to provide a sufficient response

4 to his complaint.

5 Two, pursuant to N.J.S.A. 47:1A-6,

6 Custodian has not borne her burden of proving a

7 lawful denial of access to Councilman Sharkey's

8 e-mails.

9 Three, the Custodian shall obtain

10 the records requested from Councilman Sharkey and

11 provide those records responsive to the

12 Complainant's November 9th, 2006 OPRA request

13 with proper redactions -- redaction, if

14 necessary, to the Complainant.

15 Four, Custodian shall comply with

16 Item No. 3 above within five business days from

17 the receipt of the Council's Interim Order and
18 simultaneously provide certified confirmation of
19 compliance in accordance with N.J. Court Rule
20 1:4-4 to the Executive Director.

21 Five, because the Custodian made an
22 effort to obtain the records responsive to the
23 Complainant's November 9th, 2006 OPRA request
24 after not finding any records responsive to this
25 request in the municipal files and responded in

30

1 writing within the statutorily mandated seven
2 business days to the Complainant, it is concluded
3 that the Custodian's actions do not rise to a
4 level of a knowing and willful violation of OPRA
5 and unreasonable denial of access under the
6 totality of the circumstances. However, the
7 Custodian's unlawful denial of access appears
8 negligent and heedless since she is vested with
9 the legal responsibility of granting and denying
10 access in accordance with the law.

11 Six, because Councilman Sharkey
12 failed to respond to the Custodian's effort to
13 obtain the records responsive to the
14 Complainant's OPRA request, it is possible that
15 Councilman Sharkey's actions were intentional and
16 deliberate with knowledge of his wrongfulness and
17 not merely negligent, heedless or unintentional.

18 As such, this complaint should be
19 referred to the Office of Administrative Law for
20 determination of whether Councilman Sharkey
21 knowingly and willfully violated OPRA and
22 unreasonably denied access under the totality of
23 the circumstances.

24 CHAIRMAN MALTESE: Okay. This may
25 be the first case we have before us that deals

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1 with a possible fine on someone other than the
2 Custodian. And as we know Section 47:1A-11 talks
3 about the fact that a public official, which
4 Congressman Sharkey is, officer, employee or
5 custodian who knowingly and willfully violates

6 OPRA is subject to the imposition of a fine. And
7 so this will be an interesting case to follow
8 through OAL.

9 Any additional comments?

10 So I'll entertain a motion.

11 MS. TABAKIN: So moved.

12 MR. FLEISHER: Second.

13 CHAIRMAN MALTESE: Thank you.

14 Roll call.

15 MS. HAIRSTON: Vince Maltese?

16 CHAIRMAN MALTESE: Yes.

17 MS. HAIRSTON: Robin Berg Tabakin?

18 MS. TABAKIN: Yes.

19 MS. HAIRSTON: Janice Kovach?

20 MS. KOVACH: Yes.

21 MS. HAIRSTON: Kathryn Forsyth?

22 MS. FORSYTH: Yes.

23 MS. HAIRSTON: Dave Fleisher?

24 MR. FLEISHER: Yes.

25 CHAIRMAN MALTESE: Thank you.

1 Spaulding vs. Hudson County

2 Register.

3 MS. LOWNIE: The Executive

4 Director --

5 CHAIRMAN MALTESE: Someone needs to

6 recuse.

7 MS. FORSYTH: I do.

8 (Kathryn Forsyth recuses herself.)

9 CHAIRMAN MALTESE: Okay.

10 Thank you.

11 Go ahead.

12 MS. LOWNIE: The Executive Director

13 respectfully recommends the Council finds that:

14 One, although the Custodian

15 certifies that the Complainant did not submit her

16 request on an official OPRA request form, the

17 Custodian attempts to fulfill said request

18 results in the request being considered a valid

19 OPRA request pursuant to John Paff v. Borough of

20 Audubon, GRC Complaint No. 2006-01, (March 2006).

21 Two, the Custodian's failure to

22 provide a written response to the Complainant's
23 request granting access, denying access, seeking
24 clarification or requesting an extension of time
25 within the statutorily mandated seven business

33

1 days results in a deemed denial and is a
2 violation of N.J.S.A. 47:1A-5.g. and N.J.S.A.
3 47:1A-5.i.

4 Three, records that have already
5 been recorded by a recording agency and have
6 already been in the public domain do not require
7 any redactions on the basis of confidentiality.

8 See Amelia Spaulding v. County of Passaic, GRC
9 Complaint No. 2004-199 (September 2006).

10 As such, the Custodian has not borne
11 his burden of proving a lawful denial of access
12 to the requested record pursuant N.J.S.A.
13 47:1A-5.g. and N.J.S.A. 47:1A-6. Therefore, the
14 Custodian should release the requested records to
15 the Complainant.

16 Four, the Custodian shall comply
17 with Item No. 3 above within five business days
18 from receipt of the Council's Interim Order and
19 simultaneously provide certified confirmation of
20 compliance in accordance with New Jersey Court
21 Rule 1:4-4 to the Executive Director.

22 Five, because the Custodian did not
23 provide a written response to the Complainant's
24 OPRA request until 18 months following the
25 receipt of such request and unlawfully denied

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1 access to the requested record, it is possible
2 that the Custodian's actions were intentional and
3 deliberate, with knowledge of their wrongfulness
4 and not merely negligent, heedless or
5 unintentional.

6 As such, this complaint should be
7 referred to the Office of Administrative for a
8 determination of whether the Custodian knowingly
9 and willfully violated OPRA and unreasonably
10 denied access under the totality of the

11 circumstances.

12 Six, the Council defers analysis of
13 prevailing part attorney's fees pending the
14 Office of Administrative Law's determination of a
15 knowing and willful violation of OPRA and
16 unreasonable denial of access under the totality
17 of the circumstances.

18 CHAIRMAN MALTESE: Uh-huh. Well,
19 this is a request that involves over 6 million
20 documents, is that correct, or 6 million pages --

21 MS. LOWNIE: That is correct.

22 CHAIRMAN MALTESE: -- of
23 documentation.

24 And as I recall from the
25 Spaulding/Passaic County case, there are a number

35

1 of counties that have accommodated similar
2 requests. And we also ruled in the
3 Spaulding/Passaic County case that Passaic County
4 happened to be the same and this is a similar

5 case in that regard.

6 My only comments with respect to the
7 conclusions is that following five business days
8 may be a little unrealistic to be able to turn
9 over so many pages. And so my suggestion would
10 be that we change that to say 30 days from the
11 day hereof unless the parties are able to resolve
12 that issue of -- mutually resolved that issue
13 between themselves, pick a different date. But
14 at the outside I would say 30 days from today.

15 The other issue that I have is I'm
16 not sure why we would defer analysis of
17 prevailing party attorney's fees pending
18 determination of OAL of knowing and willful
19 except to the extent that the Requestor and/or
20 Requestor's counsel would need to be involved or
21 is involved or are involved in that process.

22 So my suggestion would be that if
23 we're going to refer the matter over to OAL for
24 determination of knowing and willful that we also
25 let the OAL judge resolve the issue with respect

1 to prevailing attorney's fees -- prevailing party
2 attorney's fees as part of that process. And
3 then, of course, that goes back to us as a
4 recommendation.

5 So that -- that would be my two
6 suggestions.

7 MS. STARGHILL: May I add a third?

8 CHAIRMAN MALTESE: Please.

9 MS. STARGHILL: A minute to myself,
10 I guess.

11 Because the parties did not discuss
12 cost, per say, which was a big issue discussed in
13 the previous Spaulding decision of this Council.

14 I think we should rule similarly -- should
15 consider ruling similarly on cost which is
16 requiring the parties to mutually agree on a cost
17 that is --

18 CHAIRMAN MALTESE: -- reasonable
19 based on?

20 MS. STARGHILL: Based on OPRA.

21 CHAIRMAN MALTESE: On a -- and I
22 think we ought to probably try the language that
23 we used in the Spaulding v. Passaic County case
24 with respect to that issue.

25 MS. STARGHILL: I --

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1 CHAIRMAN MALTESE: Are we able to do
2 that?

3 MS. STARGHILL: Maybe not. I'm not
4 sure, because there was a software -- there was
5 some software issues where there was some kind of
6 bridge already on the Custodian's computer
7 systems which would allow for an electronic
8 transfer of the document and maybe that's why the
9 cost issue was kind of vague and hard for us to
10 work out. I don't know that that same situation
11 exists here because again they didn't discuss
12 cost.

13 CHAIRMAN MALTESE: Uh-huh.

14 MS. STARGHILL: What we did do
15 actually in the interim of the first Spaulding

16 was have the parties brief the cost issue. And
17 then what they did to avoid that I'm sure was
18 just mutually agree.

19 So why don't we -- Vince, I agree
20 with you, why don't we try the same language.
21 They brief the cost issue for us.

22 CHAIRMAN MALTESE: Yeah. And supply
23 that brief ten days prior to our next meeting.

24 MS. STARGHILL: Yes.

25 CHAIRMAN MALTESE: Okay. Well, I'll

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1 entertain a motion then as amended.

2 MR. FLEISHER: The amendments are
3 30 days, OAL to determine legal fees and --

4 CHAIRMAN MALTESE: -- and brief the
5 issue of cost.

6 MR. FLEISHER: Of cost. So moved as
7 amended.

8 CHAIRMAN MALTESE: Okay, thank you.

9 MS. TABAKIN: Second.

10 MS. KOVACH: Second.

11 MS. HAIRSTON: Who second it?

12 CHAIRMAN MALTESE: We have moving

13 (indicating), second (indicating).

14 UNIDENTIFIED SPEAKER: It was

15 Janice.

16 MS. HAIRSTON: Oh, I thought Dave

17 moved it, you second.

18 CHAIRMAN MALTESE: Okay. All right.

19 MS. HAIRSTON: Thank you.

20 Vince Maltese?

21 CHAIRMAN MALTESE: Yes.

22 MS. HAIRSTON: Robin Berg Tabakin?

23 MS. TABAKIN: Yes.

24 MS. HAIRSTON: Janice Kovach?

25 MS. KOVACH: Yes.

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1 MS. HAIRSTON: Dave Fleisher?

2 MR. FLEISHER: Yes.

3 CHAIRMAN MALTESE: Next is

4 Burdick -- oh, I'm sorry. Oh, yes, okay, we've

5 got to bring her in because I need to recuse

6 myself.

7 (Kathryn Forsyth returns.

8 Whereupon, Chairman Vince Maltese recuses

9 himself. Robin Berg Tabakin is now Acting Chair.

10 Janice Kovach also recused herself. The time is

11 10:56 a.m.)

12 MS. TABAKIN: Next is Burdick v.

13 Franklin Township.

14 MS. GORDON: The Executive Director

15 respectfully recommends that the Council find

16 that the complaint should be dismissed as the

17 Complainant has voluntarily withdrawn his

18 complaint in a letter to the GRC dated June 1st,

19 2007.

20 MS. TABAKIN: Thank you.

21 Motion?

22 MS. FORSYTH: So moved.

23 MR. FLEISHER: Second.

24 MS. TABAKIN: Thank you.

25 Roll call.

1 MS. HAIRSTON: Robin Berg Tabakin?

2 MS. TABAKIN: Yes.

3 MS. HAIRSTON: Kathryn Forsyth?

4 Dave Fleisher?

5 MR. FLEISHER: Yes.

6 MS. FORSYTH: Yes.

7 MS. STARGHILL: Janice recused

8 herself so she's back -- or she should be back,

9 rather.

10 MS. FORSYTH: Oh, I'll get her.

11 MS. TABAKIN: Thank you.

12 Did we -- Thomas Johnston?

13 MS. STARGHILL: No, Johnston was

14 pulled from the agenda.

15 MS. TABAKIN: Yeah, right.

16 MS. STARGHILL: That was Burdick.

17 MS. TABAKIN: Burdick, right.

18 Okay. Burns v. Borough of

19 Collingswood?

20 MS. STARGHILL: The Executive

21 Director respectfully recommends that the Council
22 find the Custodian fully complied with the
23 provision of the Council September 8, 2005
24 Interim Order by delivering to the Council a
25 redaction index and the unredacted cam --

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1 records, I'm sorry, for an in camera inspection
2 in a timely manner.

3 Also, the Denial of Access Complaint
4 should be dismissed because the Custodian
5 certifies on July 19, 2007 that the requested
6 records were made available to the Complainant
7 because the Borough has recently completed the
8 first phase of their redevelopment project;
9 therefore, the records are no longer exempt as
10 advisory, consultative or deliberative material
11 and information which, if disclosed, would give
12 an advantage to competitors or bidders.

13 MS. TABAKIN: Thank you.

14 Motion?

15 MS. FORSYTH: So moved.

16 MS. KOVACH: Second.

17 MS. TABAKIN: Thank you.

18 Roll call.

19 MS. HAIRSTON: Robin Berg Tabakin?

20 MS. TABAKIN: Yes.

21 MS. HAIRSTON: Janice Kovach?

22 MS. KOVACH: Yes.

23 MS. HAIRSTON: Kathryn Forsyth?

24 MS. FORSYTH: Yes.

25 MS. HAIRSTON: Dave Fleisher?

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1 MR. FLEISHER: Yes.

2 MS. TABAKIN: Seiler v. Old Bridge

3 Economic Development Corp.

4 MS. STARGHILL: The Executive

5 Director respectfully recommends that the Council

6 find that the complaint should be referred to the

7 Office of Administrative Law for determination of

8 whether the Custodian knowingly and willfully

9 violated OPRA and unreasonably denied access

10 under the totality of the circumstances because:

11 One, the Custodian did not comply
12 with the provisions of the Council's April 25th,
13 2007 Interim Order by failing to deliver to the
14 Council the redaction index within five business
15 days of receiving the Order;

16 And, number two, the Custodian did
17 not respond to the Complainant OPRA request for
18 approximately 16 months following receipt of the
19 Complainant's request and failed to provide a
20 lawful basis for the delay in access to the
21 requested records;

22 And three, the Custodian, by not
23 signing the legal basis for refusing to disclose
24 the requested records has failed to meet the
25 burden of proving that the denial of access was

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1 authorized by law pursuant to N.J.S.A. 47:1A-6.

2 MR. FLEISHER: So moved.

3 MS. KOVACH: Second.

4 MS. TABAKIN: Roll call.

5 MS. HAIRSTON: Robin Berg Tabakin?

6 MS. TABAKIN: Yes.

7 MS. HAIRSTON: Janice Kovach?

8 MS. KOVACH: Yes.

9 MS. HAIRSTON: Kathryn Forsyth?

10 MS. FORSYTH: Yes.

11 MS. HAIRSTON: Dave Fleisher?

12 MR. FLEISHER: Yes.

13 MS. TABAKIN: Valenzuela v. Township

14 of Irvington.

15 MS. LOWNIE: The Executive Director

16 respectfully recommends the Council find that it

17 is unclear as to which Township employee

18 obstructed access to the requested recording

19 during the eleven months following the request of

20 such recording because the following employees

21 have all been involved with this complaint:

22 Municipal Clerk (Harold Weiner), Township

23 Attorney (Marvin T. Braker), Police Chief

24 (Michael Chase), and Detective Lieutenant (John

25 Molisso). Therefore, it is possible that actions

1 of Municipal Clerk (Harold Weiner), the Township
2 Attorney (Marvin T. Braker), Police Chief
3 (Michael Chase) and Detective Lieutenant (John
4 Molisso) were intentional and deliberate with
5 their knowledge of their wrongfulness, and not
6 merely negligent, heedless or unintentional.

7 As such, this complaint should be
8 referred to the Office of Administrative Law for
9 determination of whether any or all of the listed
10 Township officials and employees knowingly and
11 willfully violated OPRA and unreasonably denied
12 access under the totality of the circumstances.

13 This conclusion further supports the
14 GRC's May 30th, 2007 Interim Order referring this
15 matter to the Office of Administrative Law.

16 MS. TABAKIN: Motion?

17 MS. KOVACH: So moved.

18 MS. TABAKIN: Second?

19 MS. FORSYTH: Second.

- 20 MS. TABAKIN: Roll call.
- 21 MS. HAIRSTON: Robin Berg Tabakin?
- 22 MS. TABAKIN: Yes.
- 23 MS. HAIRSTON: Janice Kovach?
- 24 MS. KOVACH: Yes.
- 25 MS. HAIRSTON: Kathryn Forsyth?

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- 1 MS. FORSYTH: Yes.
- 2 MS. HAIRSTON: Dave Fleisher?
- 3 MR. FLEISHER: Yes.
- 4 MS. TABAKIN: Albrecht v. New Jersey
- 5 Department of Treasury.
- 6 MS. LOWNIE: The Executive Director
- 7 respectfully recommends the Council finds that:
- 8 One, as in Beth Burns v. Borough of
- 9 Collingswood, GRC Complaint No. 2004-169,
- 10 (September 2005), and Phillip Boggia v. Borough
- 11 of Oakland, GRC Complaint No. 2005-36, (April
- 12 2006), the Custodian's basis for redacting
- 13 information from the requested DOC time report in
- 14 this instant matter is compelling. However, the

15 Council must determine whether the legal
16 conclusions asserted by the Custodian are
17 properly applied to the redactions pursuant to
18 Burns, Boggia, and Paff v. Department of Labor,
19 379 N.J. Super. 346, 354-355, (App. Div. 2005).

20 Therefore, the Council must conduct
21 an in camera inspection of the requested report
22 to determine whether the document is exempt from
23 disclosure in whole or in part, because it is
24 proprietary information and/or information which,
25 if disclosed, would give an advantage to

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1 competitors or bidders pursuant to N.J.S.A.
2 47:1A-1.1.

3 Two, based on the Court's decision
4 in Board of Chosen Freeholders of the County of
5 Burlington v. Tombs, 2006 U.S. App. LEXIS 31234
6 (December 18, 2006), the Custodian failed to
7 prove a lawful denial of access to the requested
8 Chest Pain Assessment pursuant to N.J.S.A.

9 47:1A-6. As such, the Custodian should release
10 the requested record to the Complainant with
11 appropriate redactions, if any, and a legal
12 justification and statutory citation for each
13 redacted part thereof.

14 Three, the Custodian shall comply
15 with No. 2 above within five business days from
16 receipt of the Council's Interim Order and
17 simultaneously provide certified confirmation of
18 compliance pursuant to New Jersey Court Rule,
19 1969 R: 1:4-4 to the Executive Director.

20 Four, the Custodian has borne his
21 burden of proving a lawful denial of access to
22 the requested financial statement pursuant to
23 N.J.S.A. 47:1A-6 because the requested financial
24 statements constitutes proprietary, commercial or
25 financial information obtained from any source

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1 which is not a government record pursuant to
2 N.J.S.A. 47:1A-1.1 and ACS State Health Care v.
3 State of New Jersey (Law Div. 2005).

4 Five, the GRC has no authority to
5 adjudicate the Complainant's common law right to
6 access pursuant to Donna Janeczko v. New Jersey
7 Department of Law and Public Safety, GRC
8 Complaint Nos. 2002-79 and 2002-80 (August 2003).

9 And six, the Council defers analysis
10 of a knowing and willful violation of OPRA and
11 unreasonable denial of access under the totality
12 of the circumstances pending the outcome of the
13 in camera review of the DOC time report

14 MS. TABAKIN: Motion?

15 MS. FORSYTH: So moved.

16 MS. TABAKIN: Second?

17 MS. KOVACH: Second.

18 MS. TABAKIN: Roll call.

19 MS. HAIRSTON: Robin Berg Tabakin?

20 MS. TABAKIN: Yes.

21 MS. HAIRSTON: Janice Kovach?

22 MS. KOVACH: Yes.

23 MS. HAIRSTON: Kathryn Forsyth?

24 MS. FORSYTH: Yes.

25 MS. HAIRSTON: And Dave Fleisher?

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1 MR. FLEISHER: Yes.

2 MS. TABAKIN: Taylor v. County of
3 Hudson.

4 MR. CARUSO: The Executive Director
5 respectfully recommends the Council find that:

6 One, the Custodian's failure to
7 respond in writing to the Complainant's May 8th,
8 2007 OPRA request granting access, denying
9 access, seeking clarification, we're requesting
10 an extension of time within the statutorily
11 mandated seven business days resulted in a deemed
12 denial. Thus the Custodian has violated N.J.S.A.
13 47:1A-5.g. and N.J.S.A. 47:1a-5.i.

14 Two, pursuant to N.J.S.A. 47:1a-6,
15 the Custodian has not carried his burden of
16 proving a lawful denial of access to the
17 requested records.

18 Three, because the Custodian
19 promptly provided the requested resume to the

20 Complainant after discovering that the May 8th,
21 2007 OPRA request had been misfiled, it is
22 concluded that the Custodian's actions do not
23 rise to the level of a knowing and willful
24 violation of OPRA and unreasonable denial of
25 access under the totality of the circumstances.

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1 However, the Custodian's unlawful denial of
2 access appears negligent and heedless since he is
3 vested with the legal responsibility of granting
4 and denying access in accordance with the law.

5 MS. TABAKIN: Motion?

6 MS. FORSYTH: So moved.

7 MS. TABAKIN: Second?

8 MS. KOVACH: Second.

9 Roll call?

10 MS. HAIRSTON: Robin Berg Tabakin?

11 MS. TABAKIN: Yes.

12 MS. HAIRSTON: Janice Kovach?

13 MS. KOVACH: Yes.

14 MS. HAIRSTON: Kathryn Forsyth?

15 MS. FORSYTH: Yes.

16 MS. HAIRSTON: Dave Fleisher?

17 MR. FLEISHER: Yes.

18 MS. STARGHILL: I just want to bring

19 to the Council's attention that there was -- were

20 some -- there was further adjudication of the --

21 MR. FLEISHER: We want to get Vince?

22 MS. STARGHILL: Vince is gone.

23 MR. FLEISHER: Is he done?

24 MS. STARGHILL: Yes, because

25 he...(inaudible).

50

1 Martin O'Shea v. West Milford Board

2 of Education. The New Jersey Supreme Court

3 denies certiorari of that common action, which

4 means they decline to hear the matter so it's

5 done. And that's one decision which allows

6 us -- I'm sorry which ruled that draft meeting

7 minutes -- draft unapproved meeting minutes are

8 exempt from disclosure.

9 MS. ALLEN: It's a mix of and the
10 handwritten notes are not public record under
11 OPRA.

12 MS. FORSYTH: That's correct.

13 MS. ALLEN: And that's a published
14 decision and that is the law.

15 MS. STARGHILL: And the New Jersey
16 Supreme Court refused to hear it, so that's the
17 end of it.

18 Similarly in the John Paff v. New
19 Jersey Department of Labor, Board of Review
20 action, the New Jersey Supreme Court also denied
21 certiorari, denied to hear that matter. And
22 that -- that's the court decision published for
23 decision which articulates the Council's
24 authority to raise exemption on behalf of the
25 Custodian when the Custodian fails to do so.

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1 We've discussed that.

2 I have no really no now business

3 except that a public session, a training session
4 on OPRA which I was hoping to arrange for this
5 month, the celebration of the five years of OPRA
6 and the GRC are still under, I guess, planning.
7 We're going to do it. It's a matter of when.
8 Effectively, it would have to take the place of a
9 meeting, maybe the August meeting, in order to
10 give Council members an opportunity to
11 participate as well, so stay tuned. Hopefully,
12 we will get it done for August at our regularly
13 scheduled meeting.

14 MS. TABAKIN: Okay. It's time for
15 public comment now. In the interest of time
16 because they're limited to five minutes, speakers
17 with prepared testimony should provide eight
18 copies for the Council.

19 Is there anybody that wants to make
20 public comment?

21 Mr. Caggiano?

22 UNIDENTIFIED SPEAKER: There's
23 someone --

24 MS. TABAKIN: Oh, I'm sorry, I

25 didn't realize you were there. Okay.

52

1 MR. OSWALD: Oh, wonderful.

2 MS. TABAKIN: State your name and --

3 MR. OSWALD: My name is Joseph

4 Oswald and I'm listed here in the agenda as

5 No. 11. And Mr. Caruso read the decision;

6 however, it's an awful lot for me to absorb. My

7 question is, is his decision now available to me

8 or do I have to wait until these minutes are

9 approved, or how do we go about this?

10 MS. STARGHILL: The process of the

11 GRC is that all parties to a complaint will

12 receive a copy of the Council's decision and

13 orders five to ten business days following this

14 meeting. So you will receive a copy of the

15 decision before we publish it on our website.

16 MR. OSWALD: Thank you very much.

17 MS. TABAKIN: Okay. Mr. Caggiano?

18 MR. CAGGIANO: Are any members of

19 the Press here?

20 My name is www.thomascaggiano.com.

21 Some people call me Thomas Caggiano.

22 People are allowed to make motions

23 at the -- to Board because you use parliamentary

24 procedures. Since Catherine Starghill has

25 refused to talk with me and the case manager has

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1 refused to talk with me about my complaints in

2 five or six months, I request a few extra

3 moments.

4 First I'd like discuss this

5 published report which is actually very good, but

6 it's nerving. It is dated July 8th, 2007 and

7 it's written by an excellent Star Ledger

8 reporter. I'll pronounce his last name -- spell

9 it, S-c-h-w-a-n-e-d-e-r-g. I'd like to discuss,

10 what was it, on page 16 which is in error. I

11 will quote what he said. It says:

12 The Government Record Council, the

13 agency set up to enforce OPRA, heard a complaint

14 last month against the State Division of Consumer
15 Affairs, which told a citizen -- which is me, by
16 the way, I'm that citizen, Thomas Caggiano -- he
17 could have two hours to inspect records for free,
18 but would be charged if he took longer.

19 That is incorrect. I was told that
20 I would not be allowed to look at anything after
21 two hours even if I paid. What the item was, was
22 five different complaints that I had filed
23 against four corrupt professional engineers and
24 also a professional planner. In addition, two of
25 my neighbors also filed separate reports, Mary

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1 Pawr and Iqbal Pawr, I-q-b-a-l.

2 I complained against a person who
3 represented himself as the Borough engineer, John
4 Silo, Jr. of John Silo, Jr. Associates. And he
5 has had no contract for a generation. Every
6 claim he has submitted is fraudulent.

7 They also submitted a complaint

8 against the State's corrupt Sussex County Soil
9 Conservation District, Joseph Cenipi's
10 (phonetic), Professional Engineer, because he
11 approved two false one-half project soil erosion
12 and sediment control plans for Stanhope's Block
13 10902, Lot 10. They were both determined -- the
14 first one was determined to be invalid four years
15 ago by the corrupt Executive Secretary James
16 Sadly (phonetic) of the State Soil Conservation
17 Committee after I sent him 100 e-mails.

18 I was criminally convicted six times
19 based upon false information from both Clifford
20 Lundin, the Chairman and also the Manager
21 Winifred Straub. Those were kangaroo courts.
22 Mary Pawr appeared and she was told she was not
23 allowed to testify. And she had submitted her
24 own OPRA request to Stanhope for information on
25 these documents and was told she was not allowed

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1 to get any documents at all on that minor
2 division project and I was not allowed to get

3 documents at all on the project.

4 MS. TABAKIN: Mr. Caggiano, what
5 does this have to do with OPRA and the GRC?

6 MR. CAGGIANO: This has to do with
7 the current complaint that you have before you
8 which I -- okay, what -- last month, apparently,
9 you had a meeting. I attempted to come to the
10 public meeting; however, at first I wanted to
11 advise the Smart Growth people of the data
12 contained within the carriage report of May 13,
13 2007 and also this CD which has 20 hours of audio
14 recordings. It has been provided to the person I
15 am now in contact with which is the Deputy
16 Attorney General of the United States of America.

17 I'm also in contact with the
18 Associate Attorney General, the FBI Director, the
19 Criminal Division Chief; the Public Integrity
20 Section Chief Ed Nuchi (phonetic), who according
21 to the document I am going to give you as -- I'm
22 going to give you this exhibit, Exhibit 1, which
23 is a letter I wrote to Senator Giff (phonetic)

24 which includes information --

25 MS. STARGHILL: Again, Mr. Caggiano,

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1 does this have anything to do with OPRA, the

2 GRC --

3 MR. CAGGIANO: Yes.

4 MS. STARGHILL: -- or pending

5 complaints?

6 MR. CAGGIANO: Yes, it does. This

7 has specifically to do with a complaint that's in

8 limbo, GRC 2002 -- 2006-02.

9 I'd like to correct what Mr. Marcay

10 [sic] said, he was wrong earlier. You did find

11 not only the prior original custodian guilty on

12 December 14th, 2006 of violating four state laws,

13 you ordered them to deliver documents in five

14 days. They ignored you. On April 25th you then

15 found the Town administrator guilty. So you have

16 previously found a person other than the

17 Custodian guilty. You then ordered the Town to

18 answer "yes" or "no," do they have the document.

19 They have refused to answer you.

20 So the documents I requested, which
21 was in 28 areas on December 2006, are still in
22 limbo, 2006.

23 I have a letter from -- dated
24 February 2nd, 2007 from Director and Chief
25 Administrator Law Laura Sanders that says to

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1 me -- this is the second time -- that I am
2 allowed interlocutory review of the case
3 GRC 09424-06A. That's where the GRC found the
4 Town guilty twice on May 11th, 2006 and again on
5 July 2006; of course, they shutdown in June
6 because of my complaints.

7 The SO1 --

8 MS. STARGHILL: Mr. Caggiano, that
9 complaint that was at the Office of
10 Administrative Law is the complaint that you
11 submitted in writing your desire to have the
12 complaint withdrawn.

13 MR. CAGGIANO: Let me go with

14 background for two seconds.

15 What occurred was as follows -- I

16 did not ask for it to be withdrawn, ever.

17 MS. TABAKIN: All right. Let me

18 just point out that you've already been speaking

19 for over five minutes --

20 MR. CAGGIANO: Well, I --

21 MS. TABAKIN: -- I'm going to give

22 you a few extra minutes.

23 MR. CAGGIANO: Well, I believe it's

24 critically important.

25 Let me just give you these six

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1 exhibits.

2 Okay. The first exhibit -- I'll

3 just list what they are.

4 The first exhibit is that the --

5 it's the -- if one goes into ask.com and types

6 "New Jersey Criminal Code," the first thing that

7 comes up on the web page is the corrupt State of

8 New Jersey and Borough of Stanhope. So that's

9 how you can find out how we are.

10 The second exhibit is a photograph I

11 took of a person that's Mr. John Silo standing

12 next to Mr. Franklin Dewalt on 6 Oak Drive. The

13 deck is built on the wrong side of the house.

14 He's on fill. And this was done illegally as

15 confirmed by the finding on my successful

16 third-party appeal.

17 The next photograph is of two

18 State -- two corrupt State Sussex County Soil

19 Conservation District Field Inspectors Mr. Krause

20 and Mr. Goyle (phonetic), and they're standing on

21 Lot 10 looking at the two walls that don't exist

22 on the State's two certified half plans. Both

23 houses are built on fill.

24 Just to give you the current status

25 on my five-year investigation, first I'll tell

1 you --

2 MS. TABAKIN: Mr. Caggiano --

3 MR. CAGGIANO: Let me go through my
4 charts with you --

5 MS. TABAKIN: -- well, you are
6 giving testimony and that's not fair to other
7 parties.

8 MR. CAGGIANO: I just wanted to --
9 okay, I'm just going to give you a chart.

10 MS. TABAKIN: And we do not allow --
11 per the proposed rules, we cannot allow
12 testimony --

13 MS. STARGHILL: -- unless
14 specifically requested by the GRC and that is in
15 our proposed rules.

16 MR. CAGGIANO: Are you allowed to
17 request testimony?

18 MS. STARGHILL: Yes, we are.

19 MS. TABAKIN: Not during public
20 comment session --

21 MR. CAGGIANO: Can you please make a
22 motion to request testimony?

23 MS. TABAKIN: Not during public

24 comments.

25 MR. CAGGIANO: Okay, what happens?

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1 I have requested to be on your agenda many times

2 in writing, on an e-mail --

3 MS. STARGHILL: The GRC has to

4 specifically request testimony from the parties,

5 not --

6 MR. CAGGIANO: I have requested to

7 appear before this Board many times so I'd have

8 additional time other than five minutes. I've

9 done it in writing, I've done it in e-mail, I've

10 done it in faxes. In six months, Catherine

11 Starghill and your case manager have not talked

12 to me once.

13 MS. TABAKIN: Well, this is at the

14 discretion of the GRC.

15 MR. CAGGIANO: Well, when you send a

16 complaint out, it says, Here's your case manager,

17 you're allowed to talk to her. She refuses to

18 talk to me. Catherine Starghill refuses to talk
19 to me in six months. You found our Town guilty,
20 Highsport (phonetic), you found -- I don't even
21 know what happened to us last time because when I
22 contacted the Smart Growth people is they sent
23 the police after me to escort me out the
24 building. If I didn't leave the building they
25 were going to arrest me. So that's why I was

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1 sitting outside this hallway -- -

2 MS. STARGHILL: Mr. Caggiano, my
3 feelings are hurt that you don't recall our
4 conversation of last week.

5 MR. CAGGIANO: I talked to you last
6 week, that's correct.

7 MS. STARGHILL: Okay.

8 MS. TABAKIN: Okay. We've more than
9 passed five minutes, actually.

10 MR. CAGGIANO: Okay, well, I'm just
11 going to give you these three other additional --

12 MS. TABAKIN: I have to ask you to

13 conclude your testi -- your comments.

14 MR. CAGGIANO: Yes. The last
15 comment is the excellent Stanhope Municipal Park,
16 who've been cooperating with the federal
17 authorities, and I have agreed to mediation.
18 Your mediation statement doesn't make any sense.
19 Your mediation statement -- of course, I haven't
20 got time to discuss it, but whoever -- whatever
21 lawyer signed that mediation comment has to
22 reread it. If there's time for me to discuss it
23 with her, feel free to call.

24 MS. TABAKIN: Well, there isn't
25 right now, so thank you very much.

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1 MR. CAGGIANO: Okay. I'm just going
2 to give you three more documents, though. These
3 are the status of who I believe are criminally
4 guilty and who I am currently talking to in the
5 Department of Justice who are investigating
6 Governor Corzine. Thank you.

7 MS. TABAKIN: Thank you.

8 Is there anybody else that wishes to

9 give public comment?

10 (No response from the Public.)

11 MR. CAGGIANO: Please accept -- who

12 should I give this to?

13 MS. TABAKIN: Okay. Can I have

14 motion to close the meeting, please?

15 MR. FLEISHER: So moved.

16 MS. KOVACH: Second.

17 MS. TABAKIN: Roll call.

18 MS. HAIRSTON: Robin Berg Tabakin?

19 MS. TABAKIN: Yes.

20 MS. HAIRSTON: Janice Kovach?

21 MS. KOVACH: Yes.

22 MS. HAIRSTON: Kathryn Forsyth?

23 MS. FORSYTH: Yes.

24 MS. HAIRSTON: Dave Fleisher?

25 MR. FLEISHER: Yes.

1 MS. HAIRSTON: And I apologize, I

2 missed the motions.

3 MS. STARGHILL: Dave Fleisher made

4 the motion and Janice Kovach second.

5 MS. HAIRSTON: Thank you.

6 MS. TABAKIN: Thank you, meeting is

7 adjourned.

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11 (HEARING CONCLUDES AT 11:21 A.M.)

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1 CERTIFICATE

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3 I, LINDA P. CALAMARI, a Notary Public of the

4 State of New Jersey, do hereby certify the

5 foregoing to be a true and accurate transcript of

6 my original stenographic notes taken at the time

7 and place hereinbefore set forth.

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LINDA P. CALAMARI

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15 Dated: AUGUST 10, 2007.

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