

1 STATE OF NEW JERSEY
2 COMMUNITY AFFAIRS
3 GOVERNMENT RECORDS COUNCIL

4

5

6 PUBLIC SESSION

7

8 TRANSCRIPT OF PROCEEDINGS

9

10

11 AT: DEPARTMENT OF COMMUNITY AFFAIRS

12 101 South Broad Street - Room 129

13 Trenton, New Jersey 08625-0819

14 DATE: WEDNESDAY, OCTOBER 31, 2007

15 TIME: 9:34 A.M. TO 11:23 A.M.

16

17

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1 COUNCIL MEMBERS:

2

3 VINCENT P. MALTESE, Chairman

4 DAVID FLEISHER, Secretary

5 ANTHONY D'ELIA

6 JANICE L. KOVACH

7 CHARLES RICHMAN (1st case only)

8 ROBIN BERG TABAKIN

9

10 COUNCIL PROFESSIONALS:

11

12 CATHERINE STARGHILL, ESQ., Executive Director

13 KARYN GORDON, ESQ.

14 DEBRA ALLEN, ESQ.

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

22

23

24

25

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12 None. --

13

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15 None. --

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8

1 CHAIRMAN MALTESE: Good morning,

2 ladies and gentlemen, to our October 2007.

3 Won't you please join me in the

4 Pledge of Allegiance.

5 (The Pledge of Allegiance.)

6 CHAIRMAN MALTESE: This meeting was

7 called pursuant to the provisions of the Open

8 Public Meeting act. Notices of this meeting were

9 faxed to the Newark Star Ledger, Trenton Time,

10 the Courier-Post in Cherry Hill, the Secretary of

11 State and e-mailed to the NJ Foundation for Open

12 Government on October 29, 2007.

13 Proper notice having been given, the

14 Secretary is directed to include this statement

15 in the minutes of this meeting.

16 In the event of a fire alarm

17 activation, please exit the building following

18 the exit signs located within the conference

19 rooms and throughout the building. The exit

20 signs will direct you to two fire evacuation

21 stairways located in the building. Upon leaving,

22 please follow the fire wardens, which can be

23 located -- or who can be located by yellow

24 helmets. Please follow the flow of traffic away

25 from the building.

9

1 Okay. Now we'll turn to our agenda.

2 We will deal with a few cases and then we'll go

3 into closed session and then return for the

4 balance of the cases.

5 MS. HAIRSTON: Mr. Chairman, we'll

6 do roll call?

7 CHAIRMAN MALTESE: Yes, let's do

8 roll call, that's very good. Thank you.

9 MS. HAIRSTON: Vince Maltese?

10 CHAIRMAN MALTESE: Yes, present.

11 MS. HAIRSTON: Robin Berg Tabakin?

12 MS. BERG TABAKIN: Yes.

13 MS. HAIRSTON: Janice Kovach?

14 MS. KOVACH: Yes.

15 MS. HAIRSTON: Anthony D'Elia?

16 MR. D'ELIA: Here.

17 MS. HAIRSTON: Mr. Fleisher?

18 MR. FLEISHER: Here.

19 MS. HAIRSTON: And Chuck Richman?

20 MR. RICHMAN: For the sole purpose

21 of Burdick v. Franklin Township.

22 CHAIRMAN MALTESE: Okay, great.

23 Well, why don't we turn to Burdick v. Franklin

24 Township and a couple of us will need to recuse

25 ourselves.

10

1 MS STARGHILL: And Mr. D'Elia, I

2 think Kathryn thought that you should also recuse

3 yourself. If you can step out and go with the

4 Chairman.

5 MR. D'ELIA: Oh, okay.

6 MS. LOWNIE: The executive Director

7 respectfully recommends the Council find that:

8 1. Because the Complainant's

9 request for attendance records specifically

10 identified a government record pursuant to Mag

11 Entertainment, LLC v. Division of Alcoholic

12 Beverage Control, 375 N.J. Super 534, 546 (March

13 2005), and because the Custodian could have

14 requested clarification from the Complainant
15 regarding his OPRA request pursuant to James Cody
16 v. Middletown Township Public Schools, GRC
17 Complaint No. 2005-98 (December 2005), the
18 Custodian has not borne her burden of proving a
19 lawful denial of access pursuant to N.J.S.A.
20 47:1A-6.

21 2. Pursuant to N.J.S.A. 47:1A-6,
22 the Custodian has not carried her burden of
23 proving a lawful denial of access to the
24 requested attendance records because said records
25 are considered payroll records which are subject

11

1 to public access pursuant to N.J.S.A. 47:1A-10
2 and Gerald Weimer v. Township of Middletown, GRC
3 Complaint No. 2004-22 (August 2005).

4 3. The Custodian should release the
5 requested attendance records labeled "Franklin
6 Township Staff Attendance Record" to the
7 Complaint with appropriate redaction. The

8 Custodian must provide a redaction index
9 detailing the nature of the information redacted
10 and the lawful basis of the redactions.

11 4. The Custodian shall comply with
12 the Item No. 3 above within five business days
13 from receipt of the Council's Interim Order and
14 simultaneously provide certified confirmation of
15 compliance, in accordance with N.J. Court Rule
16 1:4-4, as well as a legal explanation and
17 statutory citation for each redaction, if any, as
18 required under N.J.S.A. 47:1A-6, to the Executive
19 Director.

20 5. Because the Custodian failed to
21 include the "Franklin Township Staff Attendance
22 Record" as a record responsive to the
23 Complainant's request in the Custodian's
24 Statement of Information and because the
25 Custodian has not carried her burden of proving a

1 lawful denial of access to the requested
2 attendance records, it is possible that the

3 Custodian's actions were intentional and
4 deliberate, with knowledge of their wrongfulness,
5 and not merely negligent, heedless or
6 unintentional. As such, this complaint should be
7 referred to the Office of Administrative Law for
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 MS. BERG TABAKIN: Is there any
13 discussion?

14 Can I have a --

15 MR. FLEISHER: So moved.

16 MS. BERG TABAKIN: Thank you,
17 second?

18 MR. RICHMAN: I will second.

19 MS. BERG TABAKIN: Second, thank
20 you.

21 Roll call?

22 MS. HAIRSTON: Robin Berg Tabakin?

23 MS. BERG TABAKIN: Yes.

24 MS. HAIRSTON: Dave Fleisher?

25 MR. FLEISHER: Yes.

13

1 MS. HAIRSTON: Charles Richman?

2 MR. RICHMAN: Yes.

3 CHAIRMAN MALTESE: Okay. Next

4 matter is Caggiano v. Borough of Stanhope

5 (2007-161).

6 MS. GORDON: In this matter the

7 Executive Director respectfully recommends the

8 Council find that:

9 1. Because the Custodian responded

10 in writing to the Complainant's OPRA request from

11 July 3, 2007, the same day it was received, and

12 because the Custodian properly informed the

13 Complainant in her July 3, 2007 response that she

14 required additional time to respond to his

15 voluminous records request, the Custodian has not

16 violated N.J.S.A. 47:1A-5.g. or N.J.S.A.

17 47:1A-5.i. See Parave-Fogg v. Lower Alloways

18 Creek Township and Paff v. Bergen County

19 Prosecutor's Office.

20 2. Because the Custodian provided
21 access to ten of the thirteen records requested,
22 the Custodian has therefore not unlawfully denied
23 access to the above records under OPRA. Pursuant
24 to N.J.S.A. 47:1A-7.b, the Government Records
25 Council does not have jurisdiction over the

14

1 content of these documents. See *Chaka Kwanzaa v.*

2 *New Jersey Department of Corrections.*

3 3. Because three of the requested
4 records do not exist, the Custodian has not
5 unlawfully denied access under -- that should
6 read, denied access to the requested records
7 under OPRA. See *John Pusterhofer v. New Jersey*
8 *Department of Education.*

9 4. Although OPRA provides that
10 "immediate access shall ordinarily be granted" to
11 bills and contracts, due to the Complainant's
12 voluminous OPRA request and the Custodian's

13 request for an extension of time within which to
14 respond, the Custodian has not violated OPRA in
15 providing access to the requested records listed
16 above. N.J.S.A. 47:1A-5.e.

17 5. Because the evidence of record
18 indicates that the Complaiant in this complaint
19 commenced the complaint "in bad faith, solely for
20 the purposes of harassment[;]" specifically:

21 * the Custodian provided access to
22 all but three of the requested records, which
23 three records were found not to exist;

24 * the Complainant rejected seven of
25 the records proffered by the Custodian;

15

1 * the Custodian provided access to
2 all but one record on July 16, 2007, the day that
3 the Complainant filed the Denial of Access
4 Complaint;

5 * in spite of the disclosure of the
6 requested records (whether or not the Complainant
7 agreed with the content of those records), the

8 Complainant filed the instant Denial of Access
9 Complaint with the GRC;
10 * the Complainant failed to inform
11 the GRC that the Custodian had made available to
12 him the requested records prior to the filing of
13 the Complainant's Denial of Access Complaint; and
14 * the number and frequency of OPRA
15 requests filed with the Borough of Stanhope by
16 the Complainant in 2006 and 2007 (the Complainant
17 filed 240 requests for government records by the
18 date of the SOI in 2007, and 486 OPRA requests in
19 2006). These elements provide further support
20 for the conclusion that the Complainant's
21 continuous, repetitive filings of OPRA requests
22 is "in bad faith, solely for the purpose of
23 harassment," the Complainant's Denial of Access
24 Complaints herein should therefore be dismissed
25 as frivolous pursuant to N.J.S.A. 47:1A-7.e. See

1 Caggiano v. Borough of Stanhope, previously

2 decided by this Council (September 2007).

3 CHAIRMAN MALTESE: All right. Any

4 questions members of the Council?

5 If not, I'll entertain a motion,

6 please?

7 MS. BERG TABAKIN: So moved.

8 CHAIRMAN MALTESE: Second, please?

9 MS. KOVACH: Second.

10 CHAIRMAN MALTESE: Thank you.

11 Roll call?

12 MS. HAIRSTON: Vince Maltese?

13 CHAIRMAN MALTESE: Yes.

14 MS. HAIRSTON: Robin Berg Tabakin?

15 MS. BERG TABAKIN: Yes.

16 MS. HAIRSTON: Janice Kovach?

17 MS. KOVACH: Yes.

18 MS. HAIRSTON: Anthony D'Elia?

19 MR. D'ELIA: I'll abstain. I

20 probably would have to abstain, wouldn't I?

21 CHAIRMAN MALTESE: Well, did you

22 read the matter?

23 MR. D'ELIA: No.

24 CHAIRMAN MALTESE: You did not read
25 the matter.

17

1 MR. D'ELIA: No.

2 CHAIRMAN MALTESE: Okay, then
3 abstention is in order.

4 MS. HAIRSTON: Dave Fleisher?

5 MR. FLEISHER: Yes.

6 CHAIRMAN MALTESE: Caggiano v.
7 Borough of Stanhope (2007-182).

8 MS. GORDON: In this matter the
9 Executive Director respectfully recommends that:

10 1. Because the Custodian responded
11 in writing to the Complainant's OPRA request on
12 May 29, 2007, four business days after it was
13 received, and because the evidence of record
14 indicates that the Custodian properly informed
15 the Complainant in her May 29, 2007 response that
16 she required additional time to respond to his
17 records request, the Custodian has not violated

18 N.J.S.A. 47:1A-5.g. or N.J.S.A. 47:1A-5.i. See
19 New Jersey Builder's Association v. New Jersey
20 Council on Affordable Housing, Parave-Fogg v.
21 Lower Alloways Creek Township and Paff v. Bergen
22 County Prosecutor's Office.

23 2. Because the evidence of record
24 indicates that the Custodian provided access to
25 the escrow account for Block 10903, Lot 13, for

18

1 ENF development, each claim by John Cilo in
2 account and copy of checks paid by Stanhope to
3 John Cilo Associates and because the Borough of
4 Stanhope does not separate escrow accounts by
5 block and lot number, the Custodian has not
6 violated OPRA with regard to this record by not
7 providing records that do not exist. The
8 Custodian is under no obligation to create
9 records which do not otherwise exist. See New
10 Jersey Builder's Association v. New Jersey
11 Council on Affordable Housing.

12 3. Because the evidence of record

13 indicates that the Custodian attempted to provide
14 the Complainant with copies of the requested
15 records on June 4th, eight days after the
16 Complainant's May 23rd, 2007 OPRA request, but
17 the Complainant refused to take possession of
18 same, and because the evidence of record also
19 shows that the Custodian subsequently attempted
20 to provide the Complainant with copies of the
21 requested records on June 19, 2007 and July 16,
22 2007, but that the Complainant rejected the
23 proffered records and denied that they were
24 responsive to his request, and the Custodian
25 proffered the records again on July 30th, August

19

1 30th and September 12th, 2007, the Custodian has
2 not lawfully denied access to the requested
3 records under OPRA.

4 4. The Custodian has not unlawfully
5 denied access to the requested records under
6 OPRA, because the Custodian proffered the records

7 responsive to the request on several occasions,
8 but the Complainant refused to accept the
9 records. When the Complainant refused to accept
10 the records, the Custodian properly requested
11 clarification of the request, which the
12 Complainant refused to provide. A custodian may
13 request clarification for any requests deemed
14 broad or unclear. See D'Aquanni v. Borough of
15 Roselle.

16 5. Because the evidence of record
17 indicates that the Complainant in this complaint
18 commenced the complaints "in bad faith, solely
19 for the purpose of harassment[;]" specifically,
20 that the Custodian provided access to the
21 requested records on several occasions, but the
22 Complainant refused to take possession of the
23 records or even examine them, that the
24 Complainant also rejected numerous records as not
25 being responsive to his records request, but

1 refused to provide clarification as to the

2 records requested when the Custodian requested
3 clarification thereof, and because of the
4 extremely high number and frequency of OPRA
5 requests filed by the Complainant with the
6 Borough of Stanhope in 2006 and 2007 (the
7 Complainant filed 486 OPRA requests to the
8 Borough of Stanhope in 2006 and 240 OPRA requests
9 by the date of the SOI in 2007) provide further
10 support for the conclusion that the Complainant's
11 continuous, repetitive filings of OPRA requests
12 is "in bad faith, solely for the purpose of
13 harassment," the Complainant's Denial of access
14 Complaints herein should therefore be dismissed
15 as frivolous pursuant to N.J.S.A. 47:1A-7.e. See
16 Caggiano v. Borough of Stanhope, decided by this
17 Council September 2007.

18 CHAIRMAN MALTESE: Okay, any
19 comments from members of Council?

20 Motion?

21 MS. KOVACH: So moved.

22 CHAIRMAN MALTESE: Thank you.

23 Second?

24 MS. BERG TABAKIN: Second.

25 CHAIRMAN MALTESE: Thank you.

21

1 Roll call?

2 MS. HAIRSTON: Vince Maltese?

3 CHAIRMAN MALTESE: Yes.

4 MS. HAIRSTON: Robin Berg Tabakin?

5 MS. BERG TABAKIN: Yes.

6 MS. HAIRSTON: Janice Kovach?

7 MS. KOVACH: Yes.

8 MS. HAIRSTON: Anthony D'Elia?

9 MR. D'ELIA: Yes.

10 MS. HAIRSTON: Dave Fleisher?

11 MR. FLEISHER: Yes.

12 CHAIRMAN MALTESE: At this point in

13 our agenda, 9:45, we will entertain a motion to

14 move into closed session for the purpose of

15 discussion three cases: Brewer v. NJ Department

16 of Law & Public Safety, Boyer v. NJ Department of

17 Community Affairs, Bar v. The City of Paterson.

18 WHEREAS, N.J.S.A 10:4-12 permits a
19 public body to go into closed session during a
20 public meeting; and

21 WHEREAS, the Government Records
22 Council has deemed it necessary to go into closed
23 session to discuss certain matters I just
24 mentioned; and

25 WHEREAS, the regular meeting of the

22

1 Council will reconvene at the conclusion of the
2 closed meeting;

3 NOW, THEREFORE, BE IT RESOLVED, that
4 the Council will convene in closed session to
5 received legal advice and discuss anticipated
6 litigation in which the Council might become a
7 party pursuant to N.J.S.A. 10:4-12.b(7) in the
8 matters aforementioned.

9 BE IT FURTHER RESOLVED, that the
10 Council will disclose to the public the results
11 of the matters discussed or determined in closed

12 session as soon as possible after final decisions

13 are issued in the above cases.

14 Would someone make that motion?

15 MS. BERG TABAKIN: So moved.

16 CHAIRMAN MALTESE: Thank you.

17 MR. FLEISHER: 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. BERG TABAKIN: Yes.

24 MS. HAIRSTON: Janice Kovach?

25 MS. KOVACH: Yes.

23

1 MS. HAIRSTON: Anthony D'Elia?

2 MR. D'ELIA: Yes.

3 MS. HAIRSTON: Dave Fleisher?

4 MR. FLEISHER: Yes.

5 CHAIRMAN MALTESE: Okay, we're now

6 in closed session, ladies and gentlemen. Thank

7 you.

8 (Whereupon, the Council went into

9 closed session. The time is 9:49 a.m.)

10 (Back in public session. The time

11 is 10:16 a.m.)

12 CHAIRMAN MALTESE: All right,

13 welcome back to our meeting. We're now in open

14 session.

15 Roll call, please.

16 MS. HAIRSTON: Vince Maltese?

17 CHAIRMAN MALTESE: Yes.

18 MS. HAIRSTON: Robin Berg Tabakin?

19 MS. BERG TABAKIN: Yes.

20 MS. HAIRSTON: Janice Kovach?

21 MS. KOVACH: Yes.

22 MS. HAIRSTON: Anthony D'Elia?

23 MR. D'ELIA: Yes.

24 MS. HAIRSTON: Dave Fleisher?

25 MR. FLEISHER: Yes.

1 CHAIRMAN MALTESE: It's 10:17 a.m.

2 You have before you the closed session minutes

3 from the September 28th meeting. I'll entertain

4 a motion.

5 MS. BERG TABAKIN: So moved.

6 CHAIRMAN MALTESE: Second?

7 MS. KOVACH: Second.

8 CHAIRMAN MALTESE: Thank you.

9 Roll call.

10 MS. HAIRSTON: Vince Maltese?

11 CHAIRMAN MALTESE: Yes.

12 MS. HAIRSTON: Robin Berg Tabakin?

13 MS. BERG TABAKIN: Yes.

14 MS. HAIRSTON: Janice Kovach?

15 MS. KOVACH: Yes.

16 MS. HAIRSTON: Anthony D'Elia?

17 MR. D'ELIA: Maybe.

18 MS. HAIRSTON: Dave Fleisher?

19 MR. FLEISHER: Yes.

20 CHAIRMAN MALTESE: Okay. And of

21 course you have the minutes that were transcribed

22 and so we deem those to be official minutes and

23 do not require further action on those. You also
24 have a list of ten items for administrative
25 adjudication. I'll entertain a motion to approve

25

1 those --

2 MS. STARGHILL: I would like to
3 point out that two were added just yesterday.

4 CHAIRMAN MALTESE: Okay.

5 MS. STARGHILL: Actually, the first
6 two: Cynthia McBride v. The Township of
7 Springfield (2007-100) and Janet Pizar v.
8 Millburn Township (2007-145), both were settled
9 in mediation. It is our policy to accept and
10 include all administrative disposition cases up
11 to -- if I receive something from Fran on the
12 morning of the meeting, we are going to have it
13 on the agenda because it takes 30 seconds to
14 prepare those and add them as an addition.

15 CHAIRMAN MALTESE: That's fine. So
16 there are ten items.

17 MS. STARGHILL: Ten items that

18 were --

19 CHAIRMAN MALTESE: Just a motion,

20 please?

21 MR. FLEISHER: So moved.

22 CHAIRMAN MALTESE: Second, please?

23 MS. BERG TABAKIN: Second.

24 CHAIRMAN MALTESE: Roll call,

25 please.

26

1 MS. HAIRSTON: Vince Maltese?

2 CHAIRMAN MALTESE: Yes.

3 MS. HAIRSTON: Robin Berg Tabakin?

4 MS. BERG TABAKIN: Yes.

5 MS. HAIRSTON: Janice Kovach?

6 MS. KOVACH: Yes.

7 MS. HAIRSTON: Anthony D'Elia?

8 MR. D'ELIA: Yes.

9 MS. HAIRSTON: Dave Fleisher?

10 MR. FLEISHER: Yes.

11 CHAIRMAN MALTESE: Thank you very

12 much.

13 Now we'll go into the adjudications.

14 The first one is Dittrich v. The City of Hoboken.

15 I apologize, but I will need to

16 recuse myself on No. 1 and No. 2. And I will ask

17 Ms. Tabakin to take of those two, please.

18 MS STARGHILL: Dave will actually

19 take care of No. 2.

20 CHAIRMAN MALTESE: Okay.

21 MS. BERG TABAKIN: Just the second

22 one he was recusing himself from?

23 MS STARGHILL: D'Amore, which you

24 are also recusing yourself from.

25 MS. BERG TABAKIN: Yes.

27

1 MR. CARUSO: The Executive Director

2 respectfully recommends the Council that:

3 1. The Custodian's failure to

4 respond in writing to the Complainant's OPRA

5 request granting access, denying access, seeking

6 clarification or requesting an extension of time
7 within the statutorily mandated seven business
8 days, as required by N.J.S.A. 47:1A-5.g. and
9 N.J.S.A. 47:1A-5.i., results in a "deemed" denial
10 of the Complainant's OPRA request. Tucker Kelley
11 v. Township of Rockaway, GRC Complaint No.
12 2007-11 (August 2007).

13 2. Although the Custodian made the
14 requested records responsive to the Complainant's
15 January 18, 2007 OPRA request available for
16 inspection to the Complainant, the Custodian
17 denied access to copies of the requested records
18 because the Complainant refused to sign a receipt
19 for records provided in response to previous OPRA
20 requests. This appears to be a policy of the
21 City of Hoboken. However, OPRA does not permit a
22 custodian to require a signed receipt in order to
23 provide access to records which are not otherwise
24 exempt from disclosure. Moreover, agency policy
25 does not supersede access to government records

1 required in OPRA.

2 3. The Custodian shall disclose all
3 records responsive to the Complainant's January
4 18, 2007 OPRA request.

5 4. The Custodian should comply with
6 No. 3 above within five business days from
7 receipt of the Council's Order and simultaneously
8 provide certified confirmation of compliance to
9 the Executive Director.

10 5. The Council defers analysis and
11 determination of whether the Custodian knowingly
12 and willfully violated OPRA and unreasonably
13 denied access under the circumstances pending the
14 Custodian's compliance with the Council's Interim
15 Order in this matter.

16 MS. BERG TABAKIN: Any questions
17 from the Council for discussion?

18 A motion, please?

19 MS. KOVACH: So moved.

20 MR. FLEISHER: So moved.

21 MS. BERG TABAKIN: Second?

22 MS. KOVACH: Second.
23 MS. BERG TABAKIN: Roll call.
24 MS. HAIRSTON: Robin Berg Tabakin?
25 MS. BERG TABAKIN: Yes.

29

1 MS. HAIRSTON: Janice Kovach?
2 MS. KOVACH: Yes.
3 MS. HAIRSTON: Anthony D'Elia?
4 MR. D'ELIA: Yes.
5 MS. HAIRSTON: Dave Fleisher?
6 MR. FLEISHER: Yes.
7 Okay, findings for D'Amore, please.
8 MR. CARUSO: The Executive Director
9 respectfully recommends the Council find that:
10 1. Because the Custodian failed to
11 set forth a lawful reason for denial of access to
12 the Complainant's October 2, 2006 and October 23,
13 2006 OPRA requests, the Custodian unlawfully
14 denied access to the requested records in the
15 October 2, 2006 and October 23, 2006 requests and
16 failed to bear her burden of proof that the

17 denial of access was authorized by law pursuant
18 to N.J.S.A. 47:1A-6.

19 2. The Custodian has borne her
20 burden of proving that the denial of access to
21 Complainant's February 26, 2007 OPRA request was
22 lawful since no records were responsive to the
23 Complainant's February 26, 2007 OPRA request and
24 the Custodian certifies that she has never
25 received or maintained the requested records.

30

1 3. Because the Custodian responded
2 in a timely manner to all three requests, was
3 relying on advice from the Borough Zoning
4 Officer, and provided a lawful response to the
5 Complainant's February 26, 2007 OPRA request, it
6 is concluded that the Custodian's actions do not
7 rise to the level of a knowing and willful
8 violation of OPRA and unreasonable denial of
9 access under the totality of the circumstances.
10 However, the Custodian's unlawful denial of

11 access appears negligent and heedless since she
12 is vested with the legal responsibility of
13 granting and denying access in accordance with
14 the law.

15 MR. FLEISHER: Thank you.

16 Is there any further comments?

17 If not, I'll entertain a motion,

18 please?

19 MS. KOVACH: So moved.

20 MR. FLEISHER: Second?

21 MR. D'ELIA: Second.

22 MR. FLEISHER: Roll call, please.

23 MS. HAIRSTON: Janice Kovach?

24 MS. KOVACH: Yes.

25 MS. HAIRSTON: Anthony D'Elia?

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1 MR. D'ELIA: Yes.

2 MS. HAIRSTON: Dave Fleisher?

3 MR. FLEISHER: Yes.

4 MS. KOVACH: Okay, now I get to

5 leave.

6 MS STARGHILL: Okay, thank you.

7 CHAIRMAN MALTESE: All right. We're

8 now on the Seiler case.

9 MS. GORDON: No.

10 CHAIRMAN MALTESE: No?

11 MS STARGHILL: Bellan-Boyer.

12 CHAIRMAN MALTESE: Boyer, I'm sorry.

13 Boyer v. The Department of Community Affairs, and

14 Janice is recusing herself, let the record so

15 reflect.

16 MS. HAIRSTON: So noted.

17 MS. LOWNIE: The Executive Director

18 respectfully recommends the Council find that:

19 1. Based on the evidence of record,

20 it is concluded that the original Custodian did

21 not unlawfully deny access to the Complainant's

22 OPRA request dated April 26, 2007 because there

23 is no proof that the Custodian actually received

24 said request.

25 2. Because the Custodian certifies

1 that the only record responsive to the
2 Complainant's request was provided to the
3 Complainant and because said records were
4 provided within the statutorily mandated time
5 frame, the Custodian has not unlawfully denied
6 access to the requested records.

7 3. Because OPRA only permits
8 requests for records, no requests for information
9 pursuant to *Mag Entertainment, LLC v. Division of*
10 *Alcoholic Beverage Control*, 375 N.J. Super. 53,
11 (App. Div. 2005), the Custodian was not obligated
12 to respond to the Complainant's questions for
13 information. However, the Custodian is obligated
14 to respond to said questions in the Custodian's
15 Statement of Information as directed by the court
16 in *John Paff v. New Jersey Department of Labor*,
17 392 N.J. Super. 334 (App. Div. 2007).

18 4. Because the Custodian certifies
19 that the records responsive consists of one
20 record, which the Custodian states the original
21 Custodian provided to the Complainant on May 14,

22 2007 and because there is insufficient evidence
23 suggesting that additional records responsive to
24 the request are maintained on file in the
25 Commissioner's Office and were knowingly and

33

1 willfully withheld from the Complainant, it is
2 concluded that the Custodian's actions do not
3 rise to the level of a knowing and willful
4 violation of OPRA and unreasonable denial of
5 access under the totality of the circumstances.

6 CHAIRMAN MALTESE: Okay. Members of
7 the Council any comments, questions, amendments?

8 Entertain a motion?

9 MR. D'ELIA: So moved.

10 CHAIRMAN MALTESE: Mr. D'Elia, okay,
11 thank you.

12 Second, please?

13 MS. BERG TABAKIN: Second.

14 CHAIRMAN MALTESE: Okay, thank you.

15 Roll call, please.

16 MS. HAIRSTON: Vince Maltese?
17 CHAIRMAN MALTESE: Yes.
18 MS. HAIRSTON: Robin Berg Tabakin?
19 MS. BERG TABAKIN: Yes.
20 MS. HAIRSTON: Anthony D'Elia?
21 MR. D'ELIA: Yes.
22 MS. HAIRSTON: Dave Fleisher?
23 MR. FLEISHER: Yes.
24 CHAIRMAN MALTESE: Thank you.
25 Would you ask Janice to step back

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1 in, please?

2 Thank you.

3 Seiler v. Old Bridge Economic

4 Development Corporation. Organization.

5 MS. MAYERS: The Executive Director

6 respectfully recommends the Council find that the

7 Complaint be dismissed because the Complainant

8 withdrew the matter from the Office of

9 Administrative Law.

10 CHAIRMAN MALTESE: Okay.

11 Motion?

12 MR. FLEISHER: So moved.

13 CHAIRMAN MALTESE: Second?

14 MS. KOVACH: Second.

15 CHAIRMAN MALTESE: Thank you.

16 Roll call.

17 MS. HAIRSTON: Vince Maltese?

18 CHAIRMAN MALTESE: Yes.

19 MS. HAIRSTON: Robin Berg Tabakin?

20 MS. BERG TABAKIN: Yes.

21 MS. HAIRSTON: Janice Kovach?

22 MS. KOVACH: Yes.

23 MS. HAIRSTON: Anthony D'Elia?

24 MR. D'ELIA: Yes.

25 MS. HAIRSTON: Dave Fleisher?

35

1 MR. FLEISHER: Yes.

2 CHAIRMAN MALTESE: Rivera v.

3 Guttenberg Police Department.

4 MS. GORDON: In Executive Director

5 respectfully recommends the Council find that:

6 1. Because the Custodian failed to

7 review the recordings requested by the

8 Complainant to identify any necessary redactions,

9 the Custodian has violated N.J.S.A. 47:1A-5.g.

10 2. The Custodian shall review the

11 recordings requested by the Complainant, identify

12 any necessary redactions and provide a redaction

13 index to the Council within five days from

14 receipt of Council's Interim Order and

15 simultaneously provide certified confirmation of

16 compliance, in accordance with N.J. Court Rule

17 1:4-4, to the Executive Director.

18 3. Because the Custodian has failed

19 to establish that the special service charges are

20 reasonable and reflect the actual cost to the

21 Township of the materials and costs necessary to

22 fulfill the Complainant's OPRA request, the

23 special service charges of \$13,825.00 and

24 approximately \$797.00 proposed by the Custodian

25 are unreasonable and unwarranted under N.J.S.A.

1 47:1A-5.d.

2 4. The Custodian shall prepare a
3 detailed estimate of actual costs to be incurred
4 by the Township for the materials and effort
5 (including a computation of the necessary number
6 of hours required for an employee to fulfill the
7 Complainant's request and that employee's hourly
8 rate), to fulfill the Complainant's OPRA request,
9 including review and any necessary redactions of
10 the recordings requested, and provide this
11 estimate to the Complainant and to the Council
12 within five days from receipt of the Council's
13 Interim Order and simultaneously provide
14 certified confirmation of compliance, in
15 accordance with N.J. Court Rule 1:4-4, to the
16 Executive Director.

17 5. Because the Custodian failed to
18 provide a written response to the Complainant's
19 May 15, 2006 OPRA request within the statutorily
20 mandated seven business days either granting

21 access, denying access, requesting an extension
22 or seeking clarification of the request, the
23 Complainant's OPRA request was "deemed" denied.
24 Therefore, the Custodian violated N.J.S.A.
25 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

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1 6. Based on the evidence of record,
2 it is possible that the actions of the Custodian
3 were intentional and deliberate, with knowledge
4 of their wrongfulness, and not merely negligent,
5 heedless or unintentional. As such, this
6 complaint should be referred to the Office of
7 Administrative Law for determination of whether
8 the Custodian knowingly and willfully violated
9 OPRA and unreasonably denied access under the
10 totality of the circumstances.

11 CHAIRMAN MALTESE: Thank you, Karyn.

12 Comments?

13 It's a pretty lengthy

14 recommendation. We appreciate your efforts.

15 It's well-written.

16 Motion?

17 MS. BERG TABAKIN: So moved.

18 CHAIRMAN MALTESE: Second.

19 MR. FLEISHER: Second.

20 CHAIRMAN MALTESE: Roll call.

21 MS. HAIRSTON: Vince Maltese?

22 CHAIRMAN MALTESE: Yes.

23 MS. HAIRSTON: Robin Berg Tabakin?

24 MS. BERG TABAKIN: Yes.

25 MS. HAIRSTON: Janice Kovach?

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1 MS. KOVACH: Yes.

2 MS. HAIRSTON: Anthony D'Elia?

3 MR. D'ELIA: I have to abstain on

4 this one, I'm sorry. I did not get to this one.

5 CHAIRMAN MALTESE: Okay. Thank you.

6 MS. HAIRSTON: Okay.

7 Dave Fleisher?

8 MR. FLEISHER: Yes.

9 CHAIRMAN MALTESE: Yanda v. New

10 Jersey Department of Law and Public Safety.

11 MR. CARUSO: The Executive Director

12 respectfully recommends the Council find that:

13 1. The Custodian's failure to

14 respond in writing to the Complainant's OPRA

15 request within seven business days of receipt of

16 the OPRA request resulted in a deemed denial of

17 access to the Complainant's May 12, 2006 OPRA

18 request. Therefore, the Custodian has violated

19 N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

20 2. Because the records responsive

21 to the Complainant's May 12, 2006 OPRA request

22 are exempt from disclosure pursuant to Executive

23 Order 48 as state police investigatory records,

24 it is unnecessary to address the question of

25 whether the requested records contain advisory,

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1 consultative and deliberative material which may

2 be exempt from disclosure pursuant to OPRA or

3 whether Executive Order 21 also exempts the

4 requested records from disclosure.

5 3. Even though the Custodian's
6 actions in failing to respond in writing to the
7 Complainant's May 12, 2006 OPRA request within
8 seven business days resulted in a deemed denial
9 of access, the Custodian bore the burden of
10 proving that her denial of access to the
11 requested records was authorized by Executive
12 Order 48. Therefore, it is concluded that the
13 Custodian's actions do not rise to the level of a
14 knowing and willful violation of OPRA and
15 unreasonable denial of access under the totality
16 of the circumstances. However, the Custodian's
17 deemed denial of access appears negligent and
18 heedless since she is vested with the legal
19 responsibility of granting and denying access in
20 accordance with the law.

21 CHAIRMAN MALTESE: So this
22 recommendation stands for the proposition that
23 even though a document may not be accessible, the
24 Custodian still has an obligation to respond to
25 the requestor within the seven-day period. And

1 so that's why we -- the recommendation is that
2 there is a violation of the notification part,
3 but no violation with respect to the testimony.

4 Thank you, Frank.

5 Any comments?

6 Motion?

7 MR. D'ELIA: Moved.

8 CHAIRMAN MALTESE: Second?

9 MS. KOVACH: Second.

10 CHAIRMAN MALTESE: Thank you.

11 Roll call.

12 MS. HAIRSTON: Vince Maltese?

13 CHAIRMAN MALTESE: Yes.

14 MS. HAIRSTON: Robin Berg Tabakin?

15 MS. BERG TABAKIN: Yes.

16 MS. HAIRSTON: Janice Kovach?

17 MS. KOVACH: Yes.

18 MS. HAIRSTON: Anthony D'Elia?

19 MR. D'ELIA: Yes.

20 MS. HAIRSTON: And Dave Fleisher?

21 MR. FLEISHER: Yes.

22 CHAIRMAN MALTESE: Okay. Next one

23 is as Brewer v. Department of Law & Public

24 Safety.

25 MS. GORDON: In this matter the

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1 Executive Director respectfully recommends that

2 the Council find that:

3 1. Based on the Council's decision

4 in Amelia Spaulding v. Hudson County Register,

5 decided by this Council July 2007, the Custodian

6 should have directed the Complainant to the

7 agency's official OPRA request form when he

8 denied the Complainant's letter request on the

9 basis that the request was not submitted on an

10 official form.

11 2. Because the Complainant's

12 request for all records except for one would

13 require the Custodian to research his files to

14 locate records containing the specific

15 information sought, the request for these items
16 is not a valid OPRA request pursuant to Mag
17 Entertainment, LLC v. Division of Alcoholic
18 Beverage Control and Bent v. Stafford Police
19 Department.

20 3. Because the records requested by
21 the Complainant, i.e., a copy of the ledger that
22 the Senior Forensic Chemist recorded on March 11,
23 1987, that proves which investigator at the State
24 Police laboratory logged evidence into custody,
25 and all laboratory test reports regarding

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1 specimen No. 119258LF, are part of an
2 investigative file in the custody of the State
3 Police, these records are not disclosable
4 pursuant to Executive Order No. 48.

5 4. Although the Custodian should
6 have directed the Complainant to the agency's
7 official OPRA request form when he denied the
8 Complainant's letter request on the basis that
9 the request was not submitted on an official

10 form, the Custodian has borne the burden under
11 N.J.S.A. 47:1A-6 of proving that the denial of
12 access to the requested records was authorized by
13 law. It is therefore concluded that the
14 Custodians' actions do not rise to the level of
15 a knowing and willful violation of OPRA and
16 unreasonable denial of access under totality of
17 the circumstances. However, the Custodians'
18 unlawful denial of access appears negligent and
19 heedless since he is vested -- I'm sorry, she is
20 vested with the legal responsibility of granting
21 and denying access in accordance with the law.

22 CHAIRMAN MALTESE: Okay. Any
23 comments?

24 Modifications? Motion?

25 MS. KOVACH: So moved.

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1 CHAIRMAN MALTESE: Second?

2 MS. BERG TABAKIN: Second.

3 CHAIRMAN MALTESE: Thank you.

4 Roll call.

5 MS. HAIRSTON: Vince Maltese?

6 CHAIRMAN MALTESE: Yes.

7 MS. HAIRSTON: Robin Berg Tabakin?

8 MS. BERG TABAKIN: Yes.

9 MS. HAIRSTON: Janice Kovach?

10 MS. KOVACH: Yes.

11 MS. HAIRSTON: Anthony D'Elia?

12 MR. D'ELIA: Yes.

13 MS. HAIRSTON: Dave Fleisher?

14 MR. FLEISHER: Yes.

15 CHAIRMAN MALTESE: Kelly v. Rockaway

16 Township.

17 MS. LOWNIE: The Executive Director

18 respectfully recommends the Council find that:

19 1. Because the Custodian failed to

20 respond in writing to the Complainant's OPRA

21 request granting access, denying access, seeking

22 clarification or requesting an extension of time

23 within the statutorily mandated seven business

24 days, the Custodian violated N.J.S.A. 47:1A-5.g.

25 and N.J.S.A. 47:1A-5.i. resulting in a "deemed"

1 denial of the Complainant's OPRA requests marked

2 "A" and "B."

3 2. Pursuant to Karen Leibel v.

4 Manalapan Englishtown Regional Board of

5 Education, GRC Complaint No. 2004-51 (September

6 2004), the Custodian is entitled to request

7 clarification from the Complainant regarding his

8 OPRA requests marked "C," "D" and "F."

9 3. Because the Custodian notified

10 the Complainant that the requested records were

11 in storage and/or archived within the statutorily

12 mandated seven business days and provided the

13 Complainant access to the requested records by

14 the date anticipated by the Custodian, the

15 Custodian has not unlawfully denied access to the

16 records requested in the Complainant's OPRA

17 requests marked "C," "D" and "F" pursuant to

18 N.J.S.A. 47:1A-5.i.

19 4. Because the Township Engineer

20 informed the Custodian via memorandum dated
21 November 16, 2006 that there were no records
22 responsive to the Complainant's request and
23 because the Custodian informed the Complainant
24 via letter dated November 21, 2006 that the
25 requested records were in storage or archived as

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1 well as because the Custodian did not inform the
2 Complainant that there were no records responsive
3 to his -- it should read "request" not
4 "complaint," until November 27, 2006 (the tenth
5 business day following receipt of the request),
6 the Custodian has not carried her burden of
7 proving a lawful denial of access to the
8 Complainant's OPRA request marked "E" pursuant to
9 N.J.S.A. 47:1A-6.

10 5. Although the Custodian received
11 some of the requested records from the Road
12 Department on November 13, 2006 but did not make
13 said records available to the Complainant until
14 November 21, 2006, the Custodian still granted

15 access to the requested records in writing within
16 the statutorily mandated, seven business days
17 pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A.
18 47:1A-5.i. Thus, the Custodian has not
19 unlawfully denied access to the requested
20 records -- and this should also read "marked g."

21 6. Because the Complainant did not
22 specifically request the following records:
23 Plumbing permit for newer addition;
24 Fire permit for new furnace
25 installed in garage;

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1 Plumbing permit for gas line
2 installed for furnace located in garage;
3 Permit for air conditioning
4 installed in new addition;
5 Permit for air conditioning
6 installed in older portion of the house;
7 Approved water management plan for
8 storm/surface water;

9 Approval for sewer connection
10 regards to made connection for surface water
11 discharge;
12 Any/all correspondence from any
13 department to Councilman Dachisen concerning
14 Block 10507, Lot 7;
15 Permit for siding of entire house;
16 Permit for roofing entire house;
17 Variance from increased impervious
18 coverage;
19 Permit for bathroom in new addition;
20 Additional violation/penalty
21 notices;
22 Receipts for payment of violations
23 in addition to November 17, 2006;
24 Notices of violations from Zoning
25 Department;

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1 and Foundation location survey with
2 setbacks marked/indicated;
3 and because the Custodian certifies

4 that she has provided the Complainant with all
5 records responsive, the Custodian has carried her
6 burden that she has not unlawfully denied access
7 to the records listed above pursuant to N.J.S.A.
8 47:1A-6.

9 7. The GRC has no authority over
10 where government records are stored by any agency
11 pursuant to N.J.S.A. 47:1A-7.b.

12 8. Because of the conflict between
13 the Custodian's statement that the records
14 responsive to the Complainant's request were
15 archived and the fact that the records responsive
16 were dated after the date of the Complainant's
17 OPRA request, as well as the Complainant's
18 contention that the Construction Official could
19 not have provided the Custodian with his
20 memorandum dated November 21, 2006 because the
21 Construction Official was on vacation from
22 November 20-21, 2006 (the Complainant provided a
23 copy of the Construction Official's time sheet
24 for the time period in question), this complaint

25 should be referred to the Office of

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1 Administrative Law for a hearing to resolve the
2 facts. Also, this complaint should be referred
3 to the Office of Administrative Law for
4 determination of whether the Custodian and/or the
5 Construction Official knowingly and willfully
6 violated OPRA and unreasonably denied access
7 under the totality of the circumstances.

8 MR. FLEISHER: I missed a part, can
9 she start over?

10 MS. LOWNIE: No, thank you.

11 CHAIRMAN MALTESE: The Requester got
12 his money's worth on this recommendation, I'll
13 tell you that much.

14 All right. So we'll send it over to
15 OAL to make further factual findings. And based
16 on those factual findings make the determination
17 whether or not there is a knowing and willful
18 violation in this case.

19 Motion?

20 MS. BERG TABAKIN: So moved.

21 MR. D'ELIA: Second.

22 CHAIRMAN MALTESE: Thank you.

23 Roll call.

24 MS. HAIRSTON: Vince Maltese?

25 CHAIRMAN MALTESE: Yes.

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1 MS. HAIRSTON: Robin Berg Tabakin?

2 MS. BERG TABAKIN: Yes.

3 MS. HAIRSTON: Janice Kovach?

4 MS. KOVACH: Yes.

5 MS. HAIRSTON: Anthony D'Elia?

6 MR. D'ELIA: Yes.

7 MS. HAIRSTON: Dave Fleisher?

8 MR. FLEISHER: Yes.

9 CHAIRMAN MALTESE: Mathis v.

10 Burlington County Board of Chosen Freeholder.

11 MS. LOWNIE: The Executive Director

12 respectfully recommends the Council find that:

13 1. The evidence of record does not

14 support a conclusion that the Custodian's
15 response to the Complainant's OPRA request
16 required an extraordinary expenditure of time and
17 effort pursuant to N.J.S.A. 47:1A-5.c. and the
18 court's holding in *The Courier Post v. Lenape*
19 *Regional High School*, 360 N.J. Super. 191, 199
20 (Law Div. 2002) because redactions are part of
21 the Custodian's responsibilities pursuant to
22 OPRA.

23 Therefore, based on the
24 characteristics of the agency, specifically that
25 it would take the Custodian an estimated two

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1 hours and fifteen minutes to copy, redact, and
2 return the 101-page record to its non-archived
3 location, the special service charge asserted by
4 the Custodian is not warranted or reasonable
5 pursuant to N.J.S.A. 47:1A-5.c. However, the
6 Custodian is permitted to charge the appropriate
7 copying fees.

8 2. The Custodian should release the

9 requested record to the Complainant with
10 appropriate redactions and a legal justification
11 for each redacted part thereof and upon payment
12 of copying fees.

13 3. The Custodian shall comply
14 with -- it should say "item" not "items" -- No.
15 2 above within five business days from receipt of
16 the Council's Interim Order and simultaneously
17 provide certified confirmation of compliance, in
18 accordance with New Jersey Court Rule 1:4-4, to
19 the Executive Director.

20 CHAIRMAN MALTESE: Okay.

21 Motion?

22 MS. KOVACH: So moved.

23 CHAIRMAN MALTESE: Second.

24 MR. FLEISHER: Second.

25 CHAIRMAN MALTESE: Thank you.

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1 Roll call.

2 MS. HAIRSTON: Vince Maltese?

3 CHAIRMAN MALTESE: Yes.

4 MS. HAIRSTON: Robin Berg Tabakin?

5 MS. BERG TABAKIN: Yes.

6 MS. HAIRSTON: Janice Kovach?

7 MS. KOVACH: Yes.

8 MS. HAIRSTON: Anthony D'Elia?

9 MR. D'ELIA: Yes.

10 MS. HAIRSTON: And Dave Fleisher?

11 MR. FLEISHER: Yes.

12 CHAIRMAN MALTESE: Kohn v.

13 Livingston Township.

14 MS. LOWNIE: The Executive Director

15 respectfully recommends the Council find that:

16 1. The Custodian properly requested

17 an extension of time to provide the requested

18 records to the Complainant by requesting such

19 extension in writing within the statutorily

20 mandated seven business days pursuant to N.J.S.A.

21 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

22 2. Because the Custodian failed to

23 provide the Complainant access to the requested

24 records by the extension date anticipated by the

25 Custodian, the Custodian violated N.J.S.A.

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1 47:1A-5.i. resulting in a "deemed" denial of
2 access to the records. Additionally, the
3 Accountant's alleged hectic tax season schedule
4 is not a lawful basis for a delay in access to
5 the requested records, and as such, the Custodian
6 has not carried his burden of proving a lawful
7 denial of access pursuant to N.J.S.A. 47:1A-6.

8 3. The GRC does not have
9 jurisdiction over the accuracy of the records'
10 content pursuant to N.J.S.A. 47:1A-7.b. and Chaka
11 Kwanzaa v. Department of Corrections, GRC
12 Complaint No. 2004-167 (March 2005).

13 4. Because the Custodian violated
14 N.J.S.A. 47:1A-5.i. and because the Custodian did
15 not provide the Complainant with all of the
16 records responsive until 48 business days
17 following the date on which the Custodian stated
18 the records would be provided, and because the

19 Custodian has not carried his burden of proving a
20 lawful denial of access to the requested records,
21 it is possible that the Custodian's actions were
22 intentional and deliberate, with knowledge of
23 their wrongfulness, and not merely negligent,
24 heedless or unintentional.

25 As such, this complaint should be

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1 referred to the Office of Administrative Law for
2 determination of whether the Custodian knowingly
3 and willfully violated OPRA and unreasonably
4 denied access under the totality of the
5 circumstances.

6 CHAIRMAN MALTESE: OAL's going love
7 us. So be it.

8 Motion.

9 MS. BERG TABAKIN: So moved.

10 CHAIRMAN MALTESE: Second, please?

11 MS. KOVACH: Second.

12 CHAIRMAN MALTESE: Roll call.

13 MS. HAIRSTON: Vince Maltese?

14 CHAIRMAN MALTESE: Yes.

15 MS. HAIRSTON: Robin Berg Tabakin?

16 MS. BERG TABAKIN: Yes.

17 MS. HAIRSTON: Janice Kovach?

18 MS. KOVACH: Yes.

19 MS. HAIRSTON: Anthony D'Elia?

20 MR. D'ELIA: Yes.

21 MS. HAIRSTON: Dave Fleisher?

22 MR. FLEISHER: Yes.

23 CHAIRMAN MALTESE: All right. We're

24 going postpone hearing Item 11 until at least

25 next month. So we will hear Yehuda Shain v.

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1 Ocean County Board of Taxation this morning.

2 The next one is Marcinczyk v.

3 Township of East Brunswick.

4 MS. LOWNIE: Before I begin, I would

5 like to note an edit on page 1 under the entry

6 for May 3rd. The ending of a sentence which

7 reads "...on an official OPRA request form"

8 should be deleted and replaced with "...in a

9 letter."

10 CHAIRMAN MALTESE: In a letter,

11 okay.

12 MS. LOWNIE: The Executive Director

13 respectfully recommends the Council find that:

14 1. The Complainant's records

15 request dated May 3, 2007 was not a valid OPRA

16 request and as such the Custodian's refusal to

17 fulfill said request does not amount to an

18 unlawful denial of access pursuant to N.J.S.A.

19 47:1A-5.f., N.J.S.A. 47:1A-5.g., Mag

20 Entertainment, LLC v. Division of Alcoholic

21 Beverage Control, (App. Div. 2005), Bent v.

22 Township of Stafford Police Department, (App.

23 Div. 2005), Gannett New Jersey Partners, L.P. v.

24 County of Middlesex, (App. Div. 2005), New Jersey

25 Builders association v. New Jersey Council on

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1 Affordable Housing, (App. Div. 2007) and Tina

2 Renna v. County of Union, Docket No.

3 Union-L-1145-06 (Law Div. 2007).

4 2. The Custodian has not carried
5 his burden of proving a lawful denial of access
6 to the requested Certificate of Occupancy
7 pursuant to N.J.S.A. 47:1A-6 on the basis that
8 the Complainant must obtain written permission
9 from the property owner. Therefore, the
10 Custodian has unlawfully denied access to this
11 record.

12 3. Although the Custodian lawfully
13 denied access to the Complainant's request on the
14 basis that said request was not on an official
15 OPRA request form, the Custodian unlawfully
16 denied access to the requested Certificate of
17 Occupancy by requiring that the Complainant
18 obtain written permission from the property
19 owner. While the Custodian's unlawful denial of
20 access appears negligent and heedless since he is
21 vested with the legal responsibility of granting
22 and denying access in accordance with the law,
23 such apparent negligence paired with the

24 Custodian's lawful denial of access does not
25 amount to a knowing and willful violation of OPRA

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1 and unreasonable denial of access under the
2 totality of the circumstances.

3 CHAIRMAN MALTESE: Uh-huh. I have
4 an issue with this case. And the issue is that
5 if we're going to uphold the recommendation, and
6 I think we should, that the OPRA request is not
7 valid, then I think it's inappropriate to go
8 further and go beyond that suggest that the
9 Custodian's refusal to issue the Certificate of
10 Occupancy unless the owner consent and hold them
11 responsible and accountable for that is
12 inappropriate in this case.

13 I think it's important for us, maybe
14 in the case and in our recommendation, to make it
15 known that our feeling is that it is improper to
16 require as a condition precedent to the Issuance
17 of a Certificate of Occupancy that the Custodian
18 seek the owners consent since that is not

19 required by OPRA. However, to go beyond that and
20 to suggest that the Custodian should be found to
21 have violated OPRA, that in my view is
22 inappropriate given the fact that we have an
23 inappropriate request to start with.

24 So I don't think we even get to that
25 next step. But because it's in here I think it's

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1 important to at least publicize the fact that our
2 feeling is that there is no condition -- there is
3 no requirement that consent be issued by the
4 owner of a property when someone requests a
5 Certificate of Occupancy. So I would suggest
6 that we modify this recommendation to provide
7 that the Custodian has in fact properly rejected
8 the request, that being an inappropriate OPRA
9 request, and then maybe as an aside we note that
10 there's a reference to consent from the homeowner
11 as a condition preceding and then say that that
12 would not than appropriate under OPRA.

13 MS STARGHILL: Chairman, what we'll
14 do is just delete the last two paragraphs on
15 page 5 under the issue statement so that we'll
16 just finish up just with the provisions of OPRA
17 do not exempt from public access the Certificate
18 of Occupancy, the Requester had not obtained the
19 information, dah, dah, dah, dah. Because we
20 don't then have a finding, per se --

21 CHAIRMAN MALTESE: I think that's
22 appropriate.

23 Other comments?

24 MS. BERG TABAKIN: Well, still as
25 you stated, don't you think it should be stated

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1 somewhere in the reasoning? So --

2 MS STARGHILL: That is in the reason
3 on page 5.

4 MS. BERG TABAKIN: So you're leaving
5 that?

6 CHAIRMAN MALTESE: Yeah, we're going
7 to leave that.

8 All right. I'll entertain a motion

9 on the recommendation as modified?

10 MS. BERG TABAKIN: So moved.

11 MS. KOVACH: Second.

12 CHAIRMAN MALTESE: Second, thank

13 you.

14 Roll call.

15 MS. HAIRSTON: Vince Maltese?

16 CHAIRMAN MALTESE: Yes.

17 MS. HAIRSTON: Robin Berg Tabakin?

18 MS. BERG TABAKIN: Yes.

19 MS. HAIRSTON: Janice Kovach?

20 MS. KOVACH: Janice -- yes.

21 MS. HAIRSTON: Anthony D'Elia.

22 MR. D'ELIA: Yes.

23 MS. HAIRSTON: Dave Fleisher?

24 MR. FLEISHER: Yes.

25 CHAIRMAN MALTESE: Okay. Bart v.

2 MS. LOWNIE: The Executive

3 respectfully recommends the Council find that:

4 1. Because the Complainant is

5 clearly not seeking records which would contain

6 any personal information pertaining to any

7 individual, the Custodian unlawfully denied

8 access to the Complainant's OPRA request by

9 requiring the Complainant to indicate whether or

10 not he had been convicted of an indictable

11 offense.

12 2. Based on the Council's decision

13 in *John Windish v. Mount Arlington Public*

14 *Schools*, GRC Complaint No. 2005-216 (August

15 2006), the Custodian may charge the copy costs

16 enumerated in N.J.S.A. 47:1A-5.b.

17 3. Because the Custodian provided

18 the Complainant with the requested records one

19 business day following the receipt of the

20 Complainant's resubmitted OPRA request (even

21 though the Custodian unlawfully denied access to

22 the Complainant's OPRA request dated May 11,

23 2007) and because the Custodian properly charged

24 the copy costs enumerated in N.J.S.A. 47:1A-5.b.,

25 it is concluded that the Custodian's actions do

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1 not rise to the level of a knowing and willful

2 violation of OPRA and unreasonable denial of

3 access under the totality of the circumstances.

4 However, the Custodian's unlawful denial of

5 access appears negligent and heedless since she

6 is vested with the legal responsibility of

7 granting and denying access in accordance with

8 the law.

9 CHAIRMAN MALTESE: So this Requester

10 submitted an OPRA request but neglected to fill

11 out that part which requests information as to

12 whether the person had been convicted of an

13 indictable --

14 MS. LOWNIE: Yes, it's a simple

15 "yes" or "no."

16 CHAIRMAN MALTESE: And so it was

17 bounced back?

18 MS. LOWNIE: Uh-huh.

19 CHAIRMAN MALTESE: Uh-hum. Okay.

20 Well, in that case let me ask you this question,

21 in that case what do you think the official day

22 of request is, the original date or the day it

23 was bounced back?

24 MS. LOWNIE: Well, the official

25 request was denied, so then resubmittal would

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1 be --

2 CHAIRMAN MALTESE: Would be the

3 date?

4 MS. LOWNIE: Yes.

5 CHAIRMAN MALTESE: Comments?

6 Motion?

7 MR. D'ELIA: So moved.

8 CHAIRMAN MALTESE: Thank you.

9 Second.

10 MR. FLEISHER: 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. BERG TABAKIN: Yes.

17 MS. HAIRSTON: Janice Kovach?

18 MS. KOVACH: Yes.

19 MS. HAIRSTON: Anthony D'Elia?

20 MR. D'ELIA: Yes.

21 MS. HAIRSTON: Dave Fleisher?

22 MR. FLEISHER: Yes.

23 CHAIRMAN MALTESE: Serrao v. Borough

24 of Fair Lawn.

25 MR. STEWART: The Executive Director

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1 respectfully recommends that the Council find

2 that the requested records are confidential under

3 policy promulgated pursuant to the provisions of

4 N.J.S.A. 40A:14-181 and therefore exempt from

5 disclosure pursuant to N.J.S.A. 47:1A-9.a.

6 Further, the requested records are personnel

7 records pursuant to N.J.S.A. 47:1A-10 and the
8 Council's prior decision in Rick Merlino v.
9 Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110
10 (March 2004); therefore the requested records are
11 not government records subject to disclosure.

12 CHAIRMAN MALTESE: John, do you
13 think there's an inconsistency on page 6?

14 MR. STEWART: No, Chairman, I don't.
15 Because 1A-10 providers personnel records shall
16 not be a government record, but then it goes on
17 to list certain exceptions for personal
18 information. And the intent of that paragraph
19 was to highlight the fact that we do understand
20 that this is exempt as a personnel record.
21 However, we understand there's exceptions to
22 that, but that this was not a request for any of
23 those personal items out of the personnel
24 record --

25 CHAIRMAN MALTESE: Okay.

1 MR. STEWART: -- but rather a

2 request for a portion of an investigation that
3 was made a part of that personnel record.

4 CHAIRMAN MALTESE: Gets a little
5 tricky, but I understand where you're coming
6 from. Okay.

7 All right, any further comments?

8 Motion?

9 MR. FLEISHER: So moved.

10 CHAIRMAN MALTESE: Roll call.

11 MS. HAIRSTON: Vince Maltese?

12 CHAIRMAN MALTESE: Yes.

13 MS. HAIRSTON: Robin Berg Tabakin?

14 MS. BERG TABAKIN: Yes.

15 MS. HAIRSTON: Janice Kovach?

16 MS. KOVACH: Yes.

17 MS. HAIRSTON: Anthony D'Elia?

18 MR. D'ELIA: Yes.

19 MS. HAIRSTON: Dave Fleisher?

20 MR. FLEISHER: Yes.

21 CHAIRMAN MALTESE: Semprevivo v.

22 Pinelands Regional School District.

23 MS. MAYERS: The Executive Director
24 respectfully recommends the Council find that
25 based on the inadequate evidence in this matter,

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1 the GRC is unable to determine whether or not the
2 original Custodian unlawfully denied access to
3 the requested records. Therefore, this complaint
4 should be referred to the Office of
5 Administrative Law for a hearing to resolve the
6 facts. Also, this complaint should be referred
7 to the Office of Administrative Law for
8 determination of whether the original Custodian
9 knowingly and willfully violated OPRA and
10 unreasonably denied access under the totality of
11 the circumstances.

12 CHAIRMAN MALTESE: Okay. Motion?

13 MS. BERG TABAKIN: So moved.

14 CHAIRMAN MALTESE: Second?

15 MS. KOVACH: Second.

16 CHAIRMAN MALTESE: Thank you.

17 Roll call.

18 MS. HAIRSTON: Vince Maltese?

19 CHAIRMAN MALTESE: Yes.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 MS. BERG TABAKIN: Yes.

22 MS. HAIRSTON: Janice Kovach?

23 MS. KOVACH: Yes.

24 MS. HAIRSTON: Anthony D'Elia?

25 MR. D'ELIA: I have to abstain on

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1 this one as well.

2 CHAIRMAN MALTESE: So noted.

3 MS. HAIRSTON: Dave Fleisher?

4 MR. FLEISHER: Yes.

5 CHAIRMAN MALTESE: Keelen v. City of

6 Long Branch.

7 MS. MAYERS: The Executive Director

8 respectfully recommends the Council find that:

9 1. The Custodian failed to provide

10 the Complainant with a written response granting

11 access, denying access or requesting an extension

12 of time within the statutorily mandated seven
13 business days. Therefore, the Custodian violated
14 N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.,
15 thereby creating a "deemed" denial.

16 2. The evidence of record does not
17 support a conclusion that the Custodian knowingly
18 and willfully violated OPRA and unreasonably
19 denied access under the totality of the
20 circumstances. The Custodian forwarded the
21 request to the Director of Building Development,
22 who found no records responsive existed.
23 However, the Custodian's actions in failing to
24 respond in writing to the Complainant's OPRA
25 request within the statutorily mandated seven

1 business days appear negligent and heedless since
2 she is vested with the legal responsibility of
3 granting and denying access in accordance with
4 OPRA.

5 CHAIRMAN MALTESE: Tiffany, one of
6 the contentions by the Custodian was that this

7 was a request for information not a request for
8 specific documentation. I guess the request was
9 to provide any EPA permits for the construction
10 on the beach. And apparently you have concluded
11 that you did not agree that it was a request for
12 information and research but rather documentation
13 which should be have been ascertainable?

14 MS. MAYERS: Yes. That was found by
15 the Director that there was no records
16 responsive.

17 CHAIRMAN MALTESE: All right, any
18 comments?

19 Motion?

20 MS. BERG TABAKIN: So moved.

21 MS. KOVACH: Second.

22 CHAIRMAN MALTESE: Roll call.

23 MS. HAIRSTON: Vince Maltese?

24 CHAIRMAN MALTESE: Yes.

25 MS. HAIRSTON: Robin Berg Tabakin?

1 MS. BERG TABAKIN: Yes.

2 MS. HAIRSTON: Janice Kovach?

3 MS. KOVACH: Yes.

4 MS. HAIRSTON: Anthony D'Elia?

5 MR. D'ELIA: Yes.

6 MS. HAIRSTON: Dave Fleisher?

7 MR. FLEISHER: Yes.

8 CHAIRMAN MALTESE: May v. The

9 Township of Edison.

10 MS. MAYERS: The Executive Director

11 respectfully recommends the Council find that:

12 1. Even though the Custodian

13 eventually made the requested floor plans

14 available to the Complainant after she realized

15 that the initial denial was a mistake, the

16 Custodian has violated OPRA by denying the

17 Complainant access to the requested records.

18 Therefore, the Custodian unlawfully denied access

19 to the requested floor plans and has failed to

20 bear her burden of proof that the denial of

21 access was authorized by law pursuant to N.J.S.A.

22 47:1A-6.

23 2. Because the Custodian made
24 available to the Complainant the requested
25 records as soon as she realized that her office

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

11 CHAIRMAN MALTESE: Uh-huh, any
12 comments from members of the Council?

13 If not, I'll entertain a motion,
14 please?

15 MR. D'ELIA: So moved.

16 CHAIRMAN MALTESE: Thank you.

17 MS. BERG TABAKIN: 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. BERG TABAKIN: Yes.

24 MS. HAIRSTON: Janice Kovach?

25 MS. KOVACH: Yes.

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1 MS. HAIRSTON: Anthony D'Elia?

2 MR. D'ELIA: Yes.

3 MS. HAIRSTON: And Dave Fleisher?

4 MR. FLEISHER: Yes.

5 CHAIRMAN MALTESE: Hanks v. The

6 Department of Children and Families.

7 MR. STEWART: The Executive Director

8 respectfully recommends that the Council find

9 that the requested records are statutorily exempt

10 from disclosure pursuant to the provisions of

11 N.J.S.A. 9:6-8.10a, and therefore exempt from

12 disclosure pursuant to N.J.S.A. 47:1A-9.a. and
13 that no exception to the statutory exemption of
14 N.J.S.A. 9:6-8.10a has been determined to apply
15 based upon the evidence of record.

16 CHAIRMAN MALTESE: Uh-hum, all
17 right, it's pretty cut and dry.

18 Roll call -- I mean, motion?

19 MS. BERG TABAKIN: So moved.

20 CHAIRMAN MALTESE: Thank you.

21 MR. D'ELIA: Second.

22 CHAIRMAN MALTESE: Thank you.

23 Roll call.

24 MS. HAIRSTON: Vince Maltese?

25 CHAIRMAN MALTESE: Yes.

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1 MS. HAIRSTON: Robin Berg Tabakin?

2 MS. BERG TABAKIN: Yes.

3 MS. HAIRSTON: Janice Kovach?

4 MS. KOVACH: Yes.

5 MS. HAIRSTON: Anthony D'Elia?

6 MR. D'ELIA: Yes.

7 MS. HAIRSTON: Dave Fleisher?

8 MR. FLEISHER: Yes.

9 CHAIRMAN MALTESE: Quirk v. Nutley
10 Board of Education.

11 MR. CARUSO: The Executive Director
12 respectfully recommends the Council find that:

13 1. The Custodian's failure to
14 produce the "School Agreement" may have been
15 inadvertent, but the Custodian is still required
16 to make a prompt and accurate responses -- should
17 say "response" -- to a requestor. Therefore, the
18 Custodian's failure to produce the "School
19 Agreement" record in response to the
20 Complainant's June 22, 2007 OPRA request results
21 in a deemed denial of access to this record.

22 N.J.S.A. 47:1A-5.i.

23 2. Because the Custodian's failure
24 to produce the "School Agreement" in response to
25 the Complainant's June 22, 2007 OPRA request that

1 resulted in a deemed denial of access was an
2 oversight, it is concluded that the Custodian's
3 actions do not rise to the level of a knowing and
4 willful violation of OPRA and unreasonable denial
5 of access under the totality of the
6 circumstances. However, the Custodian's unlawful
7 denial of access appears negligent and heedless
8 since he is vested with the legal responsibility
9 of granting and denying access in accordance with
10 the law.

11 CHAIRMAN MALTESE: Now this is a
12 case and reached into his desk to pull out
13 everything in the folder and apparently there was
14 another document floating around that was not in
15 the folder, called the "School Agreement," which
16 came to light subsequent to the request.

17 MR. CARUSO: Right. Apparently what
18 he did was he just pulled out this packet of
19 papers never realizing that that one paper wasn't
20 attached in the back.

21 CHAIRMAN MALTESE: Uh-hum. All

22 right.

23 Any comments?

24 Motion -- I'm sorry -- yeah, motion,

25 please?

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1 MS. BERG TABAKIN: So moved.

2 CHAIRMAN MALTESE: Thank you.

3 Second?

4 MS. KOVACH: Second.

5 CHAIRMAN MALTESE: Thank you.

6 Roll call.

7 MS. HAIRSTON: Vince Maltese?

8 CHAIRMAN MALTESE: Yes.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 MS. BERG TABAKIN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Anthony D'Elia?

14 MR. D'ELIA: Uhm, I'm going to have

15 to abstain on this one. I recall, I believe,

16 this person's been in touch with the Department

17 of Education and our Commissioner and that's what

18 I'm responsible for doing dealing with the

19 constituents?

20 CHAIRMAN MALTESE: Okay.

21 MR. D'ELIA: I think it would be

22 best if I abstained from this.

23 CHAIRMAN MALTESE: I think it's

24 appropriate. So noted.

25 MS. HAIRSTON: Dave Fleisher?

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1 MR. FLEISHER: Yes.

2 CHAIRMAN MALTESE: At this point in

3 time we'll open the meeting to the members of the

4 public who wish to be heard.

5 MS STARGHILL: Actually --

6 CHAIRMAN MALTESE: Oh, sorry.

7 MS. STARGHILL: -- we have my

8 report. I know I usually don't have much to say.

9 CHAIRMAN MALTESE: Okay.

10 MS. STARGHILL: I just want to

11 confirm that the meeting dates scheduled for 2008
12 is here and appear to be agreeable to Council
13 members.

14 CHAIRMAN MALTESE: Uh-hum.

15 MS STARGHILL: That's it.

16 I'm sorry, Debra.

17 MS. ALLEN: I have a few. I have
18 three items for discussion.

19 As you know, from the e-mail
20 correspondence on Monday we went to court against
21 Thomas Caggiano and we -- I'm sorry.

22 This past Monday the Government
23 Records Council initiated an action in Superior
24 Court to obtain a restraining order against
25 Thomas Caggiano. We've been successful in doing

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1 so. And that order will be in effect through now
2 until January 8th of 2008 which will be the next
3 date for hearing when we're going to be
4 determining whether or not permanent restraints
5 will be issued against Mr. Caggiano.

6 And my question is -- I know you've
7 seen the order, do you have any questions or --
8 we can certainly --

9 CHAIRMAN MALTESE: We appreciate
10 your efforts in that regard.

11 MS. ALLEN: Also the Tina Renna
12 matter, they have filed a notice of appeal based
13 upon Judge Brock's decision which upheld our
14 interpretation of the -- that'll require the use
15 of an OPRA form. So that is up on appeal. So
16 we'll be hopefully getting a decision in about
17 six or nine months, but this is just starting out
18 so we haven't even filed briefs at this point.

19 CHAIRMAN MALTESE: And the issue in
20 that case?

21 MS. ALLEN: Oh, whether or not an
22 OPRA form is required pursuant to OPRA in making
23 OPRA requests.

24 CHAIRMAN MALTESE: An official form.

25 MS. ALLEN: An official form, yes.

1 And also --

2 CHAIRMAN MALTESE: Excuse me, just
3 refresh our recollection, Tina Renna made the
4 request in that case in letter form?

5 MS. STARGHILL: I think so.

6 MS. ALLEN: I think it may have been
7 an e-mail.

8 CHAIRMAN MALTESE: It may be an
9 e-mail, okay, something other than --

10 MS. ALLEN: Yes. It was certainly a
11 test case because, you know, historically she
12 used to use the County of Union for OPRA request
13 forms, and then just some reason this one
14 instance she an e-mail and the County of Union
15 said you need to fill out an official OPRA
16 request form in order for us to provide you with
17 these records. And they at that point initiated
18 an emergent action in Union County Court.

19 So that case it's been one of cases
20 of intransit to the Appellate Division. The
21 Appellate Division kicked it back to Judge Brock

22 in Union County Court. And we had argued a
23 couple of months ago on that case and we
24 prevailed in that the Court believed with the
25 GRC's position OPRA requires the use of the

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1 official form in making OPRA requests.

2 I know some of our FRs in this
3 month's agenda has referenced that. So just to
4 let you know, that case is being challenged
5 again, that is now in on appeal.

6 CHAIRMAN MALTESE: Okay.

7 MS. ALLEN: But we haven't even
8 received a scheduling order, so it's still in its
9 earlier stages.

10 And the other matter is Windish. I
11 now one of the reports refer to that case. And
12 that case will be heard on November 26th in
13 Hackensack.

14 I'm sorry.

15 MS. STARGHILL: Everyone needs to

16 speak up so that our court reporter can record
17 everything accurately. I'm very thankful to her
18 because now I don't have to prepare minutes, but
19 that can't happen unless everyone speaks up.

20 MS. ALLEN: My apology.

21 The Windish matter on November 26th,
22 there will be oral argument in that case. So we
23 should be getting a decision hopefully by the end
24 of the year.

25 CHAIRMAN MALTESE: What is the issue

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1 in that case?

2 MS. ALLEN: That's the OPRA copying
3 cost case where they're challenging the actual
4 cost as discussed under OPRA.

5 CHAIRMAN MALTESE: Okay. Any
6 questions for Debra on any of those items?

7 If not, we'll open the meeting now
8 to members of the public. If you wish to be
9 heard, raise your hand, step up to the table,
10 please provide us with your name and you may be

11 heard. We have a five-minute limit, please.

12 MR. OSWALD: Fine. My name is

13 Joseph S. Oswald, 53 Joni Avenue, Hamilton, New

14 Jersey 08690.

15 I have a prepared statement I'd like

16 to read to the body and get it into the record

17 and I have copy for your use as required by the

18 outline of your minutes.

19 CHAIRMAN MALTESE: Thank you very

20 much, sir.

21 Please proceed to read your

22 statement, Mr. Oswald.

23 MR. OSWALD: Thank you.

24 October 31, 2007.

25 Statement to: GRC Council &

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1 Administrative Staff, regarding Complaint No.

2 2007-86.

3 I'm here today as the Complainant of

4 Case No. 2007-86 to present my conclusion

5 regarding the Final Decision accompanied by the
6 Supplemental Findings and Recommendations of the
7 Executive Director, September 26, 2007 Council
8 Meetings and Findings and Recommendations of the
9 July 25, 2007 Council Meeting.

10 Upon perusal of the materials
11 provided, I discovered an indication that on July
12 26, one day following the July 25th GRC Council
13 Meeting, a certification was provided by
14 Mr. Jeffrey Plunkett, Health Officer Hamilton
15 Township, to Mr. Frank F. Caruso, Case Manager.

16 The certification reveals that the
17 initial investigation of this matter was not a
18 neighborhood survey, but a verbal neighborhood
19 review performed by Mr. Robert Decellis.
20 Mr. Jeffrey Plunkett certifies that Mr. Decellis
21 verbally reported to him with no written report.

22 Had this information been disclosed
23 at the time the initial written request of July
24 28, 2006 was made for these reports, there would
25 have been no need for requesting the aid from

1 Mayor Glenn G. Gilmore, Township of Hamilton in
2 letters of October 23, 2006 and December 4, 2006.
3 The filing of two OPRA requests with the Township
4 of Hamilton and the filing of the GRC, Denial of
5 Access Complaint could have also been avoided.

6 The Township of Hamilton should be
7 embarrassed by the mishandling of this situation.
8 The person found to be in contempt was merely the
9 messenger, whereas the actual responsibility lies
10 with the source.

11 The amount of effort and time that
12 was utilized by the GRC in the handling of the
13 GRC request could have been directed to other
14 important matters.

15 I thank the Council and their
16 Administrative staff for their dedication to the
17 handling of Case 2007-86.

18 Thank you.

19 CHAIRMAN MALTESE: Thank you, sir.

20 Anyone else?

21 Yes, sir.

22 AUDIENCE MEMBER: She was before me.

23 She had her hand up before me.

24 CHAIRMAN MALTESE: Chivalry is not

25 dead.

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1 MS. TOUSMAN: I'm Jane Tousman. I'm
2 from Edison Township. I'm a former Councilwoman
3 in Edison and I have a statement that I want to
4 read in. My address is 14 Butler Road, Edison,
5 New Jersey, and I'll be handing this to you.

6 It is political hunting season at
7 its peak. Every politician who is up for
8 election is promising golden tax relief. Yet,
9 nobody wants to tell us how they will accomplish
10 this promise. Legislation was put forth to
11 create a controller and it passed. However now,
12 the ability to audit local budgets is out of it.
13 This is wrong. Effective local audits and
14 corrective action plans are a must if we are
15 going to pull ourselves out of government debt.

16 Local budgets and their hearings are still
17 largely ignored by most of the public. This must
18 change.

19 Today you are being given an ideal
20 tool to make accountability of budgets a reality.
21 How can we have budget hearings for the public
22 without the proper information? Salaries and
23 wages are an integral part of any budget and yet
24 here standing before you is a prime example of
25 what is not happening.

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1 The budget document with salaries
2 and wages by line item should be available for
3 all public-minded citizens in every community in
4 New Jersey. You have the power to make this
5 happen by helping me get the information that I
6 need to make intelligent comments on budget in a
7 timely fashion. We could see a great precedent
8 set here ladies and gentlemen. The results of
9 your actions will be a "wake up call" to all New

10 Jersey citizens who are concerned about taxation
11 without representation. That quote is a reminder
12 that the past is still with us. Success in this
13 action will prove beneficial not only to me but
14 to you as well. It will clearly demonstrate the
15 importance of having a truly open government.

16 And I will be filing an OPRA
17 complaint today because I could not get salaries
18 and wages.

19 CHAIRMAN MALTESE: Thank you very
20 much for your comments.

21 Anyone else care to be heard?

22 Yes, sir.

23 MR. KELLEY: Hi, my name's Tucker
24 Kelley, 449 Green Pine Road, Rockaway Township,
25 New Jersey.

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1 I'm here before you, the Board, I
2 had a complaint which was 2007-11 that Miss Dara
3 Lownie had presented her findings on that. And
4 even though the findings were in my favor -- even

5 if they were not in my favor I would still say
6 the same. As an individual in the public
7 watching everything that goes on concerning this
8 Board, the Open -- or GRC, I'm looking at each
9 individual here how very articulated they are and
10 their etiquette, not even taking a drink of water
11 while they're citing their determinations and
12 their findings of fact.

13 Many of these people that are here,
14 Mrs. Mayers, Mr. Caruso, Mrs. Lownie, I can't see
15 Karyn's name over there, and Mr. Stewart, have
16 numerous amount of cases before the GRC and
17 they're reading all their findings of fact. And
18 then you, Mr. Chairman, questioning some of the
19 findings that weren't even presented to the open
20 portion of this, just shows the extent that all
21 of you go through to somewhat investigate these
22 complaints that are brought forth from the
23 public, as well as the Chairman reading through
24 every single complaint making determinations and
25 realize that in fact there could be something

1 that is not correct that would actually assist
2 the public to know what's going on if someone
3 challenged democracy.

4 So I don't know if it goes to any
5 extent of anybody's ever say it, you have no idea
6 of the thanks of the public. Now I'm not being
7 an advocate and speaking for everybody in the
8 public, but I'm telling you being here watching
9 this, it blows me away. It is incredible the
10 time that you dedicate to the public itself. I
11 don't know how you do it in the time frame that
12 you have every day. I'm sure some of you have
13 families and everything else that you do and
14 perhaps even jobs outside of this as a secondary,
15 it blows me away. Thank you.

16 CHAIRMAN MALTESE: Thank you very
17 much. Can we expect your resume soon?

18 Yes, ma'am, yes, ma'am.

19 MS. WOLKE: Good morning, my name
20 is Lois Wolke, W-o-l-k-e, 10 Peak Road in Edison.

21 And I'd like to re-enforce
22 everything that Mrs. Tousman's had said. We as
23 the residents and also our council have been
24 unsuccessful in getting the budget justification
25 material for the 2000 to nine budget. Actually,

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1 the council has been asking for this from our
2 business administrator for over two months. My
3 husband filed an OPRA request and received a
4 letter from the clerk's office that this
5 information is not available as of this week.

6 The council had a public meeting on
7 the budget on October 24, 2007. The Edison
8 Municipal Code says that this material must
9 available to the council and in the clerk's
10 office for residents to look over seven days
11 before the public meeting which did not happen.

12 I spoke at the last council meeting
13 and asked the township attorney about this and he
14 agreed as he read our municipal code that it has

15 been violated. However, he Said under state code
16 there is no penalty. I pointed out a general
17 penalty clause in our municipal code, Section
18 1.08.010, but he says it doesn't apply in this
19 case either. I read it differently, so did a lot
20 of other residents, so this is still up in the
21 air.

22 The reason it's important for us to
23 have this backup material is that last year we
24 were faced with a possible 18 percent tax
25 increase. When the council had this backup

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1 material they were able to bring it down to 7.5
2 percent because they were able to see where the
3 money was being spent. This year we're faced
4 with a 14 percent increase and the council has no
5 idea where to cut, where the money is being
6 spent. We're faced with a \$10 million increase
7 in our budget and we don't know where that
8 increase is coming from.

9 The people and the council are

10 actually being stonewalled by our business
11 administrator, we cannot get a direct answer, and
12 the clerk's office is as frustrated as we are.
13 We have a wonderful clerk's office and always
14 very cooperative. But the residents have been
15 robbed of their opportunity to review the budget
16 as we should be under the law because it's not
17 available.

18 I have no prepared statement, I just
19 jotted down these notes. But we are frustrated
20 and we really don't know what to do about it, but
21 we're here today and thank you for your
22 consideration.

23 CHAIRMAN MALTESE: Thank you very
24 much. It sounds like you may have not only an
25 OPRA issue, but you may have an Open Public

1 Meetings Act issue and you may want to consult
2 with an independent counsel on that point.

3 MS. WOLKE: Thank you.

4 CHAIRMAN MALTESE: Anyone else care

5 to be heard?

6 Yes, sir.

7 MR. BURDICK: Mr. Chairman, three of

8 you had to recuse yourselves from my case. Am I

9 allowed to make a public comment?

10 CHAIRMAN MALTESE: Sure, the case is

11 over.

12 MR. BURDICK: George B-u-r-d-i-c-k,

13 14 Mathew Drive, Annandale, New Jersey.

14 As I'm the Complainant 2007-74, I

15 would like to if I can reiterate Mr. Kelley's

16 comments and thank this Board irrespective

17 whether you ruled in my favor or not, but I must

18 tell you that I feel like I won the Academy Award

19 for the second time.

20 The specifics of this complaint are

21 most sad, an attorney, the Board of Education and

22 the Custodian of Record have not once but on

23 numerous occasions unequivocally lied about the

24 existence and application of a specific

25 attendance record document that is used at the

1 Franklin School in Hunterdon County. As I see
2 it, your ruling today supports my assertion. How
3 could I be so complete in the format an
4 explanation of this document (indicating) unless
5 I've seen the originals (indicating).

6 I have copies of original documents
7 which were freely given to me by an employee of
8 the school for the years 2003-2004, 2004-2005,
9 2005-2006. My OPRA request and complaint denial
10 were only for the last year 2005-2006.

11 What the Custodian of Record and the
12 attorney would have you believe is this document
13 is not used for payroll purpose, when in fact
14 this document does contain the words "without
15 pay" or the symbols "W/OA" (indicating). As far
16 as I'm concerned that is conclusive evidence that
17 this attendance record is in fact used for
18 payroll purposes.

19 I caution you today to be weary of

20 future actions that might be taken by the
21 attorney and the custodian of the Franklin
22 Township School and the Board of Education to
23 further deceive the Government Records Council
24 into believing that their position is correct,
25 that this document is not used for payroll

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1 purposes and that my position is not correct. I
2 am convinced that they will alter or omit any and
3 all documents as they see fit to support their
4 position.

5 I again request to the GRC that when
6 documents are submitted to this body or myself
7 that the certification by signed not by the
8 custodian, not by the attorney, but by the
9 Board -- each and every member of the Board of
10 Education.

11 On July the 13th, Mr. Thomas Johnson
12 sent a letter to the GRC where he included three
13 documents that were not given to me and he
14 included the three documents for in camera. In

15 speaking with Miss Lownie I was informed that in
16 camera review can only be ordered by this board.
17 But the facts remain is that I did not receive a
18 copy of the three documents.

19 Depending on the further results of
20 this case, I would like to request the privilege
21 of also submitting three documents for your in
22 camera review. And I would ask that you would
23 please reserve that for consideration for the
24 future, I would appreciate it very much.

25 On a much more happier note and

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1 again to reiterate Mr. Kelley's remarks, I plan
2 to nominate this staff for the New Jersey Public
3 Service Recognition Award.

4 Thank you very much.

5 CHAIRMAN MALTESE: Mr. Burdick, will
6 you be sure to make available to us copies of the
7 high points that you --

8 MR. BURDICK: The school employee

9 who gave me these is in abject fear of losing her
10 job which is why I have not provided them to you
11 because in return I have to provide them to
12 Poisio, Brombert & Newman. Retribution doesn't
13 even describe what she would feel.

14 MS. STARGHILL: And the attorney has
15 expressed concern and want to know the source of
16 Mr. Burdick's data --

17 MR. BURDICK: He can go pound sand,
18 pardon my French.

19 CHAIRMAN MALTESE: Anyone else care
20 to be heard?

21 If now, I'll entertain a motion to
22 adjourn.

23 MR. D'ELIA: So moved.

24 CHAIRMAN MALTESE: Second?

25 MS. KOVACH: Second.

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1 CHAIRMAN MALTESE: Roll call.

2 MS. HAIRSTON: Vince Maltese?

3 CHAIRMAN MALTESE: Yes.

4 MS. HAIRSTON: Robin Berg Tabakin?

5 MS. BERG TABAKIN: Yes.

6 MS. HAIRSTON: Janice Kovach?

7 MS. KOVACH: Yes.

8 MS. HAIRSTON: Anthony D'Elia?

9 MR. D'ELIA: Yes.

10 MS. HAIRSTON: And Dave Fleisher?

11 MR. FLEISHER: Yes.

12 CHAIRMAN MALTESE: Thank you, ladies

13 and gentlemen.

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16 (HEARING CONCLUDED AT 11:23 A.M.)

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1 C E R T I F I C A T E

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3 I, LINDA P. CALAMARI, a Professional
4 Reporter and Notary Public of the State of New
5 Jersey, do hereby certify the foregoing to be a
6 true and accurate transcript of my original
7 stenographic notes taken at the time and place
8 hereinbefore set forth.

9

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12 LINDA P. CALAMARI

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16 Dated: NOVEMBER 19, 2007.

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