

1 STATE OF NEW JERSEY
2 GOVERNMENT RECORDS COUNCIL

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5

6 REGULAR MEETING

7

8 TRANSCRIPT OF PROCEEDINGS

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10

11 LOCATION: 101 South Broad Street

12 Trenton, New Jersey

13 DATE: Wednesday, November 28, 2007

14 TIME: 9:40 a.m. to 10:30 a.m.

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1 COUNCIL MEMBERS:

2

3 VINCENT P. MALTESE, Chairman

4 KATHRYN FORSYTH

5 JANICE L. KOVACH

6

7 COUNCIL PROFESSIONALS:

8

9 CATHERINE STARGHILL, ESQ.

10 KARYN GORDON, ESQ.

11 DEBRA ALLEN, ESQ.

12 MEAGHAN TUOHEY-KAY, ESQ.

13 JOHN STEWART, ESQ.

14 DARA LOWNIE

- 15 TIFFANY L. MAYERS
- 16 FRANK CARUSO
- 17 JYOTHI PAMIDIMUKKALA
- 18 BRIGITTE HAIRSTON
- 19
- 20
- 21
- 22
- 23
- 24
- 25

3

1 A G E N D A P A G E

2

3 CALL TO ORDER..... 5

4 MEETING NOTICE..... 5

5 ROLL CALL..... 5

6 INDIVIDUAL COMPLAINT COUNCIL ADJUDICATION.... 6

7 CLOSED SESSION

8 Closed Session Resolution..... 8

9 APPROVAL OF MINUTES

10 (No vote due to lack of quorum)

11 ADMINISTRATIVE COMPLAINT COUNCIL ADJUDICATION..6

12 INDIVIDUAL COMPLAINT COUNCIL ADJUDICATION

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17 Julian Grauer v. NJ Department of Treasury

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19 Richard Rivera v. Town of Guttenberg

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23 Nancy Diaz v. City of Perth Amboy

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1 CHAIRMAN MALTESE: Good morning, ladies
2 and gentlemen. Welcome to our November 2007
3 meeting.

4 This meeting was called pursuant to
5 the provisions of the Open Public Meeting Act.
6 Notices of this meeting were faxed to Newark Star
7 Ledger, the Trenton Times, the Courier-Post in
8 Cherry Hill, the Secretary of State, and e-mailed
9 to the New Jersey Foundation for Open Government
10 on November 26, 2007.

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

14 In the event of a fire alarm
15 activation, please exit the building following the
16 exit signs located within the conference rooms and
17 throughout the building. The exit signs will
18 direct you to the two fire evacuation stairways
19 located in the building. Upon leaving, please

20 follow the fire wardens which can be located by
21 their yellow helmets. Please follow the flow of
22 traffic away from the building.

23 Let's do the roll call, please.

24 MS. HAIRSTON: Vince Maltese.

25 CHAIRMAN MALTESE: Present.

6

1 MS. HAIRSTON: Janice Kovach.

2 MS. KOVACH: Yes.

3 MS. HAIRSTON: Kathryn Forsyth.

4 MS. FORSYTH: Yes.

5 CHAIRMAN MALTESE: The first item on
6 the agenda will be the Individual Complaint
7 Council Adjudications. These are the Caggiano
8 versus the Borough of Stanhope, Nos. 2006-211
9 2006-219, 2007-24, 2007-25, 2007-26, 2007-40,
10 2007-43, 2007-44, 2007-45, 2007-46, 2007-47,
11 2007-183, 2007-184, 2007-228, 2007-229, 2007-285.

12 The recommendation with respect to
13 all of these is the same, and that is that the

14 Executive Director recommends that the Council
15 find that because of a conflict of interest and at
16 the request of the Complainant, this matter should
17 be referred to the Office of Administrative Law
18 for a hearing to resolve the facts in each case
19 and any possible violations of OPRA arising
20 therefrom.

21 I'll entertain a motion which would
22 be applicable to each of the cases that I just
23 mentioned.

24 MS. FORSYTH: So moved.

25 CHAIRMAN MALTESE: Thank you.

7

1 Second, please.

2 MS. KOVACH: Second.

3 CHAIRMAN MALTESE: Roll call,
4 please.

5 MS. HAIRSTON: Vince Maltese.

6 CHAIRMAN MALTESE: Yes.

7 MS. HAIRSTON: Janice Kovach.

8 MS. KOVACH: Yes.

9 MS. HAIRSTON: Kathryn Forsyth.

10 MS. FORSYTH: Yes.

11 CHAIRMAN MALTESE: Thank you.

12 While we're here, let's do the

13 Administrative Complaint Council Adjudications.

14 You have those before you. There are nine. I'll

15 entertain a motion to accept.

16 MS. KOVACH: So moved.

17 CHAIRMAN MALTESE: Thank you.

18 Second?

19 MS. FORSYTH: Second.

20 CHAIRMAN MALTESE: Thank you.

21 Roll call.

22 MS. HAIRSTON: Vince Maltese.

23 CHAIRMAN MALTESE: Yes.

24 MS. HAIRSTON: Janice Kovach.

25 MS. KOVACH: Yes.

8

1 MS. HAIRSTON: Kathryn Forsyth.

2 MS. FORSYTH: Yes.

3 CHAIRMAN MALTESE: Thank you.

4 I'll now entertain a motion to go

5 into closed session.

6 MS. KOVACH: So moved.

7 CHAIRMAN MALTESE: I have to read it

8 first.

9 MS. KOVACH: Oh, I'm sorry.

10 CHAIRMAN MALTESE: Whereas, N.J.S.A.

11 10:4-12 permits a public body to go into closed

12 session during a public meeting; and

13 Whereas, the Government Records

14 Council has deemed it necessary to go into closed

15 session to discuss certain matters which are

16 exempt from public discussion under the Open

17 Public Meetings Act; and

18 Whereas, the regular meeting of the

19 Council will reconvene at the conclusion of the

20 closed meeting;

21 Now, therefore, be it resolved, that

22 the Council will convene in closed session to

23 receive legal advice and discuss anticipated

24 litigation in which the Council may become a party

25 pursuant to N.J.S.A. 10:4-12b(7) in the following

9

1 matters:

2 Jerald Albrecht v. NJ Department of
3 Treasury (2006-191), which will be an in-camera
4 review.

5 Be it further resolved, that the
6 council will disclose to the public the matters
7 discussed or determined in closed session as soon
8 as possible after a decision on the issues has
9 been reached.

10 I'll entertain that motion, please.

11 MS. KOVACH: So moved.

12 CHAIRMAN MALTESE: Thank you.

13 Second?

14 MS. FORSYTH: Second.

15 CHAIRMAN MALTESE: Thank you.

16 Roll call.

17 MS. HAIRSTON: Vince Maltese.

18 CHAIRMAN MALTESE: Yes.

19 MS. HAIRSTON: Janice Kovach.
20 MS. KOVACH: Yes.
21 MS. HAIRSTON: Kathryn Forsyth.
22 MS. FORSYTH: Yes.
23 CHAIRMAN MALTESE: Thank you.
24 Ladies and gentlemen, we're now in
25 closed session, please.

10

1 (Whereupon, Council convened a
2 closed session.)
3 - - -
4 CHAIRMAN MALTESE: I'll entertain a
5 motion to open to the public.
6 MS. KOVACH: So moved.
7 CHAIRMAN MALTESE: Thank you.
8 Second?
9 MS. FORSYTH: Second.
10 CHAIRMAN MALTESE: Roll call.
11 MS. HAIRSTON: Vince Maltese.
12 CHAIRMAN MALTESE: Yes.
13 MS. HAIRSTON: Janice Kovach.

14 MS. KOVACH: Yes.

15 MS. HAIRSTON: Kathryn Forsyth.

16 MS. FORSYTH: Yes.

17 CHAIRMAN MALTESE: Thank you.

18 We've gone through A and we've gone

19 through B. We have before us the closed session

20 minutes from October 31.

21 MS. STARGHILL: Which we can't vote

22 on that.

23 MS. FORSYTH: I wasn't there.

24 CHAIRMAN MALTESE: You weren't there

25 so we'll postpone that for the next meeting.

11

1 And of course, our regular minutes

2 are transcribed, so we don't need to take any

3 official action on those.

4 So let's move right into the

5 Adjudications. The first case is Albrecht versus

6 the New Jersey Department of Treasury, which is a

7 matter that the --

8 MS. STARGHILL: Did we last time?

9 MS. HAIRSTON: I believe we did.

10 CHAIRMAN MALTESE: Then let's make a
11 motion to accept minutes, as transcribed.

12 MS. FORSYTH: For the October 31st,
13 I can't vote on them either.

14 CHAIRMAN MALTESE: All right.

15 Albrecht versus New Jersey
16 Department of Treasury, which is a matter that we
17 reviewed in-camera during closed session. And it
18 was the collective wisdom, which will be confirmed
19 by a vote at this time, to hold our final decision
20 on that case until our next meeting. We have a
21 few other things we want to check out before we
22 come to a conclusion. So I'll entertain a motion
23 to adjourn the Albrecht case.

24 MS. STARGHILL: Actually, Mr.
25 Chairman, can we say what information you're

12

1 requesting, for the record.

2 CHAIRMAN MALTESE: Yes. For the

3 record, the additional information that we are
4 requesting is a copy for the request for proposal,
5 commonly known as an RFP, which was utilized by
6 the Department of Treasury in this particular
7 matter.

8 We do not have a copy of that. We
9 think that it may shed some additional light on
10 our findings. And so we want to take the
11 opportunity to get it right the first time around.

12 Motion?

13 MS. KOVACH: So moved.

14 CHAIRMAN MALTESE: Second?

15 MS. FORSYTH: Second.

16 CHAIRMAN MALTESE: Thank you.

17 Roll call.

18 MS. HAIRSTON: Vince Maltese.

19 CHAIRMAN MALTESE: Yes.

20 MS. HAIRSTON: Janice Kovach.

21 MS. KOVACH: Yes.

22 MS. HAIRSTON: Kathryn Forsyth.

23 MS. FORSYTH: Yes.

24 CHAIRMAN MALTESE: Thank you.

25 Julian Grauer versus New Jersey

13

1 Department of Children and Family Services,
2 2006-214.

3 MR. CARUSO: The Executive Director

4 respectfully recommends the Council find that:

5 One, because of the Custodian failed

6 to respond in writing to the Complainant's

7 November 10, 2006 OPRA request, granting access,

8 denying access, requesting an extension of time or

9 requesting clarification of the request, the

10 Custodian has violated N.J.S.A. 47:1A-5.g and

11 N.J.S.A. 47:1A-5.i, resulting in a deemed denial

12 of the request. Tucker Kelly v. Township of

13 Rockaway, GRC Complaint No. 2007-11, August 2007.

14 Number two, because the Custodian

15 failed to immediately grant or deny access,

16 request additional time to respond, or request

17 clarification of the request for invoices, the

18 Custodian has also violated N.J.S.A. 47:1A-5.e.

19 Three, the Custodian has failed to
20 bear her burden of proof that her deemed denial
21 was authorized by law pursuant to N.J.S.A.
22 47:1A-6.

23 Four, based on the Custodian's
24 14-point analysis, given the amount of records
25 responsive and the fact that the Complainant did

14

1 not indicate the amount of time needed to complete
2 an on-site inspection of records responsive to the
3 November 10, 2006 OPRA request, the proposed
4 charge to the Complainant of \$20 an hour after the
5 first hour of on-site inspection is warranted in
6 this complaint pursuant N.J.S.A. 47:1A-5.c.

7 Five, although the Custodian did
8 respond within seven business days following the
9 receipt of the request seeking an extension in
10 order to provide access to the requested records,
11 she failed to do so in writing, as required by
12 OPRA. However, Complainant was granted access to

13 the requested records free of charge on January
14 12, 2007. Based on the evidence of record,
15 however, it is concluded that the Custodian's
16 actions do not rise to the level of a knowing and
17 willful violation of OPRA and unreasonable denial
18 of access under the totality of the circumstances.
19 However, the Custodian's actions appear to be
20 negligent and heedless since she is vested with
21 the legal responsibility of granting and denying
22 access in accordance with the law.

23 CHAIRMAN MALTESE: So this case sort
24 of is all over the place. So the Complainant here
25 received the records free of charge.

15

1 MR. CARUSO: Correct.

2 CHAIRMAN MALTESE: Notwithstanding
3 that there was a request for payment at one time.

4 MR. CARUSO: Right.

5 CHAIRMAN MALTESE: Okay.

6 MS. FORSYTH: Mr. Chairman, I have a
7 couple of quick questions about this.

8 CHAIRMAN MALTESE: Please.

9 MS. FORSYTH: The twenty dollar an
10 hour fee that the Custodian established, now, it
11 says here on Page 3 that the Custodian's counsel
12 asserts that the Custodian established a fee after
13 receiving advice from the GRC in 2002.

14 MS. STARGHILL: Agreed.

15 MS. FORSYTH: If this predates
16 OPRA --

17 MS. STARGHILL: Well, no. There was
18 a lot of communication between the GRC and records
19 custodians between the time OPRA was approved and
20 became effective, so from January basically until
21 the 1st of July, and that this is one of those
22 communications. Now, generally speaking, with
23 special service charge and the evolution of OPRA,
24 we would only allow the actual cost of someone's
25 time, an employee's time, to stand guard and watch

1 as a requester inspects records, and that's based

2 in case law. The Appellate Division decision, the
3 Courier-Post News versus Lenape Regional School
4 District. However, because someone's hourly rate
5 is likely higher than the \$20 and they're willing
6 to charge only the \$20, we went with it.

7 What I am planning to do and have
8 been communicating in our outreaches to records
9 custodians is that I'm going to come out with a
10 quarterly GRC newsletter that will squash this
11 idea that \$20 an hour rule as existing still.

12 I mean, I thought it was alarming
13 that an attorney would be quoting something so
14 old, given that as a practice in our profession,
15 we constantly are reviewing the most recent law.
16 And to rely on a five-year-old memo was pretty
17 interesting to me. Ultimately, it will benefit
18 the requester because \$20 is less than hourly
19 rate.

20 MS. FORSYTH: He ultimately got it
21 for free anyway.

22 MS. STARGHILL: That's right.

23 MS. FORSYTH: But that just kind

24 of -- okay, you've addressed my concern.

25 MS. STARGHILL: I wanted to see the

17

1 memo when I read this.

2 CHAIRMAN MALTESE: Did you see the

3 memo?

4 MS. STARGHILL: Yes.

5 CHAIRMAN MALTESE: But it wasn't a

6 rule.

7 MS. STARGHILL: But it was

8 suggested.

9 CHAIRMAN MALTESE: It was

10 communication.

11 MS. STARGHILL: It was a

12 communication. It was suggested that records

13 custodians, for lack of this later court case,

14 that records custodians follow the practice of

15 Treasury at the time that was in place before OPRA

16 was approved. And that really was because there

17 was no other authority in place.

18 MS. FORSYTH: Okay.

19 MS. STARGHILL: But clearly, there

20 is now court decisions to support the actual

21 hourly rate of the person.

22 MS. FORSYTH: Okay.

23 CHAIRMAN MALTESE: And that memo is

24 dated what, July 2nd?

25 MS. STARGHILL: Very early on. I

18

1 can't remember.

2 MR. CARUSO: July 2nd.

3 MS. STARGHILL: July 2nd.

4 CHAIRMAN MALTESE: I'm not sure when

5 the effective date of --

6 MS. STARGHILL: I think the 5th.

7 It's a couple days.

8 CHAIRMAN MALTESE: Somewhat

9 important, but certainly not controlling.

10 Motion?

11 MS. FORSYTH: So moved.

12 CHAIRMAN MALTESE: Second?

13 MS. KOVACH: Second.

14 CHAIRMAN MALTESE: Thank you.

15 Roll call.

16 MS. HAIRSTON: Vince Maltese.

17 CHAIRMAN MALTESE: Yes.

18 MS. HAIRSTON: Janice Kovach.

19 MS. KOVACH: Yes.

20 MS. HAIRSTON: Kathryn Forsyth.

21 MS. FORSYTH: Yes.

22 CHAIRMAN MALTESE: Thank you.

23 Julian Grauer versus New Jersey
24 Department of Treasury, 2007-3.

25 MR. CARUSO: The Executive Director

19

1 respectfully recommends the Council find that:

2 One, based on the court's holding in

3 Board of Chosen Freeholders in Burlington County

4 v. Robert Bradley Tombs, 215 Fed Appx 80 (3d Cir.

5 NJ 2006) and the GRC's decision in Albrecht v. New

6 jersey Department of Treasury, GRC Complaint No.

7 2006-191, July 25, 2007, copyright law does not
8 prohibit access to a government record which is
9 otherwise available under OPRA. Therefore, the
10 Custodian unlawfully denied access to the
11 requested record pursuant to N.J.S.A. 47:1A-1 and
12 failed to bear her burden of proof that the denial
13 of access was authorized by law pursuant to
14 N.J.S.A. 47:1A-6.

15 Two, based on the evidence of record
16 and the GRC's definition of "medium" in NJ
17 Libertarian Party v. New Jersey Department of
18 Human Services, Division of Youth and Family
19 Services, GRC Complaint No. 2004-114, April
20 2004-114, April 2006, on-site inspection of the
21 records responsive to the Complainant's November
22 3, 2006 OPRA request is not a reasonable
23 substitute for copies of portions of the requested
24 records.

25 Three, the New Jersey Department of

1 Treasury's policy that bids submitted will only be

2 available to the public for inspection and not
3 copying does not supercede OPRA under N.J.S.A.
4 47:1A-9 or N.J.S.A. 47:1A-9.b.

5 Four, even though the Custodian
6 unlawfully denied access to the requested records,
7 the Custodian has advised the Complainant that
8 copies of the requested records are now available.
9 Therefore, it is concluded that the Custodian's
10 actions do not rise to a level of a knowing and
11 willful violation of OPRA and unreasonable denial
12 of access under the totality of the circumstances.
13 However, the Custodian's actions appear to be
14 negligent and heedless and she is vested with the
15 legal responsibility of granting and denying
16 access in accordance with the law.

17 CHAIRMAN MALTESE: I think this
18 recommendation contains some substantive
19 principles. And the first one is that the
20 copyright law does not prohibit access to a
21 government record otherwise available under OPRA.
22 It's not to say what people are entitled to do

23 with that document once they get it, because then
24 copyright law does come into play as to the use of
25 the document. But the issue here before us is

21

1 whether or not copyright law supercedes the
2 requirements set forth in OPRA to allow access.

3 And the recommendation is it does not.

4 The other substantive part, as I see
5 it here, is the one about the Treasury's policy
6 that bids can only be inspected and not copied.

7 And the recommendation is that that may be their
8 policy, but it's counter to the requirements of
9 OPRA, and OPRA does allow access in the medium
10 requested by the requester.

11 So I think those are two substantive
12 points, and it was a reasonable decision, in my
13 view.

14 Other comments?

15 I'll entertain a motion.

16 MS. KOVACH: So moved.

17 CHAIRMAN MALTESE: Second, please.

18 MS. FORSYTH: Second.

19 CHAIRMAN MALTESE: Thank you.

20 Roll call.

21 MS. HAIRSTON: Vince Maltese.

22 CHAIRMAN MALTESE: Yes.

23 MS. HAIRSTON: Janice Kovach.

24 MS. KOVACH: Yes.

25 MS. HAIRSTON: Kathryn Forsyth.

22

1 MS. FORSYTH: Yes.

2 CHAIRMAN MALTESE: Rivera versus

3 Town of Guttenberg.

4 MR. CARUSO: The Executive Director

5 respectfully recommends the Council find that

6 because the Custodian failed to comply with the

7 GRC's request for additional information and has

8 failed to release any records responsive to the

9 Complainant's November 1, 2006 OPRA request within

10 the deadline to comply with the Council's April

11 25, 2007 Interim Order, this complaint should be

12 referred to the Office of Administrative Law for a
13 hearing to determine whether a special service
14 charge is warranted and whether the special
15 service charge assessed by the Custodian is
16 reasonable pursuant to the *The Courier-Post v.*
17 *Lenape Regional High School*, 360 N.J. Super. 191,
18 199 (Law Division 2002). Also, this matter should
19 be referred to the Office of Administrative Law to
20 determine whether the Custodian knowingly and
21 willfully violated OPRA and unreasonably denied
22 under access under the totality of the
23 circumstances.

24 CHAIRMAN MALTESE: Debra, isn't it
25 appropriate for this Council to also find that the

23

1 Custodian is in contempt of our Order and add that
2 to the recommendations so that when it goes over
3 to OAL, the OAL will understand that we've taken a
4 position that this was a contempt?

5 MS. ALLEN: That they violated the
6 GRC Order.

7 CHAIRMAN MALTESE: Yes.

8 MS. ALLEN: You could put that in,
9 yes, as part of the knowing and willful violation.

10 CHAIRMAN MALTESE: Do you agree with
11 that.

12 MS. FORSYTH: I would agree with
13 that.

14 MS. KOVACH: Yes.

15 CHAIRMAN MALTESE: So then we're
16 going to look to amend the conclusions and
17 recommendation to also note that the Custodian is
18 in contempt of this Council's Order dated -- let's
19 see, that would be -- is that the April 18th --
20 no.

21 MS. ALLEN: April 25.

22 CHAIRMAN MALTESE: April 25, 2007
23 order, as set forth at the beginning of the
24 recommendations.

25 I'll entertain a motion to accept

1 the recommendation, as amended.

2 MS. FORSYTH: So moved.

3 CHAIRMAN MALTESE: A second, please.

4 MS. KOVACH: Second.

5 CHAIRMAN MALTESE: Thank you.

6 Roll call.

7 MS. HAIRSTON: Vince Maltese.

8 CHAIRMAN MALTESE: Yes.

9 MS. HAIRSTON: Janice Kovach.

10 MS. KOVACH: Yes.

11 MS. HAIRSTON: Kathryn Forsyth.

12 MS. FORSYTH: Yes.

13 CHAIRMAN MALTESE: Thank you.

14 I'm thinking that there may just

15 some type of penalty or repercussions just as a

16 result of contempt. Okay.

17 Della Vella versus City of Wildwood,

18 2007-51.

19 MR. CARUSO: The Executive Director

20 respectfully recommends the Council find that:

21 One, because the Custodian mailed

22 his response to the Complainant's December 29,

23 2006 OPRA request on January 16, 2007 or 10
24 business days following receipt of such request,
25 the Custodian's failure to respond in writing to

25

1 the Complainant's OPRA request, granting access,
2 denying access, seeking clarification, or
3 requesting an extension of time within the
4 statutory mandated seven business days, as
5 required by N.J.S.A. 47:1A-5.g and N.J.S.A.
6 47:1A-5.i, results in a deemed denial of the
7 Complainant's OPRA request. Tucker Kelley v.
8 Township of Rockaway, GRC Complaint No. 2007-11,
9 August 2007.

10 Two, the Complainant's December 29,
11 2006 OPRA request is overly broad and does not
12 seek specific identifiable records. It is
13 therefore an invalid OPRA request pursuant to MAG
14 Entertainment, LLC v. Division of Alcoholic
15 Beverage Control, 375 N.J. Super 544 (App. Div.
16 2005) and Bent v. Stafford Police Department, 381

17 N.J. Super 30 (App. Div. 2005).

18 Three, although the Custodian failed
19 to respond in writing to the Complainant within
20 the statutory mandated seven business days, the
21 evidence of record does not support a conclusion
22 that the Custodian's denial of access was knowing
23 and willful. Therefore, it is concluded that the
24 Custodian's action do not rise to the level of
25 knowing and willful violation of OPRA and

26

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

7 CHAIRMAN MALTESE: This case raises
8 an issue in my mind, and that is whether or not
9 the Custodian can be found to have violated OPRA
10 if, in fact, the OPRA request is invalid. And I'm
11 not sure we ought to go there. But the safest

12 practice, needless to say, is if the Custodian
13 believes that, the Custodian should communicate
14 that to the requester. But I'm just wondering in
15 the larger scale whether or not a Custodian should
16 be found guilty of violating that section of OPRA
17 if, in fact, the request is invalid.

18 MS. STARGHILL: Invalid because it
19 was broad and unclear?

20 CHAIRMAN MALTESE: Yes. There are
21 other reasons too, you know, not on the form, that
22 kind of thing.

23 MS. STARGHILL: Well, this one was
24 on the form, so that invokes the responsibility to
25 respond in the statutory time frame. So in that

27

1 regard, there's the unlawful deemed denial for the
2 lack of responding within seven business days.
3 Definitely, if it's not on the form and the
4 Custodian acknowledges it's not a valid OPRA
5 request and does what we always want them to do,

6 and they don't always do, "And here is our form,
7 please put your OPRA request on the form," then,
8 of course, we couldn't find them in violation
9 until such time as they received request on the
10 form. But in this regard, there was an official
11 form and there was a requirement to respond, even
12 indicating "your request is broad and unclear and
13 therefore not valid." I think the finding is
14 correct here because it was on the form and they
15 didn't respond within the seven business days.

16 CHAIRMAN MALTESE: Suppose the
17 Custodian got a request that was not on the form
18 and did not reply, did not respond; do you see a
19 violation there under OPRA?

20 MS. STARGHILL: It is our practice
21 and we have been recommending that Custodians are
22 in violation of OPRA when they do not direct the
23 requester to the form.

24 CHAIRMAN MALTESE: So in just about
25 every case, then, the Custodian has an affirmative

1 obligation to either direct the Complainant in the
2 right direction --

3 MS. STARGHILL: Yes.

4 CHAIRMAN MALTESE: -- or to respond
5 and give some reason why they're not going to
6 honor the request.

7 MS. STARGHILL: Yes, absolutely.

8 The Legislature, I think, makes that clear in
9 Section 5 by requiring a response in writing on
10 the form from Custodians, directing Custodians to
11 make a copy and provide that response to the
12 requesters. The GRC does not hold Custodians to
13 write the lawful basis for the denial on the form,
14 simply because there might not be enough room on
15 the form. So we simply require the response be in
16 writing in whatever form and in writing within the
17 seven business days.

18 CHAIRMAN MALTESE: Okay. Any other
19 comments?

20 Motion?

21 MS. FORSYTH: So moved.

22 MS. KOVACH: Second.

23 CHAIRMAN MALTESE: Roll call,

24 please.

25 MS. HAIRSTON: Vince Maltese.

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1 CHAIRMAN MALTESE: Yes.

2 MS. HAIRSTON: Janice Kovach.

3 MS. KOVACH: Yes.

4 MS. HAIRSTON: Kathryn Forsyth.

5 MS. FORSYTH: Yes.

6 CHAIRMAN MALTESE: Diaz versus the

7 City of Perth Amboy.

8 MS. STARGHILL: We won't be taking a

9 vote on that for lack of a quorum.

10 CHAIRMAN MALTESE: Lack of a quorum

11 on that, okay. Because someone has to recuse?

12 Who would -- okay, Kathryn would be recusing.

13 That would then render us lack of a quorum, so we

14 won't hear that one until next month.

15 MS. STARGHILL: Thank you.

16 CHAIRMAN MALTESE: Okay. Next one

17 is Della Vella versus City of Wildwood, 2007-71.

18 MR. CARUSO: The Executive Director

19 respectfully recommends the Council find that

20 based on the inadequate evidence in this matter,

21 the GRC is unable to determine whether the

22 Custodian unlawfully denied access to the

23 requested records. Therefore, this complaint

24 should be referred to the Office of Administrative

25 Law for a hearing to resolve the facts for a

30

1 determination of whether the original Custodian --

2 that should probably be just "custodian" --

3 unlawfully denied access, and if so, whether such

4 denial was a knowing and willful violation of OPRA

5 and an unreasonable denial of access under the

6 totality of the circumstances.

7 MS. STARGHILL: Frank, are you

8 suggesting an edit to "original custodian"?

9 MR. CARUSO: Correct.

10 MS. STARGHILL: Because I only see

11 one Custodian listed here, Chris Wood.

12 MR. CARUSO: Right. That should
13 read just "Custodian." I thought we took that
14 out, but obviously we missed that.

15 MS. STARGHILL: So you're deleting
16 "original."

17 MR. CARUSO: Correct. Chris Wood is
18 the one and only custodian.

19 MS. ALLEN: Mr. Chairman, if I may.
20 The conclusions and recommendations sent to the
21 OAL for knowing and willful determination, I think
22 also you may want to have the OAL determine
23 whether or not there was an actual denial of
24 access at this point.

25 MS. STARGHILL: We made that edit.

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1 I don't know if you have it.

2 MS. ALLEN: No, I don't have that.

3 MS. STARGHILL: I'm sorry.

4 MS. ALLEN: Okay. Thank you.

5 CHAIRMAN MALTESE: Are we getting

6 any pushback from OAL?

7 MS. STARGHILL: No. I guess I
8 should have mentioned this. I had been in
9 communication with the Director of OAL. I mean,
10 obviously, in sending 16 Caggianos, I did not want
11 her to hate the GRC, so I called and spoke with
12 her. And she understood. She actually took a day
13 or two to talk to some of her staff, and they
14 agreed that it was best to forward the Caggiano
15 cases. And basically what she indicated was, you
16 know, GRC is up and running and so they're
17 receiving more complaints.

18 I got the impression -- this is not
19 based on fact -- that while we currently have a
20 few cases over there, we still might not be
21 sending as many as some other administrative
22 agencies. So we're not the bad guys yet.

23 CHAIRMAN MALTESE: So we're still in
24 the good graces.

25 MS. STARGHILL: She was very, very

1 nice. Very nice.

2 CHAIRMAN MALTESE: That's good to

3 hear.

4 I'll entertain a motion, please.

5 MS. KOVACH: So moved.

6 CHAIRMAN MALTESE: Second, please.

7 MS. FORSYTH: Second.

8 CHAIRMAN MALTESE: Thank you.

9 Roll call, please.

10 MS. HAIRSTON: Vince Maltese.

11 CHAIRMAN MALTESE: Yes.

12 MS. HAIRSTON: Janice Kovach.

13 MS. KOVACH: Yes.

14 MS. HAIRSTON: Kathryn Forsyth.

15 MS. FORSYTH: Yes.

16 CHAIRMAN MALTESE: Shain versus

17 Ocean County of Board of Taxation.

18 MR. STEWART: The Executive Director

19 respectfully recommends the Council find that the

20 Custodian did not unlawfully deny access to the

21 records responsive to the Complainant's request

22 because the request was for information and not
23 for specific identifiable records and agencies are
24 required to disclose only identifiable government
25 records not otherwise exempt pursuant to the

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1 Superior Court's decision of MAG Entertainment,
2 LLC v. Division of Alcoholic Beverage Control, 375
3 N.J. Super 534; therefore the Custodian has met
4 her burden of proof that access to the requested
5 records was not unlawfully denied pursuant to
6 N.J.S.A. 47:1A-6.

7 CHAIRMAN MALTESE: Certainly, the
8 rule is clear, but sometimes the application of
9 the rule is sometimes blurred. I tend to agree
10 with the conclusions reached in this particular
11 case. But that's always a fine line I find
12 throughout these cases, what's a request for
13 information versus what's a request for
14 identifiable documents. And that's something we
15 have to wrestle with in each case when that issue

16 is raised.

17 MS. STARGHILL: It's something the

18 Court articulated in the Lenape decision -- I'm

19 sorry, not Lenape; MAG.

20 CHAIRMAN MALTESE: MAG

21 Entertainment.

22 Motion?

23 MS. FORSYTH: So moved.

24 CHAIRMAN MALTESE: Second?

25 MS. KOVACH: Second.

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1 CHAIRMAN MALTESE: Thank you.

2 Roll call.

3 MS. HAIRSTON: Vince Maltese.

4 CHAIRMAN MALTESE: Yes.

5 MS. HAIRSTON: Janice Kovach.

6 MS. KOVACH: Yes.

7 MS. HAIRSTON: Kathryn Forsyth.

8 MS. FORSYTH: Yes.

9 CHAIRMAN MALTESE: Thank you.

10 MS. STARGHILL: Mr. Chairman, we

11 skipped a couple.

12 CHAIRMAN MALTESE: Oh, we did?

13 MS. STARGHILL: Allan Johnson, No.

14 8.

15 CHAIRMAN MALTESE: That's the next

16 one. Is it not?

17 Oh, I see. Yes. I'm sorry.

18 Allan Johnson versus Borough of

19 Oceanport, 2007-107.

20 MR. CARUSO: The Executive Director

21 respectfully recommends that Council find that

22 this complaint should be referred to the Office of

23 Administrative Law for determination of whether

24 Councilman Hugh Sharkey knowingly and willfully

25 violated OPRA and unreasonably denied access under

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1 the totality of the circumstances because

2 Councilman Hugh Sharkey failed to comply with the

3 provisions of the Council's July 25, 2007 Interim

4 Order by failing to respond to the Custodian's

5 request attempting to obtain the records
6 responsive to the Complainant's November 9, 2006
7 request, and because Councilman Hugh Sharkey
8 failed to respond to the Custodian's initial
9 attempt to obtain the records responsive to the
10 Complainant's November 9, 2006 OPRA request.

11 CHAIRMAN MALTESE: Isn't this a
12 matter where we can also find Councilman Sharkey
13 in contempt of our Order?

14 MS. STARGHILL: He claims to have
15 complied and did provide us some records. It's
16 not as egregious as in the O'Shea where they just,
17 you know --

18 CHAIRMAN MALTESE: Well, why don't
19 we ask the OAL to make the determination whether
20 or not Councilman Sharkey was in contempt of our
21 Order? Sounds like he is, but probably OAL should
22 look closer at that. So let's add that to the
23 recommendations, that they also take a look at the
24 contempt issue for the Councilman.

25 Any other amendments, modifications?

1 Motion, as amended?

2 MS. KOVACH: So moved.

3 CHAIRMAN MALTESE: Thank you.

4 Second?

5 MS. FORSYTH: Second.

6 CHAIRMAN MALTESE: Thank you.

7 Roll call.

8 MS. HAIRSTON: Vince Maltese.

9 CHAIRMAN MALTESE: Yes.

10 MS. HAIRSTON: Janice Kovach.

11 MS. KOVACH: Yes.

12 MS. HAIRSTON: Kathryn Forsyth.

13 MS. FORSYTH: Yes.

14 CHAIRMAN MALTESE: Jampel versus

15 Somerset County Prosecutor's Office.

16 MS. LOWNIE: The Executive Director

17 respectfully recommends the Council find that

18 based on the conflicting evidence in this matter,

19 the GRC is unable to determine whether or not the

20 Custodian unlawfully denied access to the

21 requested records. Therefore, this complaint
22 should be referred to the Office of Administrative
23 Law for a hearing to resolve the facts. Also,
24 this complaint should be referred to the Office of
25 Administrative Law for a determination of whether

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1 the Custodian knowingly and willfully violated
2 OPRA and unreasonably denied access under the
3 totality of the circumstances.

4 MS. STARGHILL: I would add, Mr.
5 Chairman, after "resolve facts," "and determine
6 whether the Custodian unlawfully denied access."
7 And then if there is a denial --

8 CHAIRMAN MALTESE: Which is
9 consistent with our earlier recommendations,
10 right?

11 MS. STARGHILL: Yes.

12 CHAIRMAN MALTESE: Okay.

13 Any other comments regarding this
14 matter? If not, I'll entertain a motion.

15 MS. FORSYTH: So moved.

16 CHAIRMAN MALTESE: Second?

17 MS. KOVACH: Second.

18 CHAIRMAN MALTESE: Thank you.

19 Roll call.

20 MS. HAIRSTON: Vince Maltese.

21 CHAIRMAN MALTESE: Yes.

22 MS. HAIRSTON: Janice Kovach.

23 MS. KOVACH: Yes.

24 MS. HAIRSTON: Kathryn Forsyth.

25 MS. FORSYTH: Yes.

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1 CHAIRMAN MALTESE: Thank you.

2 D.B. versus Somerset County

3 Prosecutor's Office.

4 MS. MAYERS: The Executive Director

5 respectfully recommends the Council find that:

6 One, the evidence of record shows

7 that the Complainant requested juvenile police

8 records, including the interviews/statement, for

9 his daughter who was a victim in an incident that

10 took place in Montgomery Township. Pursuant to
11 N.J.S.A. 47:1A-9.a, OPRA does not abrogate any
12 exemption of a public record or government record
13 from public access made pursuant to any other
14 statute. N.J.S.A. 2A:4A-60(a)(3) specifically
15 permits the release of records of the court and
16 law enforcement agencies to the parents of the
17 juvenile. Therefore, are no exemptions for access
18 to the requested records under OPRA or any other
19 law that the Custodian cited.

20 Two, even though the Custodian
21 eventually made the requested records available to
22 the Complainant after receiving further
23 clarification, the Custodian has violated OPRA by
24 denying the Complainant access to the requested
25 records. Therefore, the Custodian unlawful denied

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1 access to the requested records and has failed to
2 bear his burden of proof that the denial of access
3 was authorized by law pursuant to N.J.S.A.
4 47:1A-6.

5 Three, because the Custodian made
6 the requested records available to the Complainant
7 after receiving further clarification, it is
8 concluded that the Custodian's actions do not rise
9 to the level of a knowing and willful violation of
10 OPRA and unreasonable denial of access under the
11 totality of the circumstances. However, the
12 Custodian's unlawful denial of access appears
13 negligent and heedless since he is vested with the
14 legal responsibility of granting and denying
15 access in accordance with the law.

16 CHAIRMAN MALTESE: It appears that
17 the conclusions and recommendations have been
18 amended and supplemented.

19 MS. STARGHILL: They were
20 supplemented based on comment from our DAG
21 yesterday. I apologize. I did not communicate to
22 Brigitte to make you copies. They were just
23 beefed up with more citations to the law.

24 CHAIRMAN MALTESE: That's good.

25 I'll entertain a motion to accept

1 the recommendations and conclusions as espoused.

2 MS. KOVACH: So moved.

3 CHAIRMAN MALTESE: Second, please.

4 MS. FORSYTH: Second.

5 CHAIRMAN MALTESE: Roll call.

6 MS. HAIRSTON: Vince Maltese.

7 CHAIRMAN MALTESE: Yes.

8 MS. HAIRSTON: Janice Kovach.

9 MS. KOVACH: Yes.

10 MS. HAIRSTON: Kathryn Forsyth.

11 MS. FORSYTH: Yes.

12 CHAIRMAN MALTESE: Madam Executive

13 Director, do you have any comments? Any business

14 to take care of at this time?

15 MS. STARGHILL: No.

16 CHAIRMAN MALTESE: Council, any

17 matters?

18 Members of the public wishing to be

19 heard, please raise your hand. Come to the table

20 and tell us what you would like.

21 If not, I'll entertain a motion to

22 adjourned.

23 MS. FORSYTH: So moved.

24 CHAIRMAN MALTESE: Second, please.

25 MS. KOVACH: Second.

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1 CHAIRMAN MALTESE: Thank you.

2 Remember, our meeting in December is

3 December 19. Thank you.

4 (Meeting adjourned at 10:30 a.m.)

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

2

3 I, Lisa C. Bradley, a Certified
4 Court Reporter and Notary Public of the State of
5 New Jersey, do hereby certify that the foregoing
6 is a true and accurate transcript of the meeting
7 as taken stenographically by and before me at the
8 time, place and on the date hereinbefore set
9 forth, to the best of my ability.

10 I DO FURTHER CERTIFY that I am
11 neither a relative nor employee nor attorney nor
12 counsel of any of the parties to this action, and
13 that I am neither a relative nor employee of such
14 attorney or counsel, and that I am not financially
15 interested in the action.

16

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LISA C. BRADLEY, CCR, RPR

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CCR NO. 30XI00228700

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25 Dated: December 11, 2007