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STATE OF NEW JERSEY  
COMMUNITY AFFAIRS  
GOVERNMENT RECORDS COUNCIL

PUBLIC SESSION

TRANSCRIPT OF PROCEEDINGS

AT: DEPARTMENT OF COMMUNITY AFFAIRS

101 South Broad Street - Room 129

Trenton, New Jersey 08625-0819

DATE: WEDNESDAY, DECEMBER 19, 2007

TIME: 9:31 A.M. TO 10:46 A.M.

GUY J. RENZI & ASSOCIATES

GOLDEN CREST CORPORATE CENTER

2277 STATE HIGHWAY #33, SUITE 410

TRENTON, NEW JERSEY 08690-1700

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1 B O A R D M E M B E R S :

2

3 ROBIN BERG TABAKIN, Chairperson

4 ANTHONY D'ELIA

5 DAVID FLEISHER, Secretary

6 (Arrived after roll call)

7 JANICE L. KOVACH

8

9 B O A R D P R O F E S S I O N A L S :

10 CATHERINE STARGHILL, ESQ., Executive Director

11 DEBRA A. ALLEN, ESQ., D.A.G.

12 KARYN GORDON, ESQ.

13 MEAGHAN TUOHEY-KAY, ESQ.

14

15 FRANK F. CARUSO, Case Manager

16 DARA LOWNIE, Case Manager

17 TIFFANY L. MAYERS, Case Manager

18 JYOTHI PAMIDIMUKKALA

19 JOHN STEWART, ESQ., Case Manager

20

21 BRIGITTE HAIRSTON, Council Secretary

22

23

24

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PUBLIC COMMENT: In the interest of time,  
speakers are limited to five (5) minutes.  
Speakers with prepared testimony should provide  
eight (8) copies for the Council. 57

ADJOURNMENT 58

1                   CHAIRPERSON BERG TABAKIN: Pledge of  
2 Allegiance.

3                   (Pledge of Allegiance. )

4                   CHAIRPERSON BERG TABAKIN: This  
5 meeting was called pursuant to the provisions of  
6 the Open Public Meeting Act. Notices of this  
7 meeting were faxed to the Newark Star Ledger,  
8 Trenton Times, Courier-Post of Cherry Hill, the  
9 Secretary of State and e-mailed to the New Jersey  
10 Foundation for Open Government December 17, 2007.

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

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

23                   Roll call.

24                   MS. HAIRSTON: Robin Berg Tabakin?

25                   CHAIRPERSON BERG TABAKIN: Present.

1 MS. HAIRSTON: Janice Kovach.

2 MS. KOVACH: Yes.

3 MS. HAIRSTON: Anthony D'Elia?

4 MR. D'ELIA: Present.

5 MS. HAIRSTON: Dave Fleisher is  
6 late.

7 MS. STARGHILL: One -- we're  
8 adjudicating one case before --

9 CHAIRPERSON BERG TABAKIN: Before  
10 closed session?

11 MS. STARGHILL: That's the Thomas  
12 Caggiano (2007-20 -- 289). It's just another  
13 one -- it's his latest one that he filed.

14 CHAIRPERSON BERG TABAKIN: Right.  
15 Is that the one you just sent yesterday or the  
16 one that came with --

17 MS. STARGHILL: That came with the  
18 packet.

19 CHAIRPERSON BERG TABAKIN: Okay.

20 MS. GORDON: The Executive Director  
21 respectfully recommends the Council find that  
22 because of a conflict of interest and at the  
23 request of the Complainant, this matter be  
24 referred to the Office of Administrative Law for  
25 a hearing to resolve the facts and determine

1 whether the custodian unlawfully denied access to  
2 the requested records, and if so, whether the  
3 denial was knowing and willful in violation of  
4 OPRA and unreasonable under the totality of the  
5 circumstances.

6 CHAIRPERSON BERG TABAKIN: Okay.

7 D.A.G. ALLEN: Madam Chairwoman,  
8 there was a recent event that occurred yesterday  
9 afternoon that I'd like to speak to the Council  
10 about in closed session that pertains to the  
11 Caggiano matter.

12 MS. STARGHILL: To this one? Can we  
13 vote on this or no?

14 D.A.G. ALLEN: No, it impacts this  
15 as well as other ones.

16 MS. STARGHILL: So we should not  
17 vote?

18 D.A.G. ALLEN: No, that would be my  
19 suggestion.

20 CHAIRPERSON BERG TABAKIN: That we  
21 should not vote?

22 D.A.G. ALLEN: Well, no, we can go  
23 into closed session to speak about this case --

24 MS. STARGHILL: And then come out.

25 D.A.G. ALLEN: And then come out and

1 determine whether or not you want to vote.

2 CHAIRPERSON BERG TABAKIN: Okay.

3 Can I have a motion to go into closed session?

4 MR. D'ELIA: So moved.

5 MS. KOVACH: Second.

6 CHAIRPERSON BERG TABAKIN: Roll  
7 call.

8 MS. HAIRSTON: Robin Berg Tabakin?

9 CHAIRPERSON BERG TABAKIN: Yes.

10 MS. HAIRSTON: Janice Kovach?

11 MS. KOVACH: Yes.

12 MS. HAIRSTON: Anthony D'Elia?

13 MR. D'ELIA: Yes.

14 CHAIRPERSON BERG TABAKIN: Closed  
15 session.

16 MS. STARGHILL: Closed session will  
17 literally be ten minutes max, maybe five,  
18 seriously, probably more like five.

19 (Council goes into Closed Session.  
20 The time is 9:34 a.m.)

21 (Back in Public Session. The time  
22 is 9:57 a.m.)

23 CHAIRPERSON BERG TABAKIN: Okay, I  
24 need to read the resolution for closed session  
25 into the record.

1 MS. HAIRSTON: Could we get a vote  
2 on going back into open.

3 CHAIRPERSON BERG TABAKIN: We did.

4 MS. HAIRSTON: To open meeting.

5 MS. STARGHILL: We need a motion to  
6 close session and we need a motion to open.

7 CHAIRPERSON BERG TABAKIN: Can I  
8 have a motion to open open session?

9 MS. KOVACH: So moved.

10 MR. D'ELIA: Second.

11 MS. HAIRSTON: Robin Tabakin?

12 CHAIRPERSON BERG TABAKIN: Yes.

13 MS. HAIRSTON: Janice Kovach?

14 MS. KOVACH: Yes.

15 MS. HAIRSTON: Anthony D'Elia?

16 MR. D'ELIA: Yes.

17 MS. HAIRSTON: And Dave Fleisher?

18 He just stepped out of the room.

19 CHAIRPERSON BERG TABAKIN: All  
20 right. Now I need to read the resolution for  
21 closed session into the minutes.

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

25 WHEREAS, the Government Records

1 Council has deemed it necessary to go into closed  
2 session to discuss certain matters which are  
3 exempt from public under the Open Public Meetings  
4 Act; and

5 WHEREAS, the regular meeting of the  
6 Council will reconvene at the conclusion of the  
7 closed meeting;

8 NOW, THEREFORE, BE IT RESOLVED, that  
9 the Council will convene in closed session to  
10 receive legal advice and discuss anticipated  
11 litigation in which the Council may become a  
12 party pursuant to N.J.S.A. 10:4-12.b(7) in the  
13 follow matters:

14 Thomas Caggiano v. Borough of  
15 Stanhope (2006-211), (2006-219), (2007-24),  
16 2007-25), (2007-26), (2007-40), (2000-43) -- I'm  
17 (2007-43), (2007-44), (2007-45), (2007-46),  
18 (2007-47), (2007-183), (2007-184), (2007-228),  
19 (2007-229), (2007-285).

20 MS. STARGHILL: And for the record,  
21 the Council went into closed session to  
22 discuss --

23 CHAIRPERSON BERG TABAKIN: -- to  
24 discuss these matters.

25 MS. STARGHILL: No, to discuss the

1 matter for which it was about to adjudicate. And  
2 because what was listed on the post-session  
3 resolution also related to the matter that was in  
4 the midst of being adjudicated and for which the  
5 Council went into closed session on the advice,  
6 the direction of our D.A.G., we also discussed  
7 those matters.

8 CHAIRPERSON BERG TABAKIN: BE IT  
9 FURTHER RESOLVED, that the Council will disclose  
10 to the public the matters discussed or determined  
11 in closed session as soon as possible after final  
12 decisions are in the above cases.

13 Now we're back in open session. So  
14 the first complaint will be?

15 MS. STARGHILL: (2007-289).

16 CHAIRPERSON BERG TABAKIN: Thomas  
17 Caggiano v. Borough of Stanhope (2007-289).

18 MS. GORDON: The Executive Director  
19 respectfully recommends the Council find that  
20 because of a conflict of interest and at the  
21 request of the Complainant, this matter be  
22 referred to the Office of Administrative Law for  
23 a hearing to resolve the facts and determine  
24 whether the custodian unlawfully denied access to  
25 the requested records, and if so, whether the

1 denial was knowing and willful in violation of  
2 OPRA and unreasonable under the totality of the  
3 circumstances.

4 CHAIRPERSON BERG TABAKIN: Is there  
5 any discussion?

6 Can I have a motion, please?

7 MR. FLEISHER: So moved.

8 MS. KOVACH: Second.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 CHAIRPERSON BERG TABAKIN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Anthony D'Elia?

14 MR. D'ELIA: Yes.

15 MS. HAIRSTON: And Dave Fleisher?

16 MR. FLEISHER: Yes.

17 CHAIRPERSON BERG TABAKIN: Now we'll  
18 do --

19 MS. STARGHILL: Let's do the  
20 16 Caggiano reconsiderations?

21 CHAIRPERSON BERG TABAKIN: Okay. Do  
22 you want me to read all these?

23 MS. STARGHILL: No. As previously  
24 read into the record --

25 CHAIRPERSON BERG TABAKIN: All

1 right.

2 As previously read into the record  
3 that the cases that we were discussing in closed  
4 session, Thomas Caggiano v. Borough of Stanhope  
5 (2006-211) through the ones we read (2007-285).

6 MS. STARGHILL: The Executive  
7 Director respectfully recommends the Council find  
8 that the request for a stay of the November 28,  
9 2007 Interim Orders referring sixteen complaints  
10 to the Office of Administrative Law not be  
11 granted since the complaints were referred to the  
12 Office of Administrative Law due to a conflict of  
13 interest between Complainant and Executive  
14 Director Starghill based on the criminal  
15 harassment complaint filed and the temporary  
16 restraining order obtained for the GRC against  
17 Complainant.

18 I would like to amend that now,  
19 also, to simply add in the analysis that contrary  
20 to an argument of Custodian's counsel that the  
21 Borough would be forced to incur substantial  
22 attorney's fees that attorney representation is  
23 not required before or at proceedings before the  
24 Office of Administrative Law. I will include in  
25 my amendment the citation to the administrative

1 procedures at rules which indicate so.

2                   Additionally, I would amend to state  
3 again in opposition to the Custodial Counsel's  
4 argument that the GRC is caving into the  
5 complainant intimidation and harassment, that it  
6 is because of the severe intimidation and  
7 harassment that the GRC is in a conflict of  
8 interest situation with the Complainant and has  
9 obtained a temporary restraining order and that  
10 Executive Director Starghill, myself, filed the  
11 criminal harassment complaint against Caggiano.

12                   And lastly, I would amend to  
13 indicate that Mr. Caggiano as a Complainant's due  
14 process would likely be impinged if in fact the  
15 GRC did not refer the matters to another agency,  
16 being the Office of Administrative Law, to  
17 adjudicate these matters objectively.

18                   CHAIRPERSON BERG TABAKIN: Okay.

19 Just letting you --

20                   Okay, motion?

21                   MR. D'ELIA: So moved.

22                   CHAIRPERSON BERG TABAKIN: Second?

23                   MS. KOVACH: Second.

24                   CHAIRPERSON BERG TABAKIN: Roll

25 call.

1 MS. HAIRSTON: Robin Berg Tabakin?

2 CHAIRPERSON 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: And Dave Fleisher?

8 MR. FLEISHER: Yes.

9 CHAIRPERSON BERG TABAKIN: Now let's  
10 go back to the agenda and we will do minutes.

11 October 31st, 2007, the open session  
12 transcript. Could I have a motion to approve?

13 MR. D'ELIA: I'll move approval of  
14 the minutes.

15 CHAIRPERSON BERG TABAKIN: Okay,  
16 second?

17 MR. FLEISHER: Second.

18 CHAIRPERSON BERG TABAKIN: Roll  
19 call.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 CHAIRPERSON BERG TABAKIN: Yes.

22 MS. HAIRSTON: Janice Kovach?

23 MS. KOVACH: Yes.

24 MS. HAIRSTON: Anthony D'Elia?

25 MR. D'ELIA: Yes.

1 MS. HAIRSTON: Dave Fleisher?

2 MR. FLEISHER: Yes.

3 CHAIRPERSON BERG TABAKIN: Okay.

4 October 31st, 2007 closed session minutes. Can I  
5 have a motion to approve?

6 MS. KOVACH: So moved.

7 CHAIRPERSON BERG TABAKIN: Second?

8 MR. D'ELIA: Second.

9 CHAIRPERSON BERG TABAKIN: Roll  
10 call.

11 MS. HAIRSTON: Robin Berg Tabakin?

12 CHAIRPERSON BERG TABAKIN: Yes.

13 MS. HAIRSTON: Janice Kovach?

14 MS. KOVACH: Yes.

15 MS. HAIRSTON: Anthony D'Elia?

16 MR. D'ELIA: Yes.

17 MS. HAIRSTON: Dave Fleisher?

18 MR. FLEISHER: Yes.

19 CHAIRPERSON BERG TABAKIN: Okay,  
20 November 28th of 2007 closed session minutes and  
21 November 28th -- I assume that's 2007, not 2006,  
22 open session transcript, we cannot vote because  
23 we have a lack of quorum.

24 And now the Administrative  
25 Complaints.

1                   MS. STARGHILL: I would like to draw  
2 the Council's attention to the fact simply that  
3 two cases were mediated and we received  
4 notification late yesterday about them. And so  
5 my staff so promptly prepared the administrative  
6 position to add those matters to our agenda  
7 today. And you have copies in your folders from  
8 them. They're just both settled in mediation.  
9 It proves that our mediators are doing a fine job  
10 and work right up to the last minute before our  
11 meeting to get the cases closed.

12                   CHAIRPERSON BERG TABAKIN: We don't  
13 need a motion?

14                   MS. STARGHILL: No -- well, yes, we  
15 need a motion to accept all of these --

16                   CHAIRPERSON BERG TABAKIN: Could I  
17 have a motion to accept all of the  
18 Administrative

19                   MR. D'ELIA: So moved.

20                   MR. FLEISHER: Second.

21                   MS. HAIRSTON: Robin Berg Tabakin?

22                   CHAIRPERSON BERG TABAKIN: Yes.

23                   MS. HAIRSTON: Janice Kovach?

24                   MS. KOVACH: Yes.

25                   MS. HAIRSTON: Anthony D'Elia?

1 MR. D'ELIA: Yes.

2 MS. HAIRSTON: And Dave Fleisher?

3 MR. FLEISHER: Yes.

4 CHAIRPERSON BERG TABAKIN: Okay.

5 Now we'll go back into the individual complaints.

6 Diomedes Valenzuela v. Township of  
7 Irvington (2006-182).

8 MS. LOWINE: The Executive Director  
9 respectfully recommends the Council accept the  
10 settlement as reached by the parties at the  
11 Office of Administrative Law.

12 CHAIRPERSON BERG TABAKIN: Any  
13 discussion, questions?

14 Motion?

15 MS. KOVACH: So moved.

16 CHAIRPERSON BERG TABAKIN: Second?

17 MR. D'ELIA: Second.

18 CHAIRPERSON BERG TABAKIN: Roll  
19 call.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 CHAIRPERSON BERG TABAKIN: Yes.

22 MS. HAIRSTON: Janice Kovach?

23 MS. KOVACH: Yes.

24 MS. HAIRSTON: Anthony D'Elia?

25 MR. D'ELIA: Yes.

1 MS. HAIRSTON: Dave Fleisher?

2 MR. FLEISHER: Yes.

3 CHAIRPERSON BERG TABAKIN: Shirlee  
4 Manahan v. Salem County.

5 MS. STARGHILL: The Executive  
6 Director respectfully recommends the Council find  
7 that:

8 1. The Custodian appropriately  
9 complied with the GRC's September 26, 2007  
10 Interim Order on November 19, 2007.

11 The delay really was simply the  
12 communication to the GRC that the records had  
13 been released.

14 No. 2., As previously decided in the  
15 GRC's September 26, 2007 Interim Order, because  
16 the Custodian denied the Complainant's request  
17 that the records be sent to her electronically,  
18 stating that the Custodian did not have the  
19 capability to transmit the records  
20 electronically, only to later supply the Council  
21 with a chart detailing some of the charges the  
22 Custodian planned to impose on the Complainant  
23 for scanning and e-mailing the records responsive  
24 from a different department, as well as the  
25 Custodian's failure to respond to the GRC's

1 request for additional information regarding the  
2 special service charge, 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.

7 As such, this complaint shall be  
8 referred to the Office of Administrative Law for  
9 determination of whether the Custodian knowingly  
10 and willfully violated OPRA and unreasonably  
11 denied access under the totality of the  
12 circumstances.

13 CHAIRPERSON BERG TABAKIN: Any  
14 discussion on that?

15 Okay, can I have a motion, please?

16 MS. KOVACH: So moved.

17 MR. D'ELIA: Second.

18 CHAIRPERSON BERG TABAKIN: Roll  
19 call.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 CHAIRPERSON BERG TABAKIN: Yes.

22 MS. HAIRSTON: Janice Kovach?

23 MS. KOVACH: Yes.

24 MS. HAIRSTON: Anthony D'Elia?

25 MR. D'ELIA: Yes.

1 MS. HAIRSTON: Dave Fleisher?

2 MR. FLEISHER: Yes.

3 CHAIRPERSON BERG TABAKIN: Okay.

4 Linda G. Janney v. Estell Manor City (Atlantic).

5 MS. MAYERS: There was an edit made  
6 to No. 1 of the conclusion. It should read as  
7 follows:

8 The Executive director respectfully  
9 recommends the Council find that:

10 No. 1., The Custodian unlawfully  
11 denied access to the requested records pursuant  
12 to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.  
13 because the Custodian failed to respond in  
14 writing to the Complainant's request within seven  
15 business days, resulting in a deemed denial.  
16 Kelley v. Rockaway Township, GRC Complaint No.  
17 2006-176 (March 2007).

18 No. 2., The Custodian has failed to  
19 bear her burden of proof that the denial of  
20 access was authorized by law pursuant to N.J.S.A.  
21 47:1A-6. because she did not provide the  
22 Complainant with a lawful basis for the  
23 non-disclosure of the January 12, 2006, February  
24 1, 2006 and February 22, 2006 meeting minutes.

25 No. 3., The Custodian shall disclose

1 the requested meeting minutes with appropriate  
2 redactions, including a detailed document index  
3 explaining the lawful basis for each redaction,  
4 within five business days from receipt of this  
5 Interim Order and simultaneously provide  
6 certified confirmation of compliance to the  
7 Executive director if the requested executive  
8 session minutes were approved by the governing  
9 body prior to the date of this OPRA request.

10                   No. 4., The Custodian shall not  
11 disclose the requested executive session minutes  
12 if those minutes were not approved by the  
13 governing body prior to the date of this OPRA  
14 request because such meeting minutes are exempt  
15 from disclosure as advisory, consultative or  
16 deliberative material pursuant to N.J.S.A.  
17 47:1A-1.1 and Parave-Fogg v. Lower Alloways Creek  
18 Township, GRC Complaint No. 2006-51 (August  
19 2006). The Custodian shall provide certified  
20 confirmation to the Executive Director that the  
21 governing body did not approve the minutes prior  
22 to the date of this OPRA request within five  
23 business days from receipt of this Interim Order.

24                   No. 5., Based on the evidence of  
25 record, it is reasonable for the Custodian to

1 assess a special service charge for the retrieval  
2 of the two months of archived meeting minutes,  
3 which the Custodian certifies took her thirty  
4 minutes, and the thirty minutes that it took for  
5 the Custodian to return the records back into  
6 storage. Based on *Renna v. County of Union*, GRC  
7 Complaint No. 2004-134 (April 2006), the  
8 Custodian shall charge the Complainant a special  
9 service charge of one hour of the Custodian's  
10 hourly rate in addition to the copying cost.

11 The Custodian shall refund to the  
12 Complainant the amount paid over and above this  
13 amount and shall submit proof thereof to the  
14 Council consistent with the Council's Interim  
15 Order herein. See *Cottrell v. Borough of*  
16 *Glassboro*, GRC Complaint No. 2003-28 (July 2003),  
17 which required the Custodian to refund fees to  
18 the Complainant.

19 No. 6., Although the Custodian's  
20 failure to provide a written response either  
21 granting access, denying access, seeking  
22 clarification, or requesting an extension of time  
23 within the statutorily mandated seven business  
24 days resulted in a "deemed" denial and the  
25 Custodian failed to bear her burden of proof that

1 the denial of access was authorized by law  
2 pursuant to N.J.S.A. 47:1A-6, the Custodian did  
3 ultimately release the requested meeting minutes  
4 with the exception of the three meeting minutes  
5 on which the Custodian needed to seek more  
6 clarification.

7 Therefore, it is concluded that the  
8 Custodian's actions do not rise to the level of a  
9 knowing and willful violation of OPRA and  
10 unreasonable denial of access under the totality  
11 of the circumstances. However, the Custodian's  
12 unlawful deemed denial of access appears  
13 negligent and heedless since she is vested with  
14 the law -- excuse me, with the legal  
15 responsibility of granting and denying access in  
16 accordance with he law.

17 CHAIRPERSON BERG TABAKIN: Thank you  
18 very much.

19 Could I have a motion -- is there  
20 any discussion?

21 Could I have motion, please?

22 MR. D'ELIA: So moved.

23 MS. KOVACH: Second.

24 CHAIRPERSON BERG TABAKIN: Roll  
25 call.

1 MS. HAIRSTON: Robin Berg Tabakin?

2 CHAIRPERSON 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: And Dave Fleisher?

8 MR. FLEISHER: Yes.

9 CHAIRPERSON BERG TABAKIN: Nancy  
10 Diaz v. City of Perth Amboy.

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 granting access, denying access, seeking  
16 clarification or requesting an extension of time  
17 within the statutorily mandated seven business  
18 days, as required by N.J.S.A. 47:1A-5.g. and  
19 N.J.S.A. 47:1A-5.i., results in a "deemed" denial  
20 of the Complainant's OPRA request. Tucker Kelley  
21 v. Township of Rockaway, GRC Complaint No.  
22 2007-11 (August 2007).

23 2. Because some of the records  
24 requested were bills and invoices subject to  
25 immediate access pursuant to N.J.S.A. 47:1A-5.e.,

1 the Custodian failed to immediately grant or deny  
2 access, request additional time to respond or  
3 request clarification of the request for  
4 invoices, the Custodian has also violated  
5 N.J.S.A. 47:1A-5.e.

6 3. Pursuant to N.J.S.A. 47:1A-6.,  
7 the Custodian has not borne her burden of proving  
8 a lawful denial of access to the records  
9 requested in the Complainant's December 19, 2006  
10 OPRA request. The Custodian shall disclose all  
11 requested records with appropriate redactions, if  
12 any, and a redaction index detailing the general  
13 nature of the information redacted and the lawful  
14 basis for such redactions as required by N.J.S.A.  
15 47:1A-6. and 47:1A-5.g.

16 4. The Custodian should comply with  
17 Item No. 3 above within five business days from  
18 receipt of the Council's Order and simultaneously  
19 provide certified confirmation of compliance to  
20 the Executive Director.

21 5. Although the Complainant may be  
22 a member of the plaintiff committee currently in  
23 litigation against the City of Perth Amboy, the  
24 Complainant is still entitled to use OPRA as a  
25 means of obtaining records in regards to the same

1 litigation pursuant to Mid-Atlantic Recycling  
2 Technologies, Inc., v. City of Vineland, 222  
3 F.R.D. 81 (April 27, 2004).

4 6. The Council defers a decision  
5 regarding whether the Custodian's actions rise to  
6 the level of a knowing and willful violation of  
7 OPRA and an unreasonable denial of access under a  
8 totality of the circumstances pending compliance  
9 with the Council's Interim Order.

10 CHAIRPERSON BERG TABAKIN: Thank  
11 you.

12 Is there any discussion?

13 MR. D'ELIA: Madam Chair, is City of  
14 Perth Amboy Essex or Middlesex?

15 CHAIRPERSON BERG TABAKIN:  
16 Middlesex.

17 MR. D'ELIA: Middlesex. Just for  
18 the record that should be...

19 MS. STARGHILL: And it only says  
20 that on the agenda.

21 MR. D'ELIA: Yeah, that's all.

22 CHAIRPERSON BERG TABAKIN: All  
23 right.

24 Could I have motion to approve,  
25 please?

1 MR. D'ELIA: So moved.

2 MS. KOVACH: Second.

3 CHAIRPERSON BERG TABAKIN: Roll  
4 call.

5 MS. HAIRSTON: Robin Berg Tabakin?

6 CHAIRPERSON BERG TABAKIN: Yes.

7 MS. HAIRSTON: Janice Kovach?

8 MS. KOVACH: Yes.

9 MS. HAIRSTON: Anthony D'Elia?

10 MR. D'ELIA: Yes.

11 MS. HAIRSTON: Dave Fleisher?

12 MR. FLEISHER: Yes.

13 CHAIRPERSON BERG TABAKIN: Next one,  
14 Vesselin Dittrich v. City of Hoboken.

15 MR. CARUSO: The Executive Director  
16 respectfully recommends the Council find that:

17 1. The Custodian has complied with  
18 the Council's October 31, 2007 Interim Order by  
19 releasing the requested records to the  
20 Complainant and providing a subsequent  
21 certification to the GRC within the five business  
22 days ordered by the GRC. No further action is  
23 required.

24 2. Because the Custodian has  
25 complied with the Council's October 31, 2007

1 Interim Order by releasing all records requested  
2 to the Complainant and providing a subsequent  
3 certification to the GRC within the five business  
4 days ordered by the GRC, it is concluded that the  
5 Custodian's actions do not rise to the level of a  
6 knowing and willful violation of OPRA and  
7 unreasonable denial of access under the totality  
8 of the circumstances. However, the Custodian's  
9 actions appear to be negligent and heedless since  
10 he is vested with the legal responsibility of  
11 granting and denying access in accordance with  
12 the law.

13 CHAIRPERSON BERG TABAKIN: Any  
14 discussion?

15 Can I have a motion, please?

16 MR. FLEISHER: So moved.

17 MS. KOVACH: Second.

18 CHAIRPERSON BERG TABAKIN: Roll  
19 call.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 CHAIRPERSON BERG TABAKIN: Yes.

22 MS. HAIRSTON: Janice Kovach?

23 MS. KOVACH: Yes.

24 MS. HAIRSTON: Anthony D'Elia?

25 MR. D'ELIA: Yes.

1 MS. HAIRSTON: Dave Fleisher?

2 MR. FLEISHER: Yes.

3 CHAIRPERSON BERG TABAKIN: Mike

4 Mathes v. Burlington County Board of Chosen

5 Freeholders.

6 MS. LOWINE: The Executive Director

7 respectfully recommends that the Council find

8 that the complaint should be referred to the

9 Office of Administrative Law for determination of

10 whether the Custodian knowingly and willfully

11 violated OPRA and unreasonably denied access

12 under the totality of the circumstances because

13 the Custodian has not complied with the Council's

14 October 31, 2007 Interim Order, and thus is in

15 contempt of such Order.

16 CHAIRPERSON BERG TABAKIN: Do we

17 know why they have not complied?

18 No?

19 MS. LOWINE: No.

20 MS. STARGHILL: For

21 communications --

22 MS. LOWINE: Yes. The Custodian was

23 communicating with us via e-mail. He was more

24 concerned that our findings and recommendations

25 did not reflect that he had reached mediation.

1 But it didn't really matter because the Custodian  
2 had to find, so the issue was moot. But other  
3 than that he has not responded regarding the  
4 order itself.

5 CHAIRPERSON BERG TABAKIN: Okay,  
6 could I have a motion to approve?

7 MS. KOVACH: So moved.

8 MR. D'ELIA: Second.

9 CHAIRPERSON BERG TABAKIN: Roll  
10 call.

11 MS. HAIRSTON: Robin Berg Tabakin?

12 CHAIRPERSON BERG TABAKIN: Yes.

13 MS. HAIRSTON: Janice Kovach?

14 MS. KOVACH: Yes.

15 MS. HAIRSTON: Anthony D'Elia?

16 MR. D'ELIA: Yes.

17 MS. HAIRSTON: Dave Fleisher?

18 MR. FLEISHER: Yes.

19 CHAIRPERSON BERG TABAKIN: James  
20 Restaino v. Township of Cherry Hill.

21 MR. FLEISHER: I am recusing myself  
22 for the record.

23 CHAIRPERSON BERG TABAKIN: Note that  
24 Dave Fleisher is recusing himself.

25 (Dave Fleisher recuses himself for

1 this complaint.)

2 MS. LOWINE: The Executive Director  
3 respectfully recommends the Council find that:

4 No. 1., the Custodian's failure to  
5 grant access, deny access, seek clarification,  
6 or request an extension of time in writing within  
7 the statutorily mandated seven business days  
8 results in a "deemed" denial pursuant to N.J.S.A.  
9 47:1A-5.g., N.J.S.A. 47:1A-5.i., John Paff v.  
10 Bergen County Prosecutor's Office, GRC Complaint  
11 No. 2005-115 (March 2006), and Michael DeLuca v.  
12 Town of Guttenberg, GRC Complaint No. 2006-126  
13 (February 2007).

14 No. 2., Based on the Council's  
15 decision in John Windish v. Mount Arlington  
16 Public Schools, GRC Complaint No. 2005-216  
17 (August 2006), the Custodian may charge the copy  
18 costs enumerated in N.J.S.A. 47:1A-5.b. for paper  
19 copies. As such, the Custodian's charge of  
20 \$69.39 is reasonable pursuant to OPRA because the  
21 Custodian charged the enumerated copy costs in  
22 N.J.S.A. 47:1A-5.b. for paper copies, and what  
23 appears to be the actual cost for copies of  
24 audiotapes.

25 No. 3., Although the Custodian's

1 failure to provide a written response to the  
2 Complainant's OPRA request within the statutorily  
3 mandated seven business days resulted in a  
4 "deemed" denial, because the Custodian provided  
5 the Complainant with the requested records  
6 approximately one month following the date of the  
7 Complainant's request, it is concluded that the  
8 Custodian's actions do not rise to the level of a  
9 knowing and willful violation of OPRA and  
10 unreasonable denial of access under the totality  
11 of the circumstances. However, the Custodian's  
12 unlawful "deemed" denial of access appears  
13 negligent and heedless since she is vested with  
14 the legal responsibility of granting and denying  
15 access in accordance with the law.

16 CHAIRPERSON BERG TABAKIN: Okay, any  
17 discussion?

18 Motion, please?

19 MR. D'ELIA: So moved.

20 MS. KOVACH: Second.

21 MS. HAIRSTON: Robin Berg Tabakin?

22 CHAIRPERSON BERG TABAKIN: Yes.

23 MS. HAIRSTON: Janice Kovach?

24 MS. KOVACH: Yes.

25 MS. HAIRSTON: Anthony D'Elia?

1 MR. D'ELIA: Yes.

2 MS. STARGHILL: I'm sorry. I am  
3 going to add simply that the Windish decision was  
4 affirmed on appeal and that's on our agenda to  
5 discuss. I apologize. That came up -- we got  
6 notice after this F.R. was approved and I  
7 apologize.

8 CHAIRPERSON BERG TABAKIN: That's  
9 okay, I knew that we were going to discuss it  
10 later.

11 MS. STARGHILL: But I'll just add  
12 that in with my statement to that Windish com --  
13 GRC complaint.

14 MS. KOVACH: Yes. And I'm recusing  
15 myself from the next two and I will get David.

16 CHAIRPERSON BERG TABAKIN: Thank  
17 you.

18 (Dave Fleisher returns and Janice  
19 Kovach recuses herself for the next to  
20 complaints.)

21 CHAIRPERSON BERG TABAKIN: Okay.  
22 Paul Bellen-Boyer v. New Jersey Department of  
23 Community Affairs, Commissioner's Office.

24 MS. LOWINE: The Executive Director  
25 respectfully recommends the Council find that:

1                   No. 1., Because the original  
2                   Custodian provided a written response to the  
3                   Complainant either granting access or denying  
4                   access to the requested records within the  
5                   statutorily mandated seven business days, the  
6                   original Custodian's response was proper pursuant  
7                   to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.  
8                   and thus the original Custodian did not  
9                   unlawfully deny access to the requested records.

10                   Additionally, the current Custodian  
11                   certifies that although he was not the Custodian  
12                   at the time of the Complainant's request, upon  
13                   his search of agency files, he has not located  
14                   any records responsive to the Complainant's  
15                   request in addition to those provided by the  
16                   original Custodian.

17                   No. 2., It cannot be determined  
18                   whether the Custodian has met the burden of  
19                   proving that the requested records are exempt  
20                   from disclosure without actually reviewing the  
21                   records to confirm the Custodian's legal  
22                   conclusion. Therefore, it is recommended that  
23                   the Council conduct an in camera inspection of  
24                   the confidential reports from New Jersey Historic  
25                   Trust to the Commissioner dated April 4, 2007;

1 April 11, 2007; April 18, 2007; April 24, 2007;  
2 May 2, 2007; May 9, 2007 and May 16, 2007 to  
3 determine whether the records are exempt from  
4 disclosure in whole or in part because of  
5 "advisory, consultative or deliberative material"  
6 pursuant to N.J.S.A. 47:1a-1.1.

7 Just an edit, it should read  
8 N.J.S.A. 47:1A-1.1

9 MS. STARGHILL: It should be 1  
10 capital A.

11 MS. LOWINE: Oh, one capital A.

12 No. 3., The Custodian must deliver  
13 to the Council in a sealed envelope six copies of  
14 the requested unredacted documents, a document  
15 (see No. 2 above), a document or redaction index,  
16 as well as a legal certification from the  
17 Custodian, in accordance with New Jersey Court  
18 Rule 1:4-4, that the documents provided are the  
19 documents requested by the Council for the in  
20 camera inspection. Such delivery must be  
21 received by the GRC within five business days  
22 from receipt of the Council's Interim Order.

23 No. 4., Because pursuant to Mag  
24 Entertainment, LLC v. Division of Alcoholic  
25 Beverage Control, 375 N.J. Super. 53, (App. Div.

1 2005), public agencies are required under OPRA to  
2 disclose only "identifiable" government records  
3 not otherwise exempt, and wholesale requests for  
4 information are not encompassed therein, the  
5 Custodian's request for answers to those  
6 questions set forth by the court in John Paff v.  
7 New Jersey Department of Labor, 392 N.J. Super.  
8 334 (App. Div. 2007) is an invalid request for  
9 information under OPRA. However, the Custodian  
10 is required to provide answers to these questions  
11 as part of the Custodian's Statement of  
12 Information, as directed by the court in Paff.

13 No. 5., The Council defers analysis  
14 of a possible knowing and willful violation of  
15 OPRA and unreasonable denial of access under the  
16 totality of the circumstances pending the outcome  
17 of the in camera review.

18 CHAIRPERSON BERG TABAKIN: Is there  
19 any discussion on this?

20 May I have motion to accept it?

21 MR. D'ELIA: I'll move to accept it.

22 MR. FLEISHER: Second.

23 MS. HAIRSTON: Robin Berg Tabakin?

24 CHAIRPERSON BERG TABAKIN: Yes.

25 MS. HAIRSTON: Anthony D'Elia?

1 MR. D'ELIA: Yes,

2 MS. HAIRSTON: And Dave Fleisher?

3 MR. FLEISHER: Yes.

4 CHAIRPERSON BERG TABAKIN: Okay.

5 Sandra Schuler v. Borough of Bloomsbury.

6 And note that Janice Kovach is  
7 recusing herself from this one as well.

8 MS. LOWINE: The Executive Director  
9 respectfully recommends the Council find that:

10 No. 1., The Custodian is required to  
11 respond to each OPRA request individually  
12 pursuant to Martin O'Shea v. Township of West  
13 Milford, GRC Complaint No. 2004-17 (May 2005).

14 No. 2., Because the Custodian failed  
15 to legally certify whether her letter dated May  
16 21, 2007 is in response to the Complainant's OPRA  
17 requests dated May 14, 2007, said requests are  
18 "deemed" denied pursuant to N.J.S.A. 47:1A-5.g.,  
19 N.J.S.A. 47:1A-5.i and Tucker Kelley v. Township  
20 of Rockaway, GRC Complaint No. 2007-11 (October  
21 2007).

22 No. 3., Because the Custodian did  
23 not specifically grant or deny access to the  
24 requested records in the Custodian's letter to  
25 the Complainant dated May 21, 2007, the

1 Custodian's response is inadequate pursuant to  
2 OPRA.

3           No. 4., While seeking legal advice  
4 on how to appropriately respond to a records  
5 request is reasonable, pursuant to John Paff v.  
6 Bergen County Prosecutor's Office, GRC Complaint  
7 No. 2005-115 (March 2006), it is not a lawful  
8 reason for delaying a response to an OPRA records  
9 request because the Custodian should have  
10 notified the Complainant in writing that an  
11 extension of the time period to respond was  
12 necessary. Thus, the Custodian violated N.J.S.A.  
13 47:1A-6 by not providing a lawful basis for the  
14 denial of access to Item No. 1 of the  
15 Complainant's request.

16           No. 5., Because the work done by the  
17 Borough Engineer, Robert Zederbaum, is directly  
18 related to and arises from business done by him  
19 on behalf of the Borough of Bloomsbury (even if  
20 the Borough Engineer is not an actual employee of  
21 the Borough, he maintains a contractual  
22 relationship with the Borough), the requested  
23 records maintained on file by the Borough  
24 Engineer are considered government records  
25 pursuant to N.J.S.A. 47:1A-1.1 and are subject to

1 public access.

2                   As such, the Custodian unlawfully  
3 denied access to the records responsive to Item  
4 No. 1 of the requested records which are  
5 maintained on file by the Borough Engineer  
6 pursuant to Donald Meyers v. Borough of Fair  
7 Lawn, GRC Complaint NO. 2005-127 (May 2006) and  
8 Beck v. O'Hare, Docket No. MER-L-2411-07 (Law  
9 Div. 2007) and the Custodian should provide the  
10 requested records from the Borough Engineer's  
11 files to the Complainant.

12                   No. 6., The Custodian shall comply  
13 with Item No. 5 above within five business days  
14 from receipt of the Council's Interim Order and  
15 simultaneously provide certified confirmation of  
16 compliance, in accordance with New Jersey Court  
17 Rule 1:4-4, to the Executive Director.

18                   No. 7., Because the Complainant's  
19 OPRA requests Nos. 2 through 5 are not requests  
20 for identifiable government records, the  
21 request -- it should read "the requests are  
22 invalid," rather than "the request is" -- the  
23 requests are invalid and the Custodian has not  
24 unlawfully denied access to the requested records  
25 pursuant to Mag Entertainment, LLC v. Division of

1 alcoholic Beverage Control, 375 N.J. Super. 534  
2 (March 2005) and Bent v. Stafford Police  
3 Department, 381 N.J. Super. 30 (October 2005).

4           No. 8., Although the Complainant's  
5 request is for information rather than  
6 identifiable government records, and as such is  
7 not a valid OPRA request pursuant to Mag  
8 Entertainment, LLC v. Division of Alcoholic  
9 Beverage Control, 375 N.J. Super. 534 (March  
10 2005) and Bent v. Stafford Police Department, 381  
11 N.J. Super. 30 (October 2005), because the  
12 Custodian failed to complete the requested  
13 Statement of Information (and by doing so failing  
14 to legally certify to her actions regarding the  
15 requests at issue in this complaint), the  
16 Custodian has not carried her burden of proving a  
17 lawful denial of access to Item No. 6 of the  
18 Complainant's request pursuant to N.J.S.A.  
19 47:1A-6.

20           And lastly No. 9., The Council  
21 defers analysis and determination of whether the  
22 Custodian and/or the Borough Engineer knowingly  
23 and willfully violated OPRA and unreasonably  
24 denied access under the totality of the  
25 circumstances pending the Custodian's compliance

1 with the Council's Interim Order in this matter.

2 CHAIRPERSON BERG TABAKIN: Thank you  
3 very much.

4 Is there any discussion?

5 Okay. Motion?

6 MR. D'ELIA: I'll move approval.

7 CHAIRPERSON BERG TABAKIN: Second?

8 MR. FLEISHER: Second.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 CHAIRPERSON BERG TABAKIN: Yes.

11 MS. HAIRSTON: Anthony D'Elia?

12 MR. D'ELIA: Yes,

13 MS. HAIRSTON: And Dave Fleisher?

14 MR. FLEISHER: Yes.

15 MS. STARGHILL: I'll bring Janice

16 back in.

17 (Janice Kovach rejoins Council.)

18 CHAIRPERSON BERG TABAKIN: Would --

19 Catherine Starghill in your Executive Director's

20 Report does that, too, cover John Windish?

21 MS. STARGHILL: Yes.

22 There was -- one of the GRC's prior

23 decisions, John Windish v. Mount Arlington Board

24 of Education, which was appealed, was affirmed

25 this week in an unpublished decision of the

1 Appellate Division. In that decision, the GRC  
2 ruled that the Custodian was correct in charging  
3 the enumerated rate in OPRA contrary to the  
4 Complainant's challenge that the actual cost  
5 should be charged.

6                   And our decision -- this was a  
7 matter for which I reconsidered of my own  
8 volition given all the different trials or Law  
9 Division decisions finding that this county has  
10 to -- or the records custodian of this county of  
11 this town has to charge actual cost and records  
12 custodian in this county has to charge enumerated  
13 rate. I wanted an Appellate Division decision  
14 that would be disposed for the entire state  
15 versus the conflicting Law Division decision.

16                   And while our decision was affirmed,  
17 and I guess I'm happy about that, the analysis of  
18 the court seems to be somewhat limiting although  
19 the ultimate result is our decision allowing  
20 custodians to charge the enumerated rates over  
21 challenges that the custodian should be charging  
22 actual rate was affirmed. Our rationale was  
23 based on precept of statutory interpretation,  
24 statutory language interpretation.

25                   And basically the provision in OPRA

1 5B is somewhat -- I don't know if it's confusing  
2 as it is hard to apply in practice. And the  
3 court acknowledged that the GRC appropriately  
4 determined that that was the case and that  
5 custodians should charge enumerated rates.

6 So it was a victory for the GRC and  
7 we'll provide more clarification for guidance for  
8 custodians.

9 Did you want to?

10 D.A.G. ALLEN: Yes, because  
11 unfortunately I didn't have the opportunity to  
12 talk to our A.A.G. about this opinion prior to  
13 today's meeting. And I read the opinion in  
14 detail. It's an awfully awkward and confusing  
15 opinion and in many parts it doesn't make a lot  
16 of sense. For example, if the court is saying  
17 the custodian has to show actual cost in every  
18 circumstance. So if that's the case, then there  
19 can never could be a circumstance where that  
20 three-tier cost scheme is imposed; you know, the  
21 75 cents, 50 cents and 25 cents. I mean, based  
22 upon the court's analysis, it seems that there  
23 could never be a situation where that three-part  
24 scheme is in place.

25 MS. STARGHILL: You know what, we

1       should --

2                       D.A.G. ALLEN:  So it's read out of  
3       the court, in essence, read that out of the OPRA  
4       statute.  Where the OPRA statute clearly sets  
5       forth that schedule.

6                       MS. STARGHILL:  I thought they  
7       announced that when a custodial charges actual  
8       cost, making it sound elective almost, then they  
9       have to justify --

10                      D.A.G. ALLEN:  Well, that's  
11       according to the statute that's if it exceeds the  
12       schedule.

13                      MS. STARGHILL:  Yes.

14                      D.A.G. ALLEN:  For example, the  
15       custodian can charge 75 cents according to the  
16       statute for the first seven pages.  But let's say  
17       if the Congressman requests or they need to  
18       outsource it and they have to send it to Kinkos,  
19       and Kinkos will say, all right we'll have it for  
20       90 cents per page.  As long as the custodian can  
21       demonstrate that that actual cost of 90 some-odd  
22       cents for Kinkos is the actual cost, then there's  
23       not an issue.  But based upon the court's  
24       analysis reads, the custodian would have to show  
25       actual cost of 49 cents instead of the 75 cents.

1 And it's our opinion that that is not what OPRA  
2 intended.

3           So my goal, hopefully prior to the  
4 next meeting, is to meet with our A.A.G. and try  
5 to make sense of this opinion. The fact that we  
6 prevailed is a good thing. But for the purposes  
7 of moving forward and properly advising, you  
8 know, the custodians of the State what the law is  
9 on cost, I don't think this opinion is helpful in  
10 that regard. And I think we have to work it out  
11 in my office to figure out what's going on and  
12 what the court actually meant. This board is  
13 bound by this decision. Even though it's not a  
14 published decision, we're administratively bound  
15 by this unpublished decision. So in order for us  
16 to effectively advise the custodians of the State  
17 what the law is in that, I think we need some  
18 more guidance from my office on that.

19           MS. STARGHILL: More guidance for  
20 custodians only as it relates to when a custodian  
21 chooses to charge what it asserts is actual cost.  
22 If the custodian doesn't decide to charge actual  
23 cost, then the enumerated rate -- them charging  
24 the enumerated rate is perfectly fine under the  
25 decision.

1                   D.A.G. ALLEN: Well, we'll have our  
2 office look into it.

3                   MS. STARGHILL: Okay.

4                   CHAIRPERSON BERG TABAKIN: Yeah, I  
5 think that should be discussed at the next  
6 meeting, also, so that we can be better informed.

7                   MS. STARGHILL: Yeah, because I  
8 think my understanding of the decision is  
9 different from yours. So maybe --

10                  D.A.G. ALLEN: Well, that's why I  
11 wanted to get it out with the A.A.G.

12                  MS. STARGHILL: The A.A.G.

13                  D.A.G. ALLEN: Yeah.

14                  MS. STARGHILL: And we'll talk about  
15 it.

16                  D.A.G. ALLEN: Yeah.

17                  MS. STARGHILL: I have no other  
18 points to discuss under my Executive's Report.  
19 However, I would like to read a statement on  
20 behalf of Chairman Vince Maltese into the record.

21                         "Dear Members of the Council,  
22 Executive Director Starghill, Counsel to the GRC  
23 and dedicated staff, ladies and gentlemen:

24                                 "I am truly sorry I cannot be with  
25 you today for I am attending the funeral of one

1 of my best friends who died over the weekend. In  
2 my absence Catherine Starghill has graciously  
3 agreed to read this memo into the record in my  
4 place and stead.

5 "I have always been a strong  
6 proponent of term limitations, even if they are  
7 self-imposed. After serving on this Council for  
8 some 5 1/2 years, I have decided to move on and  
9 make room for someone else to serve the citizens  
10 of this Great State. Accordingly, I wish to  
11 announce today that I have tendered by  
12 resignation from the Government Records Council  
13 to Governor Corzine effective December 31, 2007.

14 "I have had the privilege to serve  
15 the residents of New Jersey on this panel since  
16 July 2002 and since that time I've had the  
17 distinct honor of serving as its Chairperson.

18 "During my tenure I have shared this  
19 table with many bright, selfless and passionate  
20 individuals, present company included, each one  
21 of whom brought, and now brings to this Council,  
22 a certain non-partisan work ethic and mind-set  
23 which has allowed us to persevere and grow over  
24 the years.

25 "I remember back to 2002 when our

1 staff consisted of two people, namely an  
2 Executive Director and one D.A.G. Now our staff  
3 has grown to where we are today, a dedicated  
4 staff of investigators, administrators and  
5 secretaries, an Executive Director who is not  
6 only an extremely principled person but also an  
7 individual who is quite passionate about her job,  
8 and two well respected legal counsel to help keep  
9 us on the straight and narrow.

10 "I dare say that the citizens of New  
11 Jersey continue to get their money's worth from  
12 one of the most, if not the most, dedicated and  
13 hard-working staffs in New Jersey government  
14 today. We are all very proud of your collective  
15 and individual accomplishments and efforts aimed  
16 at achieving greater transparency throughout New  
17 Jersey government.

18 "As we have said on many occasions,  
19 OPRA is not a model of clarity. It leaves much  
20 to interpretation. Over the years many public  
21 minded individuals and groups have implored our  
22 Legislature to revisit OPRA and to take steps to  
23 clarify and supplement the law where necessary.  
24 Regrettably, our Legislature has been slow to act  
25 on these recommendations.

1                    "To the thousands of records  
2                    custodians in this State who are charged with the  
3                    responsibility on a daily basis to provide access  
4                    to government records to the extent required by  
5                    law, I urge you to continue to take your  
6                    responsibility to heart, for it is only through  
7                    your good judgement and dedication to public  
8                    service that the spirit of OPRA can be fully  
9                    realized. And to those fellow New Jerseyans who  
10                    eat and sleep OPRA, and to all other citizens who  
11                    are committed to responsibly bring about greater  
12                    transparency in New Jersey government at all  
13                    levels, I commend you and urge you to continue  
14                    your pursuit with a renewed effort and passion -  
15                    for there is still much work to be done.

16                    "My best wishes to all of you for a  
17                    happy Holiday Season and a healthy and prosperous  
18                    New Year. It has been my privilege and honor to  
19                    serve you."

20                    Unfortunately, some sad, sad news.  
21                    Nice letter. I did not add that stuff about me,  
22                    honestly.

23                    I just want to, I guess, show  
24                    everyone we did get a plaque made for him. And I  
25                    hate that he was unable to be here to receive it.

1 We're going to send it to him. And it reads:

2 Department of Community Affairs  
3 Government Records Council, Vincent P. Maltese,  
4 Esq., Chairman 2002-2007. In appreciation of  
5 your five years of devoted service to the  
6 citizens of the State of New Jersey, we honor you  
7 for your leadership.

8 (Displays plaque. Applause.)

9 CHAIRPERSON BERG TABAKIN: Could we  
10 possibly invite him back to our January 30th  
11 meeting?

12 MS. STARGHILL: So that he can  
13 receive it personally, is that what you'd prefer?

14 CHAIRPERSON BERG TABAKIN: I would  
15 like to see that happen.

16 MS. STARGHILL: Okay.

17 CHAIRPERSON BERG TABAKIN: If he  
18 can't make it, then send it. But if he can make  
19 it the following month...because he really put a  
20 lot of dedication into this Council and I'd like  
21 to see him honored personally.

22 MS. STARGHILL: Okay, will do.

23 CHAIRPERSON BERG TABAKIN: And he  
24 will be missed. I want to add he will be missed.

25 Okay, are you done?

1                   MS. STARGHILL: I guess I just have  
2 a couple of comments.

3                   It truly has been a pleasure working  
4 with Chairman Maltese. He remains chairman until  
5 the end of this meeting. His integrity, his  
6 strength, and his ability to forge the way  
7 through some very dark days in the beginning and  
8 adjust as the law has been clarified through  
9 varied of our own decisions as well as the  
10 judiciary. I commend him for sticking it out.  
11 Things were rough in the beginning.

12                   And I know firsthand not as a staff  
13 of the GRC, but because I was working for a  
14 private study commission at the same time the GRC  
15 started and so I had a lot of interaction with  
16 the GRC. Things were tough in the beginning, and  
17 Vince was the pillar of strength I think for the  
18 staff here as well as everyone looking at what  
19 would happen with this law whether it was  
20 requestors or custodians. So I just want to on  
21 the record commend him for this efforts.

22                   Man, any job that he takes in the  
23 future in addition to his services to his law  
24 firm as a partner, has to be much easier than the  
25 five years he spent serving the GRC.

1                   CHAIRPERSON BERG TABAKIN:  And I  
2                   also want to add that being a member of this  
3                   Council is a volunteer job and Vince has put in  
4                   quite a lot of time, personal time into being  
5                   Chair and to leading the Council and working with  
6                   the Executive Director and so the citizens of  
7                   this state owe him a great deal of thanks.  Okay.

8                   All right, we will now entertain  
9                   public comment.  In the interest of time if  
10                  anyone has any public comment, please limit it to  
11                  five minutes.  If anyone has any public comment  
12                  please step up to the table.

13                  Hello...

14                  Okay, then I think we should  
15                  adjourn.

16                  Can I have a motion to adjourn?

17                  MS. KOVACH:  So moved.

18                  MR. D'ELIA:  Second.

19                  CHAIRPERSON BERG TABAKIN:  Roll  
20                  call.

21                  MS. HAIRSTON:  Robin Berg Tabakin?

22                  CHAIRPERSON BERG TABAKIN:  Yes.

23                  MS. HAIRSTON:  Janice Kovach?

24                  MS. KOVACH:  Yes.

25                  MS. HAIRSTON:  Anthony D'Elia?

1 MR. D'ELIA: Yes.

2 MS. HAIRSTON: Dave Fleisher?

3 MR. FLEISHER: Yes.

4 CHAIRPERSON BERG TABAKIN: Everybody  
5 have a happy holiday and a happy and healthy  
6 2008.

7 MR. FLEISHER: Happy new year,  
8 everybody.

9 MR. D'ELIA: Happy holidays,  
10 everyone.

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13 (HEARING CONCLUDED AT TIME 10:46 A.M.)

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C E R T I F I C A T E

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

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LINDA P. CALAMARI

Dated: JANUARY 6, 2008.

