

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

4

5

6 PUBLIC SESSION

7

8 TRANSCRIPT OF PROCEEDINGS

9

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12 AT: DEPARTMENT OF COMMUNITY AFFAIRS

13 101 South Broad Street - Room 129

14 Trenton, New Jersey 08625-0819

15 DATE: WEDNESDAY, MARCH 26, 2008

16 TIME: 9:36 A.M. TO 10:34 A.M.

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19

20 GUY J. RENZI & ASSOCIATES
21 GOLDEN CREST CORPORATE CENTER
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1 COUNCIL MEMBERS:

2 ROBIN BERG TABAKIN, Chairperson

3 KATHRYN FORSYTH (designee of Commissioner

4 Lucille Davy, Department

5 of Education)

6 JANICE L. KOVACH (designee of Acting Commissioner

7 Joseph V. Doria, Jr., Department

8 of Community Affairs)

9

10 COUNCIL PROFESSIONALS:

11 CATHERINE STARGHILL, ESQ., Executive Director

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

13 KARYN GORDON, ESQ.

14 MICHELLE DUDAS, ESQ.

15

16 FRANK F. CARUSO, Case Manager

17 DARA LOWNIE, Case Manager

18 TIFFANY L. MAYERS, Case Manager

19 JYOTHI PAMIDIMUKKALA, Case Manager

20 JOHN E. STEWART, ESQ., Case Manager/

21 In Camera Attorney

22

23 BRIGITTE HAIRSTON, Council Secretary

24

25

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5 3. ROLL CALL..... 8

6 4. CLOSED SESSION:

7 Closed Session Resolution..... 8

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21 4. Richard Rivera v. City of Clifton,

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11 Corrections (2007-196)..... 33

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1 CHAIRPERSON TABAKIN: Okay, I'm
2 calling the meeting to order.

3 Would we all please stand.

4 (Whereupon, all rise for the Pledge
5 of Allegiance.)

6 CHAIRPERSON TABAKIN: This meeting
7 was called pursuant to the provisions of the Open
8 Public Meeting Act. Notices of this meeting were

9 faxed to the Newark Star-Ledger, Trenton Times,
10 Courier-Post of Cherry Hill, Secretary of State
11 and e-mailed to the New Jersey Foundation for
12 Open Government on March 24th, 2008.

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

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

25 Roll call.

8

1 MS. HAIRSTON: Robin Berg Tabakin?

2 CHAIRPERSON TABAKIN: Present.

3 MS. HAIRSTON: Janice Kovach?

4 MS. KOVACH: Yes.

5 MS. HAIRSTON: Kathryn Forsyth?

6 MS. FORSYTH: Here.

7 CHAIRPERSON TABAKIN: And at this
8 time we are going to go into closed session.

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

12 WHEREAS, the Government Records
13 Council has deemed it necessary to go into closed
14 session to discuss certain matters which are
15 exempt from public discussion under the Open
16 Public Meetings Act; and

17 WHEREAS, the regular meeting of the
18 Council will reconvene at that conclusion of the
19 closed meeting;

20 NOW, THEREFORE, BE IT RESOLVED, that
21 the Council will convene in closed session to
22 receive legal advice and discuss anticipated
23 litigation in which the Council may become a
24 party pursuant to N.J.S.A. 10:4-12.b(7) in the

25 following matters:

9

1 1. Irma Sandoval v. NJ State Police

2 Board (2006-167) In camera review.

3 2. Martin O'Shea v. Wayne Board of

4 Education (2006-173) In camera 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 final decisions are issued in

9 the above cases.

10 Can I have a motion, please?

11 MS. FORSYTH: So moved.

12 MS. KOVACH: Second.

13 CHAIRPERSON TABAKIN: Roll call.

14 MS. HAIRSTON: Robin Berg Tabakin?

15 CHAIRPERSON TABAKIN: Yes.

16 MS. HAIRSTON: Janice Kovach?

17 MS. KOVACH: Yes.

18 MS. HAIRSTON: Kathryn Forsyth?

19 MS. FORSYTH: Yes.

20 CHAIRPERSON TABAKIN: We're in
21 closed session.

22 (Whereupon, Council went into closed
23 session. The time is 9:38 a.m.)

24 (Back on the record. The time is
25 9:48 a.m.)

10

1

2 CHAIRPERSON TABAKIN: Now can I have
3 a motion to go back into open session?

4 MS. KOVACH: So moved.

5 MS. FORSYTH: Second.

6 CHAIRPERSON TABAKIN: Roll call,
7 please.

8 MS. HAIRSTON: Robin Berg Tabakin?

9 CHAIRPERSON TABAKIN: Yes.

10 MS. HAIRSTON: Janice Kovach?

11 MS. KOVACH: Yes.

12 MS. HAIRSTON: Ms. Forsyth?

13 MS. FORSYTH: Yes.

14 CHAIRPERSON TABAKIN: Now we will
15 approve the minutes.

16 Now, November, the closed session
17 minutes --

18 MS. STARGHILL: There's no quorum.

19 CHAIRPERSON TABAKIN: Pardon me?

20 MS. STARGHILL: There's still no
21 quorum.

22 CHAIRPERSON TABAKIN: Right, the
23 closed session minutes from November 28th, 2007
24 cannot be approved at this time because we don't
25 have a quorum.

11

1 February 27th, 2008 closed session
2 minutes, could I have a motion to please approve
3 them?

4 MS. KOVACH: So moved.

5 MS. FORSYTH: Second.

6 CHAIRPERSON TABAKIN: Roll call.

7 MS. HAIRSTON: Robin Berg Tabakin?

8 CHAIRPERSON TABAKIN: Yes.

9 MS. HAIRSTON: Janice Kovach?

10 MS. KOVACH: Yes.

11 MS. HAIRSTON: Kathryn Forsyth?

12 MS. FORSYTH: Yes.

13 CHAIRPERSON TABAKIN: And February

14 27th, 2007 open session transcript, motion

15 please?

16 MS. KOVACH: So moved.

17 MS. FORSYTH: Second.

18 CHAIRPERSON TABAKIN: Roll call.

19 MS. HAIRSTON: Robin Berg Tabakin?

20 CHAIRPERSON TABAKIN: Yes.

21 MS. HAIRSTON: Janice Kovach?

22 MS. KOVACH: Yes.

23 MS. HAIRSTON: Kathryn Forsyth?

24 MS. FORSYTH: Yes.

25 CHAIRPERSON TABAKIN: Okay. Now we

12

1 will do the Administrative Complaint Council

2 Adjudication.

3 All right, there are seven of those
4 cases. Could I have a motion to please approve
5 those?

6 MS. KOVACH: So moved.

7 MS. FORSYTH: Second.

8 CHAIRPERSON TABAKIN: Roll call.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 CHAIRPERSON TABAKIN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Kathryn Forsyth?

14 MS. FORSYTH: Yes.

15 CHAIRPERSON TABAKIN: Now we'll get
16 to the Individual Complaints.

17 All right, No. 1, Tina Renna v.
18 Union County Utilities Authority (2006-72).

19 MS. LOWNIE: The Executive Director
20 respectfully recommends the Council accept the
21 Administrative Law Judge's initial decision dated
22 February 26th, 2008.

23 CHAIRPERSON TABAKIN: Any discussion

24 on this?

25 MS. FORSYTH: A little bit.

13

1 Doesn't this -- does this sort of
2 change our future definition of the willful
3 standard?

4 MS. STARGHILL: Actually, this
5 initial decision was very consistent with other
6 initial decisions we've received from OAL on this
7 issue in that the Administrative Law judges flip
8 the burden of proof. So when -- for a denial the
9 burden of proof or lawful denial from a Custodian
10 was to prove knowing and willful, the Requester
11 has the burden of putting forth some evidence of
12 fact that support that the Custodian met the very
13 high common law standard for knowing and willful.

14 So this is actually -- I was pleased
15 that this was consistent with prior initial
16 decisions because there is a matter -- there are
17 two matters before OAL presently where motions
18 have been submitted by counsel for the custodian

19 which does not acknowledge the precedent already
20 established in OAL for the flipping of the
21 burden.

22 But it looked to me -- and you,
23 Karyn, please correct me or elaborate on -- it
24 looked to me like this Administrative Judge
25 literally picked our boilerplate language on the

14

1 standard for knowing and willful from our prior
2 decisions and did cite our prior decisions.

3 MS. GORDON: That's correct.

4 MS. STARGHILL: I know that there
5 are other decisions, at least one that comes to
6 mind -- of course I can't remember the title of
7 the complaint -- where the Administrative Law
8 Judge, you know, went through a whole
9 dissertation which went beyond our boilerplate
10 language. But this judge I think went to our
11 website or had the clerk go to our website and
12 got some of our cases and literally --

13 MS. FORSYTH: Okay, thank you.

14 CHAIRPERSON TABAKIN: Okay. Could I

15 have a motion to accept the OAL recommendation?

16 MS. KOVACH: So moved.

17 CHAIRPERSON TABAKIN: Second?

18 MS. FORSYTH: Second.

19 CHAIRPERSON TABAKIN: Roll call.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 CHAIRPERSON TABAKIN: Yes.

22 MS. HAIRSTON: Janice Kovach?

23 MS. KOVACH: Yes.

24 MS. HAIRSTON: Kathryn Forsyth?

25 MS. FORSYTH: Yes.

15

1 CHAIRPERSON TABAKIN: Irma Sandoval

2 v. New Jersey State Parole Board (2006-167).

3 And while we're on this, I want to

4 correct, when we went into closed session, I

5 incorrectly stated Irma Sandoval v. New Jersey

6 State Police Board and it should be New Jersey

7 State Parole Board.

8 So the case is Irma Sandoval v. New
9 Jersey State Parole Board (2006-167) for the in
10 camera review findings and recommendations.

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

14 1. The Custodian has not timely
15 complied with the Council's March 28, 2007
16 Interim Order by providing the Council with all
17 records set forth in paragraph 4 of the Order
18 within five business days of receiving the
19 Council's Order; to wit, the Custodian sent one
20 copy of the redaction index by facsimile nine
21 business days after receiving the Council's Order
22 and one copy of the unredacted Status of
23 Interview form by facsimile twenty-one business
24 days after receiving the Council's Order,
25 contrary to the provisions of said Order.

16

1 No. 2. On the basis of the

2 Council's determination in this matter, the
3 Council shall comply with the Council's findings
4 of the In Camera Examination set forth in the
5 above table within five business days from
6 receipt of this Order and provide certified
7 confirmation of compliance pursuant to N.J. Court
8 Rules, R.-- Rule 1:4-4 to the Executive Director.

9 CHAIRPERSON TABAKIN: Custodian
10 shall comply with the Council's...

11 Could I have a motion to --

12 MS. KOVACH: So moved.

13 MS. FORSYTH: Second.

14 MS. HAIRSTON: Robin Berg Tabakin?

15 CHAIRPERSON TABAKIN: Yes.

16 MS. HAIRSTON: Janice Kovach?

17 MS. KOVACH: Yes.

18 MS. HAIRSTON: Kathryn Forsyth?

19 MS. FORSYTH: Yes.

20 CHAIRPERSON TABAKIN: Martin O'Shea

21 v. Wayne Board of Education (2006-173).

22 MR. STEWART: The Executive Director

23 respectfully recommends the Council find that:

24 1. The Custodian has complied with
25 the Council's September 26th, 2007 Interim Order

17

1 by providing the Council with all records set
2 forth in paragraph 2 of the Order within five
3 business days of receiving the Council's Order.

4 No. 2. On the basis of the
5 Council's determination in this matter, the
6 Custodian shall comply with the Council's
7 findings of the In Camera Examination set forth
8 in the above table within five business days from
9 receipt of this Order and provide certified
10 confirmation of compliance pursuant to New Jersey
11 Court Rules, 1969 R. 1:4-4 (2005) to the
12 Executive Director.

13 CHAIRPERSON TABAKIN: Any questions?

14 Motion?

15 MS. FORSYTH: So moved.

16 CHAIRPERSON TABAKIN: Second.

17 MS. KOVACH: Second.

18 CHAIRPERSON TABAKIN: Roll call.

19 MS. HAIRSTON: Robin Berg Tabakin?

20 CHAIRPERSON TABAKIN: Yes.

21 MS. HAIRSTON: Janice Kovach?

22 MS. KOVACH: Yes.

23 MS. HAIRSTON: Kathryn Forsyth?

24 MS. FORSYTH: Yes.

25 CHAIRPERSON TABAKIN: Suzanne Mendes

18

1 v. Tinton Falls Board of Education (2006-201).

2 MR. CARUSO: The Executive Director

3 respectfully recommends the Council accept the

4 settlement as reached by the parties at the

5 Office of Administrative Law.

6 CHAIRPERSON TABAKIN: Any questions?

7 MS. FORSYTH: So moved.

8 MS. KOVACH: Second.

9 CHAIRPERSON TABAKIN: Roll call.

10 MS. HAIRSTON: Robin Berg Tabakin?

11 CHAIRPERSON TABAKIN: Yes.

12 MS. HAIRSTON: Janice Kovach?

13 MS. KOVACH: Yes.

14 MS. HAIRSTON: Kathryn Forsyth?

15 MS. FORSYTH: Yes.

16 CHAIRPERSON TABAKIN: Thomas

17 Johnston v. Township of Hillsdale -- oh, I'm

18 sorry, Hillside Municipal Council

19 (Union)(2006-202).

20 MS. LOWNIE: The Executive Director

21 respectfully recommends the Council find that:

22 1. Because the Custodian provided

23 the Complainant with an unredacted copy of the

24 Township Council's closed session minutes dated

25 May 17, 2006 and provided certified confirmation

19

1 of compliance, pursuant to New Jersey Court Rule

2 1:4-4, to the Executive Director within five

3 business days as ordered by the Council, the

4 Custodian has complied with the Council's January

5 30, 2008 Interim Order.

6 2. Although the Custodian violated

7 OPRA by not providing the Complainant with a
8 written response within the statutorily mandated
9 seven business day, and because the Custodian
10 believed that she was following proper procedures
11 based on the Township's policy, as well as
12 guidance issued by the Municipal Clerk's
13 Association in 1999, and because the Custodian
14 complied with the Council's January 30th, 2008
15 Interim Order, it is concluded that the
16 Custodian's actions do not rise to the level of a
17 knowing and willful violation of OPRA and
18 unreasonable denial of access under the totality
19 of the circumstances.

20 However, the Custodian's unlawful
21 "deemed" denial of access appears negligent and
22 heedless since she is vested with the legal
23 responsibility of granting and denying access in
24 accordance with the law.

25 No. 3. Because the Complainant

1 clearly identified at the time of the request and

2 complaint that the Complainant represented the
3 Hillside Board of Education, the Complainant's
4 legal representation was established, allowing
5 for the applicability of the state's fee-shifting
6 provision.

7 Additionally, the action sought by
8 the Complainant came about due to the
9 Complainant's filing of a Denial of Access
10 Complaint and as such, the Complainant is a
11 prevailing party entitled to an award of a
12 reasonable attorney's fee pursuant to N.J.S.A.
13 47:1A-6 and Teeters v. DYFS, 387 N.J. Super. 423
14 (App. Div. 2006). Thus, this complaint should be
15 referred to the Office of Administrative Law for
16 the determination of prevailing party attorney's
17 fees.

18 CHAIRPERSON TABAKIN: Any questions?

19 Motion?

20 MS. KOVACH: So moved.

21 MS. FORSYTH: Second.

22 CHAIRPERSON TABAKIN: Roll call.

23 MS. HAIRSTON: Robin Berg Tabakin?

24 CHAIRPERSON TABAKIN: Yes.

25 MS. HAIRSTON: Janice Kovach?

21

1 MS. KOVACH: Yes.

2 MS. HAIRSTON: Kathryn Forsyth?

3 MS. FORSYTH: Yes.

4 CHAIRPERSON TABAKIN: Douglas

5 Ehrenworth v. Borough of Ridgefield

6 Bergen(2007-13).

7 MR. CARUSO: The Executive Director

8 respectfully recommends the Council accept the

9 settlement as reached by the parties at the

10 Office of Administrative Law.

11 CHAIRPERSON TABAKIN: Okay, motion?

12 MS. FORSYTH: So moved.

13 MS. KOVACH: Second.

14 CHAIRPERSON TABAKIN: Roll call.

15 MS. HAIRSTON: Robin Berg Tabakin?

16 CHAIRPERSON TABAKIN: Yes.

17 MS. HAIRSTON: Janice Kovach?

18 MS. KOVACH: Yes.

19 MS. HAIRSTON: Kathryn Forsyth?

20 MS. FORSYTH: Yes.

21 CHAIRPERSON TABAKIN: Larry A. Kohn

22 v. Township of Livingston Library

23 (Essex)(2007-124).

24 MS. LOWNIE: The Executive Director

25 respectfully recommends the Council find that

22

1 this complaint should be dismissed because the

2 Complainant has voluntarily withdrawn this

3 complaint in a letter to the GRC dated March 3rd,

4 2008.

5 CHAIRPERSON TABAKIN: Motion?

6 MS. KOVACH: So moved.

7 MS. FORSYTH: Second.

8 CHAIRPERSON TABAKIN: Roll call.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 CHAIRPERSON TABAKIN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Kathryn Forsyth?

14 MS. FORSYTH: Yes.

15 CHAIRPERSON TABAKIN: Sandra Schuler

16 v. Borough of Bloomsbury (Hunterdon)(2007-151).

17 MS. LOWNIE: The Executive Director

18 respectfully recommends that the Council find

19 that this complaint should be referred to the

20 Office of Administrative Law for determination of

21 whether the Custodian knowingly and willfully

22 violated OPRA and unreasonably denied access

23 under the totality of the circumstances because:

24 1. The Custodian unlawfully denied

25 access to the records responsive to Item No. 1 of

23

1 the requested records which are maintained on

2 file by the Borough Engineer.

3 And 2. The Custodian is in

4 violation of the Council's December 19, 2007

5 Interim Order by not providing the requested

6 records to the Complainant or a certified

7 confirmation of compliance, pursuant to New
8 Jersey Court Rule 1:4-4, to the Executive
9 Director within the time period ordered by the
10 Council or extended by the GRC.

11 CHAIRPERSON TABAKIN: Any questions?

12 Motion?

13 MS. KOVACH: So moved.

14 MS. FORSYTH: Second.

15 CHAIRPERSON TABAKIN: Roll call.

16 MS. HAIRSTON: Robin Berg Tabakin?

17 CHAIRPERSON TABAKIN: Yes.

18 MS. HAIRSTON: Janice Kovach?

19 MS. KOVACH: Yes.

20 MS. HAIRSTON: Kathryn Forsyth?

21 MS. FORSYTH: Yes.

22 CHAIRPERSON TABAKIN: John Paff v.

23 Township of Maurice River (Cumberland)(2007-168).

24 MS. LOWNIE: The Executive Director

25 respectfully recommends the Council find that:

1 1. Because the Custodian provided
2 the Complainant with an unredacted copy of the
3 Township Committee's executive session minutes
4 dated November 13, 2006 and provided certified
5 confirmation of compliance, pursuant to New
6 Jersey Court Rule 1:4-4, to the Executive
7 Director as ordered by the Council's January
8 30th, 2008 Interim Order, the Custodian has
9 complied with said Order.

10 2. Although the Custodian violated
11 OPRA by not providing the Complainant with all
12 records responsive to his request within the
13 statutorily mandated seven business days and even
14 though the Custodian unlawfully denied access to
15 the redacted portions of the Township Committee's
16 executive session minutes dated November 13,
17 2006, the Custodian has provided said minutes to
18 the Complainant within the five business days as
19 ordered by the Council on January 30th, 2008.

20 Therefore, it is concluded that the
21 Custodian's actions do not rise to the level of a
22 knowing and willful violation of OPRA and

23 unreasonable denial of access under the totality
24 of the circumstances.

25 No. 3. The action sought by the

25

1 Complainant came about due to the Complainant's
2 filing of a Denial of Access Complaint and as
3 such, the Complainant is a prevailing party
4 entitled to an award of a reasonable attorney's
5 fee pursuant to N.J.S.A. 47:1A-6 -- and just a
6 reminder, an edit, this should read the completed
7 citation, Teeters v. DYFS, 387 N.J. Super. 423
8 (App. Div. 2006). Thus, this the complaint
9 should be referred to the Office of
10 Administrative Law for the determination of
11 prevailing party attorney's fees.

12 CHAIRPERSON TABAKIN: Okay. Motion?

13 MS. FORSYTH: So moved.

14 MS. KOVACH: Second.

15 MS. HAIRSTON: Robin Berg Tabakin?

16 CHAIRPERSON TABAKIN: Yes.

17 MS. HAIRSTON: Janice Kovach?

18 MS. KOVACH: Yes.

19 MS. HAIRSTON: Kathryn Forsyth?

20 MS. FORSYTH: Yes.

21 CHAIRPERSON TABAKIN: Roberto

22 Mejias, M-e-j-i-a-s, v. NJ Department of

23 Corrections (2007-181).

24 MS. LOWNIE: The Executive Director

25 respectfully recommends the Council find that:

26

1 1. Because the Virginia Department
2 of Corrections Operating Procedures were not
3 adopted pursuant to N.J.S.A. 47:1A-1 et seq. and
4 Executive Order No. 9 (Hughes 1963), nor are said
5 procedures a law binding on New Jersey, as well
6 as because the agency's procedures do not
7 supersede OPRA pursuant to *Dittrich v. City of*
8 *Hoboken (Hudson)*, GRC Complaint No. 2007-73
9 (*December 2007*) and *Renna v. County of Union*, GRC
10 *Complaint No. 2004-136 (August 2005)*, the
11 *Custodian's reliance on Executive Order No. 26 as*

12 a lawful denial of access is misplaced and as
13 such the Custodian has not borne her burden
14 of proving a lawful denial of access pursuant to
15 N.J.S.A. 47:1A-6.

16 2. Because the records requested
17 are not exempt from disclosure pursuant to OPRA,
18 any other New Jersey statute, regulation,
19 resolution, Executive Order, Court Rule or
20 federal law, the Custodian should release said
21 records to the Complainant with appropriate
22 redactions, if any, including a detailed
23 redaction index explaining the legal basis for
24 each redaction.

25 3. The Custodian shall comply with

27

1 Item No. 2 above within five business days from
2 receipt of the Council's Interim Order and
3 simultaneously provide certified confirmation of
4 compliance, in accordance with New Jersey Court
5 Rule 1:4-4, including a detailed redaction index

6 explaining the legal basis for each redacted
7 portion of the requested records to the Executive
8 Director.

9 CHAIRPERSON TABAKIN: Any questions
10 on this one?

11 MS. FORSYTH: I have two questions.

12 First of all, have we ever had a
13 case before where we're dealing with some other
14 jurisdiction?

15 MS. STARGHILL: I can't think of any
16 off the top of my head.

17 And when you did your research did
18 you find any?

19 MS. LOWNIE: No. And actually this
20 inmate is part of the interstate corrections
21 compact, so he is an inmate of New Jersey, he's
22 just in a Virginia prison, so he's still subject
23 to New Jersey law.

24 MS. FORSYTH: But we've never had
25 anything where -- so that leads to a second

1 question.

2 Can the VA DOC take any action in

3 response to our release of the confidential

4 documents?

5 MS. STARGHILL: They can always

6 appeal.

7 MS. FORSYTH: Uh-huh.

8 MS. STARGHILL: They can always

9 appeal our decision. The standard of review,

10 however, would not rest to the fact but simply

11 to, you know, how substantiated our conclusion

12 is. I would welcome such an appeal because it

13 is, you know, a novel issue for the GRC.

14 MS. FORSYTH: Okay, thank you.

15 CHAIRPERSON TABAKIN: Motion?

16 MS. FORSYTH: So moved.

17 MS. KOVACH: Second.

18 CHAIRPERSON TABAKIN: Roll call.

19 MS. HAIRSTON: Robin Berg Tabakin?

20 CHAIRPERSON TABAKIN: Yes.

21 MS. HAIRSTON: Janice Kovach?

22 MS. KOVACH: Yes.

23 MS. HAIRSTON: Kathryn Forsyth?

24 MS. FORSYTH: Yes.

25 CHAIRPERSON TABAKIN: Cynthia

29

1 Feiler-Jampel v. Office of the Somerset County

2 Prosecutor's Office (2007-190).

3 MR. STEWART: The Executive Director

4 respectfully recommends that the Council find

5 that:

6 1. The Custodian's failure to

7 respond to the Complainant's request in writing

8 by granting access, denying access, requesting an

9 extension of the statutory response time, or

10 asking for clarification of the request within

11 the statutorily mandated seven business days of

12 receiving Complainant's OPRA request in violation

13 of N.J.S.A. 47:1A-5.i and N.J.S.A. 47:1A-5.g has

14 resulted in a "deemed" denial. See Tucker Kelley

15 v. Township of Rockaway, GRC Complaint No.

16 2006-176 (March 2007).

17 No. 2. Because the records
18 requested comprise an entire Somerset County
19 Prosecutor's file, the request is overbroad and
20 of the nature of a blanket request for a class of
21 various documents rather than a request for a
22 specific government record, and because OPRA does
23 not require custodians to research files to
24 discern which records may be responsive to a
25 request, the Custodian had no legal duty to

30

1 research the SCPO files to locate records
2 potentially responsive to the Complainant's
3 request pursuant to the Superior Court's
4 decisions in *MAG Entertainment, LLC v. Division*
5 *of Alcoholic Beverage Control*, 375 N.J. Super.
6 534 (App. Div. 2005) and *Bent v. Stafford Police*
7 *Department*, 381 N.J. Super. 30 (App. Div. 2005),
8 and the Council's decisions in *Asarnow v.*
9 *Department of Labor and Workforce Development*,
10 *GRC Complaint No. 2006-24 (May 2006) and Morgano*

11 v. Essex County Prosecutor's Office, GRC
12 Complaint No. 2007-190 (February 2008).
13 No. 3. The Custodian properly
14 redacted personal identifier information from 162
15 records disclosed to the Complainant in accord
16 with the Legislature's declaration set forth in
17 N.J.S.A. 47:1A-1, N.J.S.A. 47:1A-1.1, N.J.S.A.
18 47:1A-5.a. and the Council's decision in *Shain v.*
19 *Township of Lakewood*, GRC Complaint No. 2002-112
20 (February 2004).
21 No. 4. Because N.J.A.C.
22 13:59-1.6(c), applicable to OPRA pursuant to
23 N.J.S.A. 47:1A-9.a., prohibits public servants
24 from permitting any other person to access
25 criminal history record information, the

31

1 Custodian lawfully denied the Complainant access
2 to the criminal history record database.
3 No. 5. Because Executive Order 26
4 (McGreevey) excludes information relating to
5 medical history, diagnosis, treatment or

6 evaluation from the definition of a government
7 record as provided in OPRA, and because this
8 Executive Order is applicable to OPRA by
9 operation of N.J.S.A. 47:1A-9.a., the Custodian
10 lawfully denied the Complainant access to this
11 record.

12 No. 6. Because the Custodian did
13 not adequately clarify the nature of the four
14 records described as SCPO Investigation Reports,
15 the GRC must conduct an in camera review to
16 decide whether or not the Custodian has lawfully
17 denied access to these records.

18 No. 7. The Custodian must deliver
19 to the Council in a sealed envelope nine copies
20 of the requested unredacted document set forth in
21 paragraph 6 above, a document or redaction index,
22 as well as a legal certification from the
23 Custodian, in accordance with New Jersey Court
24 Rule 1:4-4, that the document provided is the
25 document requested by the Council for the in

1 camera inspection. Such delivery must be
2 received by the GRC within five business days
3 from receipt of the Council's Interim Order.

4 No. 8. Because handwritten notes do
5 not constitute a government record according to
6 the Superior Court's decision in O'Shea v.
7 Milford Board of Education, 391 N.J. Super. 534
8 (App. Div. 2007), they are exempt from disclosure
9 pursuant to N.J.S.A. 47:1A-1, which provides that
10 "...government records shall be readily
11 accessible for inspection, copying, or
12 examination by the citizens of this State..."
13 Therefore, the Custodian lawfully denied the
14 Complainant access to this record.

15 No. 9. Although the Custodian
16 failed to respond in writing within the
17 statutorily mandated seven-business day response
18 time pursuant to OPRA, based on the evidence of
19 record, it is concluded that the Custodian's
20 actions do not rise to the level of a knowing and
21 willful violation of OPRA and unreasonable denial

22 of access under the totality of the
23 circumstances. However, the Custodian's actions
24 appear to be negligent and heedless since he is
25 vested with the legal responsibility of granting

33

1 access, denying access, seeking clarification or
2 requesting an extension of time in accordance
3 with the law.

4 MS. STARGHILL: I'd like to offer an
5 amendment that actually the analysis or
6 determination of knowing and willful be deferred
7 until after the in camera just because things can
8 go wrong during that process.

9 CHAIRPERSON TABAKIN: Okay. Motion
10 to approve as amended?

11 MS. KOVACH: So moved.

12 MS. FORSYTH: Second.

13 CHAIRPERSON TABAKIN: Roll call.

14 MS. HAIRSTON: Robin Berg Tabakin?

15 CHAIRPERSON TABAKIN: Yes.

16 MS. HAIRSTON: Janice Kovach?

17 MS. KOVACH: Yes.

18 MS. HAIRSTON: Kathryn Forsyth?

19 MS. FORSYTH: Yes.

20 CHAIRPERSON TABAKIN: Andrew

21 Hamilton v. N.J. Department of Corrections

22 (2007-196).

23 MS. LOWNIE: Before I begin reading

24 the conclusion I just want to make a note that on

25 page 5 and also on page 6 references to a prior

34

1 GRC decision Caban v. New Jersey Department of

2 Corrections on your copy may be cited as 2007-174

3 which should actually read 2004-174.

4 MS. STARGHILL: 174 or --

5 MS. LOWNIE: 2004-174.

6 The Executive Director respectfully

7 recommends the Council finds that:

8 1. Because the requested records

9 relating to the Complainant's dental implants are

10 medical records, the requested dental records are

11 exempt from disclosure pursuant to N.J.S.A.
12 47:1A-9.a., Executive Order No. 26 (McGreevey
13 2002), *Kamau v. New Jersey Department of*
14 *Corrections*, GRC Complaint No. 2004-175 (February
15 2005), and *Caban v. New Jersey Department of*
16 *Corrections*, GRC Complaint No. 2004-174 (March
17 2005). As such, the Custodian has borne the
18 burden of proving a lawful denial of access to
19 Item No. 1 of the Complainant's request pursuant
20 to N.J.S.A. 47:1A-6.

21 No. 2. Because Items No. 2 and
22 three of the Complainant's OPRA request are not
23 requests for identifiable government records, the
24 requests are invalid and the Custodian has not
25 unlawfully denied access to the requested records

1 pursuant to *MAG Entertainment, LLC v. Division of*
2 *Alcoholic Beverage Control*, 375 N.J. Super. 534.
3 546 (App. Div. 2005), *New Jersey Builders*
4 *Association v. New Jersey Council on Affordable*

5 Housing, 390 N.J. Super. 166, 175 (App. Div.
6 2007) and Bent v. Stafford Police Department, 381
7 N.J. Super. 30, 37 (App. Div. 2005).

8 CHAIRPERSON TABAKIN: Okay. Any
9 questions on this one?

10 Motion?

11 MS. KOVACH: So moved.

12 MS. FORSYTH: Second.

13 MS. HAIRSTON: Robin Berg Tabakin?

14 CHAIRPERSON TABAKIN: Yes.

15 MS. HAIRSTON: Janice Kovach?

16 MS. KOVACH: Yes.

17 MS. HAIRSTON: Kathryn Forsyth?

18 MS. FORSYTH: Yes.

19 CHAIRPERSON TABAKIN: Allan Johnson
20 v. Borough of Oceanport (Monmouth)(2007-201).

21 MR. CARUSO: The Executive Director
22 respectfully recommends the Council find that:

23 1. The Custodian's failure to
24 respond in writing to the Complainant's OPRA
25 request granting access, denying access, seeking

1 clarification or requesting an extension of time
2 within the statutorily mandated seven business
3 days even though no records responsive to the
4 request existed, as required by N.J.S.A.
5 47:1A-5.g. and N.J.S.A. 47:1A-5.i., results in a
6 "deemed" denial of the Complainant's OPRA
7 request. Kelley v. Township of Rockaway, GRC
8 Complaint No. 2006-176 (October 2007).

9 2. Although the Custodian did
10 respond on the fifth day following receipt of the
11 Complainant's request, she failed to do so in
12 writing as required by OPRA. However, because
13 the Custodian certifies that no records
14 responsive to the Complainant's request exist, it
15 is concluded that the Custodian's actions do not
16 rise to a level of a knowing and willful
17 violation of OPRA and unreasonable denial of
18 access under the totality of the circumstances.

19 However, the Custodian's actions
20 appear to be negligent and heedless since she is

21 vested with the legal responsibility of granting
22 and denying access in accordance with the law.

23 CHAIRPERSON TABAKIN: Any questions?

24 MS. KOVACH: So moved.

25 MS. FORSYTH: Second.

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1 CHAIRPERSON TABAKIN: Roll call.

2 MS. HAIRSTON: Robin Berg Tabakin?

3 CHAIRPERSON TABAKIN: Yes.

4 MS. HAIRSTON: Janice Kovach?

5 MS. KOVACH: Yes.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Yes.

8 CHAIRPERSON TABAKIN: Allan Johnson

9 v. Borough of Oceanport (Monmouth)(2007-202).

10 MR. CARUSO: The Executive Director

11 respectfully recommends the Council find that:

12 1. The Custodian did not violate

13 OPRA because the Custodian responded on the same

14 day as receipt of the Complainant's OPRA request

15 providing access to some of the requested

16 records, properly requested an extension until
17 August 20, 2007 in writing and certified that all
18 records responsive were disclosed on August 17,
19 2007, or three days prior to the expiration of
20 the requested extension pursuant to N.J.S.A.
21 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

22 2. The Custodian properly requested
23 an extension of the statutorily mandated seven
24 business days in order to satisfy the
25 Complainant's August 7, 2007 OPRA request because

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1 Councilwoman Kahle was unavailable to disclose
2 any records responsive until August 20, 2007.
3 See Parave-Fogg v. Lower Alloways Creek Township,
4 GRC Complaint No. 2006-63 (July 2006).

5 CHAIRPERSON TABAKIN: Motion?

6 MS. FORSYTH: So moved.

7 MS. KOVACH: Second.

8 CHAIRPERSON TABAKIN: Roll call.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 CHAIRPERSON TABAKIN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Kathryn Forsyth?

14 MS. FORSYTH: Yes.

15 CHAIRPERSON TABAKIN: Martin O'Shea

16 v. Township of Vernon (Sussex)(2007-207).

17 MS. LOWNIE: The Executive Director

18 respectfully recommends the Council find that:

19 1. Pursuant to N.J.S.A. 47:1A-5.b.,

20 Spaulding v. County of Passaic, GRC Complaint No.

21 2004-199 (September 2006), Libertarian Party of

22 Central New Jersey v. Murphy, 384 N.J. Super. 136

23 (App. Div. 2006), Moore v. Board of Chosen

24 Freeholders of Mercer County, 39 N.J. 26 (1962)

25 and Dugan v. Camden County Clerk's Office, 376

39

1 N.J. Super. 271 (App. Div. 2005), the Custodian

2 must charge the actual cost of duplicating the

3 requested records.

4 As such, the Custodian's charge of

5 \$35.00 for an audio recording of the requested
6 meeting minutes is unreasonable and in violation
7 of N.J.S.A. 47:1A-5.b. The Custodian must
8 provide the requested records to the Complainant
9 and charge the actual cost of the audiotape and
10 shall not include the cost of labor or other
11 overhead expenses associated with making the
12 copy.

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

19 3. Because the GRC's primary
20 responsibility is to adjudicate denial of access
21 complaints, the GRC can invalidate a custodian's
22 copy charge if said charge is found to be in
23 violation of OPRA and the requestor files a
24 denial of access complaint regarding the specific
25 copy fee. However, pursuant TO N.J.S.A.

1 47:1A-7.b., the GRC does not have the authority
2 to generally invalidate a Township's ordinance
3 which sets forth the fees for copying government
4 records.

5 4. The Council defers analysis of
6 whether the Custodian knowingly and willfully
7 violated OPRA and unreasonably denied access
8 under the totality of the circumstances pending
9 the Custodian's compliance with the Council's
10 Interim Order.

11 5. The Council defers analysis of
12 whether the Custodian is a prevailing party
13 pursuant to N.J.S.A. 47:1A-6 pending the
14 Custodian's compliance with the Council's Interim
15 Order.

16 CHAIRPERSON TABAKIN: Any questions?

17 Motion?

18 MS. KOVACH: So moved.

19 MS. FORSYTH: Second.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 CHAIRPERSON TABAKIN: Yes.

22 MS. HAIRSTON: Janice Kovach?

23 MS. KOVACH: Yes.

24 MS. HAIRSTON: Kathryn Forsyth?

25 MS. FORSYTH: Yes.

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1 CHAIRPERSON TABAKIN: Donald Baldwin

2 v. New Jersey Department of Transportation

3 (2007-208).

4 MR. CARUSO: The Executive Director

5 respectfully recommends the Council find that:

6 1. Because the Custodian would have

7 had to search approximately 3,697 employees in 10

8 Assistant Commissioner/Executive Organizations,

9 25 Divisions, 82 Bureaus, 4 Regional Offices

10 outside of NJDOT headquarters in Trenton, one or

11 more maintenance yards in every county and

12 numerous field offices throughout the state, for

13 "all correspondence," the Complainant's June 25,

14 2007 OPRA request is broad and unclear pursuant

15 to MAG Entertainment, LLC V. Div. Of ABC, 375
16 N.J. Super. 534 (App. Div. 2005).

17 Therefore, the Custodian properly
18 requested that the Complainant narrow his request
19 in order for the Custodian to provide the records
20 responsive. Cody v. Middletown Township Public
21 Schools, GRC Complaint No. 2005-98 (December
22 2005).

23 2. Because the Custodian certified
24 that no records responsive to the Complainant's
25 amended request exist, there is no unlawful

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1 denial of access to the requested records. See
2 Pusterhofer v. New Jersey Department of
3 Education, GRC Complaint No. 2005-49 (July 2005).

4 3. The Complainant failed to
5 achieve the desired result of disclosure of a
6 requested record since no records responsive
7 exist to the Complainant's amended June 25, 2007
8 OPRA request. The Complainant, therefore, is not
9 entitled to prevailing party attorney's fees.

10 See Teeters v. DYFS, 387 N.J. Super. 423 (App.
11 Div. 2006) and N.J. Builders Association v. N.J.
12 Council on Affordable Housing, 390 N.J. Super.
13 166, 175 (App. Div. 2007).

14 CHAIRPERSON TABAKIN: Motion?

15 MS. KOVACH: So moved.

16 MS. FORSYTH: Second.

17 CHAIRPERSON TABAKIN: Roll call.

18 MS. HAIRSTON: Robin Berg Tabakin?

19 CHAIRPERSON TABAKIN: Yes.

20 MS. HAIRSTON: Janice Kovach?

21 MS. KOVACH: Yes.

22 MS. HAIRSTON: Kathryn Forsyth?

23 MS. FORSYTH: Yes.

24 CHAIRPERSON TABAKIN: Louis Toscano

25 v. N.J. Department of Labor, Division of

1 Vocational Rehabilitation Services (2007-296).

2 MR. CARUSO: The Executive Director

3 respectfully recommends the Council find that:

4 1. The Custodian's failure to
5 respond in writing to the Complainant's OPRA
6 request granting access, denying access, seeking
7 clarification or requesting an extension of time
8 within the statutorily mandated seven business
9 days, as required by N.J.S.A. 47:1A-5.g. and
10 N.J.S.A. 47:1A-5.i., results in a "deemed" denial
11 of the Complainant's OPRA request. Kelley v.
12 Township of Rockaway, GRC Complaint No. 2006-176
13 (October 2007).

14 2. The Council, therefore, does not
15 have the authority to determine whether NJDVRS
16 has correctly followed their records retention
17 policy pursuant to N.J.S.A. 47:1A-7.b. See Chaka
18 Kwanzaa v. Department of Corrections, GRC
19 Complaint No. 2004-167 (March 2005); Christine
20 Gillespie v. Newark Public Schools, GRC Complaint
21 No. 2004-105 (November 2004); Jay Katinsky v.
22 River Vale Township, GRC Complaint No. 2003-68
23 (November 2003); Louis Toscano v. New Jersey
24 Department of Labor, GRC Complaint No. 2005-59
25 (September 2005); Van Pelt v. Edison Township

1 Board of Education, GRC Complaint No. 2007-179

2 (January 2008).

3 3. Although the Custodian's failure

4 to provide a written response to the

5 Complainant's OPRA request within the statutorily

6 mandated seven business days resulted in a

7 "deemed" denial, 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.

12 However, the Custodian's unlawful

13 "deemed" denial of access appears negligent and

14 heedless since she is vested with the legal

15 responsibility of granting and denying access in

16 accordance with the law.

17 CHAIRPERSON TABAKIN: Thank you.

18 Any questions?

19 Motion?

20 MS. KOVACH: So moved.
21 MS. FORSYTH: Second.
22 MS. HAIRSTON: Robin Berg Tabakin?
23 CHAIRPERSON TABAKIN: Yes.
24 MS. HAIRSTON: Janice Kovach?
25 MS. KOVACH: Yes.

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1 MS. HAIRSTON: Kathryn Forsyth?
2 MS. FORSYTH: Yes.
3 CHAIRPERSON TABAKIN: John Paff v.
4 City of east Orange (Essex)(2007-297).
5 MS. MAYERS: The Executive Director
6 respectfully recommends the Council find that:
7 1. Pursuant to the disjunctive use
8 of the word "or" set forth in N.J.S.A.
9 47:1A-5.g., not every one of the prescribed
10 methods for submitting an OPRA request is
11 required under the law. Additionally, pursuant
12 to the previously published Handbook for Records
13 Custodians, and the GRC's decisions set forth in
14 Hascup v. Waldwick Board of Education, GRC

15 Complaint No. 2005-192 (April 2007), and Momo v.
16 N.J. Department of Community Affairs, Division of
17 Community Resources, GRC Complaint No. 2007-17
18 (September 2007), a Custodian may decline to
19 accept OPRA requests via facsimile consistent
20 with N.J.S.A. 47:1A-5.g. Therefore, the
21 Custodian did not unlawfully deny the Complainant
22 access to the requested records.

23 2. The Complainant failed to
24 achieve the desired result of disclosure of the
25 requested records since the Custodian did not

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1 unlawfully deny the Complainant access to the
2 requested records pursuant N.J.S.A. 47:1A-5.g.,
3 Hascup v. Waldwick Board of Education, GRC
4 Complaint No. 2005-192 (April 2007), and Momo v.
5 New Jersey Department of Community Affairs,
6 Division of Community Resources, GRC Complaint
7 No. 2007-17 (September 2007).

8 Therefore, the Complainant is not

9 entitled to prevailing party attorney's fees.

10 See Teeters v. DYFS, 387 N.J. Super. 423 (App.

11 Div. 2006) and New Jersey Builders Association v.

12 New Jersey Council on Affordable Housing, 390

13 N.J. Super. 166, 175 (App. Div. 2007).

14 CHAIRPERSON TABAKIN: Any questions

15 on this?

16 MS. KOVACH: So moved.

17 MS. FORSYTH: Second.

18 MS. HAIRSTON: Robin Berg Tabakin?

19 CHAIRPERSON TABAKIN: Yes.

20 MS. HAIRSTON: Janice Kovach?

21 MS. KOVACH: Yes.

22 MS. HAIRSTON: Kathryn Forsyth?

23 MS. FORSYTH: Yes.

24 CHAIRPERSON TABAKIN: All right.

25 Thank you all very much.

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1 No complaints to be reconsidered.

2 No complaints adjudicated in Superior Court.

3 Would you like to do your report?

4 MS. STARGHILL: I guess I'd just
5 like to inform the Council that the GRC has been
6 named in a court decision -- a court case, I'm
7 sorry, initiated by Martin O'Shea pursuant to an
8 OPRA request submitted to the GRC.

9 Additionally, the GRC has been named
10 in a Superior Court action -- Appellate Division
11 regarding the GRC not granting two motions to
12 intervene by nonparty organizations.

13 The first is Geico the auto
14 insurance company. I guess they might insure
15 other things as well. In the matter of Mia Gill
16 v. New Jersey Department of Banking and
17 Insurance, Geico wants to intervene. The records
18 being requested are those that Geico submitted to
19 the Banking and Insurance, I denied the
20 request, we don't allow -- I'm sorry, we don't
21 allow -- the GRC doesn't allow interveners, OPRA
22 does not specifically allow interveners.

23 The second matter involved George
24 Burdick v. Franklin Township Board of Education.

25 The Quaker Township --

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1 MS. LOWNIE: Quakertown Education
2 Association.

3 MS. STARGHILL: -- motion to
4 intervene, very much like the Geico, I declined
5 or did not grant the motion to intervene. The
6 records -- the record at issue is a worksheet
7 indicating the reason teachers are on leave, have
8 a day off.

9 MS. LOWNIE: Which has already been
10 disclosed to this Complainant.

11 MS. STARGHILL: Already been
12 disclosed to the Complainant.

13 Additionally, there was no medical
14 information or otherwise personal information
15 contained in this worksheet. And it was
16 determined that the worksheet was used for
17 payroll purposes which makes it a personnel
18 record which is disposable under Section 10 of
19 OPRA.

20 So, ironically, Quakertown Associ --

21 MS. LOWNIE: -- Education

22 Association.

23 MS. STARGHILL: -- Education

24 Association based on the correspondence they sent

25 me, do not even know what's contained in the

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1 record. So I'm not sure that they, unlike Geico

2 who is clearly aware of the records they

3 submitted to Banking and Insurance, the

4 Quakertown Education Association has no idea what

5 is contained in the record. So I'm not quite

6 sure what standing they have to proceed with --

7 MS. FORSYTH: That's the local

8 teachers union, right?

9 MS. STARGHILL: Yes, basically, yes.

10 But they don't even know like -- one, the records

11 have been disclosed and, two, there is no

12 personal information, so I'm not sure why they

13 want to intervene to object.

14 Anyway, that's it on my report.

15 D.A.G. ALLEN: I have a couple of
16 quick things.

17 We have filed a response to the Bart
18 appeal -- can you hear me?

19 This is Bart v. City of Patterson
20 which is one of the OAL cases where the Custodian
21 was found to have put it into a knowing and
22 willful violation.

23 MS. STARGHILL: And we assessed the
24 penalty --

25 D.A.G. ALLEN: And we assessed the

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1 penalty. We had modified that decision because
2 the ALJ had said that the Housing Authority was
3 liable for the penalty. However, the Council
4 felt that it was the Custodian personally who was
5 responsible for the penalty. So --

6 MS. STARGHILL: Based on the
7 statutory language.

8 D.A.G. ALLEN: Right, based on

9 Section 11 of OPRA. So the case is now being
10 litigated predominately on the merits which we
11 really defer to the ALJ on. But then we have the
12 secondary issue of, you know, how OPRA reads in
13 terms of the penalty provisions and whether or
14 not due process was given to the Custodian. So
15 we have filed a plea in that brief in matter.

16 Also, I received a call a couple of
17 day ago from Winterstein, he's the Township of
18 Stanhope counsel, and he was successful in
19 getting a similar restraining order to the one we
20 were able to obtain with Judge Schuster for the
21 GRC. So it's nice to know the courts are willing
22 to entertain these types of motions and they're
23 willing to, you know, come out and make orders
24 where people are being restrained when the facts
25 prove that that should be done.

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1 MS. STARGHILL: And I would say it
2 says a lot for us pursuing the restraining order

3 on our lev -- at our level which apparently has

4 assisted Stanhope. I would --

5 D.A.G. ALLEN: It's essentially

6 modeled after the order that Judge Bachanella

7 (pho) put in for Stanhope was simply modeled

8 after the order that Judge Schuster has given us.

9 MS. STARGHILL: I just want to

10 mention that I am going to court this Friday for

11 the criminal harassment complaint that I have

12 personally filed against Caggiano. I'll have

13 something to report at the next meeting.

14 I'm sorry, Debbie.

15 D.A.G. ALLEN: No, that was just

16 those two matters.

17 CHAIRPERSON TABAKIN: Okay. It is

18 now time for public comment. In the interest of

19 time, speakers are limited to five minutes.

20 Speakers with prepared testimony should provide

21 either copes for the Council.

22 Please step up to the table. State

23 your name and address, please.

24 MR. WIENER: Good morning, my name

25 is Harold Wiener. I'm the municipal clerk of the

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1 Township of Irvington, Essex County.

2 W-i-e-n-e-r.

3 I'm here as an observer for the

4 Records Committee of the State Municipal Clerks

5 Association. I just wanted to let you know who I

6 was. I was here in July, but I didn't identify

7 myself because there was an Irvington matter on

8 the agenda and I didn't want an appearance of a

9 conflict. Thank you.

10 CHAIRPERSON TABAKIN: Thank you very

11 much.

12 MS. STARGHILL: I would note that

13 the State Clerks Association now sends a

14 representative every month to observe the process

15 and hear our decisions. And they've been doing

16 that for some time now.

17 MR. WIENER: Yeah, that's correct

18 for approximately a year or so.

19 MS. STARGHILL: I think that's a

20 great thing.

21 CHAIRPERSON TABAKIN: Okay, we're

22 done.

23 Can I have a motion to adjourn?

24 MS. FORSYTH: So moved motion.

25 MS. KOVACH: Second.

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1 CHAIRPERSON TABAKIN: Roll call.

2 MS. HAIRSTON: Robin Berg Tabakin?

3 CHAIRPERSON TABAKIN: Yes.

4 MS. HAIRSTON: Janice Kovach?

5 MS. KOVACH: Yes.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Yes.

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9 (HEARING CONCLUDED AT TIME 10:34 P.M.)

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

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3 I, LINDA P. CALAMARI, a Professional

4 Reporter and Notary Public of the State of New

5 Jersey, do hereby certify the foregoing to be a

6 true and accurate transcript of my original

7 stenographic notes taken at the time and place

8 hereinbefore set forth.

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LINDA P. CALAMARI

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16 Dated: APRIL 7, 2008.

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