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STATE OF NEW JERSEY  
DEPARTMENT OF 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, JUNE 25, 2008

TIME: 9:35 A.M. TO 11:09 A.M.

GUY J. RENZI & ASSOCIATES

CERTIFIED COURT REPORTERS & VIDEOGRAPHERS

GOLDEN CREST CORPORATE CENTER

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## 1 C O U N C I L M E M B E R S :

2 ROBIN BERG TABAKIN, Chairperson

3 DAVID FLEISHER, (financial planner and Executive  
4 with the financial services firm  
5 of Firsttrust Financial  
6 Resources, LLC)

7 KATHRYN FORSYTH (designee of Commissioner  
8 Lucille Davy, Department  
9 of Education)

10 JANICE L. KOVACH (designee of Acting Commissioner  
11 Joseph V. Doria, Jr., Department  
12 of Community Affairs)

## 13 C O U N C I L P R O F E S S I O N A L S :

14 CATHERINE STARGHILL, ESQ., Executive Director

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

16 KARYN GORDON, ESQ., (In-House Counsel)

17 GINA R. OROSZ, ESQ., (Outside Counsel)

18 FRANK F. CARUSO, (Case Manager)

19 DARA LOWNIE, (Senior Case Manager)

20 SHERIN KEYS, ESQ., (Case Manager/Staff Attorney)

21 JYOTHI PAMIDIMUKKALA, (Resource Manager)

22 JOHN E. STEWART, ESQ., (Case Manager/

23 In Camera Attorney)

24 ELIZABETH ZIEGER-SEARS, ESQ. (Case Manager)

25 BRIGITTE HAIRSTON, (Council Secretary)

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1                   CHAIRPERSON TABAKIN: Please stand  
2 for the flag salute.

3                   (Whereupon, the Pledge of Allegiance  
4 was given.)

5                   CHAIRPERSON TABAKIN: This meeting  
6 was called pursuant to the provisions of the Open  
7 Public Meeting Act. Notices of this meeting were  
8 faxed to the Newark Star-Ledger, Trenton Times,  
9 Courier-Post of Cherry Hill, the Secretary of  
10 State and e-mailed to the New Jersey Foundation  
11 for Open Government, June 20th, 2008.

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

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

24                   Roll call.

25                   MS. HAIRSTON: Robin Berg Tabakin?

1 CHAIRPERSON TABAKIN: Yes.

2 MS. HAIRSTON: Janice Kovach?

3 MS. KOVACH: Yes.

4 MS. HAIRSTON: Dave Fleisher?

5 MR. FLEISHER: Yes.

6 MS. HAIRSTON: Kathryn Forsyth late.

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

10 WHEREAS, the Government Records  
11 Council has deemed it necessary to go into closed  
12 session to discuss certain matters which are  
13 exempt from the Open Public Meetings Act; and

14 WHEREAS, the regular meeting of the  
15 Council will reconvene at the conclusion of the  
16 closed meeting;

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

23 Robert Gorman v. Gloucester City  
24 (2008-108) In-camera review;

25 Martin O'Shea v. West Milford

1 Municipal Utilities Authority (2006-138) for an  
2 In-camera review;

3 Robert Iorio v. New Jersey  
4 Department of Labor, Commissioner's Office  
5 (2007-310) In-camera review.

6 BE IT FURTHER RESOLVED, that the  
7 Council will disclose to the public the matters  
8 discussed or determined in closed session as soon  
9 as possible after final decisions are issued in  
10 the above cases.

11 Could I have motion, please, to go  
12 into closed?

13 MR. FLEISHER: So moved.

14 MS. KOVACH: 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: Dave Fleisher?

21 MR. FLEISHER: Yes.

22 CHAIRPERSON TABAKIN: Thank you.

23 We're in closed.

24 (Closed session. The time is 9:37  
25 a.m.)

1 (Back in open session. The time is  
2 10:17 a.m.)

3 CHAIRPERSON TABAKIN: Could I have a  
4 motion to go into open session?

5 MS. FORSYTH: So moved.

6 MS. KOVACH: Second.

7 CHAIRPERSON TABAKIN: Roll call.

8 MS. HAIRSTON: Robin Berg Tabakin?

9 CHAIRPERSON TABAKIN: Yes.

10 MS. HAIRSTON: Janice Kovach?

11 MS. KOVACH: Yes.

12 MS. HAIRSTON: Kathryn Forsyth?

13 MS. FORSYTH: Yes.

14 MS. HAIRSTON: Dave Fleisher?

15 MR. FLEISHER: Yes.

16 CHAIRPERSON TABAKIN: We will now  
17 attempt to approve the minutes once again.

18 November 28, 2007 closed session  
19 minutes.

20 MS. STARGHILL: And, Debra, do you  
21 want to give a quickie on how we can get this  
22 approved?

23 D.A.G. ALLEN: Yes, we actually have  
24 a solution.

25 I spoke with our A.A.G. who handles

1 OPMA in the office and I explained the situation.  
2 He said that as long as the two Council members  
3 who were at the November meeting are present --  
4 so it would be Janice and Kathryn -- and they  
5 would make a representation as to what occurred  
6 in closed session, the Council can vote based  
7 upon that representation.

8 Does that make sense?

9 MS. STARGHILL: Yes.

10 D.A.G. ALLEN: So Janice and Kathryn  
11 would have to recall the specifics of the  
12 November meeting. Otherwise you have a quandary,  
13 you can't pass an amendment.

14 MR. FLEISHER: Current closed,  
15 right, unless -- minutes yes, no?

16 MS. STARGHILL: I'm sorry, Dave?

17 D.A.G. ALLEN: There's no transcript  
18 or tape for the other members to review.

19 CHAIRPERSON TABAKIN: To refresh  
20 your memory, since I was not there, that it was  
21 around Thanksgiving. So if you could think  
22 back --

23 MS. FORSYTH: Think back if we  
24 actually discussed Albrecht v. Brick? What was  
25 that about?

1 MS. STARGHILL: That was the  
2 complaint involving access to RFC -- I have to  
3 think, the -- you know...

4 MS. FORSYTH: Was that the medical  
5 service?

6 MS. STARGHILL: Which was just  
7 approved, adjudicated last month.

8 MR. FLEISHER: It was pulled at a  
9 prior meeting, so we're well aware of that.

10 MS. STARGHILL: It was pulled here.  
11 I think this is -- yeah, because this would have  
12 been --

13 MS. FORSYTH: It was pulled here.

14 MS. STARGHILL: Meaghan was -- well,  
15 we discussed it, but Meaghan objected, our  
16 outside counsel, objected at this meeting. And  
17 then we got some legal analysis from outside  
18 counsel and finally adjudicated it last month.

19 CHAIRPERSON TABAKIN: Okay, so that  
20 was the only case discussed --

21 MS. STARGHILL: Just makes it  
22 easier.

23 CHAIRPERSON TABAKIN: -- in closed  
24 session.

25 So do you recall?

1 MS. FORSYTH: Well, I recall we  
2 discussed this case many times. I would have to  
3 kind of assume this is correct. I do not recall  
4 the exact discussion on the 28th of November.

5 MS. STARGHILL: And the exact  
6 discussion is not expected here.

7 MS. FORSYTH: Right.

8 MS. STARGHILL: You only need to  
9 recall what was discussed.

10 MS. KOVACH: I remember the case.

11 MS. FORSYTH: Uh-hum.

12 MS. KOVACH: I remember looking at  
13 the records.

14 MS. STARGHILL: Is that sufficient  
15 for you, Dave and Robin?

16 MR. FLEISHER: Yes.

17 Was there any other business other  
18 than what's on the agenda that you recall?

19 No? Then I'm fine.

20 CHAIRPERSON TABAKIN: So let's have  
21 a roll call to approve the November 28th, 2007  
22 closed session minutes.

23 MS. FORSYTH: The only people that  
24 can vote are Janice and myself?

25 D.A.G. ALLEN: No, everybody can

1 vote.

2 CHAIRPERSON TABAKIN: We abstain  
3 because we were not there?

4 D.A.G. ALLEN: No, you can approve  
5 the minutes based upon the representation because  
6 otherwise you won't have your quorum.

7 MS. FORSYTH: Otherwise we won't  
8 have three people --

9 CHAIRPERSON TABAKIN: So David and I  
10 can approve the closed session minutes based on  
11 the rep -- for November 28, 2007, based on the  
12 representation of what Kathryn and Janice said.

13 MR. FLEISHER: This was the issue  
14 discussed and there was no other business that  
15 was discussed during the meeting?

16 CHAIRPERSON TABAKIN: Correct.  
17 Okay.

18 Could I have a motion, please?

19 MS. FORSYTH: So moved.

20 MS. KOVACH: Second.

21 MS. HAIRSTON: Robin Berg Tabakin?

22 CHAIRPERSON TABAKIN: Yes.

23 MS. HAIRSTON: Janice Kovach?

24 MS. KOVACH: Yes.

25 MS. HAIRSTON: Kathryn Forsyth?

1 MS. FORSYTH: Yes.

2 MS. HAIRSTON: Dave Fleisher?

3 MR. FLEISHER: Yes.

4 MS. STARGHILL: March.

5 CHAIRPERSON TABAKIN: No, no, I was  
6 just looking to see who was here.

7 MR. FLEISHER: Not me.

8 CHAIRPERSON TABAKIN: All right,  
9 March 26th, 2008, could I have a motion to  
10 approve the closed session minutes?

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 MS. HAIRSTON: Dave Fleisher?

21 MR. FLEISHER: Abstain.

22 CHAIRPERSON TABAKIN: March 26th,  
23 2008 open session transcript.

24 Motion, please?

25 MS. KOVACH: So moved.

1 MS. FORSYTH: Second.

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 MS. HAIRSTON: Dave Fleisher?

9 MR. FLEISHER: Abstain.

10 MS. STARGHILL: And now for April --

11 CHAIRPERSON TABAKIN: I know, I'm

12 just looking to make sure --

13 MS. FORSYTH: For April I have to

14 abstain.

15 CHAIRPERSON TABAKIN: April 30th,

16 2008 closed session minutes. Motion, please?

17 MR. FLEISHER: So moved.

18 MS. KOVACH: 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: Abstain.

1 MS. HAIRSTON: Dave Fleisher?  
2 MR. FLEISHER: Yes.  
3 CHAIRPERSON TABAKIN: And April  
4 30th, 2008 open session transcript.  
5 MR. FLEISHER: So moved.  
6 MS. KOVACH: Second.  
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: Abstain.  
13 MS. HAIRSTON: Dave Fleisher?  
14 MR. FLEISHER: Yes.  
15 CHAIRPERSON TABAKIN: May 28th, 2008  
16 closed session minutes, please, motion?  
17 MS. FORSYTH: So moved.  
18 MR. FLEISHER: Second.  
19 MS. HAIRSTON: Robin Berg Tabakin?  
20 CHAIRPERSON TABAKIN: Yes.  
21 MS. HAIRSTON: Janice Kovach?  
22 MS. KOVACH: Abstain.  
23 MS. HAIRSTON: Kathryn Forsyth?  
24 MS. FORSYTH: Yes.  
25 MS. HAIRSTON: And Dave Fleisher?

1 MR. FLEISHER: Yes.

2 CHAIRPERSON TABAKIN: Okay, May  
3 28th, 2008 open session transcript.

4 MS. FORSYTH: So moved.

5 MR. FLEISHER: Second.

6 MS. HAIRSTON: Robin Berg Tabakin?

7 CHAIRPERSON TABAKIN: Yes.

8 MS. HAIRSTON: Janice Kovach?

9 MS. KOVACH: Abstain.

10 MS. HAIRSTON: Kathryn Forsyth?

11 MS. FORSYTH: Yes.

12 MS. HAIRSTON: Dave Fleisher?

13 MR. FLEISHER: Yes.

14 MS. STARGHILL: Awesome.

15 CHAIRPERSON TABAKIN: Now we will  
16 move to the Administrative Complaint Council  
17 Adjudications. There are nine cases.  
18 Could I have a motion to approve  
19 these?

20 MS. KOVACH: So moved.

21 MR. FLEISHER: Second.

22 MS. HAIRSTON: Robin Berg Tabakin?

23 CHAIRPERSON TABAKIN: Yes.

24 MS. HAIRSTON: Janice Kovach?

25 MS. KOVACH: Yes.

1 MS. HAIRSTON: Kathryn Forsyth?

2 MS. FORSYTH: Yes.

3 MS. HAIRSTON: Dave Fleisher?

4 MR. FLEISHER: Yes.

5 CHAIRPERSON TABAKIN: Thank you.

6 We will now move into the Individual  
7 Complaint Council Adjudication.

8 The first one is Robert Gorman v.  
9 Gloucester City in Camden (2004-108).

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

12 1. The In Camera Examination of the  
13 requested MVR tape reveals the MVR tape is not  
14 exempt from disclosure as advisory, consultative  
15 or deliberative material.

16 No. 2, Upon applying the common law  
17 balancing test established by the New Jersey  
18 Supreme Court in Doe vs. Poritz, 1995, and by the  
19 GRC in Merino v. Ho-Ho-Kus, GRC Complaint No.  
20 2003-110, (February 2004) and balancing the  
21 Complainant's need for the police mobile video  
22 recorded tape versus the potential for harm  
23 should the tape be disclosed, it is clear the  
24 potential for harm outweighs the Complainant's  
25 need for access. Accordingly, the Complainant

1 was lawfully denied access to the requested  
2 mobile video recorded tape.

3 CHAIRPERSON TABAKIN: Motion?

4 MS. KOVACH: So moved.

5 MR. FLEISHER: 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 MS. HAIRSTON: Dave Fleisher?

14 MR. FLEISHER: Yes.

15 CHAIRPERSON TABAKIN: John McCormack

16 v. New Jersey Department of Treasury (2005-160).

17 MS. STARGHILL: The Executive

18 Director respectfully recommends the Council

19 accept the Complainant's request to withdraw this

20 complaint from the Office of Administrative Law.

21 No further adjudication is required.

22 CHAIRPERSON TABAKIN: Motion?

23 MS. FORSYTH: So moved.

24 MS. KOVACH: Second.

25 CHAIRPERSON TABAKIN: Roll call.

1 MS. HAIRSTON: Robin Berg Tabakin?

2 CHAIRPERSON TABAKIN: Yes.

3 MS. HAIRSTON: Janice Kovach?

4 MS. KOVACH: Yes.

5 MS. HAIRSTON: Kathryn Forsyth?

6 MS. FORSYTH: Yes.

7 MS. HAIRSTON: Dave Fleisher?

8 MR. FLEISHER: Yes.

9 CHAIRPERSON TABAKIN: John McCormack

10 vs. New Jersey Department of Treasury (2005-164).

11 MS. GORDON: The Executive Director

12 respectfully recommends the Council accept the

13 Complainant's request to withdraw this complaint

14 from the Office of Administrative Law. No

15 further adjudication is required.

16 CHAIRPERSON TABAKIN: Motion?

17 MS. FORSYTH: So moved.

18 MS. KOVACH: Second.

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 MS. HAIRSTON: Dave Fleisher?

1 MR. FLEISHER: Yes.

2 CHAIRPERSON TABAKIN: Charles  
3 Bonanno vs. Garfield Board of Education (Bergen)  
4 (2006-62).

5 MS. LOWNIE: The Executive Director  
6 respectfully recommends the Council find that no  
7 further adjudication is required because the  
8 Complainant voluntarily withdrew his complaint  
9 from the Office of Administrative Law via letter  
10 dated May 15, 2008.

11 CHAIRPERSON TABAKIN: Motion?

12 MS. KOVACH: So moved.

13 MR. FLEISHER: 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 MS. HAIRSTON: Dave Fleisher?

21 MR. FLEISHER: Yes.

22 CHAIRPERSON TABAKIN: Tina Renna v.  
23 Union County Alliance (Union) (2006-73).

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

1 that the Union County Alliance is not a public  
2 agency in accordance with the determination in  
3 Dan Miller v. Union County Alliance, Superior  
4 Court of New Jersey - Law Division: Union County.  
5 Thus, this complaint requires no further  
6 adjudication since the requirements of OPRA only  
7 applies to public agencies.

8 CHAIRPERSON TABAKIN: Martin O'Shea  
9 vs. --

10 MS. STARGHILL: No, motion.

11 CHAIRPERSON TABAKIN: Oh, I'm sorry.

12 MR. FLEISHER: So moved.

13 MS. FORSYTH: 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 MS. HAIRSTON: Dave Fleisher?

22 MR. FLEISHER: Yes.

23 CHAIRPERSON TABAKIN: Okay. Sorry  
24 about that.

25 Martin O'Shea vs. West Milford

1 Municipal Utilities (Hunterdon) (2006-138).

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

4 1. Based on the foregoing evidence  
5 and consistent with Custodian's Counsel's letter  
6 to the GRC dated May 30, 2008, the Council shall  
7 release copies of these records to the  
8 Complainant consistent with this Order.

9 2. Because there is no evidence in  
10 the record to support a conclusion that the  
11 Custodian intentionally and deliberately denied  
12 access to the requested records without a lawful  
13 reason for so doing, and because the totality of  
14 the evidence in the record indicates that there  
15 was considerable confusion between the GRC, the  
16 Custodian and the Custodian's Counsel regarding  
17 which records had been disclosed to the  
18 Complainant, which records had not been disclosed  
19 and the legal reasons for non-disclosure, as the  
20 Custodian's Counsel stated in his letter to the  
21 GRC dated May 30, 2008, and because the Custodian  
22 provided access to all but nine of the requested  
23 records; there are lawful reasons for redactions  
24 to six of those records, it is concluded that the  
25 Custodian's actions do not rise to the level of a

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

4 The Council's determination in its  
5 October 19, 2006 and February 28, 2007 Interim  
6 Orders that this matter should be referred to the  
7 Office of Administrative Law for a hearing is  
8 withdrawn.

9 CHAIRPERSON TABAKIN: Motion?

10 MS. KOVACH: I move.

11 MS. FORSYTH: Second.

12 MS. HAIRSTON: Robin Berg Tabakin?

13 CHAIRPERSON TABAKIN: Yes.

14 MS. HAIRSTON: Janice Kovach?

15 MS. KOVACH: Yes.

16 MS. HAIRSTON: Kathryn Forsyth?

17 MS. FORSYTH: Yes.

18 MS. HAIRSTON: Dave Fleisher?

19 MR. FLEISHER: Yes.

20 CHAIRPERSON TABAKIN: Richard  
21 Rivera vs. Guttenberg Police Department (Hudson)  
22 (2006-154).

23 MR. CARUSO: The Executive Director  
24 respectfully recommends the Council accept the  
25 Complainant's request to withdraw this complaint

1 from the Office of Administrative Law. No  
2 further adjudication is required.

3 CHAIRPERSON TABAKIN: Motion?

4 MS. KOVACH: So moved.

5 CHAIRPERSON TABAKIN: Second?

6 MS. FORSYTH: Second.

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 MS. HAIRSTON: Dave Fleisher?

14 MR. FLEISHER: Yes.

15 CHAIRPERSON TABAKIN: Richard Rivera

16 vs. Town of Guttenberg (Hudson) (2007-5).

17 MR. CARUSO: The Executive Director

18 respectfully recommends the Council accept the

19 Complainant's request to withdraw this complaint

20 from the Office of Administrative Law. No

21 further adjudication is required.

22 MR. FLEISHER: So moved.

23 MS. KOVACH: Second.

24 MS. HAIRSTON: Robin Berg Tabakin?

25 CHAIRPERSON TABAKIN: Yes.

1 MS. HAIRSTON: Janice Kovach?

2 MS. KOVACH: Yes.

3 MS. HAIRSTON: Kathryn Forsyth?

4 MS. FORSYTH: Yes.

5 MS. HAIRSTON: Dave Fleisher?

6 MR. FLEISHER: Yes.

7 CHAIRPERSON TABAKIN: Michael

8 Pisauro vs. Township of Long Branch (Ocean)

9 (2007-146).

10 MS. KEYS: The Executive Director

11 respectfully recommends the Council find that:

12 1. Because the Custodian provided  
13 the requested documents to the Complainant within  
14 the five business days ordered by the Council and  
15 the only documents not released were the  
16 unapproved minutes which are exempt from  
17 disclosure as advisory, consultative or  
18 deliberative material pursuant to OPRA Section 1,  
19 the Custodian has not unlawfully denied access to  
20 the requested meeting minutes and as such, the  
21 Custodian is in compliance with the Council's  
22 April 30, 2008 order.

23 As an aside, this has been amended  
24 to include a prevailing party fees and that is in  
25 paragraph 3 that I'll be reading shortly.

1 Paragraph 2 reads:

2 Because the Custodian sought and  
3 followed legal advice from legal counsel and  
4 promptly released the records responsive once the  
5 Custodian received a copy of the Council's April  
6 30, 2008 Interim Order, it is concluded that the  
7 Custodian's actions do not rise to the level of a  
8 knowing and willful violation of OPRA and  
9 unreasonable denial of access under the totality  
10 of the circumstances.

11 See *Blanchard v. Rahway Board of*  
12 *Education*, GRC Complaint No. 2003-57 (October  
13 2003).

14 However, the Custodian's unlawful  
15 denial of access appears negligent and heedless  
16 since she is vested with the legal responsibility  
17 of granting and denying access in accordance with  
18 the law.

19 MS. STARGHILL: Can you raise your  
20 voice?

21 MS. KEYS: Oh, I'm sorry.

22 MS. STARGHILL: Just for the  
23 reporter.

24 MS. KEYS: Oh, okay.

25 Paragraph 3 as amended reads:

1                   Because the action sought by the  
2           Complainant came about due to the Complainant  
3           filing of the denial of access complaint and as  
4           such the Complainant is a prevailing party  
5           entitled to an award of reasonable attorney fee  
6           pursuant to OPRA Section 6 in Teeter vs. DYFS  
7           (App. Div. 2006).

8                   Thus, the complaint should be  
9           referred to the Office of Administrative Law for  
10          the determination of prevailing party attorney  
11          fees.

12                   CHAIRPERSON TABAKIN: There's no  
13          discussion of the attorney fees in the body.

14                   MS. STARGHILL: That's the  
15          amendment. She --

16                   CHAIRPERSON TABAKIN: Oh, all right.

17                   MS. STARGHILL: In our Interim  
18          Order, we deferred analysis on the prevailing  
19          party attorney fees and in the amendment it's  
20          been addressed.

21                   CHAIRPERSON TABAKIN: Okay, so it's  
22          in the Order. I understand. What I meant was  
23          inside in the --

24                   MS. STARGHILL: Right, it's been --

25                   CHAIRPERSON TABAKIN: Motion?

1 MS. FORSYTH: I just have one other  
2 question.

3 It says here in the notes that  
4 neither the OPRA request form or the accompanying  
5 letter stated that the Complainant was  
6 represented by counsel.

7 MS. STARGHILL: No, in my footnotes  
8 I have attorney representing both parties.

9 MS. FORSYTH: Right. It says  
10 represented by him, but then it says the  
11 Complainant's law partner and neither the OPRA  
12 request nor the accompanying letter stated that  
13 he was represented by counsel. What does that  
14 mean?

15 MS. KEYS: That means that after the  
16 complaint was filed, there was a letter where he  
17 requested attorney fees. So it wasn't on the  
18 complaint. It wasn't stated that this is what he  
19 wanted up front. So there was some question as to  
20 whether or not attorney fees should be even  
21 granted in this case because he came in at such a  
22 late date, and there was some consideration as to  
23 whether they were even proper.

24 MS. FORSYTH: Uh-huh.

25 MS. KEYS: So --

1 MS. STARGHILL: Are we striking that  
2 last sentence in that footnote, "...however  
3 because since we've since determined that --

4 MS. KEYS: Yes.

5 MS. STARGHILL: -- there is proper  
6 representation --

7 MS. KEYS: Yes.

8 MS. FORSYTH: Okay. The  
9 determination was that there was proper --

10 MS. STARGHILL: Yeah, so that's an  
11 additional amendment.

12 MS. FORSYTH: Okay.

13 CHAIRPERSON TABAKIN: Motion?

14 MS. KOVACH: So moved.

15 MS. FORSYTH: Second.

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 MS. HAIRSTON: Dave Fleisher?

23 MR. FLEISHER: Yes.

24 CHAIRPERSON TABAKIN: Yehuda Shain  
25 vs. Ocean County Board of Taxation (Ocean)

1 (2007-159).

2 MR. STEWART: The Executive Director  
3 respectfully recommends the Council find that  
4 because the Complainant's request was for  
5 information and not for specific identifiable  
6 records, and because agencies are required to  
7 disclose only identifiable government records not  
8 otherwise exempt, the Custodian would have  
9 lawfully denied the Complainant access to the  
10 requested records pursuant to the Superior  
11 Court's decisions in *MAG Entertainment, LLC v.*  
12 *The Division of Alcoholic Beverage Control*, (App.  
13 *Div. March 2005*), *Bent v. Stafford Police*  
14 *Department*, (App. Div. 2005) and *New Jersey*  
15 *Builders Association v. New Jersey Council on*  
16 *Affordable Housing*, (App. Div. 2007), and met her  
17 burden of proof that access to the requested  
18 records was not unlawfully denied pursuant to  
19 OPRA Section 6.

20 However, the Custodian's response to  
21 provide records when they were available due to  
22 the disruption to agency operations that would  
23 ensue if the records were provided before July 9,  
24 2007 goes beyond what is required under the law.

25 CHAIRPERSON TABAKIN: Motion?

1 MS. FORSYTH: So moved.

2 MS. KOVACH: Second.

3 MS. HAIRSTON: Robin Berg Tabakin?

4 CHAIRPERSON TABAKIN: Yes.

5 MS. HAIRSTON: Janice Kovach?

6 MS. KOVACH: Yes.

7 MS. HAIRSTON: Kathryn Forsyth?

8 MS. FORSYTH: Yes.

9 MS. HAIRSTON: Dave Fleisher?

10 MR. FLEISHER: Yes.

11 CHAIRPERSON TABAKIN: Okay. I'm

12 recusing myself from Paff v. Lavallette.

13 (Chairperson Tabakin recuses herself  
14 and leaves the room.)

15 MR. FLEISHER: John Paff v. Borough  
16 of Lavallette, GRC Complaint No. 2007-209.

17 MS. ZIEGLER-SEARS: The Executive  
18 Director respectfully recommends the Council find  
19 that:

20 Although the Custodian responded to  
21 the Complainant's July 31st, 2007 OPRA request by  
22 providing the redacted executive session minutes  
23 within a statutorily mandated seven business days  
24 timeframe required by OPRA Section 5, the  
25 Custodian's response was legally insufficient

1 under OPRA because he failed to provide a written  
2 response setting forth a detailed and lawful  
3 basis for each redaction.

4 See Paff v. Township of Plainsboro,  
5 GRC complaint No. 2005-29, (July 2005) (ordering  
6 the Custodian to provide redacted executive  
7 session minutes with a detailed and lawful basis  
8 for each redacted part).

9 See also, Barbara Schwarz v. NJ  
10 Department of Human Services, GRC Complaint No.  
11 2004-60, (February 2005) (setting forth the  
12 proposition that specific citations to the law  
13 that allow a denial of access are required at the  
14 time of the denial).

15 Therefore, the Custodian violated  
16 OPRA pursuant to Section 5.g. and has not borne  
17 his burden of proving the denial of access to the  
18 redacted portions was authorized by law pursuant  
19 to Section 6.

20 No. 2, Pursuant to Paff v.  
21 Department of Labor, (App. Div. 2005), the GRC  
22 must conduct an in camera review of the requested  
23 executive session minutes to determine the  
24 validity of the Custodian's assertion that the  
25 redacted portions contain attorney-client

1 privileged information which is exempt from  
2 disclosure pursuant to OPRA Section 1.1.

3           No. 3, The Custodian must deliver to  
4 the Council in a sealed envelope nine copies of  
5 the requested unredacted documents, a document or  
6 redaction index, as well as a legal certification  
7 from the Custodian, in accordance with N.J. Court  
8 Rule 1:4-4, that the documents provided are the  
9 documents requested by the Council for the in  
10 camera inspection. Such delivery must be  
11 received by the GRC within five business days  
12 from receipt of the Council's Interim Order.

13           4. The Council defers analysis of  
14 whether the Custodian knowingly and willfully  
15 violated OPRA and unreasonably denied access  
16 under the totality of the circumstances pending  
17 the Custodian's compliance with the Council's  
18 Interim Order.

19           No. 5, The Council defers analysis  
20 of whether the Complainant is a prevailing party  
21 pursuant to Section 6 and entitled to reasonable  
22 attorney's fees pending the Custodian's  
23 compliance with the Council's Interim Order.

24           MR. FLEISHER: Thank you.

25           Is there any discussion?

1                   If not, I'll entertain a motion.

2                   MS. FORSYTH:   So moved.

3                   MS. KOVACH:    Second.

4                   MR. FLEISHER:   Roll call, please.

5                   MS. HAIRSTON:   Robin Berg Tabakin?

6                   Janice Kovach?

7                   MS. KOVACH:    Yes.

8                   MS. HAIRSTON:   Kathryn Forsyth?

9                   MS. FORSYTH:   Yes.

10                  MS. HAIRSTON:   Dave Fleisher?

11                  MR. FLEISHER:   Yes.

12                  (Chairperson Tabakin comes back to  
13 the Council table.)

14                  CHAIRPERSON TABAKIN:   Phyllis  
15 Feggans v. City of Newark (Essex) (2007-238).

16                  MS. LOWNIE:    The Executive Director  
17 respectfully recommends the Council find that:

18                  No. 1, The Custodian's failure to  
19 respond in writing to the Complainant's OPRA  
20 request either granting access, denying access,  
21 seeking clarification or requesting an extension  
22 of time within the statutorily mandated seven  
23 business days results in a "deemed" denial  
24 pursuant to OPRA Sections 5.g., 5.i. as well as  
25 Kelley v. Township of Rockaway, GRC Complaint No.

1 2007-11 (October 2007).

2                   No. 2, Because the Custodian has not  
3 yet provided the GRC with a detailed document  
4 index identifying all records responsive to the  
5 Complainant's request that were not provided to  
6 the Complainant on the basis that said records  
7 are exempt as criminal investigatory records  
8 pursuant to OPRA Section 1.1 (or a certification  
9 that the videotape is the only such record) and  
10 because the requested information must come from  
11 the Police Department, the Council orders the  
12 Police Department to provide the document index  
13 to the GRC.

14                   No 3, The Police Department shall  
15 comply with Item No. 2 above within five business  
16 days from receipt of the Council's Interim Order.  
17 Such document index must include a certification  
18 pursuant to N.J. Court Rule 1:4-4.

19                   CHAIRPERSON TABAKIN: Any discussion  
20 on this one?

21                   Motion?

22                   MS. FORSYTH: So moved.

23                   CHAIRPERSON TABAKIN: Second?

24                   MS. KOVACH: Second.

25                   MS. HAIRSTON: Robin Berg Tabakin?

1 CHAIRPERSON TABAKIN: Yes.

2 MS. HAIRSTON: Janice Kovach?

3 MS. KOVACH: Yes.

4 MS. HAIRSTON: Kathryn Forsyth?

5 MS. FORSYTH: Yes.

6 MS. HAIRSTON: Dave Fleisher?

7 MR. FLEISHER: Yes.

8 CHAIRPERSON TABAKIN: Richard Rader

9 vs. Township of Willingboro (Burlington)

10 (2007-239).

11 MS. LOWNIE: The Executive Director

12 respectfully recommends the Council find that:

13 No. 1, While seeking legal advice on

14 how to appropriately respond to a records request

15 is reasonable, pursuant to Paff v. Bergen County

16 Prosecutor's Office, GRC Complaint No. 2005-115

17 (March 2006), it is not a lawful reason for

18 delaying a response to an OPRA request because

19 the Custodian should have notified the

20 Complainant in writing that an extension of the

21 time period to respond was necessary.

22 As such, the Custodian's failure to

23 provide a written response to the Complainant's

24 request either granting access, denying access,

25 seeking clarification or requesting an extension

1 of time within the statutorily mandated seven  
2 business days results in a "deemed" denial  
3 pursuant to OPRA Sections 5.g., 5.i. as well as  
4 Kelley v. Township of Rockaway, GRC Complaint No.  
5 2007-11 (October 2007).

6 No 2, The unapproved, draft  
7 executive session meeting minutes of the Township  
8 Council dated October 24, 2006 constitute  
9 inter-agency or intra-agency advisory,  
10 consultative, or deliberative material and thus  
11 are not government records pursuant the  
12 definition of a government record and are exempt  
13 from disclosure pursuant to Section 1.1 and Dina  
14 Parave-Fogg v. Lower Alloways Creek Township, GRC  
15 Complaint No. 2006-51 (August 2006).

16 Accordingly, the Custodian has borne  
17 her burden of proving a lawful denial of access  
18 to the draft minutes pursuant to OPRA Section 6  
19 because she certified that the requested draft  
20 minutes had not been approved by the governing  
21 body at the time of the Complainant's request.  
22 However, the Custodian provided the Complainant  
23 with a copy of said minutes via letter dated  
24 October 12, 2007 as said minutes were approved by  
25 the governing body on November 7th, 2007.

1                   No 3, The Custodian's written  
2 response to the Complainant dated September 19th,  
3 2007 is insufficient pursuant to OPRA Section  
4 5.g. because the Custodian failed to provide any  
5 legal basis for the denial of access to the  
6 Township Council's meeting minutes dated October  
7 24th, 2006 and November 8th, 2006.

8                   No. 4, The Custodian's search for  
9 records responsive to the Complainant's request  
10 for "other Council action" appointing the Acting  
11 Manager was insufficient pursuant to Donato v.  
12 Township of Union, GRC Complaint No. 2005-182  
13 (February 2007) and Schneble v. NJ Department of  
14 Environmental Protection, GRC Complaint No.  
15 2007-220 (April 2008).

16                   No. 5, The matter of whether the  
17 Council's method of the Township Manager's  
18 termination is in violation of N.J.S.A. 40:69A-93  
19 or whether the Council violated Open Public  
20 Meetings Act for any reason does not fall under  
21 the authority of the GRC and is not governed by  
22 OPRA pursuant to OPRA Section 7.b., Allegretta v.  
23 Borough of Fairview, GRC Complaint No. 2005-132  
24 (December 2006) and Donato v. Borough of Emerson,  
25 GRC Complaint No. 2005-125 (March 2007).

1                   No. 6, Although the Custodian  
2                   violated Section 5.g. and Section 5.i. of OPRA,  
3                   provided an insufficient response to the  
4                   Complainant's request pursuant to OPRA Section  
5                   5.g. and conducted an insufficient search in  
6                   response to the Complainant's request, the  
7                   Custodian provided the Complainant with all  
8                   records responsive to the request even when such  
9                   disclosure was not required (because the  
10                  requested executive session minutes were not  
11                  approved by the governing body at the time of the  
12                  request).

13                  Therefore, it is concluded that the  
14                  Custodian's actions do not rise to the level of a  
15                  knowing and willful violation of OPRA and  
16                  unreasonable denial of access under the totality  
17                  of the circumstances.

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

24                  CHAIRPERSON TABAKIN: Any questions?  
25                  Motion?

1 MS. KOVACH: So moved.

2 MR. FLEISHER: Second.

3 MS. HAIRSTON: Robin Berg Tabakin?

4 CHAIRPERSON TABAKIN: Yes.

5 MS. HAIRSTON: Janice Kovach?

6 MS. KOVACH: Yes.

7 MS. HAIRSTON: Kathryn Forsyth?

8 MS. FORSYTH: Yes.

9 MS. HAIRSTON: Dave Fleisher?

10 MR. FLEISHER: Yes.

11 CHAIRPERSON TABAKIN: John Paff vs.

12 Borough of Roselle (Union) (2007-255).

13 MR. CARUSO: The Executive Director  
14 respectfully recommends the Council find that:

15 1. Although the Custodian's Counsel  
16 failed to request an extension within five  
17 business days of receipt of the Council's Interim  
18 Order, the Custodian did provide the requested  
19 records within the extended deadline.

20 However, because the Custodian  
21 failed to request an extension of time to comply  
22 with the Interim Order within five business days  
23 following receipt of the Council's Order, the  
24 Custodian failed to comply with the Council's  
25 April 30th, 2008 Interim.

1                   2. Although the Custodian's initial  
2 response to the Complainant's September 27, 2007  
3 OPRA request was untimely and the Custodian  
4 failed to request an extension of time to comply  
5 with the Council's April 30th, 2008 Interim Order  
6 until the sixth business day after receipt of  
7 same, the Custodian did provide an appropriate  
8 denial of access to request Item No. 1 and  
9 provided the requested records within the  
10 extended deadline set forth by the GRC.

11                   Therefore, it is concluded that the  
12 Custodian's actions do not rise to a level of a  
13 knowing and willful violation of OPRA and  
14 unreasonable denial of access under the totality  
15 of the circumstances.

16                   However, the Custodian's actions  
17 appear to be negligent and heedless since she is  
18 vested with the legal responsibility of granting  
19 and denying access in accordance with the law.

20                   3. Pursuant to *Teeters v. DYFS*,  
21 (App. Div. 2006), the Complainant has achieved  
22 "the desired result because the complaint brought  
23 about a change (voluntary or otherwise) in the  
24 Custodian's conduct." *Id.* At 432.

25                   Therefore, the Complainant is a

1 prevailing party entitled to an award of a  
2 reasonable attorney's fee under OPRA Section 6.  
3 Thus, this complaint should be referred to the  
4 Office of Administrative Law for the  
5 determination of reasonable prevailing party  
6 attorney's fees.

7 CHAIRPERSON TABAKIN: Motion?

8 MS. KOVACH: So moved.

9 MS. FORSYTH: Second.

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 MS. HAIRSTON: Dave Fleisher?

17 MR. FLEISHER: Yes.

18 CHAIRPERSON TABAKIN: Z.T. v.

19 Bernards Township Board of Education (Somerset)

20 (2007-262).

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

23 1. The Custodian has complied with  
24 the Council's April 30, 2008 Interim Order by  
25 providing the requested transcript to the

1 Complainant within five business days of receipt  
2 of the Council's Interim Order as ordered by the  
3 GRC and by providing a subsequent certification  
4 to the GRC on May 9, 2008.

5                   2. The Custodian responded to the  
6 Complainant's September 14th, 2007 OPRA request  
7 on the second business day following receipt of  
8 the request providing all records responsive,  
9 except for the record relevant to this complaint,  
10 which the Custodian asserted he was unable to  
11 provide.

12                   Although the Custodian initially  
13 failed to grant access to the requested  
14 transcript, the Custodian unknowingly provided  
15 the record as an attachment to the Statement of  
16 Information and complied with the Council's April  
17 30th, 2008 Interim Order within the same period  
18 specified therein.

19                   Therefore, it is concluded that the  
20 Custodian's actions do not rise to the level of a  
21 knowing and willful violation of OPRA and  
22 unreasonable denial of access under the totality  
23 of the circumstances.

24                   However, the Custodian's actions  
25 appear to be negligent and heedless since he is

1 vested with the legal responsibility of granting  
2 and denying access in accordance with the law.

3 CHAIRPERSON TABAKIN: Motion?

4 MS. KOVACH: So moved.

5 MS. FORSYTH: Second.

6 MS. HAIRSTON: Robin Berg Tabakin?

7 CHAIRPERSON TABAKIN: Yes.

8 MS. HAIRSTON: Janice Kovach?

9 MS. KOVACH: Yes.

10 MS. HAIRSTON: Kathryn Forsyth?

11 MS. FORSYTH: Yes.

12 MS. HAIRSTON: Dave Fleisher?

13 MR. FLEISHER: Yes.

14 CHAIRPERSON TABAKIN: Rita Bernstein

15 v. Township of Knowlton (Warren) (2007-278).

16 MR. CARUSO: The Executive Director

17 respectfully recommends the Council find that:

18 1. Because the Custodian did not  
19 address the records relevant to this complaint  
20 until October 4th, 2007, nine business days  
21 following receipt of the Complainant's September  
22 27, 2007 OPRA request. The Custodian's failure  
23 to respond in writing to the Complainant's OPRA  
24 request granting access, denying access, seeking  
25 clarification or requesting an extension of time

1 within the statutorily mandated seven business  
2 days as required by OPRA Section 5.g. and 5.i.,  
3 results in a "deemed" denial of the Complainant's  
4 OPRA request, Kelley v. Township of Rockaway, GRC  
5 Complaint No. 2007-11 (October 2007).

6                   2. The unapproved draft and public  
7 session meeting minutes of the Township Council  
8 dated September 10th, 2007 constitute  
9 inter-agency or intra-agency advisory,  
10 consultative or deliberative material and thus  
11 are not government records pursuant to the  
12 definition of a government record and are exempt  
13 from disclosure pursuant OPRA Section 1.1 and  
14 Parave-Fogg...

15                   However, the Custodian has borne her  
16 burden of proving a lawful denial of access to  
17 the draft minutes pursuant to OPRA Section 6  
18 because the Custodian's failure to respond in  
19 writing within the statutorily mandated timeframe  
20 resulted in a "deemed" denial.

21                   3. The GRC need not reconcile the  
22 Custodian's conflicting assertion of dates on  
23 which the public session meeting minutes were  
24 approved because the Custodian did ultimately  
25 certify in her May 8th, 2008 submission to the

1 GRC that the Complainant was provided with  
2 unapproved draft meeting minutes on September  
3 28th, 2007 which the Custodian was not required  
4 to provide to OPRA Section 1.1., Parave-Fogg  
5 August -- Parave-Fogg v. Lower Alloways Creek  
6 Township, GRC Complaint No. 2006-51 (August  
7 2006).

8 4. The Custodian's response to Item  
9 No. 2 of the Complainant's September 21st, OPRA  
10 request was insufficient pursuant to OPRA Section  
11 5.i. and Paff [sic] v. Lower Alloways Creek  
12 Township, GRC Complaint No. 2006-51 (August  
13 2006), because she failed to specifically state  
14 the minutes were not yet approved and were thus  
15 exempt from disclosure as ACD material.

16 Therefore, the Custodian failed to  
17 bare her burden of proving that the denial of  
18 access was lawful pursuant to OPRA Section 6.

19 5. Handwritten notes of the  
20 Custodian are not subject to investigation  
21 because they are not considered to be public  
22 records pursuant to O'Shea v. West Milford Board  
23 of Education (App. Div. 2007).

24 6. Although the Custodian's  
25 response resulted in a "deemed" denial of access

1 to the records relevant to this complaint because  
2 the requested unapproved public and executive  
3 session meeting minutes were exempt from  
4 disclosure pursuant to OPRA Section 1.1 and  
5 Parave-Fogg v. Lower Alloways Creek, GRC  
6 Complaint No. 2006-51 (August 2006) and because  
7 the Custodian certifies that the minutes were  
8 provided -- or were delivered to the Complainant  
9 upon approval even though the Custodian was not  
10 required to do so pursuant to OPRA Section 1.1,  
11 Parave-Fogg v. Lower Alloways Creek Township, GRC  
12 Complaint No. 2006-51 (August 2006), it is  
13 concluded that the Custodian's actions do not  
14 rise to a knowing and willful violation of OPRA  
15 and unreasonable denial of access under the  
16 totality of the circumstances.

17                   However, the Custodian's actions  
18 appear to be negligent and heedless since she is  
19 vested with the legal responsibility of granting  
20 and denying access in accordance with the law.

21                   CHAIRPERSON TABAKIN: Any questions?

22                   Motion?

23                   MS. FORSYTH: So moved.

24                   MS. KOVACH: Second.

25                   MS. HAIRSTON: Robin Berg Tabakin?

1 CHAIRPERSON TABAKIN: Yes.

2 MS. HAIRSTON: Janice Kovach?

3 MS. KOVACH: Yes.

4 MS. HAIRSTON: Kathryn Forsyth?

5 MS. FORSYTH: Yes.

6 MS. HAIRSTON: Dave Fleisher?

7 MR. FLEISHER: Yes.

8 CHAIRPERSON TABAKIN: Thomas

9 Driscoll v. School District of the Chathams  
10 (Morris) (2007-300).

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

13 1. The Complainant's November 21st,  
14 2007 OPRA request sought "copies of any  
15 government record" and referenced the definition  
16 of a government record set forth at OPRA Section  
17 1.1., but failed to identify any specific type of  
18 government record or a timeframe within which the  
19 records may have been created. Because the  
20 Custodian would have had to research all files  
21 and evaluate all records contained therein to  
22 determine whether such records related to "copies  
23 of any government record," this request is  
24 invalid because it is overly broad pursuant to  
25 MAG Entertainment, LLC v. Division of Alcoholic

1 Beverage Control, (App. Div. 2005) and Bent v.  
2 Stafford Police Department, (App. Div. 2005).

3           But see Paff v. Borough of Roselle  
4 (Union), GRC Complaint No. 2007-255 (April  
5 2008)(finding that because the Complainant  
6 identified a type of government record -  
7 resolutions and executive meeting minutes -  
8 within a specific date - the most recent meeting  
9 prior to the Complainant's OPRA request were the  
10 first two meetings after October 1, 2006, the  
11 request was not overly broad or unclear).

12           See also Vercammen v. Linden Police  
13 Department, GRC Complaint No. 2002-103 (December  
14 2002).

15           Further, the Custodian has borne his  
16 burden of proving that the denial of access was  
17 authorized by law pursuant to N.J.S.A. 47:1A-6.

18           2. The Custodian's failure to  
19 respond in writing to the Complainant's OPRA  
20 request granting access, denying access,  
21 requesting clarification or requesting an  
22 extension of time within the statutorily mandated  
23 seven business days, as required by OPRA Section  
24 5.g. and 5.i., results in a "deemed" denial of  
25 the Complaint's OPRA request. Kelley v. Township

1 of Rockaway, GRC Complaint No. 2007-11 (October  
2 2007).

3 3. Although the Custodian in this  
4 complaint failed to respond in writing stating  
5 that records responsive to Items No. 1 and No. 2  
6 do not exist, the Custodian did not unlawfully  
7 deny access to the requested records because the  
8 Custodian certified that records responsive to  
9 request Item No. 1 and No. 2 did not exist.

10 See Pusterhofer v. New Jersey  
11 Department of Education, GRC Complaint No.  
12 2005-49 (July 2005).

13 4. Although the Custodian's failure  
14 to provide a written response to the  
15 Complainant's November 21, 2007 OPRA request  
16 within the statutorily mandated seven business  
17 days resulted in a "deemed" denial even though no  
18 records responsive existed as of the date of the  
19 Complainant's OPRA request, the Custodian did  
20 provide records responsive once those records  
21 were provided to the Board of Education.

22 Therefore, it is concluded that the  
23 Custodian's actions do not rise to the level of a  
24 knowing and willful violation of OPRA and  
25 unreasonable denial of access under the totality

1 of the circumstances.

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

7                   CHAIRPERSON TABAKIN: Motion?

8                   MS. KOVACH: So moved.

9                   MS. FORSYTH: Second.

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                  MS. HAIRSTON: Dave Fleisher?

17                  MR. FLEISHER: Yes.

18                  CHAIRPERSON TABAKIN: Thomas

19 Driscoll v. School District of the Chathams

20 (Morris) (2007-301).

21                  MR. CARUSO: I just want to point  
22 out that there was a suggestion made that we make  
23 an edit to page 5 of this just to address the  
24 Custodian's counsel's assertion of ACD. I've  
25 added the following sentence to the final

1 paragraph on page 5:

2                   Additionally, the issue of whether  
3 the requested records or ACD is moot because the  
4 request was not for specific identifiable  
5 government -- records.

6                   MS. STARGHILL: But that's an  
7 amendment.

8                   MR. CARUSO: That's an amendment.  
9 It won't be included in the conclusion, though.

10                   The Executive Director respectfully  
11 recommends the Council find that:

12                   The Custodian lawfully denied access  
13 to the Complainant's request for "any and all  
14 information" without identifying any specific  
15 type of government record or a timeframe within  
16 which the records may have been created. Because  
17 the Custodian would have had to research all  
18 files and evaluate all records contained therein  
19 to determine whether such records related to  
20 correspondence between the school system or Board  
21 of Education and Joel Boroff, this request is  
22 invalid because it is overly broad pursuant to  
23 *MAG Entertainment, LLC v. Division of Alcoholic*  
24 *Beverage Control*, (App. Div. 2005) and *Bent v.*  
25 *Stafford Police Department* (App. Div. 2005). The

1 Custodian has borne his burden of proving that  
2 the denial of access was authorized by law  
3 pursuant to OPRA Section 6.

4 CHAIRPERSON TABAKIN: Motion?

5 MS. KOVACH: So moved.

6 MR. FLEISHER: Second.

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 MS. HAIRSTON: Dave Fleisher?

14 MR. FLEISHER: Yes.

15 CHAIRPERSON TABAKIN: Thomas

16 Driscoll v. School District of the Chathams  
17 (Morris) (2007-302).

18 MR. CARUSO: The Executive Director  
19 respectfully recommends the Council find that the  
20 Custodian lawfully denied access to the  
21 Complaints request for "any and all information"  
22 without identifying any specific type of  
23 government record or timeframe within which the  
24 records may have been created. Because the  
25 Custodian would have been required to identify,

1 analyze, collate and compile documents responsive  
2 to the request pursuant to MAG Entertainment, LLC  
3 v. Division of Alcoholic Beverage Control (App.  
4 Div. 2005), Bent v. Stafford Police Department  
5 (App. Div. 2005) and Sandoval v. New Jersey State  
6 Parole Board, GRC Complaint No. 2006-167 (March  
7 2007).

8                   But see Paff v. Borough of Roselle  
9 (Union), GRC Complaint No. 2007-255 (April 2008)  
10 (finding that because the Complainant identified  
11 a type of government record (resolutions and  
12 executive meeting minutes) within a specific date  
13 (the most recent meeting prior to the  
14 Complainant's OPRA request and the first two  
15 meetings after October 1, 2006), the request was  
16 not overly broad or unclear).

17                   See also Vercammen v. Linden Police  
18 Department, GRC Complaint No. 2002-103 (December  
19 2002). Additionally, the Custodian has borne the  
20 burden of proving that the denial of access was  
21 authorized by law pursuant to OPRA Section 6.

22                   CHAIRPERSON TABAKIN: Motion?

23                   MS. KOVACH: So moved.

24                   MR. FLEISHER: Second.

25                   MS. HAIRSTON: Robin Berg Tabakin?

1 CHAIRPERSON TABAKIN: Yes.

2 MS. HAIRSTON: Janice Kovach?

3 MS. KOVACH: Yes.

4 MS. HAIRSTON: Kathryn Forsyth?

5 MS. FORSYTH: Yes.

6 MS. HAIRSTON: Dave Fleisher?

7 MR. FLEISHER: Yes.

8 CHAIRPERSON TABAKIN: Thomas

9 Driscoll v. School District of the Chathams  
10 (Morris) (2007-303).

11 MR. CARUSO: The Executive Director  
12 respectfully recommends the Council find that  
13 because the Custodian in this complaint responded  
14 in writing on the same day of receipt of the  
15 Complainant's November 30, 2007 OPRA request  
16 stating that no records responsive exist, the  
17 Custodian has borne his burden of proving that  
18 this denial of access was authorized by law  
19 pursuant to OPRA Section 6 and Pusterhofer v. New  
20 Jersey Department of Education, GRC Complaint No.  
21 2005-49 (July 2005).

22 Further, the Custodian was under no  
23 obligation to provide the requested record to the  
24 Complainant following the Custodian's response  
25 that no record existed pursuant to Donato v.

1 Borough of Emerson, GRC Complaint No. 2005-225  
2 (February 2007).

3 MR. FLEISHER: So moved.

4 MS. FORSYTH: Second.

5 MS. KOVACH: Second.

6 MS. HAIRSTON: Robin Berg Tabakin?

7 CHAIRPERSON TABAKIN: Yes.

8 MS. HAIRSTON: Janice Kovach?

9 MS. KOVACH: Yes.

10 MS. HAIRSTON: Kathryn Forsyth?

11 MS. FORSYTH: Yes.

12 MS. HAIRSTON: Dave Fleisher?

13 MR. FLEISHER: Yes.

14 CHAIRPERSON TABAKIN: Richard Iorio  
15 v. New Jersey Department of Labor, Commissioner's  
16 Office (2007-310).

17 MS. GORDON: The Executive Director  
18 recommends the Council find that:

19 1. The Custodian has complied with  
20 the Council's April 30, 2008 Interim Order by  
21 providing the Council with all records set forth  
22 in paragraph 2 of the Order within five business  
23 days of receiving the Council's Order, as  
24 extended.

25 2. On the basis of the Council's

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

8 CHAIRPERSON TABAKIN: Motion?

9 MS. KOVACH: So moved.

10 MR. FLEISHER: Second.

11 MS. HAIRSTON: Robin Berg Tabakin?

12 CHAIRPERSON TABAKIN: Yes.

13 MS. HAIRSTON: Janice Kovach?

14 MS. KOVACH: Yes.

15 MS. HAIRSTON: Kathryn Forsyth?

16 MS. FORSYTH: Yes.

17 MS. HAIRSTON: Dave Fleisher?

18 MR. FLEISHER: Yes.

19 CHAIRPERSON TABAKIN: J.C. v.

20 Bernards Township Board of Education (Somerset)  
21 (2008-18).

22 MR. STEWART: The Executive Director  
23 respectfully recommends the Council find that  
24 based on the inadequate evidence presented in  
25 this matter, the GRC is unable to determine

1 whether or not the Custodian unlawfully denied  
2 access to the records responsive to the  
3 Complainant's request.

4 Therefore, this complaint should be  
5 referred to the Office of Administrative Law for  
6 a hearing to resolve the facts to determine  
7 whether the Custodian unlawfully denied access,  
8 and if so, for a further determination of whether  
9 the Custodian knowingly and willfully violated  
10 OPRA and unreasonably denied access under the  
11 totality of the circumstances.

12 CHAIRPERSON TABAKIN: 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 MS. HAIRSTON: Dave Fleisher?

22 MR. FLEISHER: Yes.

23 CHAIRPERSON TABAKIN: Thomas

24 Caggiano v. Borough of Stanhope (Sussex)

25 (2008-105).

1 MS. GORDON: The Executive Director  
2 respectfully recommends the Council find that  
3 because of a conflict of interest, this matter be  
4 referred to the Office of Administrative Law for  
5 a hearing to resolve the facts and determine  
6 whether the custodian unlawfully denied access to  
7 the requested records, and if so, whether the  
8 denial was knowing and willful in violation of  
9 OPRA and unreasonable under the totality of the  
10 circumstances.

11 CHAIRPERSON TABAKIN: Motion?

12 MS. KOVACH: So moved.

13 MR. FLEISHER: 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 MS. HAIRSTON: Dave Fleisher?

21 MR. FLEISHER: Yes.

22 CHAIRPERSON TABAKIN: Okay. We've  
23 concluded the Individual Complaints Council  
24 Adjudication.

25 There are no complaints that were

1 reconsidered and no complaints adjudicated in  
2 Superior Court.

3                   Could we have the Executive  
4 Director's report?

5                   MS. STARGHILL: Yes. First I'd like  
6 to thank Frank for coming back from his vacation  
7 for this meeting. I have a fairly strict rule  
8 that you can have a vacation almost anytime but  
9 not on the meeting days. And so he left his  
10 vacation so he could be here, especially because  
11 had most of the complaints and the agenda and  
12 pretty much we weren't going to read them for  
13 him.

14                   Next week the GRC is going to send  
15 out its first quarterly newsletter to record  
16 custodians discussing recent cases and the GRC's  
17 interpretation of OPRA called tentatively "The  
18 GRC Insider."

19                   We're going to have that available  
20 on our website, as well as send it out through my  
21 friend Bruce Solomen, who's here, for all the  
22 state record custodians. It's over "gov connect"  
23 for the municipal custodians and any other  
24 mechanisms that I can find to send it out. We're  
25 going to send it to the prosecutors' offices, as

1 well as through the county association which  
2 Karyn just did an outreach for.

3           So hopefully we'll start getting the  
4 word out to more folks than we're hitting by  
5 going out to the various counties to do  
6 outreaches. With our limited resources we do a  
7 lot of outreaches, but we aren't hitting everyone  
8 every year.

9           Additionally or in that spirit we  
10 are having in lieu of our September meeting,  
11 which is September 25th, we are going to host a  
12 seminar for the public, requesters and records  
13 custodians at the State Museum, much in the same  
14 manner that we did last year in August.

15           While the statute, OPRA, provides  
16 that we are mandated to provide training  
17 opportunities for records custodians, many of our  
18 requesters throughout the year ask us when will  
19 we provide a seminar for them.

20           And so I think going forward, as  
21 long as you all agree, we're going to -- one of  
22 our meetings will always be a public seminar.

23           MS. FORSYTH: Will we consider  
24 taping the meeting?

25           MS. STARGHILL: No, it's just the

1 seminar. Kind of like a month off for you guys,  
2 but I would like you to be there. It would be  
3 nice for the public to speak with the members and  
4 it's always a photo op opportunity. They came  
5 out so good last year. And that's all I have.

6 CHAIRPERSON TABAKIN: Okay. At this  
7 time we invite public comment. In the interest  
8 of time, speakers are limited to five minutes.  
9 Speakers with prepared testimony should provide  
10 eight copies for the Council.

11 Would anyone like to comment?

12 No?

13 Well, then could I have a motion to  
14 adjourn?

15 MS. FORSYTH: So moved.

16 MS. KOVACH: Second.

17 MS. HAIRSTON: Robin Berg Tabakin?

18 CHAIRPERSON TABAKIN: Yes.

19 MS. HAIRSTON: Janice Kovach?

20 MS. KOVACH: Yes.

21 MS. HAIRSTON: Kathryn Forsyth?

22 MS. FORSYTH: Yes.

23 MS. HAIRSTON: Dave Fleisher?

24 MR. FLEISHER: Yes.

25 CHAIRPERSON TABAKIN: Thank you for

1 attending. See everyone next month.

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(HEARING CONCLUDED AT 11:09 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: JULY 7, 2008.

