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STATE OF NEW JERSEY
DIVISION OF CONSUMER AFFAIRS
GOVERNMENT RECORDS COUNCIL

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PUBLIC SESSION

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TRANSCRIPT OF PROCEEDINGS

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AT: DEPARTMENT OF COMMUNITY AFFAIRS
101 South Broad Street - Room 129
Trenton, New Jersey 08625

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14

Date: Wednesday, October 29, 2008

15

Time: 10:10 a.m. to 12:17 p.m.

16

REPORTED BY: Tracey L. Pinsky, CCR, RPR

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COUNCIL MEMBERS:

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ROBIN BERG-TABAKIN, Chairperson

3

JANICE KOVACH, Designee for DCA

4

KATHRYN FORSYTH, Designee for DOE

5

David Fleisher, Secretary

6

Charles Richman, 2nd Designee for DCA

7

COUNCIL STAFF:

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FRANK CARUSO, Case Manager

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KARYN GORDON, Acting Executive Director

10

BRIGITTE HAIRSTON, Secretary

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DARA LOWNIE, Senior Case Manager

12

SHERIN KEYS, Case Manager

13

JYOTHI PAMIDIMUKKALA, Resource Manager

14

JOHN STEWART, In Camera Specialist

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ELIZABETH ZIEGLER-SEARS, Staff Attorney

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GINA OROSZ, Outside Counsel

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DEBRA ALLEN, DAG

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0007

1 CHAIRPERSON TABAKIN: Could we all
2 please rise for the Pledge of Allegiance.
3 (At this time 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 October 27, 2008. Proper
12 notice having been given, the secretary is
13 directed to include this statement in the minutes
14 of the meeting.

15 In the event of a fire alarm
16 activation, please exit the building following the
17 exit signs located within the conference room and
18 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 the yellow helmets. Please follow the flow of
23 traffic away from the building.

24 Roll call.

25 MS. HAIRSTON: Robin Berg Tabakin.

0008

1 CHAIRPERSON TABAKIN: Yes.

2 MS. HAIRSTON: Kathryn Forsyth.

3 MS. FORSYTH: Yes.

4 MS. HAIRSTON: Dave Fleisher.

5 MR. FLEISHER: Here.

6 CHAIRPERSON TABAKIN: Before we
7 start I want to say that last September 25 we had
8 a wonderful training session. I want to thank
9 Karyn Gordon for that. It was very informative.
10 And we had, I think, a fairly good turnout. And
11 we always learn something new every time.

12 Okay. So we will skip down to
13 approving the minutes. Okay. Could I have a
14 motion to approve the closed session minutes of
15 July 30, 2008.

16 MR. FLEISHER: So moved.

17 MS. FORSYTH: Second.

18 MS. HAIRSTON: Robin Berg Tabakin?

19 CHAIRPERSON TABAKIN: Yes.

20 MS. HAIRSTON: Kathryn Forsyth?

21 MS. FORSYTH: Yes.

22 MS. HAIRSTON: Dave Fleisher?

23 MR. FLEISHER: Yes.

24 CHAIRPERSON TABAKIN: And a motion
25 to approve the open session transcript July 30,

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1 2008.

2 MR. FLEISHER: So moved.

3 MS. FORSYTH: Second.

4 MS. HAIRSTON: Robin Berg Tabakin?

5 CHAIRPERSON TABAKIN: Yes.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Yes.

8 MS. HAIRSTON: Dave Fleisher?

9 MR. FLEISHER: Yes.

10 CHAIRPERSON TABAKIN: Okay. Thank
11 you. Why don't we do that. All right, there are

12 27 -- I'm sorry, 26 Administrative Complaint
13 Council Adjudications. Could I have a motion to
14 approve those?

15 MS. FORSYTH: So moved.

16 MR. FLEISHER: Second.

17 MS. HAIRSTON: Robin Berg Tabakin?

18 CHAIRPERSON TABAKIN: Yes.

19 MS. HAIRSTON: Kathryn Forsyth?

20 MS. FORSYTH: Yes.

21 MS. HAIRSTON: Dave Fleisher?

22 MR. FLEISHER: Yes.

23 CHAIRPERSON TABAKIN: All right.

24 Rather than going into closed session, because we
25 do need some of the other members there, we will

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1 go on to the Individual Complaint Council
2 Adjudications, and we will just skip over the ones
3 we don't have a quorum for yet.

4 We can do number two. Patty
5 Semprevivo versus Pinelands Regional School
6 District, Ocean County, 2207-135.

7 MS. LOWNIE: Okay. The Executive
8 Director respectfully recommends the Council
9 accept the Administrative Law Judge's Initial
10 Decision dated July 9, 2008 because the
11 Complainant has failed to provide any legal basis
12 for the GRC to reject said decision. As such, no
13 further adjudication is required.

14 MR. FLEISHER: So moved.

15 MS. FORSYTH: Second.

16 CHAIRPERSON TABAKIN: Thank you.

17 MS. HAIRSTON: Robin Berg Tabakin?

18 CHAIRPERSON TABAKIN: Yes.

19 MS. HAIRSTON: Kathryn Forsyth?

20 MS. FORSYTH: Yes.

21 MS. HAIRSTON: Dave Fleisher?

22 MR. FLEISHER: Yes.

23 CHAIRPERSON TABAKIN: Number five,

24 Cynthia McBride versus Township of Bordentown,
25 Burlington, 2007-217.

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1 MS. GORDON: The Executive Director
2 respectfully recommends the Council find that:
3 1. Based on the language of the
4 statute --

5 Oh, before I begin, let me note that
6 this recommendation has been amended from the
7 version that you were provided with. There's one
8 amendment that occurred on Page 9. You will note
9 -- I think it is the last paragraph on that page,
10 therefore, pursuant to Blau, supra, and the
11 specific language of OPRA, as well as judicial
12 recognition of the importance of the statutory
13 request form, the Complainant's letter request to
14 receive the tax export file twice a week is not
15 valid under OPRA. That's a bit of change from the
16 previous version. And now I'll read the

17 Conclusions and Recommendations.

18 The Executive Director respectfully
19 recommends the Council find that:

20 1. Based on the language of the
21 statute, as well as judicial recognition of the
22 importance of the statutory request form, it is
23 determined that the statute requires all
24 requestors to submit OPRA requests on an agency's
25 official OPRA records request form. OPRA's

0012

1 provisions come into play only where a request for
2 records is submitted on an agency's official OPRA
3 records request form. Therefore, because the
4 Complainant submitted her request on the
5 Township's official OPRA request form and named a
6 particular record that existed at the time of the
7 request, the Complainant's request is a valid OPRA
8 request. And included in the recommendation two
9 has also been slightly amended to conform with the
10 paragraph that I read earlier.

11 2. Pursuant to Blau v. Union County
12 Clerk and the specific language of OPRA, as well
13 as judicial recognition of the importance of the
14 statutory request form, the Complainant's letter
15 request to receive the tax export file twice a
16 week is not valid under OPRA. The Complainant
17 must submit a new OPRA request on an OPRA request
18 form each time records are sought.

19 3. The Custodian's failure to
20 respond in writing to the Complainant's OPRA
21 request either granting access, denying access,
22 seeking clarification or requesting an extension
23 of time within the statutorily mandated seven
24 business days results in a deemed denial of the
25 Complainant's OPRA request pursuant to Section 5.g

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1 of OPRA, Section 5.1 of OPRA and Kelley v.
2 Township of Rockaway.

3 4. The Custodian's August 28, 2007
4 written response to the Complainant's request is
5 insufficient because the Custodian failed to
6 specifically address the Complainant's preference
7 for receipt of records. As such, the Custodian
8 violated Section 5.g pursuant to O'Shea versus
9 Township of Fredon, Sussex County, GRC Complaint
10 No. 2007-251, April 2008.

11 5. The Custodian's failure to
12 provide the requested records in the medium
13 requested is a violation of Section 5.d because
14 the evidence of evidence indicates that the
15 Custodian had the ability to provide the record in
16 the medium requested at the time of the
17 Complainant's request as well as at the time of
18 the Custodian's response.

19 6. Pursuant to Spaulding versus
20 County of Passaic, GRC Complaint No. 2004-199,
21 September 2006, the commercial use of government

22 records is not a lawful basis for a denial of
23 access.

24 7. In order to more fully develop
25 the record in this matter, this complaint should
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1 be referred to the Office of Administrative Law
2 for a hearing to determine the following: Whether
3 the Custodian's offer to provide the requested
4 records on CD-ROM or floppy disk constitutes a
5 meaningful medium pursuant to Section 5.d of OPRA
6 in light of the Complainant Counsel's assertion
7 that the Township has been providing electronic
8 copies of the requested records to another entity
9 during the investigation of this complaint;
10 whether the Township's removal of the software
11 feature at the request of Mayor George Chidley was
12 intentional in response to the Complainant's OPRA
13 request or tangentially related to the
14 installation of a new version of the software;
15 whether the Custodian's ability to provide the
16 requested records in the medium requested at the
17 time of the request and failure to do so amounts
18 to a knowing and willful violation of OPRA and
19 unreasonable denial of access under the totality
20 of the circumstances; whether the Mayor knowingly
21 and willfully violated OPRA and unreasonably
22 denied access under the totality of the
23 circumstances; and whether the Complainant is a
24 prevailing party pursuant to Section 6 of OPRA and
25 entitled to reasonable attorney's fees.

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1 CHAIRPERSON TABAKIN: Thank you.
2 Okay. I have a comment on this case, and that is,
3 the complainant submitted OPRA request and then
4 submitted a separate letter to the tax
5 collector --

6 MS. GORDON: Yes.

7 CHAIRPERSON TABAKIN: -- asking for
8 a tax export files twice a week. That letter was
9 not an OPRA -- on an OPRA form?

10 MS. GORDON: Correct.

11 CHAIRPERSON TABAKIN: So there are
12 two things here. Number one, there has to be an
13 OPRA request on an OPRA form each time a document
14 is requested. And that under the law of OPRA you
15 can't request something being sent to you on a
16 weekly basis or any kind of basis, there has to be
17 separate requests for each document. Okay.

18 Motion please.

19 MR. FLEISHER: So moved.

20 MS. FORSYTH: Second.

21 MS. HAIRSTON: Robin Berg Tabakin?

22 CHAIRPERSON TABAKIN: Yes.

23 MS. HAIRSTON: Kathryn Forsyth?

24 MS. FORSYTH: Yes.

25 MS. HAIRSTON: Dave Fleisher?

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1 CHAIRPERSON TABAKIN: Phyllis
2 Feggans versus City of Newark, Essex, 2007-238.
3 MS. LOWNIE: The Executive Director
4 respectfully recommends the Council find that:
5 1. Because the requested videotape
6 constitutes evidence adduced as part of a criminal
7 investigation as is signed by Sergeant Cruz, the
8 videotape is exempt from disclosure as a criminal
9 investigatory records pursuant to Section 1.1 of
10 OPRA. As such, the Custodian has carried her
11 burden of proving a lawful denial of access
12 pursuant to Section 6 of OPRA.
13 2. Because police incident reports
14 are exempt from disclosure as criminal
15 investigatory records pursuant to OPRA Section
16 1.1, Nance v. Scotch Plains Police Department, GRC
17 Complaint No. 2003-125, January 2005 and Morgano
18 v. Essex County Prosecutor's Office, GRC Complaint
19 No. 2007-156, February 2008, and because it is
20 concluded that the police incident summary and
21 result sheets summarize the information contained
22 on the incident reports, the summary and result
23 sheets are also exempt from disclosure as criminal
24 investigatory records pursuant to OPRA Section
25 1.1. As such, the Custodian has carried her

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1 burden of proving a lawful denial of access
2 pursuant to OPRA Section 6.
3 3. Because Detective M. Palermo's
4 Preliminary Investigation Sheets regarding Central
5 Complaints No. 05-124266 and 05-124244 relate to
6 an investigation, said records are exempt from
7 disclosure as criminal investigatory records
8 pursuant to OPRA Section 1.1. As such, the
9 Custodian has carried her burden of proving a
10 lawful denial of access pursuant to OPRA Section
11 6.

12 4. Because the Complainant
13 submitted her OPRA request on August 28, 2007 and
14 the OPRA Memorandum dated April 4, 2008 did not
15 exist at the time of the Complainant's request
16 said record is not at issue in this complaint.

17 5. Although the Custodian violated
18 OPRA Sections 5.g and 5.1 by not granting access,
19 denying access, seeking clarification, or
20 requesting an extension of time within the
21 statutorily mandated seven business days, the
22 Custodian provided the requested records to the
23 Complainant on the 19th business day following
24 receipt of the request. Additionally, although
25 the Custodian did not identify the records

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1 withheld from disclosure or the specific lawful
2 basis for the denial at the time of the
3 Custodian's response to the request, the Custodian
4 was only able to provide as much information as
5 the police department informed her regarding this

6 request as the records responsive are located
7 within the police department. As such, it is
8 concluded that the Custodian's actions do not rise
9 to the level of a knowing and willful violation of
10 OPRA and unreasonable denial of access under the
11 totality of the circumstances. However, the
12 Custodian's unlawful deemed denial of access
13 appears negligent and heedless since she is vested
14 with the legal responsibility of granting and
15 denying access in accordance with the law.

16 6. Although the Police Department
17 was not fully cooperative with the Custodian in
18 responding to the Complainant's OPRA request or
19 responding to the GRC's request for information
20 during the investigation of this complaint, the
21 police department did not unlawfully deny access
22 to the records withheld from disclosure. As such,
23 it is concluded that the Police Department's
24 actions do not rise to the level of a knowing and
25 willful violation of OPRA and unreasonable denial

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1 of access under the totality of the circumstances.
2 However, because of the Police Department's lack
3 of cooperation with the Custodian and apparent
4 lack of understanding of OPRA, the Police
5 Department should familiarize itself with OPRA's
6 provisions by way of the various reference
7 materials located on the GRC's website,
8 www.nj.gov/grc.

9 CHAIRPERSON TABAKIN: Okay. Motion.

10 MS. FORSYTH: So moved.

11 MR. FLEISHER: Second.

12 CHAIRPERSON TABAKIN: Roll call.

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 MS. HAIRSTON: Dave Fleisher?

20 MR. FLEISHER: Yes.

21 CHAIRPERSON TABAKIN: Beverly Jones

22 versus Trenton Board of Education --

23 MS. GORDON: Beverly Jones is an

24 in-camera one.

25 CHAIRPERSON TABAKIN: Kevin Starkey

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1 versus New Jersey Department of Transportation,
2 2007-315, 2007-316, 2007-317.

3 MS. LOWNIE: The Executive Director
4 respectfully recommends that Council find that:

5 1. Because the Custodian requested
6 an extension of time in writing within the
7 statutorily mandated seven business days regarding
8 request no. C31055 and provided an anticipated
9 deadline date of when the requested records would
10 be made available, the Custodian properly

11 requested said extension pursuant to OPRA Section
12 5.g, 5.i, and Johnson v. Borough of Oceanport,
13 Monmouth County, GRC Complaint No. 2007-202, March
14 2008.

15 2. Because of the Custodian
16 provided the Complainant with a written response
17 within the extended time frame regarding request
18 no. C31055 in which the Custodian estimated a
19 special service charge, thus providing the
20 Complainant with an opportunity to review and
21 object to the charge prior to it being incurred,
22 the Custodian's September 14, 2007 response was
23 proper pursuant to OPRA Section 5.c and 5.g.
24 Pursuant to Paff v. City of Plainfield, GRC
25 Complaint No. 2006-54, July 2006, Santos vs. New
0021

1 Jersey State Parole Board, GRC Case No. 2004-74,
2 August 2004, and Cuba v. Northern State Prison,
3 GRC Case No. 2004-146, February 2005, the
4 Custodian is not required to provide the records
5 responsive until he receives payment for said
6 records.

7 3. Because the Custodian failed to
8 notify the Complainant in writing of when the
9 requested records would be made available after
10 the Complainant paid the special service charge
11 deposit for request no. C31055, the Custodian
12 violated OPRA Section 5.1.

13 4. The Custodian in this matter has
14 not provided any evidence that he attempted to
15 reach a reasonable solution with the requester
16 that accommodates the interest of the requester
17 and the agency regarding request no C31055. As
18 such, the Custodian has failed to meet his burden
19 of proof that fulfilling the Complainant's request
20 would substantially disrupt agency operations
21 pursuant to OPRA Section 5.g.

22 5. Because the Custodian failed to
23 notify the Complainant in writing within the
24 statutory mandated seven business days regarding
25 requests no. C31093 and C31096 of when the
0022

1 requested records would be made available pursuant
2 to OPRA Section 5.9, the Custodian's written
3 response to the Complainant's requests dated
4 September 12, 2007 in which the Custodian
5 requested an extension of time is inadequate under
6 OPRA pursuant to Hardwick v. New Jersey Department
7 of Transportation, GRC Complaint No. 2007-154,
8 February 2008, and the Complainant's requests are
9 denied pursuant to OPRA Section 5.g, 5.i, and
10 Kelley v. Township of Rockaway, GRC Complaint No.
11 2007-11, October 2007.

12 6. Although it may be reasonable
13 that the Complainant's request no. C31093 and
14 C31096 took several months to fulfill due to the
15 nature of the requests and the volume of records

16 responsive, the Complainant's request are
17 approaching one year unfulfilled and the Custodian
18 has not provided any indication as to when the
19 records responsive will be released to the
20 Complainant. As such, the Custodian must release
21 the records responsive to the Complainant or show
22 cause as to why the Custodian cannot release the
23 records within the ordered time frame.

24 7. The Custodian shall comply with
25 item no. 6 above within ten business days from

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1 receipt of the Council's Interim Order with
2 appropriate redactions, including a detailed
3 document index explaining the lawful basis for
4 each redaction and simultaneously provide
5 certified confirmation of compliance, in
6 accordance with New Jersey Court Rule 1:4-4 to the
7 Executive Director.

8 8. The issue of whether fulfilling
9 the Complainant's 42 new OPRA requests would
10 substantially disrupt Department of
11 Transportation's operations is not properly before
12 the GRC because said requests are not the subject
13 of these Denial of Access Complaints.

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

20 10. The Council defers analysis of
21 whether the Complainant is a prevailing party
22 pursuant to OPRA Section 6 and entitled to
23 reasonable attorney's fees pending the Custodian's
24 compliance with the Council's Interim Order.

25 CHAIRPERSON TABAKIN: Any questions

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1 or comments on this one? Can I have a motion,
2 please?

3 MS. KOVACH: So moved.

4 MR. FLEISHER: Second.

5 MS. HAIRSTON: Robin Berg Tabakin?

6 CHAIRPERSON TABAKIN: Yes.

7 MS. HAIRSTON: Janice Kovach?

8 MS. KOVACH: Yes.

9 MS. HAIRSTON: Kathryn Forsyth?

10 MS. FORSYTH: Yes.

11 MS. HAIRSTON: Dave Fleisher?

12 MR. FLEISHER: Yes.

13 CHAIRPERSON TABAKIN: Thank you.

14 And could you note that Janice Kovach is here?

15 MS. HAIRSTON: Yes.

16 CHAIRPERSON TABAKIN: I think we
17 have done all of the Individual Complaint Council
18 Adjudications that we can do before we go into
19 closed session. So I suggest we go into closed
20 session, do what we can do while Chuck is not

21 here -- Mr. Richman. And when he comes we can
22 discuss the Baldwin case where Janice Kovach is
23 recused.

24 MS. GORDON: And Pittore as well.

25 CHAIRPERSON TABAKIN: That's

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1 correct.

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

5 WHEREAS, the Government Records
6 Council has deemed it necessary to go into close
7 session to discuss certain matters which are
8 exempt from public discussion under the Open
9 Public Meetings Act;

10 WHEREAS, the regular meeting of the
11 Council will reconvene at the conclusion of the
12 closed meeting;

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

19 1. Robert Gorman versus Gloucester
20 City Police Department 2004-108 (Reconsideration).

21 2. Donald Baldwin versus Township
22 of Readington, Hunterdon, 2006-165 (In-camera
23 review).

24 3. Irma Sandoval versus NJ State
25 Parole Board, 2006-167, (Reconsideration).

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1 4. Ali Morgano versus Essex County
2 Prosecutor's Office, 2007-156 (In-camera review).

3 5. Ronald Pittore versus University
4 of Medicine & Dentistry of NJ, 2007-216 (In-camera
5 review).

6 6. Beverly Jones versus Trenton
7 Board of Education, 2007-282 (In-camera review).

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

13 Could I have a motion to go into
14 closed session?

15 MS. FORSYTH: So moved.

16 MR. FLEISHER: 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.

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1 (At this time the Council is in
2 Closed session.)

3 (Recess at 10:35 a.m.)

4 (Resumed at 12:02 p.m.)

5 CHAIRPERSON TABAKIN: Can I have a
6 motion, please, to go back into open session.

7 MR. FLEISHER: So moved.

8 MS. KOVACH: Second.

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 MS. HAIRSTON: Dave Fleisher?

16 MR. FLEISHER: Yes.

17 MS. HAIRSTON: Charles Richman?

18 MR. RICHMAN: Yes.

19 MR. FLEISHER: Okay. We will start

20 with Ronald Pittore versus University of Medicine
21 and Dentistry of New Jersey.

22 MR. STEWART: The Executive Director
23 respectfully recommends the Council find that:

24 1. Although the Custodian submitted
25 the required records to the GRC in a timely

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1 manner, the Custodian failed to comply with the
2 terms of the Council's Interim Order because she
3 failed to submit to the GRC a legal certification
4 pursuant to New Jersey Court Rule 1:4-4 and a
5 document or redaction index as required by
6 directive of said order.

7 2. On the basis of the Council's
8 determination in this matter, the Custodian shall
9 comply with the Council's findings of the In
10 Camera examination set forth in the above table
11 within five business days from receipt of this
12 Order and provide to the Executive Director
13 certified confirmation of compliance pursuant to
14 New Jersey Court Rules 1969 R. 1:4-4 (2005).

15 MR. FLEISHER: Any questions from
16 the Council regarding this matter. If not, we'll
17 entertain a motion.

18 MR. RICHMAN: So moved.

19 MS. FORSYTH: Second.

20 MR. FLEISHER: Roll call, please.

21 MS. HAIRSTON: Charles Richman?

22 MR. RICHMAN: Yes.

23 MS. HAIRSTON: Robin Berg Tabakin?

24 CHAIRPERSON TABAKIN: Abstain.

25 MS. HAIRSTON: Kathryn Forsyth?

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1 MS. FORSYTH: Yes.

2 MS. HAIRSTON: Dave Fleisher?

3 MR. FLEISHER: Yes.

4 CHAIRPERSON TABAKIN: Now we will go

5 back to the remainder. Donald Baldwin versus
6 Township of Readington, Hunterdon, 2006-165.

7 MR. STEWART: The Executive Director
8 respectfully recommends the Council find that:

9 1. The Custodian has complied with
10 the council's April 25, 2007 Interim Order by
11 providing the Council with all records set forth
12 in Paragraph 3 of the Order within five business
13 days of receiving Council's order to have it
14 extended.

15 2. On the Basis of the Council's
16 determination in this matter, the Custodian shall
17 comply with the Council's findings of In-Camera
18 Examination set forth in the above table within
19 five business days of receipt of this Order and
20 provide certified confirmation of compliance
21 pursuant to New Jersey Court Rules, R. 1:4-4 2005
22 to the Executive Director.

23 MR. FLEISHER: So moved.

24 MS. FORSYTH: Second.

25 CHAIRPERSON TABAKIN: Roll call.

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1 MS. HAIRSTON: Robin Berg Tabakin?

2 CHAIRPERSON TABAKIN: Yes.

3 MS. HAIRSTON: Kathryn Forsyth?

4 MS. FORSYTH: Yes.

5 MS. HAIRSTON: Dave Fleisher?

6 MR. FLEISHER: Yes.

7 MS. KOVACH: I abstain.

8 CHAIRPERSON TABAKIN: All right. We
9 have pulled Michael Brown versus New Jersey
10 Department of Corrections 2007-191 and Beverly
11 Jones versus Trenton Board of Education, Mercer,
12 2007-282. We will now -- and now we will move to
13 Complaints Reconsidered where we have pulled
14 Alfred M. Salley, Sr. versus New Jersey Department
15 of Law and Public Safety, Division of Criminal
16 Justice, 2008-21 and we will -- all right.

17 We are going back to Ali Morgano
18 versus Essex County Prosecutor's Office, 2007-156.

19 MR. STEWART: The Executive Director
20 respectfully recommends that the Council find
21 that:

22 1. Because the Custodian failed to
23 provide a document or redaction index asserting
24 the lawful basis for denial in accord with the
25 Council's February 27, 2008 Interim Order, the

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1 Custodian has failed to comply with said order.

2 2. On the Basis of the Council's
3 determination in this matter, the Custodian shall
4 comply with the Council's findings of the
5 In-Camera Examination set forth in the In Camera
6 Table table within five business days of receipt
7 of this Order and provide certified confirmation
8 of compliance pursuant to New Jersey Court Rules,
9 1969 R. 1:4-4 2005 to the Executive Director.

10 3. Based upon the evidence of
11 record on reconsideration, the Custodian has
12 failed to meet her burden of proof pursuant to
13 N.J.S.A. 47:1A-6 that the Complainant shall be
14 denied access to the Newark Police Department
15 arrest reports and, therefore, the Custodian must
16 comply with Paragraph 5 of the Council's February
17 27, 2008 Interim Order by (a) redacting everything
18 in said reports except the information statutorily
19 required to be disclosed pursuant to OPRA Section
20 3.b, including, but not limited to the arrested
21 person's name, age, residence, occupation, marital
22 status, time and place of arrest, charges,
23 arresting agency, and such other specific
24 information detailed in set statute, and (b)
25 disclosing the redacted arrest reports to the

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1 Complainant.

2 4. The Custodian shall comply with
3 item three above within five business days in
4 receipt of the Council's Interim Order and
5 simultaneously provide certified confirmation of
6 compliance in accordance with New Jersey Court
7 Rule 1:4-4 to the Executive Director.

8 5. Because the Custodian failed to
9 provide a written response to the Complainant's
10 OPRA request within the statutorily mandated seven
11 business period, which resulted in a deemed
12 denial, and because the Custodian further failed
13 to comply with the Council's February 27, 2008
14 Interim Order by not providing the correct records
15 for in-camera examination along with a document or
16 redaction index asserting the lawfulness of the
17 denial, the Custodian has violated the provisions
18 of OPRA. But because the Custodian responded in
19 writing on the eighth business day following the
20 receipt of such request denying access, it is
21 included that the Custodian's actions do not rise
22 to the level of knowing and willful violation of
23 OPRA and unreasonable denial of access under the
24 totality of the circumstances. However, the
25 Custodian's unlawful deemed denial of access and

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1 her failure to comply with the Council's Interim
2 Order appears negligent and heedless since she is
3 vested with the legal responsibility of granting
4 and denying access in accordance with the law.

5 CHAIRPERSON TABAKIN: Thank you.

6 Motion.

7 MS. KOVACH: So moved.

8 MS. FORSYTH: 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 MS. HAIRSTON: Dave Fleisher?
17 MR. FLEISHER: Yes.
18 CHAIRPERSON TABAKIN: Robert Gorman
19 versus Gloucester City Police Department,
20 2004-108.

21 MR. STEWART: The Executive Director
22 respectfully recommends the Council find that
23 because the Complainant in his Denial of Access
24 Complaint did not request the MVR tape with the
25 audio portion and any portion of the tape that

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1 includes an visual image of any private citizen
2 redacted, the Council's June 25, 2008 Final
3 Decision should not be disturbed. There is no
4 basis for reconsideration of this matter.

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

15 CHAIRPERSON TABAKIN: Irma Sandoval
16 versus New Jersey Parole Board, 2006-167.

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

20 1. The Council's March 25, 2008
21 Interim Order is hereby amended to reflect that
22 the Custodian's submission on April 16, 2007 was
23 the result of an extension granted by the GRC.
24 However, the Custodian's submission of the
25 unredacted Status of Interview form twenty-one

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1 business days after receiving the Council's Order
2 is not compliant with such Order.

3 2. Because the Council's March 28,
4 2007 Interim Order clearly stated that the Council
5 shall conduct an in-camera review of the Completed
6 Status of Interview Form, the Custodian's
7 Counsel's assertion that the Council's March 28,
8 2007 Interim Order did not contain a request for
9 an in-camera review of the Status of Interview
10 form is, therefore, mistaken.

11 3. Because the Council's March 26,
12 2008 Interim Order does not explicitly state that
13 of the 372 e-mails identified as responsive to the
14 Complainant's request, only one e-mail required
15 redaction for a Social Security number, and that
16 it was determined that the Council's -- that the
17 Custodian's Counsel should so advise the GRC, but
18 was not required six copies of the 372 e-mails,
19 the Council's March 26, 2008 Interim Order is

20 hereby amended to reflect these facts.

21 4. Because the Council's March 26,
22 2008 Interim Order was clear with regard to the
23 action required of the Custodian, the Council
24 declines to amend its March 26, 2008 Interim
25 Order.

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1 5. Although the Custodian failed to
2 comply with the Council's March 28, 2007 Interim
3 Order with regard to the timely submission of the
4 unredacted Status of Interview Forms, the
5 Custodian released the remainder of the requested
6 records with minimal redactions. It is,
7 therefore, concluded that the Custodian's actions
8 do not rise to the level of a knowing and willful
9 violation of OPRA and unreasonable denial of
10 access under the totality of circumstances.
11 However, the Custodian's unlawful deemed denial of
12 access appears negligent and heedless since he is
13 vested with the legal responsibility of granting
14 and denying access in accordance with the law.
15 Therefore, referral of this matter to the Office
16 of Administrative Law as determined in the
17 Council's March 28, 2007 Interim Order is not
18 warranted.

19 CHAIRPERSON TABAKIN: 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 MS. HAIRSTON: Dave Fleisher?

4 MR. FLEISHER: Yes.

5 CHAIRPERSON TABAKIN: There are no
6 complaints adjudicated in Superior Court.

7 Executive Director's report. Any new business?

8 MS. GORDON: I have nothing for the

9 Executive Director's report. We do have some

10 things from the DAG's office, however.

11 MS. ALLEN: I wanted to talk about

12 two matters that arose in the last couple of

13 months. One has to do with our victory in the

14 Martin O'Shea versus Township of West Millford.

15 We have a lot of those cases. This particular one

16 related to a Government Records Council Cross

17 Motion for Summary Decision which was granted.

18 The case arose when O'Shea challenged a GRC

19 Administrative Determination denying him access to

20 an attorney/client privilege memorandum that was

21 sent to us in the context of an adjudication.

22 Originally the Custodian has denied access to that

23 memorandum. Ultimately in the course of

24 litigation had given it to O'Shea, but the

25 litigation continues assumably because they wanted
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1 to get attorneys fees from the GRC if they were to
2 prevail.

3 So originally the question was,
4 well, did the Custodian waive the attorney/client
5 privilege by providing us the memorandum in the
6 process of our adjudication. We successfully
7 argued that that was not the case because we sit
8 as quasi judicatory body. And that if we request
9 these documents that are attorney/client
10 privilege, as we do with the in-camera documents,
11 we are reviewing that as an adjudicator and not as
12 the Custodian. And, therefore, that document in
13 our possession is not a government record. It's
14 part of our case review file. It's not considered
15 a government record that's kept in the Government
16 Records Council public records file.

17 Additionally, we are argued
18 successfully that the case is effectively academic
19 because under 1.1 under OPRA, attorney/client
20 privilege documents are not government records.
21 And whether or not they got it from the Custodian
22 or they tried to do it around and get it from us
23 through Kathryn as the Custodian for the GRC, in
24 either situation that document is not disclosable.
25 So we won on both accounts where the document

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1 wouldn't have been disclosable in any situation;
2 and, two, even if it were and there was this
3 waiver of an attorney/client privilege, it
4 wouldn't apply because we sit as an adjudicator
5 and not as the Custodian when we review our cases.

6 The other matter just came up about
7 three or four days ago. The New Jersey FOG has
8 put in an Order to Show Cause against the
9 Government Records Council because we denied them
10 access to database of our complaints dating back
11 to the inception of the Council. And the denial
12 was not based categorically, it was based upon our
13 decision to release some information but to redact
14 home addresses. Now, the issue before the court
15 is whether or not that decision was proper in that
16 the addresses they're saying are disclosable,
17 because complaints that are filed with us are
18 similar to the complaints filed in a court of law.
19 And those -- you know, those documents would be
20 public and they would not be redacted to not
21 disclose that information. So now -- we are we
22 just starting, you know, this litigation, this
23 came up, again, a couple days ago. And we're in
24 the process of filing an answer to defended that
25 position.

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1 And we will keep you posted on how
2 that develops.

3 CHAIRPERSON TABAKIN: Thank you. Is

4 that it?
5 MS. ALLEN: Yes, that's it.
6 CHAIRPERSON TABAKIN: Okay. It's
7 now time for public comment. If you would like to
8 make a comment, please step up to the table.
9 No one?
10 Okay. Then could I have a motion to
11 close?
12 MS. KOVACH: 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: Thank you very
24 much. We are adjourned.
25 (12:17 p.m.)

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1 C E R T I F I C A T E
2
3 I, Tracey L. Pinsky, a Certified
4 Court Reporter, Registered Professional Reporter
5 and Notary Public of the State of New Jersey, do
6 hereby certify that the foregoing is a true and
7 accurate computer-aided transcript of the Meeting
8 as taken stenographically by and before me at the
9 time, place and on the date hereinbefore set
10 forth.
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23 _____
24 Certified Court Reporter
25 XI00219700
Notary Public of New Jersey
My commission expires 12-9-12