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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, February 25, 2009  
TIME: 9:35 a.m. to 12:00 p.m.  
REPORTED BY: Renée Helmar, Shorthand Reporter

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CLASS ACT COURT REPORTING AGENCY  
Registered Professional Reporters  
1420 Walnut Street                      133 Gaither Drive  
Suite 1200                                      Suite H  
Philadelphia, PA 19103                      Mt. Laurel, NJ 08054

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0003

- COUNCIL MEMBERS:
- ROBIN BERG TABAKIN, Chairwoman
- JANICE L. KOVACH (designee of Acting Commissioner  
Joseph V. Doria, Jr., Department  
of Community Affairs)
- KATHRYN FORSYTH (designee of Commissioner Lucille Davy,  
Department of Education)
- COUNCIL PROFESSIONALS:
- CATHERINE STARGHILL, Esquire, DAG
- DEBRA A. ALLEN, Esquire, DAG
- KARYN GORDON, Esquire, (In-House Counsel)
- KELLEY J. LAKE, Esquire
- JYOTHI PAMIDIMUKKALA, (Resource Manager)
- ELIZABETH ZIEGIER-SEARS, Esquire (Case Manager)
- SHERIN KEYS, Esquire (Case Manager/Staff Attorney)
- FRANK F. CARUSO, (Case Manager)
- JOHN E. STEWART, Esquire, (Case Manager/ In Camera Attorney)
- DARA LOWNIE, (Senior Case Manager)
- BRIGITTE HAIRSTON, (Council Secretary)



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 20 19. Barbara Kulig v. Township of  
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 21 20. John Paff v. Township of Voorhees(2008-270)(Camden)  
 22 21. Willie Williams v. New Jersey State Parole  
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 24 22. David Weiner v. County of Essex(2008-272)  
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 26 23. Joseph Lamb v. Township of Brick(2008-274)(Brick)

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24. Cynthia McBride v. Township of  
 Delanco(2008-282)(Burlington)

3

25. Jessica Krammes v. The College of New  
 Jersey(2008-284)

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26. Jane Copeland v. Morris County Prosecutor's  
 Office(2009-01)

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27. Jane Copeland v. Morris County Sheriff's  
 Office(2009-2)(Morris)

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28. John Agostini v. Nutley Board of  
 Education(2009-6)(Essex)

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29. Thomas Caggiano v. Township of Green Municipal  
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30. Russell Tinsley v. New Jersey Department of  
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31. Richard Rivera v. Ramsey Police  
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32. Carolanne Schlosser v. City of Union Municipal  
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2. Beth Barile v. Stillwater  
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 KF Recusal

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4. Allan M. Johnson v. Borough of  
 Oceanport(2007-107)(Monmouth)

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5. Steve Hyman v. Jersey  
 City(2007-118)(Hudson) KF Recusal

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6. James Leak v. Union County Prosecutor's  
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PULLED

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0009

1 MADAME CHAIRWOMAN: Okay. I am calling  
2 this meeting to order. Good morning.  
3 Could we all rise for the flag.  
4 (Whereupon, the Pledge of

5 Allegiance was recited.)

6 MADAME CHAIRWOMAN: This meeting was  
7 called pursuant to the provisions of the Open  
8 Public Meeting Act.

9 Notices of this meeting were faxed to the  
10 Newark Star Ledger, Trenton Times, Courier Post  
11 of Cherry Hill, the Secretary of State and  
12 e-mailed to the New Jersey Foundation for Open  
13 Government, February 23rd, 2009.

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

17 In the event of a fire alarm activation,  
18 please exit the building following the exit  
19 signs located within the conference room and  
20 throughout the building.

21 The exit signs will direct you to the two  
22 fire evacuation stairways located in the  
23 building.

24 Upon leaving, please follow the fire  
25 wardens, which can be located by the yellow

0010  
1 helmets. Please follow the flow of traffic  
2 away from the building.

3 Roll call.

4 MS. HAIRSTON: Robin Berg Tabakin?

5 MADAME CHAIRWOMAN: Yes.

6 MS. HAIRSTON: Janice L. Kovach?

7 MS. KOVACH: Yes.

8 MS. HAIRSTON: Kathryn Forsyth?

9 MS. FORSYTH: Yes.

10 MS. HAIRSTON: Dave Fleisher?

11 MADAME CHAIRWOMAN: Not here.

12 Okay. We're going to go into closed.

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

16 WHEREAS, the Government Records Council  
17 has deemed it necessary to go into closed  
18 session to discuss certain matters which are  
19 exempt from public under the Open Public  
20 Meetings Act; and

21 WHEREAS, the regular meeting of the  
22 Council will reconvene at the conclusion of the  
23 closed meeting;

24 NOW, THEREFORE, BE IT RESOLVED, that the  
25 Council will convene in closed session to

0011  
1 receive legal advice and discuss anticipated  
2 litigation in which the Council may become a  
3 party pursuant to N.J.S.A 10:4-12.b(7) in the  
4 following matters:

5 Sandra Schuler versus Borough of  
6 Bloomsbury (2007-243), Hunterdon;

7 Allen Johnson versus Borough of Oceanport  
8 (2008-141), Monmouth;

9 NJFOG versus GRC.

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

15 May I have a motion?

16 MS. FORSYTH: So moved.

17 MS. KOVACH: Second.

18 MS. HAIRSTON: Robin Berg Tabakin?

19 MADAME CHAIRWOMAN: Yes.

20 MS. HAIRSTON: Janice Kovach?

21 MS. KOVACH: Yes.

22 MS. HAIRSTON: Kathryn Forsyth?

23 MS. FORSYTH: Yes.

24 MADAME CHAIRWOMAN: Thank you.

25 (Whereupon, the Council goes

0012

1 into closed session. The time  
2 is 9:40 a.m.)

3 (Back in open session. The time  
4 is 10:20 a.m.)

5 MADAME CHAIRWOMAN: Can I have a motion to  
6 go into open session?

7 MS. FORSYTH: So moved.

8 MS. KOVACH: Second.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 MADAME CHAIRWOMAN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Kathryn Forsyth?

14 MS. FORSYTH: Yes.

15 MADAME CHAIRWOMAN: Okay. Before we  
16 start, I'm just going to edit on the closed  
17 session to read, our second one, Allen Johnson  
18 v. Borough of Oceanport should read 2007-107.

19 Okay. Now, approval of the minutes.

20 Could I have a motion to approve the open  
21 session minutes from November 19th, 2008?

22 MS. FORSYTH: So moved.

23 MS. KOVACH: Second.

24 MS. HAIRSTON: Robin Berg Tabakin?

25 MADAME CHAIRWOMAN: Yes.

0013

1 MS. HAIRSTON: Janice Kovach?

2 MS. KOVACH: Yes.

3 MS. HAIRSTON: Kathryn Forsyth?

4 MS. FORSYTH: Yes.

5 MADAME CHAIRWOMAN: Motion to approve  
6 closed session minutes December 18th, 2008?

7 MS. KOVACH: So moved.

8 MS. FORSYTH: Second.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 MADAME CHAIRWOMAN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Kathryn Forsyth?

14 MS. FORSYTH: Yes.

15 MADAME CHAIRWOMAN: Open session minutes  
16 December 18th, 2008.

17 MS. FORSYTH: Madame Chair, I have some  
18 corrections that I spoke to Miss Gordon about  
19 on Pages 19 to 21, there is a dialogue that  
20 takes place between a member of the audience  
21 and it is described to me, and I think it was  
22 Miss Gordon or Miss Allen who made those  
23 comments.

24 MADAME CHAIRWOMAN: Oh, yes.

25 MS. FORSYTH: Because I'm talking about a  
0014

1 lot of legal things that I have no clue.

2 MS. STARGHILL: Well, they elevated you.

3 MS. FORSYTH: Yeah. Practicing without a  
4 license.

5 It starts on Page 19.

6 MS. STARGHILL: Talking about statutes.

7 MS. FORSYTH: Yeah.

8 MS. STARGHILL: Okay. Let's attribute the  
9 comments presently attributed to Ms. Forsyth to  
10 Ms. Allen.

11 MADAME CHAIRWOMAN: From line --

12 MS. STARGHILL: From line 7 down to --  
13 well, to 25; right?

14 MS. FORSYTH: To Page 25.

15 MS. STARGHILL: Then line 7, in the middle  
16 of Page 19 up until the end of that  
17 conversation, which ends on Page 21.

18 MS. FORSYTH: 21, three-quarters of the  
19 way down the page.

20 MS. STARGHILL: 0049; line one?

21 MS. FORSYTH: Yeah. Actually it's line  
22 five; 007; line 5.

23 MS. STARGHILL: So, everywhere that it  
24 says Ms. Forsyth, it should be Ms. Allen.

25 MADAME CHAIRWOMAN: Okay. Could I have a  
0015

1 motion to approve the minutes as --

2 MS. STARGHILL: Amended.

3 MADAME CHAIRWOMAN: Yes.

4 MS. FORSYTH: So moved. So moved as  
5 amended.

6 MS. KOVACH: Second.

7 MS. HAIRSTON: Robin Berg Tabakin?

8 MADAME CHAIRWOMAN: Yes.

9 MS. HAIRSTON: Janice Kovach?

10 MS. KOVACH: Yes.

11 MS. HAIRSTON: Kathryn Forsyth?

12 MS. FORSYTH: Yes.

13 MADAME CHAIRWOMAN: Now, the  
14 Administrative Complaint Council Adjudication,  
15 there are 32.

16 Do I have a motion to approve?

17 MS. KOVACH: So moved.

18 MS. FORSYTH: Second.

19 MS. HAIRSTON: Robin Berg Tabakin?

20 MADAME CHAIRWOMAN: Yes.  
21 MS. HAIRSTON: Janice Kovach?  
22 MS. KOVACH: Yes.  
23 MS. HAIRSTON: Kathryn Forsyth?  
24 MS. FORSYTH: Yes.  
25 MADAME CHAIRWOMAN: Now, the Individual

0016

1 Complaint Council Adjudication.  
2 All right. The first one that we have a  
3 quorum for is Beth Barile v. Stillwater  
4 Township(2007-92)(Sussex).  
5 MS. KEYS: The Executive Director  
6 respectfully recommends the Council find that:  
7 1. Because the custodian has asserted  
8 that portions of the records were lawfully  
9 redacted pursuant to N.J.S.A. 10:4-12, the  
10 Council must determine whether the legal  
11 conclusions asserted by the Custodian are  
12 properly applied to the records at issue  
13 pursuant to Paff v. New Jersey Department of  
14 Labor, Board of Review, Appellate Division  
15 2005.

16 Therefore, the GRC must conduct an in  
17 camera review of the requested records to  
18 determine the validity of the Custodian's  
19 assertion that the requested records were  
20 properly redacted.  
21 2. The Custodian must deliver to the  
22 Council in a sealed envelope nine copies of the  
23 requested unredacted document, see Number 1  
24 above, a document or redacted index, as well as  
25 a legal certification from the Custodian, in

0017

1 accordance with New Jersey Court Rule 1:4-4,  
2 that the document provided is the document  
3 requested by the Council for the in camera  
4 inspection. Such delivery must be received by  
5 the Council within five business days from  
6 receipt of the Council's Interim Order.  
7 3. Pursuant to OPRA Section 1, Donal  
8 Meyers v. Borough of Fair Lawn, GRC Complaint  
9 Number 2005-127, December 25, and Seerey v.  
10 Upper Pittsgrove Township, GRC Complaint Number  
11 2005-38, December 2005, the Custodian's  
12 assertion of the confidentiality of the records  
13 sought in request Item Number 3 and the  
14 Custodian's contention that OPRA does not apply  
15 to home computers were improper. The  
16 Custodian's response was not supported by any  
17 provisions of OPRA or ensuing case law.  
18 4. Pursuant to OPRA Section 7.b, the GRC  
19 does not have the authority to adjudicate  
20 whether a Custodian has complied with OPMA or  
21 any other statute other than OPRA. See Thomas  
22 Allegretta v. Borough of Fairlawn, GRC  
23 Complaint Number 2005-132, December 2006,  
24 holding that based on Section 7.b, the GRC does

25 not have the authority to adjudicate whether a  
0018

1 Custodian has complied with OPMA or any statute  
2 other than OPRA.

3 Because Stillwater Ordinance 2007-22 sets  
4 copy fees for OPRA requests in excess of the  
5 fees authorized by OPRA, the Ordinance is  
6 invalid as applied to OPRA requests. Under  
7 OPRA, the Custodian may only charge the actual  
8 cost of duplication for the record requested,  
9 OPRA Section 5.b.

10 While the Custodian has certified in one  
11 instance that the actual cost of duplicating  
12 the record requested is \$5, she has certified  
13 that the town -- the town purchases 100 CD-ROMs  
14 for \$35, thereby making the cost per CD-ROM .35  
15 cents.

16 Because the Custodian has failed to  
17 establish that the Township will incur any  
18 additional costs for duplicating the requested  
19 record, the Custodian has violated Section 5.b  
20 of OPRA. Libertarian Party of Central New  
21 Jersey v. Murphy, Appellate Division 2006.

22 6. The Council defers analysis of whether  
23 the Custodian knowingly and willfully violated  
24 OPRA and unreasonably denied access under the  
25 totality of the circumstances the Custodian's

0019 compliance with the Council's Interim Order.

1 MADAME CHAIRWOMAN: Any questions?

2 (No response.)

3 MADAME CHAIRWOMAN: Motion?

4 MS. FORSYTH: So moved.

5 MS. KOVACH: Second.

6 MS. HAIRSTON: Robin Berg Tabakin?

7 MADAME CHAIRWOMAN: Yes.

8 MS. HAIRSTON: Janice Kovach?

9 MS. KOVACH: Yes.

10 MS. HAIRSTON: Kathryn Forsyth?

11 MS. FORSYTH: Yes.

12 MADAME CHAIRWOMAN: Allan M. Johnson v.

13 Borough of Oceanport(2007-107).

14 MR. CARUSO: I wanted to make you aware,  
15 there is an amendment in place, a footnote that  
16 has been added to --

17 MS. STARGHILL: Actually where -- this is  
18 the complaint in which due to our lack of  
19 quorum for last meeting, in fact that meeting  
20 was canceled, the 35 days expired under the  
21 Public Administrative Law. The expiration for  
22 accepting, rejecting or modifying initial  
23 decisions of the Administrative Law Judge,  
24 therefore, the GRC will be filing an extension  
25

0020 of 45 days, which will inform counsel that we  
1 will proceed with our adjudication  
2 understanding that the extension we're given  
3

4 are just so.  
5 Go ahead. That footnote will no longer be  
6 necessary, Frank.

7 MR. CARUSO: The Executive Director  
8 respectfully recommends that:

9 1. The December 15th, 2008 Initial  
10 Decision of Administrative Law Judge Martone,  
11 which finds that Councilman Sharkey knowingly  
12 and willfully violated OPRA and unreasonably  
13 denied access to the Complainant's November  
14 9th, 2006 OPRA request under the totality of  
15 the circumstances, and the conduct of  
16 Councilman Sharkey was intentional and  
17 deliberate, with knowledge of the wrongfulness  
18 of his actions, and not merely negligent, and  
19 which ordered Councilman Hugh Sharkey to pay a  
20 civil penalty in the amount of \$1000 for this  
21 initial violation pursuant to Section 11.a of  
22 OPRA is adopted.

23 2. The Initial Decision is modified to  
24 require that, pursuant to Section 11.a, this  
25 penalty shall be collected and enforced in

0021

1 proceedings in accordance with the Penalty  
2 Enforcement Law of 1999 and the rules of the  
3 Court governing actions for the collection of  
4 civil penalties.

5 Therefore, pursuant to N.J.S.A. 2A:11 and  
6 New Jersey Court Rule 4:70-3, payment of civil  
7 penalties are to be made payable to the  
8 Treasurer of the State of New Jersey and shall  
9 be remitted to the GRC.

10 3. Councilman Hugh Sharkey shall comply  
11 with Item Number 2 above within five business  
12 days from receipt of the Council's Interim  
13 Order.

14 MADAME CHAIRWOMAN: Motion?

15 MS. KOVACH: So moved.

16 MS. FORSYTH: Second.

17 MS. HAIRSTON: Robin Berg Tabakin?

18 MADAME CHAIRWOMAN: Yes.

19 MS. HAIRSTON: Janice Kovach?

20 MS. KOVACH: Yes.

21 MS. HAIRSTON: Kathryn Forsyth?

22 MS. FORSYTH: Yes.

23 MADAME CHAIRWOMAN: James Leak v. Union  
24 County Prosecutor's Office(2007-148).

25 MR. CARUSO: The Executive Director

0022

1 respectfully recommends the Council find that:

2 1. Pursuant to Section 6 of OPRA, the  
3 Custodian has borne her burden of proving a  
4 lawful denial of access to records responsive  
5 to request Items Number 1, Number 2 and Number  
6 3 because the records are exempt from  
7 disclosure pursuant to N.J.S.A. 47:1.A-1.1,  
8 McCrone, The Trenton Times v. Burlington County

9 Prosecutor's Office, GRC Complaint Number  
10 2005-146, November 2005, and Executive Order  
11 Number 69.

12 2. The Custodian's failure to respond in  
13 writing to the Complainant's OPRA request,  
14 Items Number 4 through Number 8 either granting  
15 access, denying access, seeking clarification  
16 or requesting an extension of time within the  
17 statutorily mandated seven business days  
18 results in a deemed denial of the Complainant's  
19 OPRA request pursuant to Section 5.g of OPRA,  
20 Section 5.i of OPRA, and Kelley v. Township of  
21 Rockaway, GRC Complaint Number 2007-11, October  
22 2007.

23 3. The Custodian's assertion in this  
24 Complaint should have been provided request  
25 Items Number 4 through 8 by a defense attorney

0023  
1 or public defender is not a lawful reason for  
2 the Custodian's failure to respond pursuant to  
3 Vessio v. Township of Manchester, GRC Complaint  
4 Number 2006-130, April 2008.

5 4. Pursuant to N.J.S.A. 47:1A-6, the  
6 Custodian has failed to bear his burden of  
7 proving a lawful denial of access to the  
8 records requested in the Complainant's May 5th,  
9 2007 OPRA request. The Custodian shall  
10 disclose all records requested in Items Number  
11 4 through 8 with appropriate redactions, if  
12 any, and a redaction index detailing the  
13 general nature of the information redacted and  
14 the lawful basis for such redactions as  
15 required by Section 6 of OPRA and Section 5.g  
16 of OPRA.

17 If those -- if no records responsive to  
18 request Items Number 4 through 8 exist, the  
19 Custodian must provide a certification stating  
20 as such to the GRC.

21 5. Now, the Custodian shall comply with  
22 Item Number 4 above within five business days  
23 from receipt of the Council's Interim Order and  
24 simultaneously provide certified confirmation  
25 of compliance, in accordance with New Jersey

0024  
1 Court Rule 1:4-4, to the Executive Director.

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

8 MADAME CHAIRWOMAN: Motion?

9 MS. STARGHILL: I have an edit, Page 5,  
10 the last full paragraph, the last sentence  
11 reads, "Therefore, the ballistics report  
12 responsive to Item Number 2 of the  
13 Complainant's May 5th, 2007 OPRA request."

14 It should be, the request of this Board  
15 pursuant to N.J.S.A. 47:1A-1.1; is that  
16 correct?

17 MR. CARUSO: Yes.

18 MS. STARGHILL: Okay.

19 MADAME CHAIRWOMAN: Okay. As edited.

20 MS. KOVACH: So moved as amended.

21 MS. FORSYTH: Second.

22 MS. HAIRSTON: Robin Berg Tabakin?

23 MADAME CHAIRWOMAN: Yes.

24 MS. HAIRSTON: Janice Kovach?

25 MS. KOVACH: Yes.

0025

1 MS. HAIRSTON: Kathryn Forsyth?

2 MS. FORSYTH: Yes.

3 MADAME CHAIRWOMAN: Sandra Schuler v.  
4 Borough of Bloomsbury(2007-151)(Hunterdon).

5 MS. LOWNIE: The Executive Director  
6 respectfully recommends the Council accept the  
7 Administrative Law Judge's Initial Decision  
8 dated February 6, 2009.

9 Therefore, no further adjudication is  
10 required.

11 MADAME CHAIRWOMAN: Motion?

12 MS. FORSYTH: So moved.

13 MS. KOVACH: Second.

14 MS. HAIRSTON: Robin Berg Tabakin?

15 MADAME CHAIRWOMAN: Yes.

16 MS. HAIRSTON: Janice Kovach?

17 MS. KOVACH: Yes.

18 MS. HAIRSTON: Kathryn Forsyth?

19 MS. FORSYTH: Yes.

20 MADAME CHAIRWOMAN: Ali Morgano v. Essex  
21 County Prosecutor's Office(2007-156).

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

24 The Custodian has complied with the  
25 Council's October 29th, 2008 Interim Order by

0026

1 redacting and disclosing the records to the  
2 Complainant as directed in Paragraphs Number 2  
3 and Paragraph Number 4 of the Interim Order and  
4 subsequently providing a certification to the  
5 GRC within five business days as ordered by the  
6 Council.

7 MADAME CHAIRWOMAN: Motion?

8 MS. FORSYTH: So moved.

9 MS. KOVACH: Second.

10 MS. HAIRSTON: Robin Berg Tabakin?

11 MADAME CHAIRWOMAN: Yes.

12 MS. HAIRSTON: Janice Kovach?

13 MS. KOVACH: Yes.

14 MS. HAIRSTON: Kathryn Forsyth?

15 MS. FORSYTH: Yes.

16 MADAME CHAIRWOMAN: John Paff v. Township  
17 of Maurice River(2007-168)(Cumberland).

18 MS. LOWNIE: I just want to note, our

19 original position has been amended in  
20 anticipation of the end of January, and a copy  
21 should be in as well.

22 MADAME CHAIRWOMAN: Okay.  
23 MS. LOWNIE: The Executive Director  
24 respectfully recommends the Council find that:  
25 This complaint should be dismissed because

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1 the Complainant withdrew his Complaint via  
2 letter to the GRC dated January 26th, 2009.

3 MADAME CHAIRWOMAN: Motion?

4 MS. KOVACH: So moved.

5 MS. FORSYTH: Second.

6 MS. HAIRSTON: Robin Berg Tabakin?

7 MADAME CHAIRWOMAN: Yes.

8 MS. HAIRSTON: Janice Kovach?

9 MS. KOVACH: Yes.

10 MS. HAIRSTON: Kathryn Forsyth?

11 MS. FORSYTH: Yes.

12 MADAME CHAIRWOMAN: Michael Brown v. New  
13 Jersey Department of Corrections(2007-191).

14 MS. ZIEGLER-SEARS: The Executive Director  
15 respectfully recommends the Council find that:

16 1. Because the Custodian herein certified  
17 that no records exist that are responsive to  
18 Item Number 1, the Custodian did not unlawfully  
19 deny access to the requested record. See  
20 Pusterhofer v. New Jersey Department of  
21 Education, GRC Complaint Number 2005-49, July  
22 2005, stating that the Custodian did not  
23 unlawfully deny access because the Custodian  
24 certified that the requested records did not  
25 exist.

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1 2. Because Items Number 2, Number 3 and  
2 Number 4 require the Custodian to conduct  
3 research in order to determine the records  
4 responsive to the request, and fail to specify  
5 identifiable government records, the  
6 Complainant's OPRA request for these items is  
7 invalid. MAG Entertainment, LLC v. Division of  
8 Alcoholic Beverage Control, Appellate Division  
9 2005, Bent v. Stafford Police Department,  
10 Appellate Division 2005, and New Jersey  
11 Builders Association v. New Jersey Council of  
12 Affordable Housing, Appellate Division 2007.

13 3. Item Number 5 requests records  
14 evaluating the visitation program under  
15 N.J.A.C. 10A:18-6.6. The Custodian certifies  
16 that this request fails to specify the record  
17 requested. Because this request fails to  
18 specifically identify the documents sought, it  
19 is not encompassed by OPRA and therefore is  
20 invalid. Bent v. Stafford Police Department,  
21 Appellate 2005.

22 4. Based upon the foregoing, the  
23 Custodian has borne her burden of proof that

24 the denial of access to the requested records  
25 was authorized by law pursuant to OPRA Section

0029

1 6.  
2 MADAME CHAIRWOMAN: Motion?  
3 MS. KOVACH: So moved.  
4 MS. FORSYTH: Second.  
5 MS. HAIRSTON: Robin Berg Tabakin?  
6 MADAME CHAIRWOMAN: Yes.  
7 MS. HAIRSTON: Janice Kovach?  
8 MS. KOVACH: Yes.  
9 MS. HAIRSTON: Kathryn Forsyth?  
10 MS. FORSYTH: Yes.  
11 MADAME CHAIRWOMAN: Martin O'Shea v. Pine  
12 Hill Board of Education(2007-192)(Camden).  
13 MS. KEYS: The Executive Director  
14 respectfully recommends the Council find that:  
15 Because the Custodian has certified that  
16 the Pine Hill Board of Education lacks the  
17 equipment necessary to fulfill the OPRA  
18 request, and because the vendor invoice  
19 submitted by the Custodian is reasonable and  
20 based on the cost actually incurred by the  
21 agency, and because the Complainant has failed  
22 to -- and because the Complainant has failed to  
23 submit any credible evidence that the vendor  
24 invoice submitted by the agency is  
25 unreasonable, the proposed estimate of 10.48

0030

1 for duplication is reasonable and consistent  
2 with Section 5.c of OPRA.  
3 2. The evidence of record indicates that  
4 the Custodian responded in writing to the  
5 Complainant's OPRA request on the same business  
6 day as receipt, thereof, providing an estimate  
7 of \$10 to provide a copy of the requested  
8 audiotape.  
9 Moreover, the estimate of 10.48 submitted  
10 by the agency's vendor is reasonable pursuant  
11 to Section 5.c of OPRA.  
12 Therefore, the Custodian herein has not  
13 knowingly and willfully violated OPRA nor  
14 unreasonably denied access to the requested  
15 record under the totality of the circumstances  
16 pursuant to Section 11.a of OPRA.  
17 3. The Complainant failed to achieve the  
18 desired result of disclosure of a requested  
19 record at a lower fee. Because no change has  
20 come about as a result of the Complainant's  
21 actions, the Complainant is not a prevailing  
22 party as defined in Teeters v. DYFS, Appellate  
23 Division 2006, and as such is not entitled to  
24 prevailing party attorney's fees. See, New  
25 Jersey Builders Association v. New Jersey

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1 Council on Affordable Housing, Appellate  
2 Division 2007 and Section 6 of OPRA.

3 MADAME CHAIRWOMAN: Motion?  
4 MS. KOVACH: So moved.  
5 MS. FORSYTH: Second.  
6 MS. HAIRSTON: Robin Berg Tabakin?  
7 MADAME CHAIRWOMAN: Yes.  
8 MS. HAIRSTON: Janice Kovach?  
9 MS. KOVACH: Yes.  
10 MS. HAIRSTON: Kathryn Forsyth?  
11 MS. FORSYTH: Yes.  
12 MADAME CHAIRWOMAN: George Rodgers v. New  
13 Jersey Department of Corrections(2007-311).

14 MS. ZIEGLER-SEARS: The Executive Director  
15 respectfully recommends that the Council find  
16 that:

17 1. Because the Custodian has certified  
18 that she informed the Complainant in writing  
19 within the statutory time frame that 13  
20 documents totaling 21 pages were available upon  
21 the Complainant's payment of a \$13 copying fee,  
22 and because the Custodian is not required to  
23 release the requested records until payment is  
24 received pursuant to OPRA Section 5.b and Paff  
25 v. City of Plainfield, GRC Complaint Number

0032

1 2006-54, July 2006, and because the Complainant  
2 has not as of yet paid the copying fee, the  
3 Custodian has not unlawfully denied the  
4 Complainant access to said records.

5 2. Pursuant to Paff v. Department of  
6 Labor, Appellant Division 2005, the GRC must  
7 conduct an in camera review of the requested  
8 Special Investigation Division Report to  
9 determine the validity of the Custodian's  
10 assertion that the report contains information  
11 generated by the Department of Corrections  
12 related to its investigation of a grievance  
13 filed against the Department of Corrections  
14 staff, and therefore is not a government record  
15 pursuant to OPRA Section 1.1.

16 3. The Custodian must deliver to the  
17 Council nine copies of the requested unredacted  
18 documents, a document or redaction index, as  
19 well as legal certification from the Custodian  
20 in accordance with New Jersey Court Rule 1:4-4,  
21 that the documents provided are the documents  
22 requested by the Council for the in camera  
23 inspection. Such delivery must be received by  
24 the GRC within five business days from receipt  
25 of the Council's Interim Order.

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

7 MADAME CHAIRWOMAN: Motion?

8 MS. FORSYTH: So moved.  
9 MS. KOVACH: Second.  
10 MS. HAIRSTON: Robin Berg Tabakin?  
11 MADAME CHAIRWOMAN: Yes.  
12 MS. HAIRSTON: Janice Kovach?  
13 MS. KOVACH: Yes.  
14 MS. HAIRSTON: Kathryn Forsyth?  
15 MS. FORSYTH: Yes.  
16 MADAME CHAIRWOMAN: Kevin Starkey v. New  
17 Jersey Department of Transportation(2007-315,  
18 316 and 317).

19 MS. LOWNIE: The Executive Director  
20 respectfully recommends the Council find that:  
21 1. Because the Custodian previously  
22 provided the Complainant with the requested  
23 records, the Council's October 29th, 2008  
24 Interim Order was not necessary.  
25 However, the Council issued said Order

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1 because the Custodian failed to notify the  
2 Council that he had provided said records to  
3 the Complainant approximately seven months  
4 prior to the adjudication of these complaints.

5 2. Because the Complainant's three OPRA  
6 were voluminous, it is reasonable that the  
7 Custodian required additional time beyond the  
8 statutorily mandated seven business days to  
9 fulfill said requests.

10 Additionally, the evidence of record  
11 indicates that the Custodian made efforts to  
12 fulfill said requests from the time that he  
13 received said requests until the time that he  
14 provided said records to the Complainant.

15 However, the evidence of record also  
16 indicates that the Custodian failed to  
17 continuously notify the Complainant in writing  
18 of the Custodian's efforts to fulfill said  
19 requests.

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

25 However, the Custodian's unlawful deemed

0035

1 denial of access and failure to notify the  
2 Complainant in writing of when the records  
3 would be made available after the Complainant  
4 paid the special service charge appears  
5 negligent and heedless since he is vested with  
6 the legal responsibility of granting and  
7 denying access in accordance with the law.

8 3. Based on the fact that the courts of  
9 this State have determined that the State's fee  
10 shifting statutes are intended to compensate an  
11 attorney hired to represent a plaintiff, not an  
12 attorney who is the plaintiff representing

13 himself, as well as the GRC's decisions in  
14 Philip Boggia v. Borough of Oakland, GRC  
15 Complaint Number 2005-36, April 2006 and Daryle  
16 Pitts v. New Jersey Department of Corrections,  
17 GRC Complaint Number 2005-71, April 2006, the  
18 Complainant is not entitled to reasonable  
19 attorney's fees pursuant to OPRA.

20 MADAME CHAIRWOMAN: Motion?

21 MS. KOVACH: Move.

22 MS. FORSYTH: Second.

23 MS. HAIRSTON: Robin Berg Tabakin?

24 MADAME CHAIRWOMAN: Yes.

25 MS. HAIRSTON: Janice Kovach?

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1 MS. KOVACH: Yes.

2 MS. HAIRSTON: Kathryn Forsyth?

3 MS. FORSYTH: Yes.

4 MADAME CHAIRWOMAN: Leon Wilk v. Borough  
5 of Avalon(2008-5)(Cape May).

6 MS. KEYS: The Executive Director

7 respectfully recommends the Council find that:

8 Because the Custodian failed to notify the  
9 Complainant in writing within the statutorily  
10 mandated seven business days of the anticipated  
11 date of availability of the requested record,  
12 the Custodian's November 29th, 2008 written  
13 response to the Complainant's request is  
14 insufficient pursuant to Section 5.i of OPRA.  
15 See Hardwick v. New Jersey Department of  
16 Transportation, GRC Complain Number 2007-164,  
17 February 2008.

18 2. Because the Custodian responded in  
19 writing to the Complainant's OPRA request  
20 within the seven business days mandated by OPRA  
21 and because the Custodian has certified that  
22 she provided the Complainant with the record  
23 requested in the medium requested as soon as  
24 the record became available, 19-business days  
25 after the Custodian indicated that access would

0037

1 be delayed in order to convert the record to  
2 the medium requested, it is concluded that the  
3 Custodian's actions do not rise to the level of  
4 a knowing and willful violation of OPRA and  
5 unreasonable denial of access under the  
6 totality of the circumstances.

7 However, the Custodian's actions appear  
8 negligent and heedless since she is vested with  
9 the legal responsibility of granting and  
10 denying access in accordance with the law.

11 MADAME CHAIRWOMAN: Motion?

12 MS. KOVACH: So moved.

13 MS. FORSYTH: I second.

14 MS. HAIRSTON: Robin Berg Tabakin?

15 MADAME CHAIRWOMAN: Yes.

16 MS. HAIRSTON: Janice Kovach?

17 MS. KOVACH: Yes.

18 MS. HAIRSTON: Kathryn Forsyth?  
19 MS. FORSYTH: Yes.  
20 MADAME CHAIRWOMAN: William Osterman v.  
21 City of Trenton(2008-12)(Mercer).  
22 MR. STEWART: The Executive Director  
23 respectfully recommends the Council find that:  
24 1. Custodian Conti's failure to respond  
25 in writing to the Complainant's OPRA request

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1 granting access, denying access, seeking  
2 clarification or request an extension of time  
3 within the statutorily mandated seven business  
4 days results in a deemed denial of the  
5 Complainant's OPRA request pursuant to OPRA  
6 Section 5.g, OPRA Section 5.i and Kelley v.  
7 Township of Rockaway, GRC Complaint Number  
8 2007-11, October 2007.  
9 2. Because the evidence of record reveals  
10 that Custodian Conti determined no records  
11 responsive to the Complainant's OPRA request  
12 existed, Custodian Conti did not unlawfully  
13 deny the Complainant access to the record  
14 pursuant to OPRA Section 1.1 and the Council's  
15 decisions Pusterhofer v. New Jersey Department  
16 of Education, GRC Complaint Number 2005-49,  
17 July 2005, and Renna v. County of Union, GRC  
18 Complaint Number 2005-89, October 2005.

19 3. Although Custodian Conti's failure to  
20 provide a written response to the Complainant's  
21 OPRA request within the statutorily mandated  
22 seven business days resulted in a deemed  
23 denial, because Custodian Conti provided a  
24 written response to the Complainant eight  
25 business days following the date of the

0039

1 Complainant's request informing the Complainant  
2 that there were no records relevant to this  
3 complaint that were responsive to the  
4 Complainant's request, it is concluded that  
5 Custodian Conti's actions do not rise to the  
6 level of a knowing and willful violation of  
7 OPRA and unreasonable denial of access under  
8 the totality of the circumstances.

9 However, Custodian Conti's unlawful deemed  
10 denial of access appears negligent and heedless  
11 since he is vested with the legal  
12 responsibility of granting and denying access  
13 in accordance with the law.

14 MADAME CHAIRWOMAN: Motion?

15 MS. KOVACH: So moved.

16 MS. FORSYTH: Second.

17 MS. HAIRSTON: Robin Berg Tabakin?

18 MADAME CHAIRWOMAN: Yes.

19 MS. HAIRSTON: Janice Kovach?

20 MS. KOVACH: Yes.

21 MS. HAIRSTON: Kathryn Forsyth?

22 MS. FORSYTH: Yes.

23 MADAME CHAIRWOMAN: Leonard Lucente v.  
24 City of Trenton(2008-30)(Hudson).  
25 MR. CARUSO: The Executive Director

0040

1 respectfully recommends the Council find that:  
2 1. The Custodian's failure to respond in  
3 writing to the Complainant's OPRA request  
4 either granting access, denying access, seeking  
5 clarification or requesting an extension of  
6 time within the statutorily mandated seven  
7 business days results in a deemed denial of the  
8 Complainant's OPRA request pursuant to Section  
9 5.g of OPRA, Section 5.i of OPRA, and Kelley v.  
10 Township of Rockaway, GRC Complaint Number  
11 2007-11, October 2007.  
12 2. The Custodian has borne his burden  
13 that the denial of access to the redacted  
14 information in the record responsive was  
15 authorized by law pursuant to Section 10 of  
16 OPRA and Jackson v. Kean University, GRC  
17 Complaint Number 2002-98, February 2004. See  
18 also Mitzak v. Manalapan-Englishtown Regional  
19 Schools, GRC Complaint Number 2005-205, July  
20 2006.  
21 3. Although the Custodian's failure to  
22 provide a written response to the Complainant's  
23 OPRA request within the statutorily mandated  
24 seven business days resulted in a deemed  
25 denial, because the Custodian bore his burden

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1 of proving a lawful denial of access to the  
2 redacted information in the record responsive  
3 to the Complainant's December 11th, 2007 OPRA  
4 request pursuant to Section 10 of OPRA and  
5 Jackson v. Kean University, GRC Complaint  
6 Number 2002-98, February of 2004, it was  
7 concluded that the Custodian's actions do not  
8 rise to the level of a knowing and willful  
9 violation of OPRA unreasonable denial of access  
10 under the totality of the circumstances.  
11 However, the Custodian's unlawful deemed  
12 denial of access appears negligent and heedless  
13 since he is vested with the legal  
14 responsibility of granting and denying access  
15 in accordance with the law.

16 MADAME CHAIRWOMAN: Thank you.  
17 Motion?

18 MS. KOVACH: So moved.

19 MS. FORSYTH: Second.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 MADAME CHAIRWOMAN: Yes.

22 MS. HAIRSTON: Janice Kovach?

23 MS. KOVACH: Yes.

24 MS. HAIRSTON: Kathryn Forsyth?

25 MS. FORSYTH: Yes.

0042

1 MADAME CHAIRWOMAN: Tina Renna v. Township

2 of Warren(2008-40)(Somerset).  
3 MS. LOWNIE: The Executive Director  
4 respectfully recommends the Council find that:  
5 1. The Custodian's Counsel made the  
6 requested records available to the Complainant  
7 within the ordered five business days and  
8 assessed the actual cost of the CD-ROM.  
9 However, the Custodian did not provide  
10 certified confirmation of compliance to the  
11 Executive Director until the five business days  
12 had expired.  
13 Therefore, the Custodian has not fully  
14 complied with the Council's November 19th, 2008  
15 Interim Order.

16 2. The evidence of record indicates that  
17 the Custodian was unaware of the statutorily  
18 mandated seven business day response time  
19 because the Engineering Inspector provided a  
20 written response granting access to the  
21 requested records on the fourth business day,  
22 although said response was insufficient because  
23 it failed to address the Complainant's  
24 preferred method of receiving electronic copies  
25 of said records. The evidence of record also

0043

1 indicates that the Custodian was aware of  
2 OPRA's provision allowing for the imposition of  
3 special service charges because the Custodian  
4 provided the Complainant with an estimated  
5 special service charge on the seventh business  
6 day, although the Custodian failed to charge  
7 the actual cost of duplicating the records.

8 However, there is no evidence to support  
9 the notion that the Custodian's actions were  
10 intentional or willfully ignorant of OPRA.

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

15 However, the Custodian's insufficient  
16 response, inaccurate estimated special service  
17 charge and failure to charge the actual cost of  
18 duplicating the records appears negligent and  
19 heedless since she is vested with the legal  
20 responsibility of granting and denying access  
21 in accordance with the law.

22 3. Pursuant to OPRA Section 6, Teeters v.  
23 DYFS, Appellate Division 2006, and Mason v.  
24 City of Hoboken and City Clerk of the City of  
25 Hoboken, New Jersey Supreme Court 2008, the

0044

1 Complainant is a prevailing party entitled to  
2 an award of reasonable attorney's fees.

3 The complaint brought about a change,  
4 voluntary or otherwise, in the Custodian's  
5 conduct.

6 Specifically, the Custodian made the

7 requested records available to the Complainant  
8 at the actual direct cost of providing said  
9 copies.

10 Additionally, using the catalyst theory,  
11 there is a factual causal nexus between the  
12 filing of the Complainant's Denial of Access  
13 Complaint and the relief ultimately achieved  
14 because the Custodian made the requested  
15 records available to the Complainant at the  
16 actual direct cost of providing said copies.

17 Further, the relief ultimately secured by  
18 the Complainant had a basis in law because OPRA  
19 Section 5.b provides that custodians must  
20 charge the actual cost of duplicating records  
21 and OPRA Section 5.c provides that special  
22 service charges must relate to the actual  
23 direct cost of providing the copies.

24 Thus, this complaint should be referred to  
25 the Office of Administrative Law for the

0045

1 determination of reasonable prevailing party  
2 attorney's fees.

3 MADAME CHAIRWOMAN: Thank you.  
4 Motion?

5 MS. KOVACH: So moved.

6 MS. FORSYTH: Second.

7 MS. HAIRSTON: Robin Berg Tabakin?

8 MADAME CHAIRWOMAN: Yes.

9 MS. HAIRSTON: Janice Kovach?

10 MS. KOVACH: Yes.

11 MS. HAIRSTON: Kathryn Forsyth?

12 MS. FORSYTH: Yes.

13 MADAME CHAIRWOMAN: Robert Verry v.  
14 Borough of South Bound  
15 Brook(2008-49)(Somerset).

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

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

0046

1 v. Township of Rockaway, GRC Complaint Number  
2 2007-11, October 2007.

3 2. Pursuant to Section 6 of OPRA, the  
4 Custodian has not borne his burden of proving a  
5 lawful denial of access to the records  
6 requested in the Complainant's three November  
7 16th, 2007 OPRA requests. The Custodian shall  
8 disclose all requested records with appropriate  
9 redactions, if any, and a redaction index  
10 detailing the general nature of the information  
11 redacted and the lawful basis for such

12 redactions as required by Section 6 of OPRA and  
13 Section 5.g of OPRA. If no record responsive  
14 to Item Number 1 exists, the Custodian must  
15 certify to this fact.

16 3. The Custodian shall comply with Item  
17 Number 2 above within five business days from  
18 receipt of the Council's Interim Order with  
19 appropriate redactions, including a detailed  
20 document index explaining the lawful basis for  
21 each redaction, and simultaneously provide  
22 certified confirmation of compliance, in  
23 accordance with New Jersey Court Rule 1:4-4, to  
24 the Executive Director.

25 4. The Council defers analysis of whether  
0047  
1 the Custodian knowingly and willfully violated  
2 OPRA and unreasonably denied access under the  
3 totality of the circumstances pending the  
4 Custodian's compliance with the Council's  
5 Interim Order.

6 MADAME CHAIRWOMAN: Motion?

7 MS. KOVACH: So moved.

8 MS. FORSYTH: Second.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 MADAME CHAIRWOMAN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Kathryn Forsyth?

14 MS. FORSYTH: Yes.

15 MADAME CHAIRWOMAN: Laure Zucker v. Bergen  
16 County Improvement Authority(2008-68).

17 MR. STEWART: The Executive Director  
18 respectfully recommends the Council find that:

19 1. Because the Custodian made Elnatan  
20 Rudolph's unredacted time records for the year  
21 2007 from the date of hire to the date of  
22 request available to the Complainant, and  
23 because the Custodian provided certified  
24 confirmation of compliance, pursuant to New  
25 Jersey Court Rule 1:4-4, to the Executive

0048  
1 Director within five business days of receiving  
2 the Interim Order, the Custodian has complied  
3 with Council's December 18th, 2008 Interim  
4 Order.

5 2. Because the Custodian promptly made  
6 the records available to the Complainant upon  
7 receipt of the Council's December 18th, 2008  
8 Interim Order, it is concluded that the  
9 Custodian's actions do not rise to the level of  
10 a knowing and willful violation of OPRA and  
11 unreasonable denial of access under the  
12 totality of the circumstances.

13 However, the Custodian's denial of access  
14 to Elnatan Rudolph's time records for the year  
15 2007 appears negligent and heedless since he is  
16 vested with the legal authority of granting and

17 denying access in accordance with the law.

18 MADAME CHAIRWOMAN: Thank you.

19 Motion?

20 MS. FORSYTH: So moved.

21 MS. KOVACH: Second.

22 MS. HAIRSTON: Robin Berg Tabakin?

23 MADAME CHAIRWOMAN: Yes.

24 MS. HAIRSTON: Janice Kovach?

25 MS. KOVACH: Yes.

0049

1 MS. HAIRSTON: Kathryn Forsyth?

2 MS. FORSYTH: Yes.

3 MADAME CHAIRWOMAN: Robert Verry v.

4 Borough of South Bound Brook(2008-70 and

5 71)(Somerset).

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

8 1. The Custodian's written response to  
9 the Complainant's requests dated March 19th,  
10 2008, in which the Custodian requested an  
11 extension of time, is inadequate pursuant to  
12 OPRA Section 5.i, and Hardwick v. the New  
13 Jersey Department of Transportation, GRC  
14 Complaint Number 2007-164, February 2008,  
15 because the Custodian failed to provide an  
16 anticipated deadline date upon which the  
17 requested records would be made available.

18 As such, the Complainant's requests are  
19 deemed denied pursuant to OPRA Section 5.g and  
20 5.i and Kelley v. Township of Rockaway, GRC  
21 Complaint Number 2007-11, October 2007.

22 2. Because the Complainant's requests  
23 which are the subject of GRC Complaint Number  
24 2008-70 are not requests for identifiable  
25 government records, the requests are invalid

0050

1 and the Custodian has not unlawfully denied  
2 access to the requested records pursuant to MAG  
3 Entertainment, LLC v. Division of Alcoholic  
4 Beverage Control, Appellate Division 2005, Bent  
5 v. Stafford Police Department, Appellate  
6 Division 2005, New Jersey Builders Association  
7 v. New Jersey Council on Affordable Housing,  
8 Appellate Division 2007, and Schuler v. Borough  
9 of Bloomsbury, GRC Complaint Number 2007-151,  
10 March 2008.

11 3. Although the Complainant identified  
12 specific records within a specific time period  
13 in his OPRA request which is the subject of GRC  
14 Complaint Number 2008-71, the Custodian is not  
15 required to conduct research in response to a  
16 request pursuant to Donato v. Township of  
17 Union, GRC Complaint Number 2005-182, February  
18 2007.

19 As such, the Complainant's requests are  
20 invalid under OPRA and the Custodian has not  
21 unlawfully denied access to the requested

22 records pursuant to MAG Entertainment, LLC v.  
23 Division of Alcoholic Beverage Control,  
24 Appellate Division 2005, Bent v. Stafford  
25 Police Department, Appellate Division 2005, New

0051

1 Jersey Builders Association v. New Jersey  
2 Council on Affordable Housing, Appellate  
3 Division 2007, and Schuler v. Borough of  
4 Bloomsbury, GRC Complaint Number 2007-151,  
5 March 2008.

6 4. Although the Custodian violated OPRA  
7 Section 5.g and 5.i by providing the  
8 Complainant with an inadequate response to his  
9 OPRA requests, said requests are invalid under  
10 OPRA because they are not requests for  
11 identifiable government records.

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

17 However, the Custodian's deemed denial of  
18 access and insufficient request for an  
19 extension of time appears negligent and  
20 heedless since he is vested with the legal  
21 responsibility of granting and denying access  
22 in accordance with the law.

23 MADAME CHAIRWOMAN: Thank you.  
24 Motion?

25 MS. KOVACH: So moved.

0052

1 MS. FORSYTH: Second.

2 MS. HAIRSTON: Robin Berg Tabakin?

3 MADAME CHAIRWOMAN: Yes.

4 MS. HAIRSTON: Janice Kovach?

5 MS. KOVACH: Yes.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Yes.

8 MADAME CHAIRWOMAN: Robert Verry v.

9 Borough of South Bound

10 Brook(2008-72)(Somerset).

11 MS. LOWNIE: The Executive Director  
12 respectfully recommends the Council find that:

13 1. The Custodian's failure to respond in  
14 writing to the Complainant's OPRA request  
15 either granting access, denying access, seeking  
16 clarification or requesting an extension of  
17 time within the statutorily mandated seven  
18 business days results in a deemed denial of the  
19 Complainant's OPRA request pursuant to OPRA  
20 Section 5.g and 5.i, as well as Kelley v.  
21 Township of Rockaway, GRC Complaint Number  
22 2007-11, October 2007.

23 However, the Custodian would not have  
24 unlawfully denied access if he responded within  
25 the appropriate time frame because no records

0053

1 responsive to the Complainant's request exist.  
2 See Pusterhofer v. New Jersey Department of  
3 Education, GRC Complaint Number 2005-49, July  
4 2005.

5 2. Although the Custodian's failure to  
6 provide a written response to the Complainant's  
7 OPRA request within the statutorily mandated  
8 seven business days resulted in a deemed  
9 denial, because no records responsive to the  
10 Complainant's request exist, it is concluded  
11 that the Custodian's actions do not rise to the  
12 level of a knowing and willful violation of  
13 OPRA and unreasonable denial of access under  
14 the totality of the circumstances.

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

20 MADAME CHAIRWOMAN: Thank you.  
21 Motion?

22 MS. FORSYTH: So moved.

23 MADAME CHAIRWOMAN: Second?

24 MS. KOVACH: Second.

25 MS. HAIRSTON: Robin Berg Tabakin?

0054

1 MADAME CHAIRWOMAN: Yes.

2 MS. HAIRSTON: Janice Kovach?

3 MS. KOVACH: Yes.

4 MS. HAIRSTON: Kathryn Forsyth?

5 MS. FORSYTH: Yes.

6 MADAME CHAIRWOMAN: Robert Verry v.

7 Borough of South Bound

8 Brook(2008-85)(Somerset).

9 MR. CARUSO: The Executive Director  
10 respectfully recommends the Council find that:

11 1. The Custodian's failure to respond in  
12 writing to the Complainant's OPRA request  
13 either granting access, denying access, seeking  
14 clarification or requesting an extension of  
15 time within the statutorily mandated seven  
16 business days results in a deemed denial of the  
17 Complainant's OPRA request pursuant to Section  
18 5.g of OPRA, Section 5.i of OPRA, and Kelley v.  
19 Township of Rockaway, GRC Complaint Number  
20 2007-11, October 2007.

21 2. Because the Custodian failed to  
22 immediately grant or deny access to the  
23 requested invoices or respond in writing  
24 requesting additional time to respond, the  
25 Custodian has also violated Section 5.e of

0055

1 OPRA. See Herron v. Township of Montclair, GRC  
2 Complaint Number 2006-178, February 28th, 2007.

3 3. The Custodian has failed to bear his  
4 burden of proof that this denial of access to  
5 the requested invoices from August, 2005 to

6 June, 2006 was lawful under Section 6 of OPRA.  
7 The Custodian shall disclose the requested  
8 records with appropriate redactions, if any,  
9 and a redaction index detailing the general  
10 nature of the information redacted and the  
11 lawful basis for such redactions as required by  
12 Section 6 of OPRA, Section 5.g of OPRA. If no  
13 records responsive to the Complainant's July  
14 14th, 2006 OPRA request exist, the Custodian  
15 must provide a certification stating as such to  
16 the GRC.

17 4. The Custodian shall comply with Item  
18 Number 3 above within five business days from  
19 receipt of the Council's Interim Order with  
20 appropriate redactions, including a detailed  
21 document index explaining the lawful basis for  
22 each redaction, and simultaneously provide  
23 certified confirmation of compliance, in  
24 accordance with New Jersey Court Rule 1:4-4, to  
25 the Executive Director.

0056

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

7 MADAME CHAIRWOMAN: Motion?

8 MS. KOVACH: So moved.

9 MS. FORSYTH: Second.

10 MS. HAIRSTON: Robin Berg Tabakin?

11 MADAME CHAIRWOMAN: Yes.

12 MS. HAIRSTON: Janice Kovach?

13 MS. KOVACH: Yes.

14 MS. HAIRSTON: Kathryn Forsyth?

15 MS. FORSYTH: Yes.

16 MADAME CHAIRWOMAN: Robert Verry v.  
17 Borough of South Bound  
18 Brook(2008-106)(Somerset).

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

21 1. The Custodian's failure to respond in  
22 writing to the Complainant's OPRA request  
23 either granting access, denying access, seeking  
24 clarification or requesting an extension of  
25 time within the statutorily mandated seven

0057

1 business days results in a deemed denial of the  
2 Complainant's OPRA request pursuant to Section  
3 5.g of OPRA, 5.i of OPRA, and Kelley v.  
4 Township of Rockaway, GRC Complaint Number  
5 2007-11, October 2007.

6 2. Because the Custodian certified that  
7 the executive session minutes were not yet  
8 approved by Council at the time of the  
9 Complainant's OPRA request, these minutes are  
10 exempt from disclosure under OPRA as ACD

11 material pursuant to Parave-Fogg v. Lower  
12 Alloways Township, GRC Complaint Number  
13 2006-51, August 2006 and Section 1.1 of OPRA.

14 However, the Custodian has not borne his  
15 burden of proving a lawful denial of access to  
16 the draft minutes pursuant to Section 6 of OPRA  
17 because the Custodian's failure to respond in  
18 writing within the statutorily mandated time  
19 frame resulted in a deemed denial.

20 3. Although the Custodian violated  
21 Section 5.g of OPRA and Section 5.i of OPRA and  
22 failed to bear his burden of proving a lawful  
23 denial of access by not responding within the  
24 statutorily mandated seven business day time  
25 frame, the requested executive session minutes

0058

1 are not subject to disclosure because the  
2 minutes were not approved by the governing body  
3 at the time of the request.

4 Therefore, it is concluded that the  
5 Custodian's actions do not rise to the level of  
6 a knowing and willful violation of OPRA and  
7 unreasonable denial of access under the  
8 totality of the circumstances.

9 However, the Custodian's deemed denial of  
10 access appears negligent and heedless since he  
11 is vested with the legal responsibility of  
12 granting and denying access in accordance with  
13 the law.

14 MADAME CHAIRWOMAN: Thank you.  
15 Motion?

16 MS. KOVACH: So moved.

17 MS. FORSYTH: Second.

18 MS. HAIRSTON: Robin Berg Tabakin?

19 MADAME CHAIRWOMAN: Yes.

20 MS. HAIRSTON: Janice Kovach?

21 MS. KOVACH: Yes.

22 MS. HAIRSTON: Kathryn Forsyth?

23 MS. FORSYTH: Yes.

24 MADAME CHAIRWOMAN: David Nugent v. Ocean  
25 County College(2008-120(Ocean)).

0059

1 MR. CARUSO: The Executive Director  
2 respectfully recommends the Council find that:  
3 Because the Complainant's OPRA request did  
4 not specify an identifiable government record,  
5 but instead sought information, the  
6 Complainant's OPRA request is invalid. MAG  
7 Entertainment, LLC v. Division of Alcoholic  
8 Beverage Control, Appellate Division 2005, Bent  
9 v. Stafford Police Department, Appellate  
10 Division 2005.

11 MADAME CHAIRWOMAN: Thanks.  
12 Motion?

13 MS. FORSYTH: So moved.

14 MS. KOVACH: Second.

15 MS. HAIRSTON: Robin Berg Tabakin?

16 MADAME CHAIRWOMAN: Yes.  
17 MS. HAIRSTON: Janice Kovach?  
18 MS. KOVACH: Yes.  
19 MS. HAIRSTON: Kathryn Forsyth?  
20 MS. FORSYTH: Yes.  
21 MADAME CHAIRWOMAN: Michael Matthews v.  
22 City of Atlantic City(2008-123)(Atlantic).  
23 MR. CARUSO: The Executive Director  
24 respectfully recommends that Council find that:  
25 1. The Custodian's failure to respond in

0060

1 writing to the Complainant's OPRA request  
2 either granting access, denying access, seeking  
3 clarification or requesting an extension of  
4 time within the statutorily mandated seven  
5 business days results in a deemed denial of the  
6 Complainant's OPRA request pursuant to Section  
7 5.g of OPRA, 5.i of OPRA and Kelley v. Township  
8 of Rockaway, GRC Complaint Number 2007-11,  
9 October 2007.

10 2. The Custodian would not have  
11 unlawfully denied access to the Complainant's  
12 April 7th, 2008 OPRA request except that  
13 failure to respond in writing granting access,  
14 denying access, requesting clarification or  
15 requesting an extension of the statutorily  
16 mandated seven business days resulted in a  
17 deemed denial of access pursuant to Cottrell v.  
18 Rowan University, GRC Complaint Number 2006-04,  
19 April 2006, Section 5.g of OPRA and Section 5.i  
20 of OPRA.

21 3. The Custodian was under no obligation  
22 to create a list compatible to the  
23 Complainant's OPRA request because OPRA does  
24 not require a Custodian to produce new  
25 documents in response to an OPRA request

0061

1 pursuant to MAG Entertainment, LLC v. Division  
2 of Alcoholic Beverage Control, Appellate  
3 Division 2005 and New Jersey Builders  
4 Association v. New Jersey Council on Affordable  
5 Housing, Appellate Division 2005.

6 4. Although the Custodian's failure to  
7 provide a written response to the Complainant's  
8 OPRA request within the statutorily mandated  
9 seven business days resulted in a deemed  
10 denial, because the Custodian provided the  
11 Complainant with the requested records in their  
12 entirety approximately 16 business days  
13 following the date of the Complainant's  
14 request, it is concluded that the Custodian's  
15 actions do not rise to the level of a knowing  
16 and willful violation of OPRA and unreasonable  
17 denial of access under the totality of the  
18 circumstances.

19 However, the Custodian's unlawful deemed  
20 denial appears -- of access appears negligent

21 and heedless since she is vested with the law  
22 -- the legal responsibility of granting and  
23 denying access in accordance with the law.

24 MADAME CHAIRWOMAN: Thank you.  
25 Motion?

0062

1 MS. FORSYTH: So moved.  
2 MS. KOVACH: Second.  
3 MS. HAIRSTON: Robin Berg Tabakin?  
4 MADAME CHAIRWOMAN: Yes.  
5 MS. HAIRSTON: Janice Kovach?  
6 MS. KOVACH: Yes.  
7 MS. HAIRSTON: Kathryn Forsyth?  
8 MS. FORSYTH: Yes.  
9 MADAME CHAIRWOMAN: Joseph Krzywda v.  
10 Barnegat Township School  
11 District(2008-138)(Ocean).

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

14 1. Because Mr. Germano failed to forward  
15 the Complainant's June 20th, 2008 OPRA request  
16 to the Custodian or direct the Complainant to  
17 submit an OPRA request with the Custodian  
18 within the statutorily mandated seven business  
19 days required, Mr. Germano has violated Section  
20 5.h of OPRA and Section 5.i of OPRA. See  
21 Kossup v. City of Newark Police Department, GRC  
22 Complaint Number 2006-174, February 2007.

23 2. The Custodian has borne his burden of  
24 proving a lawful denial of access pursuant to  
25 Section 6 of OPRA and Pusterhofer v. New Jersey

0063

1 Department of Education, GRC Complaint Number  
2 2005-49, July 2005, because the Custodian  
3 certified that no records responsive exist.

4 3. Even though Mr. Germano failed to  
5 forward the Complainant's June 20th, 2008 OPRA  
6 request to the Custodian or direct the  
7 Complainant to the proper Custodian within the  
8 statutorily mandated seven business day time  
9 frame required under OPRA, Mr. Germano did  
10 forward the request to the Custodian  
11 approximately 14 days following receipt of the  
12 Complainant's request.

13 Therefore, it is concluded that Mr.  
14 Germano'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  
17 totality of the circumstances.

18 However, Mr. Germano's deemed denial and  
19 failure to forward part of the request to the  
20 proper Custodian appears negligent and heedless  
21 since he is vested with the legal  
22 responsibility of forwarding the Complainant's  
23 OPRA request to the proper Custodian or  
24 returning the OPRA request to the Complainant  
25 and directing the Complainant to the proper

0064

1

Custodian.

2

MADAME CHAIRWOMAN: Thank you.

3

MS. KOVACH: So moved.

4

MS. FORSYTH: Second.

5

MS. HAIRSTON: Robin Berg Tabakin?

6

MADAME CHAIRWOMAN: Yes.

7

MS. HAIRSTON: Janice Kovach?

8

MS. KOVACH: Yes.

9

MS. HAIRSTON: Kathryn Forsyth?

10

MS. FORSYTH: Yes.

11

MADAME CHAIRWOMAN: Scott Jenkins v.

12

Borough of Island Heights(2008-139)(Ocean).

13

MR. CARUSO: The Executive Director

14

respectfully recommends the Council find that:

15

1. The Custodian's failure to respond in

16

writing to the Complainant's OPRA request

17

either granting access, denying access, seeking

18

clarification or requesting an extension of

19

time within the statutorily mandated seven

20

business day -- seven business days results in

21

a deemed denial of the Complainant's OPRA

22

request pursuant to Section 5.g of OPRA, 5.i of

23

OPRA, and Kelley v. Township of Rockaway, GRC

24

Complaint Number 2007-11, October 2007.

25

2. Requests for records made to the

0065

1

Judiciary Branch of New Jersey State Government

2

are not within the Council's authority to

3

adjudicate, Section 7 of OPRA. See Vessio v.

4

Township of Manchester, GRC Complaint Number

5

2006-130, April 2008.

6

Because the records requested in Item

7

Number 1 and Item Number 2 were made,

8

maintained and kept on file by the Municipal

9

Court, the Custodian should have provided a

10

written response to the Complainant's OPRA

11

request stating that she possessed no records

12

responsive to this request. See Section 5.g of

13

OPRA and 5.i of OPRA.

14

3. The Custodian would have borne her

15

burden of proving that this denial of access

16

was authorized by law pursuant to Section 6 of

17

OPRA and Pusterhofer v. New Jersey Department

18

of Education, GRC Complaint Number 2005-49,

19

July of 2005 had the Custodian responded in

20

writing within the statutorily mandated seven

21

business day response time.

22

4. Because the request Item Number 3 of

23

the Complainant's OPRA request is not a request

24

for identifiable government records, the

25

request is invalid and the Custodian would not

0066

1

have unlawfully denied access to the requested

2

records pursuant to MAG Entertainment, LLC v.

3

Division of Alcoholic Beverage Control,

4

Appellant Division 2005 and Bent v. Stafford

5 Police Department, Appellant Division 2005 had  
6 she responded in writing in a timely manner.

7 5. Even though the Custodian's failure to  
8 respond in writing within the statutorily  
9 mandated seven business days resulted in a  
10 deemed denial, the Custodian certified that no  
11 records responsive to the Complainant's June  
12 3rd, 2008 OPRA request exist and request Item  
13 Number 3 is invalid because no identifiable  
14 government record is requested.

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

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

25 MADAME CHAIRWOMAN: Motion?

0067

1 MS. KOVACH: So moved.

2 MS. FORSYTH: Second.

3 MS. HAIRSTON: Robin Berg Tabakin?

4 MS. KOVACH: Yes.

5 MS. HAIRSTON: Janice Kovach?

6 MS. KOVACH: Yes.

7 MS. HAIRSTON: Kathryn Forsyth?

8 MS. FORSYTH: Yes.

9 MADAME CHAIRWOMAN: Anthony LaMantia v.  
10 Jamesburg Public Library(2008-140).

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

13 1. The Custodian's failure to respond in  
14 writing to the Complainant's OPRA request  
15 either granting access, denying access, seeking  
16 clarification or requesting an extension of  
17 time within the statutorily mandated seven  
18 business days results in a deemed denial of the  
19 Complainant's OPRA request pursuant Section 5.g  
20 of OPRA, 5.i of OPRA and Kelley v. Township of  
21 Rockaway, GRC Complainant Number 2007-11,  
22 October 2007.

23 2. Based on Section 9.b of OPRA, which  
24 safeguards confidentiality established by other  
25 state statutes, N.J.S.A. 18A:73-43.2, which

0068

1 grants confidentiality to library records which  
2 contain names or other personally identifying  
3 details regarding library users, the Custodian  
4 has borne her burden of proving a lawful denial  
5 of access to request Item Number 1 pursuant to  
6 Section 6 of OPRA.

7 3. Although the Complainant's amended  
8 OPRA request is seeking cardholder addresses  
9 with the redaction of names and house numbers,

10 the unredacted material is still personally  
11 identifying information which is not subject to  
12 disclosure under N.J.S.A. 18A:73-43.2.

13 Therefore, the Custodian did not  
14 unlawfully deny access to the requested record  
15 when she stated that the previously cited  
16 reasons for a denial of access to the requested  
17 records still applied to the amended OPRA  
18 request.

19 4. Because request Item Number 2 of the  
20 Complainant's June 25th, 2008 OPRA request  
21 seeks information rather than an identifiable  
22 government record, the request is invalid  
23 pursuant MAG Entertainment, LLC v. Division of  
24 Alcoholic Beverage Control, Appellant Division  
25 2005 and Bent v. Stafford Police Department,

0069

1 Appellant Division 2005.

2 Nevertheless, the GRC notes that the  
3 Custodian disclosed this information in her  
4 July 10th, 2008 response to the Complainant's  
5 OPRA request.

6 5. Although the Custodian failed to  
7 respond to the Complainant's June 25th, 2008  
8 OPRA request to the Custodian within the  
9 statutorily mandated seven business day time  
10 frame required under OPRA, the Custodian did  
11 bear her burden of proving a lawful denial of  
12 access pursuant to Section 6 of OPRA, Section  
13 9.d of OPRA and N.J.S.A. 18A:73-43.2.

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

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

24 MADAME CHAIRWOMAN: Thank you.  
25 Motion?

0070

1 MS. KOVACH: So moved.

2 MS. FORSYTH: Second.

3 MS. HAIRSTON: Robin Berg Tabakin?

4 MADAME CHAIRWOMAN: Yes.

5 MS. HAIRSTON: Janice Kovach?

6 MS. KOVACH: Yes.

7 MS. HAIRSTON: Kathryn Forsyth?

8 MS. FORSYTH: Yes.

9 MADAME CHAIRWOMAN: Kenneth Mayer v.  
10 Township of Middle(2008-167)(Cape May).

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

13 Pursuant to Naples v. New Jersey Motor  
14 Vehicle Commission, GRC Complaint Number

15 2008-97, December 2008, Section 9.a of OPRA and  
16 N.J.S.A. 28:8-62, the Custodian lawfully denied  
17 access to the requested record under Section 6  
18 of OPRA.

19 MADAME CHAIRWOMAN: Thank you.

20 Motion?

21 MS. KOVACH: So moved.

22 MS. FORSYTH: Second.

23 MS. HAIRSTON: Robin Berg Tabakin?

24 MADAME CHAIRWOMAN: Yes.

25 MS. HAIRSTON: Janice Kovach?

0071

1 MS. KOVACH: Yes.

2 MS. HAIRSTON: Kathryn Forsyth?

3 MS. FORSYTH: Yes.

4 MADAME CHAIRWOMAN: Jacqueline Andrews v.  
5 Township of Irvington(2008-232(Essex).

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

8 1. The Custodian's failure to respond in  
9 writing to the Complainant's September 17th,  
10 2008 OPRA request granting access, denying  
11 access, seeking clarification or requesting an  
12 extension of time within the statutorily  
13 mandated seven business days results in a  
14 deemed denial of the Complainant's OPRA request  
15 pursuant OPRA 5.g, OPRA 5.i, and Kelley v.  
16 Township of Rockaway, GRC Complainant Number  
17 2007-11, October 2007.

18 2. Because the Custodian failed to  
19 indicate the specific basis for the denial of  
20 access to the records listed in Item Number 1,  
21 Item Number 2, Item Number 4 and Item Number 5  
22 of the Complainant's September 17th, 2008 OPRA  
23 request, the Custodian has failed to prove that  
24 the denial of access was authorized by law in  
25 violation of OPRA Section 6.

0072

1 3. Because the Custodian failed to prove  
2 that the denial of access was authorized by  
3 law, and because Custodian's Counsel informed  
4 the GRC that all of the records the Complainant  
5 requested have been disclosed or will be  
6 disclosed, the custodian shall disclose the  
7 records requested in Item Number 1, Item Number  
8 2, Item Number 4 and Item Number 5 of the  
9 Complainant's September 17th, 2008 request,  
10 with all appropriate redactions, if any.

11 If any portions of the record are  
12 redacted, the Custodian must provide a  
13 redaction index detailing the nature of the  
14 information redacted and the lawful basis for  
15 the redactions.

16 4. The Custodian shall comply with  
17 Item Number 3 above within five business days from  
18 receipt of the Council's Interim Order with  
19 appropriate redactions, if any, including a detailed

20 document index explaining the lawful basis for each  
21 redaction, and simultaneously provide certified  
22 confirmation of compliance, in accordance with New  
23 Jersey Court Rule 1:4-4, to the Executive Director.

24 5. Because the Custodian provided a  
25 written response to the Complainant within the

0073

1 statutorily mandated seven business day time frame  
2 informing the Complainant that the records  
3 responsive to her September 22, 2008 were available  
4 for inspection, the Custodian complied with OPRA  
5 Section 1, OPRA Section 5.i and OPRA Section 5.g,  
6 and did not unlawfully deny the Complainant access  
7 to the records responsive to this request.

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

14 MADAME CHAIRWOMAN: Thank you.

15 Motion?

16 MS. KOVACH: So moved.

17 MS. FORSYTH: Second.

18 MS. HAIRSTON: Robin Berg Tabakin?

19 MADAME CHAIRWOMAN: Yes.

20 MS. HAIRSTON: Janice Kovach?

21 MS. KOVACH: Yes.

22 MS. HAIRSTON: Kathryn Forsyth?

23 MS. FORSYTH: Yes.

24 MADAME CHAIRWOMAN: Okay. There were no  
25 Complaints Adjudicated in Superior Court to be

0074

1 discussed.

2 MS. STARGHILL: No.

3 MADAME CHAIRWOMAN: And do you have a  
4 report?

5 MS. STARGHILL: I do. I just want to  
6 thank staff for the agenda, while we did miss  
7 last month's meeting, the additional, as far as  
8 adding to our agenda, we have some bad -- and  
9 now this is the record as far as for the  
10 longest agenda in the GRC history -- we have  
11 some bad news, we just received the resignation  
12 of one of the council members, David Fleisher,  
13 who received -- he is going to --

14 MADAME CHAIRWOMAN: Shall I read the  
15 letter?

16 MS. STARGHILL: Yes.

17 MADAME CHAIRWOMAN: "Dear Governor,  
18 Effective immediately, I hereby resign as  
19 a Member of the State of New Jersey Government  
20 Records Council.

21 I have been appointed to the Township  
22 Council of Cherry Hill Township, and pursuant  
23 to state law, I am here as a public member of  
24 the municipal governing body.

25 I am grateful for the opportunity to have  
0075

1 served on the GRC with the hardworking women  
2 and men of the Council and the professional  
3 staff. I completely believe strongly in the  
4 importance of open and transparent government,  
5 and have an even greater appreciation for the  
6 experience as a result of my two years of  
7 service on the GRC.

8 Thank you again for the opportunity to  
9 serve. Wishing you every success as you lead  
10 our great State during the times serving the  
11 GRC."

12 Okay. Now is the time for public  
13 comments. If anyone would like to speak,  
14 please come to the table.

15 In the interest of time, we allow five  
16 minutes. Please state your name.

17 MR. SHARKEY: My name is Hugh Sharkey; my  
18 address is 39 Algonquin Avenue, Oceanport, New  
19 Jersey.

20 When you went into executive session or  
21 closed session, if you will, with regards to  
22 2007-107, I know that I can't talk about the  
23 case, from Mr. Caruso's E-mail to me it was  
24 saying the case was closed.

25 I understand that it was amended today.

0076  
1 It was approved to adjust the report based on  
2 the extension of time for whatever.

3 Is that going to change the official  
4 document; is one question?

5 MS. STARGHILL: No.

6 MR. SHARKEY: So the public documents are  
7 going to have information on them that I don't  
8 believe was completed -- completely accurate.

9 And I have a question for the Council  
10 Members. I had submitted information on  
11 January 28th when the meeting was canceled for  
12 your review, a packet of documents; did any of  
13 you receive it or review it?

14 MADAME CHAIRWOMAN: No.

15 MR. SHARKEY: It was not given to you;  
16 okay.

17 So -- so my attorney had filed an  
18 Exception to the Administrative Law Judge's  
19 ruling. That Exception, was that ever reviewed  
20 by any of the Council Members?

21 MS. STARGHILL: That was posted on the  
22 portal with all the other documents --

23 MR. SHARKEY: Was it reviewed?

24 MS. STARGHILL: -- and was made available.

25 MR. SHARKEY: So you reviewed the

0077  
1 Exception?

2 MS. STARGHILL: And actually the packet  
3 may have been.

4 MR. SHARKEY: So the Council Members did  
5 not review the Exceptions?  
6 MS. STARGHILL: No. We did.  
7 MR. SHARKEY: You did?  
8 MS. STARGHILL: Yes.  
9 MR. SHARKEY: They did review them?  
10 MR. CARUSO: They were made available as  
11 part of the --  
12 MS. STARGHILL: It was part of the record.  
13 It is part of the revised recommendations.  
14 MR. SHARKEY: Okay. Next -- can I have a  
15 verbal response?  
16 MS. STARGHILL: They are part of the  
17 recommendations.  
18 MR. SHARKEY: Could you read the  
19 Exception; yes or no?  
20 MS. STARGHILL: It was summarized by the  
21 Executive Order.  
22 MR. SHARKEY: Okay. I'm just trying to  
23 find out if that Exception has got to be put  
24 into the official record.  
25 MR. CARUSO: It is.

0078

1 MS. STARGHILL: It is part of the official  
2 record.  
3 When you receive the decision, you will  
4 see that it is allocated as part of the  
5 background as well as the entry and decision of  
6 the Administrative Law Judge.  
7 MR. SHARKEY: Okay. The next issue I  
8 would just like to point out to Council  
9 Members, the packet of information which you  
10 didn't have a chance to look at or review, I  
11 gained 50 -- 60 E-mails, all right, 50 -- 46 of  
12 them are on the Borough's computer server,  
13 okay, that I authored back and forth to me.  
14 The certifications that you relied on and  
15 the ruling that the Administrative Law Judge  
16 relied on said that the Borough's computer  
17 server was searched; no records were found,  
18 okay.  
19 I kept, for other reasons, I have some of  
20 those records, and I had 46 of them, okay,  
21 there was no group of them that were the mayor  
22 and council.  
23 And, so, the certification that you  
24 received and relied on was obviously  
25 inaccurate, okay. And this information that I

0079

1 delivered to Mr. Caruso hasn't been addressed,  
2 okay. It was addressed and it was provided to  
3 him in a timely fashion on the 28th, which is  
4 before the 45-day time frame.  
5 MS. STARGHILL: But after the Exception.  
6 It allows for Exception.  
7 MR. SHARKEY: Right.  
8 So, I'm asking the Council Members to

9 consider that.  
10 The other item of significant importance  
11 is, that I attended the seminar yesterday and I  
12 heard Miss -- Miss Gordon, you were there,  
13 right?

14 MS. GORDON: Yes. Yes.

15 MR. SHARKEY: Okay. Talked about E-mail  
16 retention. And one of the topics discussed by  
17 the chief of the archives, the records  
18 management, Division of Archives and Records  
19 Management, talked about transient  
20 administrative E-mail, and they do not have to  
21 be retained, okay, after they're administrative  
22 useful life is over; is that correct?

23 MS. GORDON: That is what he said to the  
24 audience, yes.

25 MR. SHARKEY: All right. Do you agree or  
0080 concur?

1 MS. STARGHILL: That is not our theory of  
2 law.

3 MS. GORDON: We don't -- we don't have any  
4 authority over the Division of Archives and  
5 Records.

6 MR. SHARKEY: Okay. So my point on that  
7 is, that the report and the official record  
8 that was issued and you voted on and accepted  
9 --

10 MS. STARGHILL: When you say the report,  
11 you mean the initial decision of the  
12 Administrative Law Judge after the hearing?

13 MR. SHARKEY: No. The GRC's Interim  
14 Report. The report that the GRC issued and the  
15 Supplemental Finding Report.

16 Those reports do not have any indication  
17 that I was aware of that you could see that  
18 said that the documents that were reviewed as  
19 part of the case were delivered and should have  
20 been retained, because if you look at --

21 MS. STARGHILL: We make a determination as  
22 it relates to the record retention. We don't  
23 have the legal authority.

24 MR. SHARKEY: Okay. So, again, that is a  
0081

1 critical element in the investigation that is  
2 flawed is that, if you look at the actual  
3 content of the document and how the document  
4 that were provided to Mr. Caruso and the  
5 evidence, you can see it clearly, a transient  
6 administrative document that does not need to  
7 be retained, it is clearly that, okay, as  
8 explained by the chief of the Archives and  
9 Record Management.

10 So the decision, okay, of saying the  
11 document was deliberately withheld when it did  
12 not even need to be retained is kind of a  
13 critical element in the investigation that you

14 would want to look at.  
15 MS. GORDON: The critical element in terms  
16 of the allegations is retained before the  
17 conclusion of the OAL hearing.

18 So, you're basically trying to introduce  
19 evidence at the OAL hearing, which Miss Allen  
20 will address --

21 MR. SHARKEY: Okay.

22 MS. GORDON: -- about that.

23 Secondly, if you have questions or  
24 problems at the conclusion of this matter, your  
25 recourse at this point is an appeal before the

0082

1 Appellate Division.

2 MR. SHARKEY: That is true, and it is  
3 going to cost time and money and everyone, in a  
4 sense, that the taxpayers would have to incur.

5 But the issue is, that not only have an  
6 opportunity that the Interim Report was issued  
7 --

8 MS. STARGHILL: I'm sorry. Were you in  
9 the hearings at the office of the OAL?

10 MR. SHARKEY: Excuse me, ma'am, I'm making  
11 a point and I will address your comment in a  
12 few. Allow me.

13 MS. STARGHILL: Well, I'm concerned,  
14 because this report, when I transmit at the  
15 Executive Director all of our cases to the OAL  
16 for a hearing, I do so that -- so that the  
17 complainant have an opportunity to be heard  
18 before the Administrative Law Judge.

19 MR. SHARKEY: That's right. And my  
20 attorney filed the Exception letter which  
21 indicated that the Government Records Council  
22 did not have a representative at the hearing  
23 that we could have raised these issues until we  
24 had no opportunity to make -- to raise the  
25 issue, okay.

0083

1 So that --

2 MS. STARGHILL: Because we are not a party  
3 to this case, naturally our deputy attorney  
4 general comments to this letter that means, we  
5 can't have a representative, we are just the  
6 transmitting agency, that it is really the  
7 Complainant, Allan Johnson against the  
8 municipality or whomever the municipality has  
9 allegedly denied access.

10 MR. SHARKEY: All right. So --

11 MS. STARGHILL: We are not a party as you  
12 were insinuating.

13 MR. SHARKEY: So the point here, you're  
14 substantiating my -- my -- my -- point is that  
15 we really didn't have an opportunity, I didn't  
16 have an opportunity to disclose and point out  
17 this information.

18 So the investigation that was done by Mr.

19 Caruso relied upon by the GRC referred to the  
20 Administrative Law Judge, and the Law Judge  
21 relied on the information, and I didn't have an  
22 opportunity to question anyone or point out  
23 that the evaluation of whether it was a  
24 transient E-mail that could be deleted wasn't  
25 even heard. We didn't have an opportunity at

0084

1 all to respond to that.

2 MS. STARGHILL: Did you testify at all?

3 MR. SHARKEY: I did testify.

4 MS. STARGHILL: Did you bring that up to  
5 the judge?

6 MR. SHARKEY: I bring up that I don't know  
7 about that issue? Wait; he doesn't know  
8 anything about it.

9 MS. STARGHILL: The hearing was your  
10 opportunity to bring up whatever issues where  
11 you felt might be pertinent to the matter at  
12 hand.

13 MR. SHARKEY: And we -- we -- we -- we  
14 brought -- the representative either from the  
15 Attorney General's Office or the GRC was going  
16 to be there that we could question, and they  
17 weren't. So there was no one there that we  
18 could even impose any questions to.

19 MS. STARGHILL: And just so that I may be  
20 sure, Allan Johnson and the gentleman from GRC,  
21 when you contend you filed, some of them  
22 transmitted to the office of the Division for  
23 Factfinding and its outsourced corporation.  
24 But the GRC could, in fact, be Factfinding, but  
25 they say they are an impartial Administrative

0085

1 Law Judge, and that both parties as well as  
2 this Council will look at the evidence and the  
3 petition is rendered by the Administrative Law  
4 Judge, that seems to have been an indication to  
5 this situation with the GRC. And if you are  
6 aware that there could be an exception and the  
7 part of exceptions that are filed thereafter  
8 for consideration by the agency to render a  
9 decision.

10 So, I'm just trying to establish --

11 MR. SHARKEY: And you are absolutely  
12 right.

13 So, now, the opportunity to present this  
14 information, additional information to the GRC  
15 is before you, except the Administrative Law  
16 Judge's ruling.

17 So, my attorney filed an Exception on one  
18 issue; I brought additional information to --  
19 to the --

20 MS. STARGHILL: To the Council.

21 MR. SHARKEY: -- Council, and it hasn't  
22 been considered.

23 MS. STARGHILL: It was after the 13 days.

24 Because the Exception --  
25 MR. SHARKEY: I understand.

0086

1 MS. STARGHILL: -- under the Federal  
2 Administrative needs to be filed 13 days  
3 thereafter receipt of the initial decision.

4 MR. SHARKEY: Okay.

5 MS. STARGHILL: Which I'm sure your  
6 attorney did file within 13 days.

7 MR. SHARKEY: He did.

8 MS. STARGHILL: He filed after the fact.  
9 There is a five-day reply period.

10 MR. SHARKEY: Right. What is the key  
11 exception that the attorney filed indicated  
12 that there was a -- there was a three-year  
13 active law enforcement investigation, okay,  
14 involving the Monmouth County Prosecutor and  
15 the New Jersey State Police and the FBI, okay  
16 -- have all been contacted well before this  
17 incident every came up, okay. And that was  
18 pointed out clearly, all right, on a number of  
19 occasions and had conversations with Miss  
20 Starghill, okay --

21 MS. STARGHILL: Not before going to OAL.

22 MR. SHARKEY: Yes. It was, ma'am. And I  
23 -- my phone records will document that  
24 conversation with Mr. Caruso in the room as  
25 well.

0087

1 So -- so this concern about -- or  
2 listening to the possibility, okay, that there  
3 is a reasonable exception, okay, of -- of an  
4 active law enforcement investigation, and I  
5 gave the name of the county prosecutor to be  
6 contacted and verify that on Monday blowing  
7 smoke, okay. And I don't believe that part of  
8 this investigation was ever followed up on, and  
9 I think it is a critical part of this whole --  
10 whole situation, all right, because this is a  
11 three-year investigation, all right.

12 Now, the other point, the 46 E-mails that  
13 were on the Borough's system, okay, and the  
14 certification that said the system was searched  
15 and no E-mails were found, that is a  
16 substantial problem, okay, because 46 E-mails  
17 that were found, and my one E-mail that's  
18 alleged to have been a legitimate record that  
19 should have been retained and wasn't found, and  
20 I was found guilty of intentionally holding one  
21 E-mail and 46 weren't presented. That is a big  
22 difference, okay. I can see losing one.  
23 Losing 46 is a problem, okay. But that needs  
24 to be addressed in this matter.

25 And the last point that I would like to

0088

1 make is that I made the information about the  
2 contacting law enforcement to verify whether --

3 I'm telling you, it's not -- it's right or not.  
4 And the last item is the procedural one  
5 involving the new case that Mr. Johnson filed.  
6 All right, just so the Board is aware,  
7 this information that was given to the  
8 prosecutor, the Monmouth County Prosecutor on  
9 this active investigation involved Mr.  
10 Johnson's wife, okay.

11 The Board isn't aware that Mr. Johnson has  
12 filed ten E-mails for every one of my E-mail  
13 communications since I started council in 2005,  
14 okay, looking to find out what I've turned over  
15 to the Monmouth County Prosecutor and Law  
16 Enforcement, okay. It was a fishing  
17 expedition.

18 And this Council, by not addressing that  
19 issue, okay, or considering that issue of what  
20 was going on and instead -- instead of saying,  
21 hey, Administrative Law Judge, Mr. Sharkey  
22 intentionally withheld an E-mail that was a  
23 transient E-mail that you have to make a  
24 decision on, it is kind of ridiculous here with  
25 that, all right.

0089

1 Now, I also know in the new case,  
2 2008-141, okay, for the record, that the  
3 documents that Mr. Caruso gave you, okay, are  
4 seriously flawed and I would like to talk you,  
5 Miss Allen, as part of the attorney general,  
6 and show you my findings on this information  
7 because they should not be taking it seriously  
8 either, okay.

9 MS. STARGHILL: Mr. Allen (sic), thank you  
10 for your comment --

11 MR. SHARKEY: Sharkey. Sharkey.

12 MS. STARGHILL: Mr. Sharkey, I'm sorry.  
13 Thank you for your comments.

14 However, we, the Council, cannot accept  
15 new evidence at this point.

16 This Complaint was actually filed in April  
17 of 2007. The GRC, especially back then before  
18 we got our regs accommodated allowed for  
19 parties to submit whatever submissions they  
20 wanted to while the adjudication took place.

21 And, so, there was a lot of opportunity  
22 between then and the initial decision to  
23 present evidence.

24 We cannot accept this as a matter of  
25 course at this point.

0090

1 MR. SHARKEY: I'm sure that the Council  
2 Members can do what they think is fair and say,  
3 hey, listen, you make a good point --

4 MADAME CHAIRWOMAN: We cannot accept new  
5 evidence.

6 MR. SHARKEY: It is not new evidence, it  
7 is evidence that you had and it was not taken

8 into consideration, it was during the proper  
9 time period. The Exception was filed within  
10 the 13 days.

11 MADAME CHAIRWOMAN: You can an appeal; you  
12 can appeal.

13 MR. SHARKEY: And we're going to go  
14 through a whole cost and expense and time of an  
15 appeal when you can do it another way just by  
16 looking at the issue.

17 MADAME CHAIRWOMAN: That is what an appeal  
18 is for, so you can appeal.

19 MR. SHARKEY: Okay. Fine. If we have to  
20 do it that way, we will.

21 MADAME CHAIRWOMAN: We've already read the  
22 decision.

23 MR. SHARKEY: Okay. Thank you for your  
24 time.

25 MADAME CHAIRWOMAN: Anyone else?

0091

1 MR. PAFF: My name is John Paff; 1605  
2 Anwell Road, Somerset, New Jersey.

3 I just wanted to ask a question about the  
4 meeting minutes. This is a big issue of mine  
5 around the State as to whether or not meeting  
6 minutes need to be approved before they are  
7 public record.

8 I see today that you approved, correct me  
9 if I'm wrong, open session minutes from  
10 November of 2008, that is about three months  
11 ago.

12 My question is, had I asked for those open  
13 session minutes, let's say a month ago, which  
14 is two months after the meeting, would the  
15 Council have denied my request on the argument  
16 that it is advisory, consulted and  
17 deliberative under the Lower Alloway Creek's,  
18 the ruling and debate on that?

19 MS. STARGHILL: Mr. Paff, as a matter of  
20 course, we would never give a determination  
21 without an actual --

22 MR. PAFF: A request.

23 MS. STARGHILL: -- asking for it.

24 MR. PAFF: And the point that I want to  
25 make, and I will follow up with a request, I

0092

1 will do it by the numbers, the request will be  
2 for the minutes of a meeting, a public meeting,  
3 before those meeting minutes are through.

4 The point that I want to make, and I'm  
5 trying to short-circuit this to save some time  
6 is, that this Board is governed by the Open  
7 Public Meetings Act, regardless separate and  
8 distinct of the Open Public Records Act, and  
9 that the Open Public Meetings Act says, that  
10 minutes have to be made promptly available to  
11 the extent that they are able to be released as  
12 far as closed session is. Open session minutes

13 and closed session minutes both have to be made  
14 promptly available.

15 I've had lots of Case Law that says that  
16 that means sometime prior to their approval by  
17 this Board.

18 MS. STARGHILL: Sometime prior.

19 MR. PAFF: Sometime prior to their  
20 approval. There is no reason why open session  
21 minutes have to be approved before they are  
22 released to the public.

23 I can send you a letter. What I would  
24 like to do is, I would like to make this where  
25 I don't ask for the minutes, you deny it and I

0093

1 file a court complaint. I would like to see if  
2 we can just get an understanding of this.

3 MS. STARGHILL: And you saw today there  
4 was a misrepresentation in the open minutes  
5 with our transcript simply because our  
6 transcriber got the name of the speaker  
7 inaccurately.

8 MR. PAFF: Sure.

9 MS. STARGHILL: And based on the advise  
10 that we got from the New Jersey Attorney  
11 General's Office, the purpose of approving the  
12 minutes is to make sure that the content of  
13 those minutes is accurate, is an accurate  
14 reflection of what actually happened in the  
15 meeting.

16 MR. PAFF: Right. The purpose of  
17 approving minutes is to make sure that what the  
18 minutes say is what actually happened at the  
19 meeting.

20 MS. STARGHILL: Exactly.

21 MR. PAFF: So, what people --

22 MS. STARGHILL: What the GRC does, I'm  
23 sorry, you are not a hostile --

24 MR. PAFF: Not yet.

25 MS. STARGHILL: I don't consider you

0094

1 hostile at this very hour, but the only time  
2 the GRC doesn't approve minutes would be  
3 because we might not have a quorum.

4 I remember for awhile we had a bad  
5 situation where we couldn't get the minutes  
6 approved, we had to actually get a special for  
7 them to get a special announcement from the  
8 attorney general to get -- one Council Member  
9 left who was there, and the remaining two of  
10 those members weren't actually present and we  
11 were never going to have a quorum.

12 I do, though -- or the staff that which  
13 you receive out in the field as you are  
14 requesting minutes that other bodies may not be  
15 approving minutes for other reasons. But the  
16 only reason the GRC doesn't approve the minutes  
17 in a timely fashion would be because of a lack

18 of a quorum --  
19 MADAME CHAIRWOMAN: Or if we don't have  
20 them.  
21 MS. STARGHILL: -- or if we don't have  
22 them.  
23 MADAME CHAIRWOMAN: The November --  
24 MS. STARGHILL: Right. The transcript was  
25 not delivered in time to our members of Council

0095

1 to review them, because we do review them  
2 promptly and as soon as we have a quorum.  
3 MR. PAFF: Let me just say --  
4 MS. STARGHILL: It is not that we got them  
5 from the Attorney General's Office.  
6 MR. PAFF: Well, I have legal advise from  
7 -- from judges in Superior Court that say that  
8 the --  
9 MS. STARGHILL: The Law Division knows  
10 that --  
11 MR. PAFF: Well, that might be the  
12 problem. I can send you a letter and cite the  
13 Appellate Division and the city that says that  
14 you have to release these meeting minutes.

15 The idea is, what everybody's done,  
16 they've marked them in draft. That is what  
17 they do, they mark them in draft, and then the  
18 public gets to see what the unapproved meeting  
19 minutes look like, and they get to get the  
20 general sense. But they know that they are on  
21 notice that these are drafts and they will be  
22 corrected when they are approved.

23 So my problem is, is that we are sitting  
24 here three months, and I know that nobody  
25 intentionally tried to keep these minutes away,

0096

1 I know that you have quorum problems, and in  
2 January the weather, you had all these  
3 problems.

4 But the fact remains that a transcript was  
5 made of November 2008 meeting that we're not  
6 allowed to see until after February 2009. That  
7 is a three-month delay, and I just offer that  
8 that doesn't meet the -- the reasonably prompt  
9 standard of N.J.S.A. 10:4 -- 10:4-14, which is  
10 the Open Public Meetings Act.

11 And, I mean, I'll make a request for it,  
12 but this is not an OPRA issue, it is an open --

13 MS. STARGHILL: Yes.

14 MR. PAFF: -- and I think that you have to  
15 do better.

16 So I will send you a letter, and maybe you  
17 can at least see my argument.

18 I believe there is an Appellate Division  
19 that states in there that shows that --

20 MS. STARGHILL: I would love to see that.

21 MR. PAFF: -- that shows that a Board in  
22 Hudson County had to release their minutes

23 prior to approval. And that is what I will do.  
24 And the second is, is there any way that  
25 this Council could meet some place other than

0097

1 here?

2 I'm going to tell you something, point of  
3 view perspective. You guys probably have a  
4 parking lot.

5 (Whereupon, there was a  
6 collective response in the  
7 negative.)

8 MR. PAFF: Then we're all better off then.  
9 Getting here is a problem. There is no  
10 parking. Lots are full. It is a wildcard.

11 You have to leave way early to get down  
12 here at 9:30, to sit out in the hallway,  
13 because we don't know how long the executive  
14 session is going to take.

15 It is very inconvenient to the public to  
16 come here.

17 MS. STARGHILL: The flip side would be  
18 that the staff would have to get to every  
19 meeting --

20 MR. PAFF: Yes.

21 MS. STARGHILL: -- and the taxpayers would  
22 incur travel cost.

23 MR. PAFF: Well, the thing is, there is a  
24 difference between inconveniencing the public,  
25 and inconveniencing the staff.

0098

1 And although I respect the staff --

2 MS. STARGHILL: There is a direct cost to  
3 the taxpayers.

4 MR. PAFF: There is a direct cost for  
5 everything.

6 MS. STARGHILL: Who is going to pay for  
7 it?

8 MR. PAFF: I mean, it seems to me that the  
9 gobs of money that is thrown at every  
10 conceivable wedge by the State of New Jersey,  
11 and no one has -- no one blinks an eye except  
12 when it facilitates the public's right to know,  
13 then all of a sudden the cost is a factor.

14 You can have it at a -- I mean, I can't  
15 imagine what this would cost, but you can't --

16 MS. STARGHILL: It is free. The room is  
17 free. Everything is free to us here; if we  
18 need to use the audio equipment --

19 MR. PAFF: Okay.

20 MS. STARGHILL: -- like the VCR, but we  
21 have that available.

22 I can't imagine that that would always be  
23 the case if we had --

24 MR. PAFF: I think with proper planning it  
25 could be made more convenient to the public.

0099

1 The second thing is, could you possibly

2 announce a start time of the public session?

3 In other words, the public session is  
4 going to start 10:30 a.m., that way we know  
5 when we're supposed to be here.

6 As it is right now, we have to account  
7 for, the public I'm talking, I have to say,  
8 when do we want to get here?

9 Well, officially it starts at 9:30. We  
10 know they typically go into executive session.  
11 So if we don't get here at 9:30, we run the  
12 risk of missing something. We walk in, the  
13 meetings already half over.

14 I know that it is convenient for you,  
15 because this way you just have your executive  
16 session at 9:30, and then whatever it is, it  
17 could be 10, it could be 10:30, it could be 11,  
18 whenever it is you start your public session.

19 But from our point of view, from the  
20 public's point of view, we'd like to know when  
21 to be here, because it is not easy to get down  
22 to Trenton, and especially not easy to get down  
23 when you don't know exactly when you're  
24 supposed to be here.

25 So, would you say something like, we will

0100

1 start our executive session at 9:30; we  
2 guarantee that we will not be done before  
3 10:30.

4 In other words, if you get done before  
5 10:30, then you start the public session at  
6 10:30. Yes. It is inconvenient for you.

7 MS. STARGHILL: No. It is not that it is  
8 inconvenient. Absolutely not. That is not the  
9 issue, Mr. Paff. We never know --

10 MR. PAFF: Then you adjourn --

11 MS. STARGHILL: -- if it is going to go so  
12 long.

13 MR. PAFF: Then you adjourn the executive  
14 session at the predetermined time.

15 In other words, I know that you don't know  
16 --

17 MS. STARGHILL: This would mean that we  
18 wouldn't be able to adjudicate all the  
19 complaints --

20 MR. PAFF: Then you leave yourself ample  
21 time by starting your executive session  
22 earlier. I mean, it depends on --

23 MS. STARGHILL: I will tell you something,  
24 the whole session changed, I believe, from  
25 yesterday to today. So even if we made an

0101

1 announcement and put it on our Web site, which  
2 clearly we have the capability of doing that,  
3 this is a public meeting, you would have had to  
4 check after 5:00 yesterday to know that our  
5 closed session changed, and --

6 MR. PAFF: Okay.

7 MS. STARGHILL: -- it was actually shorter  
8 then it was.

9 MADAME CHAIRWOMAN: Because there is a  
10 quorum.

11 MS. STARGHILL: Yes.

12 MR. PAFF: All -- what I'm telling you is,  
13 this is a --

14 MS. STARGHILL: I understand.

15 MR. PAFF: -- and inconvenient place to  
16 go, and the idea is, that I think maybe the  
17 Board could maybe try to do something to  
18 accommodate the public as far as what time the  
19 meeting is going to take place.

20 If you decide that you cannot do that for  
21 whatever reason, then so be it. I'm only  
22 making a policy suggestion.

23 Thank you.

24 MS. STARGHILL: Thank you.

25 MADAME CHAIRWOMAN: Anyone else?

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1 MR. BALDWIN: Good morning; Don Baldwin;  
2 Post Office Box 66, Readington.

3 And Miss Starghill probably knows what my  
4 question is.

5 MS. STARGHILL: Well, because you are my  
6 oldest case now, you know now you have the  
7 stripes now.

8 But unlike when I inherited this  
9 organization, we had very, you know, a lot of  
10 cases.

11 I worked very hard to clean up the backlog  
12 and get rid of those, old dogs, I used to call  
13 them. You are my oldest dog. I'm sorry.

14 MR. BALDWIN: Well, don't euthanize me.  
15 Before I set the records for the oldest case,  
16 do I have any idea when this will be resolved,  
17 because I took time that I really didn't have  
18 to come down here today?

19 MS. STARGHILL: Ironically, before the  
20 resignation of Mr. Fleisher, I anticipated in  
21 preparation of this meeting, I had got word  
22 that the governor's office might be announcing  
23 what then was going to be the fifth member of  
24 the Council.

25 So, hopefully -- I don't know because I

0103

1 have no control of the governor's office, but I  
2 will make a call this afternoon, especially  
3 because this matter is more precedent.  
4 Hopefully the governor's office makes the  
5 appointment of this new member, the fifth  
6 member of the Council, so that we will have a  
7 quorum next time if everyone can attend.

8 Unfortunately, I think there was a  
9 recusal.

10 MR. BALDWIN: Is there any way to hear the  
11 recommendation of the Executive Director prior

12 to the formation of a quorum?  
13 MS. STARGHILL: No.  
14 MR. BALDWIN: The case is going on three  
15 years old now.  
16 MS. STARGHILL: I understand. It is just  
17 frustrating. I want it done.  
18 MR. BALDWIN: I have the utmost regard for  
19 what you guys do. I'm an open government  
20 advocate for a number of years, but it is  
21 getting pretty old.  
22 MS. STARGHILL: I agree. I'm going to  
23 start calling the governor's office myself  
24 probably every couple of days after that.  
25 Obviously, there are six cases -- well,  
0104  
1 four cases that we couldn't hear because of the  
2 recusal issue.  
3 Yeah. We will definitely call you before  
4 this new session.  
5 MR. BALDWIN: That would be great.  
6 MS. STARGHILL: And I'm going to try to  
7 get everything done so that the new council  
8 person is available for that meeting --  
9 MR. BALDWIN: Okay. Thank you.  
10 MS. STARGHILL: -- our March meeting.  
11 MR. BALDWIN: I appreciate it.  
12 MS. STARGHILL: Yes.  
13 MADAME CHAIRWOMAN: Anyone else?  
14 (No response.) Could I have a  
15 motion to adjourn?  
16 MS. KOVACH: So moved.  
17 MS. FORSYTH: Second.  
18 MS. HAIRSTON: Robin Berg Tabakin?  
19 MADAME CHAIRWOMAN: Yes.  
20 MS. HAIRSTON: Janice Kovach?  
21 MS. KOVACH: Yes.  
22 MS. HAIRSTON: Kathryn Forsyth?  
23 MS. FORSYTH: Yes.  
24 MADAME CHAIRWOMAN: This meeting is  
25 adjourned.

0105  
1 (Whereupon, the proceedings  
2 concluded at approximately 12:00  
3 p.m.)  
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I, RENÉE HELMAR, a Shorthand Reporter, and Notary Public, certify that the foregoing is a true and accurate transcript of the proceedings which were held at the time, place and on the date herein before set forth.

I further certify that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which these proceedings were taken, and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.

Renée Helmar

Shorthand Reporter