

MINUTES OF THE GOVERNMENT RECORDS COUNCIL
March 11, 2004

The meeting was called to order at 8:30AM. at the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Mr. Dice called the roll:

Present: Chairman Vincent Maltese, Virginia Hook, Bernard Spigner, Charles Richman, (designee of Commissioner Susan Bass Levin, Department of Community Affairs, Diane Schonyers, (designee of Commissioner William Librera, Department of Education.

Mr. Maltese read the resolution to convene in closed session to receive legal advice concerning the complaints to be adjudicated that day. Ms. Hook moved to adopt the resolution that was seconded by Ms. Schonyers. All members present approved the motion. The Council met in closed session from 8:30AM to 10:55AM

The Council reconvened in open session at 11:00 AM in room 129 of the Department of Community Affairs, Trenton, New Jersey. The Open Public Meeting Act statement was read and attendees recited the Pledge of Allegiance.

Ms. Luzzatto called the roll:

Present: Chairman Vincent Maltese, Virginia Hook, Bernard Spigner, Charles Richman, (designee of Commissioner Susan Bass Levin, Department of Community Affairs, Diane Schonyers, (designee of Commissioner William Librera

Also Present: Deputies Attorney General Karen Dumars, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, GRC Attorney Advisor Susan Jacobucci, Staff Associates Chris Malloy, Anthony Carbabelli, Erin Mallon, Kimberly Gardner.

Mr. Maltese introduced Commission Susan Bass Levin. Commissioner Levin delivered a brief progress report on the success of the Government Records Council. The Commissioner thanked the Council for their dedication and professionalism. The Commissioner also thanked the staff for their outstanding work effort. Commissioner Levin officially announced the appointment of Mr. Dice as the Executive Director.

Mr. Dice gave a status report on the cases as follows: There are 39 scheduled for today, 19 scheduled for March 30, 2 on appeal to Superior Court, 6 cases to the office of Administrative Law, 6 cases in mediation, 5 cases are a work in progress, not scheduled for a specific agenda, closed 211.

Mr. Maltese stated that they would forgo a reading of the minutes from the February 27, 2004 meeting and adopt them at the next meeting.

Mr. Dice indicated there were no personnel matters or communications to report

Mr. Maltese recused himself from the meeting during the discussion of the following cases:

- Michael Galdieri vs. Jersey City Incinerator Authority (2003-152)
- Michael Galdieri vs. Jersey City Incinerator Authority (2003-153)
- W. vs. William Patterson University (2004-010)

Michael Galdieri v. Jersey City Incinerator Authority (2003-152)

Mr. Dice stated that this (“OPRA”) Complaint filed November 22, 2003 alleges denial of an OPRA request to the Jersey City Incinerator Authority (“Authority”) seeking copies of various personnel records, minutes, resolutions and personal financial disclosure forms.

The Custodian asserts in the Statement of Information that the requested records, except for Mr. Dabney’s personal financial disclosure form, were provided to the Requester with a letter dated December 19, 2003. Further, the Custodian asserts in the Statement of Information that the personal financial disclosure form is not a record within its custody but must be requested from the City Clerk’s Office.

The Executive Director respectfully recommended that the Council dismiss the complaint because:

1. The Custodian provided access to Michael Galdieri’s personnel and employee file.
2. The Custodian provided access to all the records requested that were made, maintained, and kept on file with its December 19, 2003 response to the Requestor.
3. N.J.S.A. 47:1A-5(h) provides that “[a]ny officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian or direct the requestor to the custodian of the record.”

Mr. Spigner called for a motion to accept the Executive Director’s recommendation. A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner

Nays: None

Recused: Mr. Maltese

Michael Galdieri v. Jersey City Incinerator Authority (2003-153)

Mr. Dice stated that the Open Public Records Act (“OPRA”) Complaint filed December 3, 2003 alleges denial of an OPRA request to the Jersey City Incinerator Authority (“Authority”) seeking copies of various communications, log books, reports and other records relating to employees’ time reporting systems.

The Custodian asserts in the Statement of Information that the requested records, except all communications concerning Mr. Michael Galdieri which was provided to the Requester pursuant to a later request, either did not exist at the date of the request, were too vague for compliance with the request, or the Requestor must pay the statutorily mandated fee for reproduction of the records.

The Acting Executive Director respectfully recommended that the Council:

1. Order the Custodian to certify whether the daily electronic time scan reports for each environmental inspector/officer, as well as personnel, for 1/29/03 through 1/31/03 and 2/24/03 through 3/7/03 did or did not exist as of the date of the request.
2. Further order the Custodian to explain the inconsistency between its statements in its September 16, 2003 response that the electronic time scan reports might be exempt from disclosure because they might jeopardize building security or computer program security and its statements in the Statement of Information that the records do not exist because they are destroyed after six months.
3. Order the Requester to revise his request for copies of the daily log book as it relates to employee vacation, personal, sick and compensation days within five business days to be more specific regarding date, author and subject (employee) of the records.
4. Order the Custodian to explain the inconsistency between its statements in its September 16, 2003 response that the copies of the daily log book as it related to employee vacation, personal, sick and compensation days were exempt from disclosure due to the personal nature of the records and N.J.S.A. 47:1A-10 which provides that personnel and pension records are not considered government records except for certain information contained within them (i.e. payroll records) and its statements in the Statement of Information that the request is too vague for the Custodian to comply with the request.
5. Order the Custodian to explain the inconsistency between its statements in its September 16, 2003 response that the records relating to employee vacation, sick and personal time for all non-union personnel for 1/28/03 through 4/11/03 were exempt from disclosure due to the personal nature of the records and N.J.S.A. 47:1A-10 which provides that personnel and pension records are not considered government records except for certain information within them (i.e. payroll records) and its statements in the Statement of Information that the records will be made available upon the Requester’s payment of the statutorily mandated fee for reproduction of the records.

6. Order the Custodian to certify whether records regarding the proper or improper function of the employee hand scanner and time clock did or did not exist as of the date of the request.
7. Further order the Custodian to explain the inconsistency between its statement in the September 16, 2003 response that the records regarding the proper or improper function of the employee hand scanner and time clock were exempt from disclosure because they might jeopardize building security and its statement in the Statement of Information that no such records existed as of the date of the request.

The Council voted to adopt the entirety of the Executive Director's Findings and Recommendations and ordered the custodian to reply to Executive Director, Paul Dice, regarding Items "1," "2," "4," "5," "6" and "7" above within ten business days of receipt of the Council's Interim Decision. The Council further ordered the requestor to reply to Executive Director, Paul Dice, regarding Item "3" above within ten business days of this Interim Decision.

Mr. Spigner called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner

Nays: None

Recused: Mr. Maltese

W. v. William Patterson University (2004-10)

Mr. Dice stated that the Complainant alleges that the William Patterson University Police released their report number 0300611 to University employees on January 23, 2003. Said report, a copy of which is attached to the Complainant's Denial of Access Complaint, includes personally identifiable information such as Complainant's social security number.

Mr. Dice noted that the custodian did not submit a Statement of Information in the case but stated its position in a letter to the complainant indicating the incident reports were not confidential when distributed to intra departments for educational use. The Executive Director respectfully recommended that the Government Records Council "Council") dismiss this complaint on the grounds that the complaint is outside the Council's jurisdiction pursuant to N.J.S.A. 47:1A-7(b).

Mr. Spigner called for a motion to accept the Executive Director's recommendation. A motion was made by Mr. Richman and seconded by M. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner

Nay: None
Recused: Mr. Maltese

Yehuda Shain v. Lakewood (2002-111)

Mr. Dice reviewed the Supplemental Finding and Recommendations of the case and recommended that the Council:

1. Dismiss the Complainant's opposition to the Council's acceptance of the custodian's motion for reconsideration on the basis that the Council has received legal advice from the Division of Law that acceptance of the motion is proper and within the Council's purview.
2. Refer this case back to the OAL for a determination on whether the Custodian had knowingly and violated N.J.S.A. 47:1A-1 et seq. in the totality of the circumstances.

Mr. Maltese called for a motion to accept the Executive Director's recommendation. A motion was made by Mr. Spigner and seconded by Ms. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Dale Baranoski v. Division of Criminal Justice (2003-5)

Mr. Dice stated at its March 11, 2004 public meeting, the Government Records Council ("Council") considered the March 11, 2004 Findings and Recommendations of Executive Director set forth below and all related documentation submitted by the parties.

1. Order the custodian to release the documents it believes are fully disclosable, arguably the 28 records referenced in the OAG proposal, pursuant to N.J.S.A. 47:1A-1 et seq. to the Complainant within five business days of the custodian's receipt of the Council's order.
2. Order the custodian to release the documents it believes are partially disclosable, arguably the 40 records referenced in the OAG proposal, pursuant to N.J.S.A. 47:1A-1 et seq. to the Complainant within five business days of the custodian's receipt of the Council's order.
3. Order the custodian to provide Executive Director Paul Dice written confirmation of compliance with "1" and "2" immediately above within five business days of the custodian's receipt of the Council's order.
4. Order the custodian to provide Executive Director Paul Dice with a detailed certification of why the Council should not consider the custodian to have knowing and willfully violated N.J.S.A. 47:1A-1 et seq. in the totality of the circumstances surrounding the complainant's July 12, 2002 and July 30, 2002

Open Public Records Act requests within five business days of the custodian's receipt of the Council's order.

5. Forego any determination of the acceptability of the custodian's March 5, 2004 explanations of why the Council should accept the arguments that selected documents are privileged and, therefore, nondisclosable until the custodian has complied with "1-4" immediately above.

The Council unanimously voted to postpone a decision on the Executive Director's Recommendations until the GRC counsel reviews the custodian counsel's March 5, 2004 explanations of why selected documents are privileged and exempt from disclosure. The Executive Director will report the results of his findings to the Council at the March 30, 2004 Meeting.

Charles Cannon, Jr. v. Atlantic City Board of Education (2003-36)

Mr. Dice stated this a case involving footage of the inside and outside of the old Atlantic City High School. The requestor has stated he has not received that which is being sought. . To date, the complainant alleges that he has received only a portion of the requested material.

The Custodian contends that they offered Mr. Cannon the opportunity to come and view the documents and pick and choose that which he is looking for on at least two occasions. The custodian is seeking clarification from Mr. Cannon and they will make copies for him.

The Executive Director respectfully recommended that the Council dismiss this complaint for the following reasons:

1. The Custodian has certified that all of the requested information in the possession of the school district has been provided to the Complainant.
2. The Custodian has offered the Complainant the opportunity to review and select whatever additional footage he is seeking.
3. Complainant has provided insufficient proof that the Custodian or school district is withholding the requested information notwithstanding their certification to the contrary.

Mr. Maltese called for a motion to accept the Executive Director's Recommendation. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Newark Morning Ledger v. New Jersey Sports & Exposition Authority (2003-43)

Mr. Dice stated that he received a letter dated March 1, 2004 from custodian's counsel advising him that the parties have reached an agreement regarding the attorney's fee and the remaining issue is receipt of the final payment that has been agreed upon. The parties have asked the Council to hold the case pending on the attorney's fee application for one month, so they can work out the administrative details between them.

The Executive Director respectfully recommended that the Council advise the parties that they have until April 8, 2004 to resolve their differences and provide the Council with written confirmation of same.

Mr. Maltese called for a motion to accept the Executive Director's Recommendation. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Robert Hopewell, III v. Passaic Valley Sewerage Commission (2003-48)

Mr. Dice stated based on the information received from the requestor's counsel and custodian, the issues in the complaint have been resolved. Government Records Council staff sent a January 29, 2004 to the complainant requesting a written reply regarding the resolution of the case by February 9, 2004. Since there was no reply to the January 29, 2004 letter, another letter was sent via UPS on February 18, 2004 indicating that the case would be closed. Delivery was confirmed and the case is considered closed.

The Executive Director recommended that based on the Staff's inability to communicate with Mr. Hopewell, the Council dismiss the complaint.

Mr. Maltese called for a motion to accept the Executive Director's Recommendation. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner,

Nays: None

Abstain: Mr. Maltese

Timothy Probe v. Div. of Criminal Justice, Dept of Law & Public Safety (2003-63)

Mr. Dice stated that this Open Public Records Act (“OPRA”) Complaint filed December 3, 2003 alleges denial of an OPRA request to the Department of Law & Public Safety – Division of Criminal Justice seeking a copy of the Office of Insurance Fraud Prosecutor case #01-012166-24 and all other related documents under the name of Leonard Probe.

The Requester alleges that he was improperly denied access to these records. The Custodian asserts in the Statement of Information that the requested records are “criminal investigatory records” and are, therefore, exempt from disclosure under OPRA. The Custodian further asserts that the records are not subject to public access under OPRA because they are exempt as confidential under the New Jersey Insurance Fraud Protection Act and regulations promulgated by the Department of Banking and Insurance.

The Executive Director respectfully recommended that the Council dismiss the complaint because:

1. The custodian has met its burden of showing that the requested records and documents are exempt from disclosure under the provisions of OPRA, N.J.S.A. 47:1A-9 as they are considered confidential privileged from disclosure under N.J.A.C. 11:16-6.12 and N.J.S.A. 17:33A-11
2. The requested records are also exempt from disclosure under N.J.S.A. 47:1A-1.1 as “criminal investigatory records.”

Mr. Maltese called for a motion to accept the Executive Director’s recommendation. A motion was made by Mr. Spigner and seconded by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese
Nays: None
Abstain: None

Larry Loigman v. Division of State Police (2003-81)

Mr. Dice stated that this OPRA complaint alleges denial of an OPRA request to review copies of all reports, notes, statements, or other documents relating to the investigation of false “Megan’s Law” letters, in which Complainant was the victim, in or about February 2000 and thereafter.

The record shows that the Custodian denied the request based upon the fact that the requested records constitute criminal investigatory records, which are exempt from public access under OPRA.

The Acting Executive Director respectfully recommended that the Council dismiss this complaint because the custodian certified in their statement of information that the requested information and documents are criminal investigatory records which established public access was properly withheld under the provisions of N.J.S.A. 47:1A-1.1.

Mr. Maltese called for a motion to accept the Executive Director's Recommendation. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Skip DeBiasse v. Madison Borough (2003-91)

Mr. Dice stated that the complaint involved 5 different requests for documents. Mr. Dice stated that the record reflects that the custodian provided access to the complainant in request 1, 2 & 5, and that the custodian has additional information to clarify the information sought in the request for certificates of occupancy

The Executive Director respectfully recommended the Council find that:

1. The custodian has provided access to the complainant for requests numbered "1", "2" and "5"
2. Mr. DeBiasse is to provide the information requested by the custodian in requests numbered "3" and "4" concerning certificates of occupancy with a copy to the Executive Director within five business days. Failure to provide the requested information will result in the case being dismissed.

Mr. Maltese called for a motion to accept the Executive Director's recommendation. A motion was made by Mr. Spigner and seconded by Ms. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Hook, M Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Joseph Fournier v. Hudson County Prosecutor's Office (2003-93)

Mr. Dice stated that the complaint involved a request for copies of complaints/summonses issued in connection with an incident involving a given individual and alleges the refusal to fully provide the requested complaints/summonses that were issued in connection with an alleged assault and based on hand-written notes regarding the documents provided, Complainant believes that the Custodian has withheld information relevant to his request.

Mr. Dice stated that the Custodian provided the GRC with copies of the documents that were sent to the Complainant and affirmed that such documents fully comply with the

Complainant's request. He noted that the Complainant has offered no proof that the documents provided to him are not fully compliant with the OPRA request.

The Executive Director respectfully recommended that the Council dismiss the case since the Complainant has provided no proof that the Custodian's response was not in compliance with OPRA and that the Custodian has affirmed that the documents provided to the Requestor fully satisfy his request.

Mr. Maltese noted for the record that the Custodian's in this matter was untimely in fulfilling the complainant's request.

Mr. Maltese called for a motion to accept the Executive Director's Recommendation. A motion was made by Ms Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, M Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Robert Blau v. Essex County Register (2003-97)

Mr. Dice stated that a request for all deeds and mortgages in digital format was subject of the complaint. He indicated further that the custodian has not supplied the GRC with a Statement of Information regarding the complaint. Mr. Dice also stated that the lack of response in this case should be considered a denial of access.

The Executive Director respectfully recommended that the Council find:

1. The custodian's lack of response should be considered a denial of access. N.J.S.A.47: 1A-5(i).
2. The Council should deem that the documents are disclosable given that the custodian has not offered a defense.
3. Order the custodian to provide the requestor and Executive Director Paul Dice with a detailed estimate of the bases for the cost(s) of providing the requested digital copies for those documents in existence with the Essex County Registrar on June 25, 2003 and which are responsive to the complainant's request. Such cost estimate(s) should be in keeping with the provisions set forth in N.J.S.A. 47:1A-5 within five business days of the custodian's receipt of the Council's order.
4. Mr. Blau seeks information on a continuing basis. The GRC finds that this is not appropriate to seek information on a continuing basis since OPRA deals with the present and past tense, not the future.

Mr. Maltese called for a motion to accept the Executive Director's Recommendation as revised. A motion was made by Mr. Spigner and seconded by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, M Schonyers, Mr. Richman, Mr.Spigner, Mr. Maltese

Nays: None

Abstain: None

Daryl Pitts v. Department of Corrections (2003-99)

Mr. Dice stated that this case involved a request for the complainant's own prison medical records from 1985 through present. Mr. Dice noted the record indicates that the complainant received the requested documents.

The Executive Director respectfully recommended that the Council dismiss the case because the Complainant had signed documentation on February 26, 2004 that he received the requested documents. Mr. Dice also stated that no further action is needed by the Government Records Council.

Mr. Maltese called for a motion to accept the Executive Directors recommendation. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr.Spigner, Mr. Maltese

Nays: None

Abstain: None

Michael Dean v. Borough of Chatham (2003-108)

Mr. Dice stated that at the February 27, 2004 public meeting, the Government Records Council ("Council") considered the February 23, 2004 Findings and Recommendations of Executive Director and all related documentation submitted by the parties. Whereby the Council voted to hold its decision in the case pending receipt of the following:

The Council instructs the custodian to review it's invoice and provide a written certification that there are no attorney bills resulting from the tax appeal for Block 34, Lot 73, 181 Passaic Avenue. Should invoices contain any entry of attorney bills said bills are to be disclosed to the requestor, subject to necessary redactions pursuant to N.J.S.A.47:-1A-1et seq.

Mr. Dice stated further that subsequent to the Council's order, the custodian submitted a March 5, 2004 certification stating that the borough does not have any additional

documents that meet the definition of a “Government Record” and therefore recommended that the council dismiss the complaint.

Mr. Maltese called for a motion to accept the Executive Director’s recommendation. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Rick Merino v. Borough of Ho-Ho-Kus (2003-110)

Mr. Dice stated that the complaint alleges a denial of an OPRA request to review copies of (1) all moving violations by Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, including names and addresses of those cited (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle. The Complainant also alleges that the custodian overcharged him for duplicating the requested records. Mr. Dice noted that the record shows that the custodian did provide access to redacted copies of the requested summons but denied access to the training records, complaints and internal reprimands.

The Executive Director recommended that the Council find that:

1. Notwithstanding the Records Retention and Disposition Schedule for summonses, if the Custodian does, in fact, possess records of summonses for any prior period that were issued and requested in the OPRA request, such records must be provided to the Complainant pursuant to the provisions of N.J.S.A. 47:1A-1 et. seq. Although the Records Retention and Disposition Schedule calls for the destruction of summonses within one month after disposition of the offense, if such records have not been destroyed, they remain subject to public access.
2. Training records of Officer Tuttle must be made available to the Complainant pursuant to N.J.S.A. 47:1A-10. Personnel records that “disclose conformity with specific experiential, educational or medical qualifications required for government employment” shall be considered a government record and must be made available for public access.
3. The Complainant’s request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian. N.J.S.A. 47:1A-10 provides in pertinent that “the personnel or pension records of any individual in the possession of a public agency, *including but not limited to* records relating to *any grievance filed by or against an individual*, shall not be considered a public record and shall not be made available for public access”

[emphasis added]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.

4. Assuming that the number of pages provided to the Complainant was, in fact, 27 double-sided pages, the Complainant should be refunded \$18.25. The Complainant was charged \$64.25 (\$25.00 for a copy of a videotape and \$39.25 for 27 double-sided photocopies). The maximum fee for photocopies under OPRA (at N.J.S.A. 47:1A-5) and the fees listed by the Custodian on its document request form are identical (\$0.75 for the first ten pages, \$0.50 for the second ten pages, and \$0.25 for each page thereafter). The maximum allowable fee for 54 pages (i.e. 27 times 2) is, therefore, \$21.00. Accordingly, the Custodian must issue a refund to the Complainant in the amount of \$18.25.

Mr. Maltese suggest that the Council postpone its decision on whether the addresses and names were properly redacted on the documents pertaining to the prior month's moving violation summonses of Officer Tuttle pending further review by the GRC's legal counsel. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Marie Bailey v. Department of Agriculture (2003-116)

Mr. Dice stated that this complaint was filed September 25, 2003 in which the complainant was seeking to inspect dealer certificates, dealer inspection reports, and dealer forms and list that disclose the names of other nurseries and dealers from whom DuBrow's Nurseries, Inc. purchases stock.

The Executive Director recommended that the Council dismiss the complaint because:

1. The custodian addressed the June 5, 2003 request when copies of the annual dealer inspection reports and dealer certificates for DuBrow's Nurseries, Inc. were provided to the requestor.
2. The June 5, 2003 request was further addressed by the custodian when the requestor was informed that pursuant to the Department of Agriculture's records retention policy, copies of the dealer forms and lists that disclose the names of other nurseries and dealers from whom DuBrow's Nurseries, Inc. purchases stock material are destroyed after one year and that there are no records in the DuBrow's Nurseries, Inc. files other than those already provided to the requestor.

3. The custodian addressed the June 26, 2003 request when copies of the reverse sides of the annual dealer inspection reports and dealer certificates were provided to the requestor.
4. On February 4, 2004, the custodian affirmed in the Statement of Information that all the responsibilities under OPRA were carried out when the requestor was provided the records that existed at the date of the request and information regarding the inability to produce the dealer forms or lists that disclose the names of other nurseries and dealers from whom DuBrow's Nurseries, Inc. purchases stock material.

Mr. Maltese called for a motion to accept the Executive Director's recommendation to dismiss the case. A motion was made by Ms. Schonyers and seconded by Mr. Richman. The motion was adopted by roll call vote.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Maltese
Absent: Mr. Spigner
Nays: None
Abstain: None

Jann M. Giacoboni v. Superior Court of New Jersey (2003-126)

Mr. Dice reviewed the facts in the case indicating that the requestor was seeking motion hearings of 3 judges from the Superior Court of New Jersey, Camden County Court Reporters and Transcript Unit.

The Executive Director recommended that the Council find that the Government Records Council lacks jurisdiction over this matter pursuant to N.J.S.A. 47:1A-7 (g) and the case be dismissed.

Mr. Maltese called for a motion to accept the Executive Director's recommendation to dismiss the case. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call vote.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese
Nays: None
Abstain: None

John Paff v. New Jersey Department of Labor (2003-128)

Mr. Dice stated the complaint involved a denial of access to a request of Certificate of Debt documents. In reviewing the case Mr. Dice stated the Requestor alleges that the Custodian did not relinquish all documents requested, however, the Requestor does acknowledge a receipt of some of the documents, specifically the Debt of Judgment Order and Warrant of Satisfaction.

Mr. Dice noted the Custodian asserts that the Requestor received redacted documents from the file that are considered to be public record and filed with the Superior Court. The Custodian certified, that the remaining documents requested are the Wage Record and Tax Contribution File for Ms. Garbin and pursuant to N.J.S.A. 43:21-11 (g) are confidential and are not subject to OPRA.

The Executive Director Recommended that the complaint be dismissed for the following reasons:

1.OPRA (N.J.S.A. 47:1A-9) “shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L.1963, c.73 (N.J.S.A.47: 1A-1 et seq.);

2/The custodian certified that requested document contains information deemed confidential under (N.J.S.A. 43:21-1 et seq.)

Mr. Maltese called for a motion to accept the Executive Director’s recommendation to dismiss the case. A motion was made by Ms. Schonyers and seconded by Ms. Hook. The motion was adopted by roll call vote.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr.Spigner, Mr. Maltese

Nays: None

Abstain: None

Michael Dean v. Chatham Borough (2003-130)

Mr. Dice stated that the subject case is on follow up from the February 27, 2004 public meeting where the Council voted to hold its decision in the case pending receipt of the following information:

Ascertain the existence of any additional documents relevant to the complainant’s request and meet the definition of a Government Record under OPRA. If such documents do exists, determine whether there is any exception of granting public access to the document or documents’ under public law or other applicable law. If no exception exists make such documents available to the complainant.

The Executive Director recommended that the complaint be dismissed, since the custodian submitted a certification on March 5, 2004 stating that the borough does not have any additional documents that meet the definition of a “Government Record.”

Mr. Maltese called for a motion to accept the Executive Director’s recommendation to dismiss the case. A motion was made by Ms.Hook and seconded by Mr. Richman. The motion was adopted by roll call vote.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Gober v. City of Burlington (2003-139)

Mr. Dice: stated that the case involved a denial of access a request for various documents made to the City of Burlington. Mr. Dice reviewed the facts of the case noting that the Custodian, assert that with respect to certain correspondence, access was provided. The conceptual drawings were not submitted and therefore not available, internal correspondence was advisory, consultative and deliberative and not subject to access and no appraisals existed.

Mr. Dice added that the custodian failed to submit a statement of Information as requested by the GRC staff and recommended that the Council adopt the Findings and Recommendation's with the Council's changes:

1. Order the requestor to provide specific details of the information still being sought, which has not been provided by the custodian. A response to the custodian and Executive Director, Paul Dice, must be provided within 10 business days after receipt of the Council's Interim Order.
2. The custodian will have 10 business days to reply to requestor's response in Item No. 1 above by providing access to the documents still sought by the requestor pursuant to N.J.S.A. 47:1A-1 et seq.
3. Order the Custodian to provide public access to internal correspondence and inter-agency correspondence, subject to redaction of any information in such correspondence that is "advisory, consultative or deliberative" in nature. Factual assertions made in such correspondence are not exempt from public access under the relevant provisions of OPRA and the Custodian needs to provide a detailed explanation for any documents withheld or redacted from the Complainant.
4. Order the Custodian to provide a certification explaining the delay in responding to the request and why it should not be considered a knowing and willful violation.
5. The custodian will have 10 business days to comply with Items No. 3 and 4 above after receipt of the Council's Interim Order.

Mr. Maltese called for a motion to accept the Executive Director's Recommendation as amended with the changes to number # 1 and #5. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call vote.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Richard Wilcox v. The Township of West Caldwell (2003-142)

Mr. Dice stated that OPRA request filed on November 5, 2003 alleges a denial of access of an OPRA request to the Township of West Caldwell seeking to inspect various records of the Township Attorney and the Township Zoning Board of Adjustment. Mr. Dice stated the Custodian states in the Statement of Information that the records are subject to attorney client privilege and are therefore exempt from access under OPRA. The Custodian alleged all documents in the requested file that are not exempt by attorney client privilege were released to the requestor.

The Executive Director recommended that if the custodian has not complied with the staff's February 26, 2004 letter requesting explanations of why the Council should consider the exempted documents as attorney/client privilege:

1. The Council should order the Custodian to provide same within five business days.
2. The Council should order the custodian to fully explain he delay in responding to the OPRA request within in five business days

Mr. Maltese suggested that the Council require the Custodian to respond to the GRC by March 18, 2004. Also suggested was the fact that the Custodian did not act in a timely manor, and should fully explain in a certified statement to the Executive Director by March 18, 2004, their reasons for not responding to the requests in a timely manor. Mr. Maltese called for a motion to adopt the Executive Director's recommendation with the council's noted amendments. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Maryann Cotrell v. Glassboro Boro Hall (2003-143)

Mr. Dice stated that the Open Public Records Act Complaint filed October 14, 2003 alleges a denial of immediate access to an OPRA request for Ordinance #74-24 regarding the parking of vehicles on the front lawn of a residence. He noted that the Requestor alleges that under OPRA, she should have had immediate access to the Ordinance including a copy and further asserted that the Custodian should be removed from office for "conduct unbecoming a Records Keeper."

Mr. Dice noted that the record shows that the Requestor was given immediate access to review the Ordinance on the same day of the request and then received a copy the next day, April 29, 2003.

The Executive Director recommended that the Council dismiss this complaint because:

1. According to N.J.S.A. 47:1a-5 (E), “[I]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” OPRA does not specifically refer to ordinances in those records that are “ordinarily” granted immediate access; therefore, the Custodian is not in violation of this portion of the act.
2. According to N.J.S.A. 47:1A-5(g), “A custodian shall promptly comply with a request to inspect or examine, copy or provide a copy of a government record.” The Custodian certifies that the Requestor was immediately given access to the Ordinance book and allowed to review Ordinance #74-24 and received a copy of the ordinance the following day.
3. N.J.S.A.47: 1A-5(i) states that a “custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but no later than seven (7) business days after receiving the request.” The Custodian certifies that the Requestor received the record the following day, April 29, 2003, thus complying with OPRA.
4. OPRA does not cite a matter regarding the “conduct of a Records Keeper” or custodian.

Mr. Maltese called for a motion to accept the Executive Director’s recommendation. A motion was made by Mr. Spigner and seconded by Ms. Schonyers. The motion was adopted by roll call.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr.Spigner, Mr. Maltese

Nays: None

Abstain: None

Donald Pelican v. City of Hoboken (2003-146)

Mr. Dice stated that this case involves a request for a series of bonds, as well as inquiring about various financial decisions made by the city. Which the custodian certified in their Statement of Information were provide to the requestor.

The Executive Director recommended that the Council dismiss this complaint on the basis that the custodian has certified in the Statement of Information that it has complied with the request by providing the documentation it was responsible for providing.

Mr. Maltese called for a motion to accept the Executive Director’s recommendation. A motion was made by Mr. Spigner and seconded by Ms.Hook. The motion was adopted by roll call.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr.Spigner, Mr. Maltese

Nays: None

Abstain: None

Karen Waldron v. Boro of Pennington (2003-148)

Mr. Dice stated that the complainant requested a series of public and executive session minutes, as well as lawsuit settlement documents relating to Jeff Wittkop. He noted that the record indicates the Requestor also has a Superior Court case pending wherein she is requesting the same documents.

The Executive Director recommended that the Council dismiss the case based on the fact that there is pending action regarding the same documents in the Superior Court of New Jersey. Mr. Dice stated that he would like to amend the Recommendation and Legal analysis, to state “ prior pending action in Superior Court”.

Mr. Maltese called for a motion to accept the Executive Director’s recommendation as amended. A motion was made by Mr. Spigner and seconded by Ms.Hook. The motion was adopted by roll call.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr.Spigner, Mr. Maltese

Nays: None

Abstain: None

Richard Linderman, Esquire v. Depart. of Community Development (2003-154)

Mr. Dice stated that the Government Records Council (“Council”) considered this case at its February 27, 2004 meeting in which the Council ordered:

1. Mr. Linderman is to provide the information requested by the custodian with a copy to the Acting Executive Director within five business days of receipt of the decision.
- 2.Failure to provide the requested information will result in the case being dismissed.

Mr. Dice stated that as of March 8, 2004 the GRC staff had not received the information requested by the custodian from the requestor.

The Executive Director respectfully recommended that the Council dismiss the case since the requestor failed to provide the requested information.

Mr. Maltese called for a motion to accept the Executive Director's recommendation. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by roll call.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Floyd Frederick Allen v. County of Warren (2003-155)

Mr. Dice stated that the complainant contended he was improperly denied access to the harassment complaint against him and that he was not seeking the actual harassment complaint, but was seeking information contained in the complaint. The record indicates the Complainant was provided access to his personnel records in accordance with the County's policy to permit County employees to review their own personnel files.

Mr. Dice noted that the custodian denied access to the harassment complaint against the complainant under the provisions of OPRA, N.J.S.A. 47:1A-10 and N.J.S.A. 47:1A-1.1.

The Acting Executive Director respectfully recommended that the Council dismiss this case because:

1. The complainant was provided access to all requested personnel records pursuant to the County's policy to permit County employees to review their own personnel files.
2. Access to the harassment complaint against complainant was properly denied pursuant to:
 - a. N.J.S.A. 47:1A-10 "...records relating to any grievance filed by or against the individual are not considered a government record..." and
 - b. The disclosure exception under N.J.S.A. 47:1A-1.1, which includes "grievances" filed against an individual.
 - c. The information requested by the complainant is not a valid OPRA request as it does not constitute a "Government record" under the provisions of N.J.S.A. 47:1A-1.1.

Mr. Maltese called for a motion to accept the Executive Director's recommendation. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Michael Bent v. Stafford Township Police Department (2004-7)

Mr. Dice stated the Complainant alleges a denial of an OPRA request made to the Township of Stafford Police Department for various police reports and other materials relating to an investigation of the Complainant in connection with various business and personal matters. Mr. Dice noted further that the Custodian certified that: (1) all records in connection with the request were provided to the Requestor, or do not exist.

The Executive Director recommended that the Council dismiss this complaint because:

(1) The Custodian has provided a certification that the records requested by the Complainant have been provided to the Complainant or (2) do not exist.

Furthermore, there is no compelling evidence that a lack of truthfulness on the part of a Custodian exists. The Council will not engage in speculative fact-finding when that Custodian has certified as to the truthfulness of his or her response.

Mr. Maltese asked the staff to review the dates of the requests and Custodian response dates.

Mr. Maltese called for a motion to accept the Executive Director's recommendation. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Mr. Maltese stated that the following cases involve voluntary withdrawals of complaints on the part of the respective complainants.

Mr. Maltese called for a motion to accept the Executive Director's Recommendations to dismiss all of the following cases on said basis:

Fisher vs. Hudson County Correctional Facility (2203-61)

Stile vs. Township of South Orange Village (2003-37)

Michael Deluca vs. Town of Guttenberg (2004-11)

Krohn vs. Ocean County Sheriff's Department (2004-09)

Fred Berman vs. Board of Social Work Examiners (2004-01)

David Rothman vs. Department of Law & Public Safety (2003-151)

Jeannette Hallak vs. Department of Treasury (2003-149)

Daryl Pitts vs. Department of Corrections (2003-99)

Acme Research vs. City of Newark (2003-95)

Fisher vs. Bergen County Sheriff's Office (2003-54)

A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

Mr. Maltese stated that the following two cases involve Agreements of the Parties to participate in mediation:

Stephen Biss vs. Department of Transportation (2004-13)

Michael DeLuca vs. Town of Guttenberg (004-08)

Mr. Maltese called for a motion to forego any adjudication action pending the outcome of mediation. The motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr. Spigner, Mr. Maltese

Nays: None

Abstain: None

New Business:

Mr. Maltese discussed a piece of legislation A2455 which intends to amend a particular section of OPRA to give custodians in certain agencies some discretion with respect to the release of documentation as it relates to industries that may be the subject of sabotage and noted that Mr. Dice has copies of this legislation.

Public Comment:

There were no public comments.

Mr. Maltese called for a motion to adjourn. A motion was made by Ms Hook and seconded by Ms. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr.Spigner, Mr. Maltese

Nays: None

Abstain: None

Government Records Council Meeting adjourned at 1:00pm.

Respectfully submitted,

/s/Virginia Hook, Secretary

Dated:_____

