

MINUTES OF THE GOVERNMENT RECORDS COUNCIL
April 8, 2004

The meeting was called to order at 9:00 AM. 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 Mr. Spigner. All members present approved the motion. The Council met in closed session from 9:00AM to 10:30AM. The Council reconvened in open session at 10:45 AM in room 129 of the Department of Community Affairs, Trenton, New Jersey. The Open Public Meetings 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, Department of Education.)

Also Present: Deputy Attorney General Andrea Grundfest, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, GRC Attorney Advisor David Zipin, Staff Associates Chris Malloy, Anthony Carbabelli, Erin Mallon, Kimberly Gardner and Marion Davies Administrative Assistant.

Mr. Maltese called for a motion to accept the minutes of the Open Public Meeting Minutes from the February 27, 2004 open session as written, motion was made by Mr. Richman, and seconded by Mr. Spigner. The motion was adopted by a roll call:

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

Nays: None

Mr. Maltese called for a motion to accept the minutes from the February 27, 2004 closed session meeting as written; a motion was made by Mr. Spigner, and seconded by Ms. Hook. The motion was adopted by a roll call:

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

Nays: None

Mr. Maltese asked for the report of the Executive Director, Paul Dice. Mr. Dice reviewed the breakdown of the cases as follows: Forty-four cases scheduled to be heard - 29 (twenty nine) for today and 15 (fifteen) scheduled for April 26, 2004. He noted that the March 30th meeting was cancelled because the Council did not have a quorum, and a second meeting is therefore scheduled in April. Of the 44 total cases - two are on appeal, six have been referred to the Office of Administrative Law; seven are in mediation, 14 are work in progress; there are a total of 240 closed cases.

Mr. Dice stated that there were no communications to report at this time.

Yehuda Shain v. Township of Lakewood (2002-111)

Mr. Dice stated that the Government Records Council (“Council”) considered this case at its February 27, 2004 meeting. The Council voted unanimously at that meeting to direct Executive Director Dice to seek legal counsel regarding whether the Council should refer the complaint back to the OAL for a continuation of the determination on whether the Custodian had knowingly and willfully violated N.J.S.A. 47:1A-1 et seq. in the totality of the circumstances.

At the March 11, public meeting the Council voted to:

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. Dice stated that subsequent to the above Order, the Executive Director received Email correspondence from the Complainant, Yehuda Shain, on March 25, 2004 stating that he was withdrawing his complaint.

Executive Director, Paul Dice, recommended that the Council dismiss the case in its entirety on the basis of the complainant’s voluntary withdrawal.

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

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

Nays: None

Dale Baranoski v. Division of Criminal Justice (2003-05)

Mr. Dice stated that the subject case was continued from the March 11, 2004 meeting for the GRC counsel to review the custodian counsel's March 5, 2004 explanations of why selected documents sought in the request are privileged and exempt from disclosure.

In a March 25, 2004 letter to the GRC subsequent to the Government Records Councils Order, Mr. Dice noted that the Custodian's Counsel indicated 28 of the 83 documents delineated in their privilege log were disclosable in their entirety, 39 documents were partially disclosable and 16 documents were considered inter-agency or intra-agency advisory, consultative or deliberative, attorney-client privilege or legislative privileged. He stated further that the Custodian's Counsel asked for consideration from the Council to not find a knowing and willful violation under the totality of the circumstances.

The Executive Director recommended that the Council:

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.

Mr. Maltese suggested that the Council consider that the Custodian submit to the GRC within five business days a certification confirming that the documents which the Custodian believes to be disclosable have in fact been disclosed and that the Custodian supplies to the Council copies of all of the documents referred to in the Vaughn Index which the Custodian claims are partially disclosable or exempt from disclosure for and in camera review by the Council to determine whether was proper in withholding said document. Additionally, he suggested that the Custodian submit a certification to explain why the Council should not consider knowing and willful under the totality of the circumstances. Mr. Spigner and Mr. Richman noted their agreement with the suggested changes and to ensure compliance. Mr. Maltese called for a motion to:

1. Order the Custodian to disclose all documents pursuant to OPRA and submit to the council all documents that have been provided to the Council within five business days.
2. Submit copies of all documents, which are partially disclosable, and not fully disclosable to the Executive Director for an in-camera review by the Council.

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

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

Nays: None

Ms. Luzzatto noted administrative changes concerning to the subject case which were read into the record.

Gregory Perry v. Department of Corrections (2003-32)

Mr. Dice stated that this matter was previously heard at the February 10, 2004 Council meeting. The Council voted to direct the Executive Director to elicit a certification from the custodian regarding why the Council should consider the outline of the training session conducted by the Department of Corrections' attorneys for disciplinary hearing officers and supervisory staff to be attorney-client privileged and, therefore, not disclosable.

The Executive Director respectfully recommended that the Council dismiss the complaint On the basis that the custodian's certification adequately supports the custodian's position that the subject documents are protected by the attorney-client privilege and not disclosable under N.J.S.A. 47:1A-1 et seq.

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

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

Nays: None

Larry Loigman v. Monmouth County Prosecutor (2003-44)

Mr. Dice stated that the Government Records Council (“Council”) considered this case on follow-up at the January 8, 2004 meeting. At that meeting, the Council voted unanimously to find that:

1. The requestor has the right to inspect the records and not receive copies if he so chooses.
2. The custodian shall not charge an extraordinary labor charge for preparing the records for inspection given that the custodian has not explained the rationale for applying such charges.
3. Should the requestor require copies of all or parts of the subject documentation, such charges, pursuant to N.J.S.A. 47:1A –5(b), shall not exceed \$79.75.

A Supplemental Order with an effective date of January 23, 2004 was issued in accordance with the Council’s vote.

At its February 10, 2004 public meeting, the Council considered the Executive Director’s Findings and Recommendations, voted to adopt same but amended them as follows:

1. The parties have ten (10) business days from the effective date of this Final Decision to meet if the requestor seeks to inspect the records.
2. The parties have five (5) calendar days to confirm in writing to the Executive Director their positions in response to the Council’s January 8, 2004 Supplemental Order. Such positions must be provided in writing to the Executive Director by the close of said five-day timeframe

Mr. Dice advised the Council that the requestor has not complied with the Council’s Final Decision effective March 1, 2004. The Executive Director respectfully recommended that the case be dismissed on the basis that the requestor has not confirmed to the GRC that he made an attempt to contact the custodian to inspect the records.

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

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

Nays: None

Skip DeBiasse v. Madison Borough (2003-91)

Mr. Dice stated that this matter was addressed at the March 11, 2004 meeting at which time the Council determined that the custodian was legitimately seeking additional information from the complainant. The GRC ordered the complainant to provide said information and

the complainant responded. The custodian claimed, however, that the specific information provided was still too vague to determine the records being sought. The Executive Director recommended that the Council dismiss the complaint on the basis that:

1. The Complainant's March 23, 2004 response was unclear and no more specific than what had been presented in the original request.
2. The Complainant did not respond to the Custodian in a timely fashion as instructed by the Council.

Mr. Richman suggested that the Executive Director intervene with both parties to see if the matter could be resolved. Mr. Maltese called for a consensus vote of the Council to direct the Executive Director to conduct an intervention with both parties in an attempt to reach a resolution and the Council will postpone any action in the case. The motion was adopted by roll call:

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

Nays: None

Gina Calogero v. Borough of Emerson(2003-119)

Mr. Dice stated that this case was considered at the February 27, 2004 and Council in its interim decision ordered that:

1. The custodian has not demonstrated that a special service charge is warranted in this case.
2. Access should be granted to all documents in existence at the time of the request, which the borough had custody of, and which are not exempt under the Open Public Records Act.
3. The issue raised by the requestor concerning receiving notice of her appeal rights is moot, because she received actual notice.
4. This complaint should be dismissed.

Subsequent to the Council's February 27, 2004 Order, the Custodian informed the Government Records Council staff in letters dated March 9, March 12, 2004 and March 19, 2004 all documents responsive to the request were provided to the Complainant with the exception of:

1. Emails to or from the mayor concerning borough business and sent or received through the website and
2. Council Meeting Minutes of April 29, 2003 Borough of Emerson.

On March 11, 2004 letter from the Complainant to the Executive Director, the Complainant acknowledges a partial receipt of all documents requested with the exception of "1" and "2" above and draft resolutions that were subsequently provided on March 12, 2004.

Regarding the documents not disclosed, the custodian provided the following explanation:

1. Emails received by the Mayor of Emerson through the borough website that were not published in the “question and answer” section of the borough website: You may request that information of the Mayor through the Borough Attorney. I have no copies of those records on file in the Borough Hall nor would I be able to retrieve them from the website.
2. The April 29, 2003 minutes of the Borough Meeting would be disclosed once they are approved.

The Executive Director recommended that the Council find the following:

1. Order the Custodian to disclose that which has not already been provided to the Complainant in “1” above pursuant to the provisions of N.J.S.A. 47:1A-1 et seq. because the municipal clerk, as Custodian for the Borough, is responsible for responding to the OPRA requests and/or coordinating responses to said requests. The Custodian shall not place the burden of a request back on the Complainant to contact the Borough Attorney or Mayor.
2. Order the Custodian to disclose that which has not already been provided to the Complainant in “2” above pursuant to the provisions of N.J.S.A. 47:1A-1 et seq. The Custodian shall disclose only the “open session” minutes of the April 29, 2003 Borough Meeting, or in the alternate, where those minutes are yet to be approved, the “open session” draft minutes.
3. The Custodian shall advise the Executive Director when “1” and “2” above are complete.
4. This action should be completed within five business days.

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

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

Nays: None

Jann M. Giacoboni v. Camden County Office of the Sheriff (2003-122)

Mr. Dice stated that the subject case involved a request for a writ of possession, various correspondence and documents of forced lock out from property. The record indicates that a portion of documents requested to not exist, some were not disclosed and one document was not provided in the proper form.

The Executive Director recommended that the Council:

1. Order the Custodian submit a copy of the Writ of Possession with state seal to the Complainant;
2. Order the Custodian to supply the Complainant with any and all documents that exist in regards to points numbered 2, 3, 6 and 7; and
3. For points numbered 4 and 5, the Custodian has certified that these documents do not exist and pursuant to N.J.S.A 47:1A 1.1, no further action is needed.

Mr. Richman suggested that the council consider amending the recommendation to include a response from the Custodian within five business days. Mr. Maltese called for a motion to accept the Executive Director's recommendation with the suggested amendment. A motion was made by Mr. Richman and seconded by Mr. Spigner. The motion was adopted by roll call:

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

Nays: None

Pamela Kaithern v. West Cape May Borough Environmental Commission(2003-135)

Ms. Luzzatto reviewed the case indicating it involved requests for copies of Environmental Commission Resolutions 101-107, Copy of Environmental Commission Letters Referenced in #103-104, and Copy of Environmental Commission Resolutions and Attachments Subsequent to Resolution #107. Ms. Luzzatto further stated the requestor acknowledges receipt of the requested resolutions #101-107. She noted at issue was letter attachments referenced in the resolution, which the custodian certified, could not be found in hard copy and the documents could not be found in their volunteer's computer

Ms. Luzzatto further noted the record indicates that the Custodian certified all resolutions adopted by the West Cape May Environmental Commission, all attachments to Resolutions adopted by the Environmental Commission in existence at the time of the request were provided to the complainant.

Ms Luzzatto stated that it was the Executive Director's recommendation that the Council dismiss this Complaint for the following reasons:

1. The Custodian has supplied a certification in her Statement of Information in which she certifies that the Complainant was granted complete access to the Environmental Commission files at all times during normal business hours.
2. The Custodian certified that the letters referenced in Environmental Commission resolutions 103 and 104 do not exist.

3. The Custodian certified in her Statement of Information that she complied with the Complainant's requests to review resolutions and attachments adopted by the West Cape May Environmental Commission and that she had provided the Complainant with copies of any and all resolutions in the Environmental Commission file.
4. The Custodian has satisfied her duties under N.J.S.A. 47:1A-1 et. seq.

Ms. Schonyers questioned that the letters sought by the complainant were not saved in the computer. Ms. Hook also expressed concern that the custodian did not insure that the documents were preserved. Mr. Richman reinforced the need to address these issues in a training session with record custodians.

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

Nays: None

Newark Morning Ledger v. Department of Environmental Protection (2003-136)

Mr. Dice noted an Administrative Change to the Findings and Recommendations. Mr. Dice reviewed the issues and the parties' positions in the case, which involved a request for the name and address of the victim of a Bear attack in a park. All information was provided except for the name and address of the victim. The Department of Environmental Protection cited a proposed regulation enforceable under Executive Order 21 that exempts the "identity of complainants" from public access.

The Executive Director recommended that the Council dismiss this Complaint on the basis of:

1. The Open Public Records Act provides that government records will be subject to public access unless exempted therefore by, among other things, department or agency rules and regulations and Executive Orders of the Governor.
2. Executive Order 21 issued by Governor McGreevey instructs all state departments and agencies to respond to requests for public records in a manner consistent with any proposed and pending rules and regulations relating to public records access.
3. The New Jersey Department of Environmental Protection has proposed rules and regulations that exempt the "identity of complainants" from public access. Because the requested information constitutes the "identity of a complainant" (i.e., the victim complained to NJDEP about a bear attack), the Custodian acted properly in denying access to such information.

Mr. Richman asked Ms. Grundfest for her opinion on Executive Order 21. Ms. Grundfest advised that Executive Order 21 includes proposed regulations and does not reference a

termination date regarding proposed regulations. She concluded that it was proper to apply the proposed regulation pursuant to Executive Order 21 and supercedes OPRA.

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

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

Nays: Mr. Spigner

Gary Mosher v. Borough of Mendham (2003-150)

Mr. Dice reviewed the complaint, which concerned a claim that access had been denied on an OPRA request for audiotape or CD copies of all meetings of the Borough's Council that included executive sessions, if and when they become available to the public. He noted that the complainant also had a Superior Court case pending wherein he was addressing his OPRA issues.

The Executive Director recommended that the Council dismiss the case based on the fact that there is prior pending action in the Superior Court of New Jersey pursuant N.J.S.A. 47:1A-6.

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

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

Nays: None

Albert P. Poreda v. Hudson County(2004-14)

Mr. Dice noted an Administrative Change and read it into the record.

Mr. Dice reviewed the case noting that it involved a denial of access for a Copy of Scoring Sheets Completed by Selection Committee, a Copy of Contract Awarded to Winning Vendor, a Copy of Transcript of Pre-Bidders Conference and a Copy of transcript of Freeholders' Caucus. A request made on March 9, 2004 for the custodian's statement of information was unanswered. Thus, the custodian offered no defense in this case. Mr. Dice further stated that given there was no defense the Executive Director recommended that the Council order:

1. The Custodian's lack of response was considered a denial of access pursuant to N.J.S.A.47: 1A-5(i).

2. The Custodian was to disclose all requested information pursuant to N.J.S.A. 47:1A-1 et seq.
3. The custodian was to disclose the requested documents to the Complainant within five business days of the Custodian's receipt of the Council's order.

Mr. Maltese suggested that the Council consider amending the Findings and Recommendation to include the following:

1. The custodian was to certify to the Executive Director within five business days of receipt of this Order.
2. The custodian was to explain in a certification to the Executive Director why the Council should not consider the custodian's lack of response to the request is not
3. a knowing and willful violation of the OPRA under the totality of the circumstances.

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. Schonyers. The motion was adopted by roll call:

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

Nays: None

Trish Fanders v. Easthampton Board of Education (2004-16)

Mr. Dice stated that this case involved a request for resumes and credential of all Administrators of the Easthampton School District. Mr. Dice further stated that in a Statement of Information from the Custodian all documents requested were provided, however the GRC has not been able to confirm whether or not the requestor has received the information requested.

The Executive Director recommended that the Council:

1. Order a response from the Complainant to the Executive Director of the Government Records Council (GRC) within 5 business days of receipt of the decision indicating whether any of the requested information has not been disclosed in response to said request.
2. Failure of Complainant to respond with the requested information in "1" above will result in the case being dismissed.

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

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

Nays: None

Louis Perry v. Township of Pennsauken (2004-19)

Mr. Dice stated that this case involved a request for municipal boundary lines and legal description on a deed or survey and the custodian claims they provided a copy of the township map with boundary lines, but did not possess the legal description or survey information that the requestor was seeking.

The Executive Director recommended that the Council:

1. Order the custodian to provide a certification to the Executive Director within 5 business days which identifies the specific documents provided to the requestor
2. And all documents responsive to the request that were not provided and why.

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

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

Nays: None

The Executive Director recommended that the Council dismiss the following cases on the basis that the requestor's in their respective case have voluntarily withdrawn their complaint:

- Stephen J. Biss v. Dept. of Education Division of Finance Office of Student Transportation (2004-15)
- Anthony Lopez v. Hudson County (2004-29)
- Robert Edwards v. Housing Authority of Plainfield (2003-117)

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

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

Nays: None

The following cases involve mutual agreements for mediation. The Executive Director recommended that the Council and GRC staff forego any adjudicatory action pending the outcome of mediation on the following cases:

- Robert Blau v. Essex County Registrar (Carole Graves) (2003-97)
- John M. Ward v. Village of Ridgewood (2003-131)
- John M. Ward v. Village of Ridgewood (2003-132)
- John M. Ward v. Village of Ridgewood (2003-133)
- Fred Burnett v. Bergen County (2004-06)
- Fred Burnett v. Mercer County (2004-20)
- Larry Kohn v. Township of Livingston (2004-12)
- Thomas Toth v. Ewing Township (2004-21)
- Ms. Lois Lebbing v. Middlesex County Dept. of Planning (2004-25)
- Ms. Lois Lebbing v. Middlesex County Dept. of Planning (2004-26)
- Ms. Lois Lebbing v. Middlesex County Dept. of Planning (2004-27)

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

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

Nays: None

Ms. Lois Lebbing v. Township of Piscataway (2003-144)

The Executive Director recommended that the Council dismiss the subject case since settlement has occurred through mediation:

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

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

Nays: None

Newark Morning Ledger Co. Publisher of Star Ledger v. New Jersey Sports & Exposition Authority (NJSEA) (2003-43)

Mr. Dice indicated that the subject case is on follow-up following the Council's decision that access was improperly withheld under OPRA and ordered disclosure and the prevailing party's Attorney's Fee's. The Counsel for the requestor submitted his application for reasonable Attorney Fee's to the GRC, and immediately after that entered into discussions with the custodian regarding those Fee's. On March 16, 2004, Mr. Dice noted that the GRC received correspondence from the requestor's counsel withdrawing the complaint because the custodian has fulfilled the obligation with respect to the payment of attorney's fees.

The Executive Director respectfully recommended that the Council dismiss the complaint on the basis that the requestor's counsel confirmed in their March 16, 2004 correspondence to the Government Records Council that the custodian has complied with the agreement to pay the agreed attorney's fees.

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

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

Nays: None

New Business:

Mr. Maltese announced that the next Government Records Council Meeting would be Monday, April 26, 2004

Mr. Dice noted that the GRC Web Site was current with the Council's Decisions, Findings and Recommendation and the Executive Directors report.

Public Comment:

Ms. Ann Baron:

Ms. Baron noted that the New Jersey Foundation for Open Government would be hosting the National Freedom of Information Coalition Conference in Newark. She indicated that Mr. Maltese, Mr. Spigner and Mr. Dice would be in attendance. Ms Baron commented as follows:

1. She expressed concern about cases involving lost or destroyed documents and felt that these issues could be eliminated if more financial penalties were imposed on the custodian for not complying with OPRA.

Mr. Maltese responded indicating that a high threshold exists under OPRA before a custodian penalty would be imposed. He acknowledged Ms. Baron's concerns, but indicated that any change or modification of OPRA would require legislation. Mr. Spigner reconfirmed Mr. Maltese's comments concerning custodian penalties.

2. Ms. Baron commented that the Lebbing cases heard by the Council involved Middlesex County, specifically the Borough of Highland Park and the Borough of Piscataway. She indicated the two referenced boroughs did not provide GRC contact information on their OPRA forms. She asked if the Executive Director would address the issue.

Mr. Dice informed Ms. Baron that her concerns would be investigated to insure the Boroughs were in compliance with OPRA.

Hugh Sharkey:

Mr. Sharkey identified himself as a CPA who specialized in analyzing electronic information in databases and that he was also a member of the New Jersey CPA Society of Government Accounting and Auditing Committee. He commented that he made an OPRA request for information from his town's electronic system and was denied access by the Borough Clerk, the Deputy Borough Clerk, the Finance Officer and the Borough Attorney. He indicated that he previously received the information, which access is now being denied. He indicated that he felt the custodian knowingly and willfully intended to not provide the electronic information requested. He asked whether his denial of access complaint should be filed against the Borough Attorney, Mayor and Council or the employees.

In response, Mr. Dice indicated the complaint should identify the Borough itself as the party from which the records were being sought and that he would provide him with the necessary information for filing the denial of access complaint.

Mr. Sharkey indicated that he filed a second records request for accounting documentation on the disposition of a piece of First Aid Squad equipment and was denied access because it is believed that the First Aid Squad was a not for profit entity, although it does receive subsidies from the borough to support the ambulances, insurances and phone bills. Mr. Sharkey wanted to know if this type of entity falls outside of OPRA because it is a not for profit organization.

Mr. Dice responded by referencing N.J.S.A. 47:1A-1.1, which he indicated defines a public agency and in general may address his situation. Mr. Maltese commented that the Government Records Council was created under OPRA to assist the public to gain access to government records disclosable under OPRA.

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

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

Nays: None

Meeting adjourned at 12:30 PM

Respectfully submitted

/s/ Virginia Hook, Secretary

Dated

