

**Minutes of the Government Records Council  
June 9, 2005 Public Meeting - Open Session**

The meeting was called to order at 9:00 a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Luzzatto called roll call:

Present: Chairman Vincent Maltese, DeAnna Minus-Vincent (designee of Commissioner Susan Bass Levin, Department of Community of Affairs), Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, Mr. Mitchell Fishman, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Erin Knoedler, Jennifer Arozamena, Colleen McGann and Marion Davies;

Absent: Mrs. Robin Berg Tabakin and Ms. Diane Schonyers

The Council met in closed session from 9:15 a.m. to 10:30 a.m.  
Open Session reconvened at 10:35am.

Personnel Matters: Mr. Dice:

1. Marion Davies is the new Administrative Coordinator
2. Erin Knoedler is leaving the Council effective July.
3. Mr. Mitchell Fishman joins the Council as a Council member.

Administrative Case Closure List: Ms. Luzzatto

1. Marie Bailey v. NJ Department of Agriculture (2003-116) Case Closed
2. Rory Moore v. Township of Old Bridge (2004-137) Case Closed
3. Rory Moore v. Township of Old Bridge (2004-140) Case Closed
4. Rory Moore v. Township of Old Bridge (2004-154) Case Closed
5. Rory Moore v. Township of Old Bridge (2004-155) Case Closed
6. Rory Moore v. Township of Old Bridge (2004-171) Case Closed
7. Rory Moore v. Township of Old Bridge (2004-172) Case Closed
8. Rory Moore v. Township of Old Bridge (2004-173) Case Closed
9. Susan Repko v. NJ Economic Development (2005-21) Settled in Mediation
10. Greg Volpe v. Barnegat Township School District (2005-23) Settled in Mediation
11. Dudley Burdge v. NJ Department of Personnel (2005-32) Case Closed
12. Steven Russo v. NJ State Parole Board (2005-38) Case Closed
13. John Paff v. Somerset County Prosecutor's Office (2005-40) Settled in Mediation
14. Dr. Kathleen Henderson v. Kean University (2005-44) Forwarded to Mediation
15. Dr. Kathleen Henderson v. Kean University (2005-45) Forwarded to Mediation
16. Dr. Kathleen Henderson v. Kean University (2005-46) Forwarded to Mediation
17. John Paff v. Borough of Milltown (2005-51) Settled in Mediation
18. Joy DeSanctis v. City of Paterson (2005-63) Case Closed
19. James Maynard v. Asbury Park Board of Education (2005-65) Case Closed
20. Elaine S. Chu v. Little Ferry Borough (2005-100) Agreed to Mediation
21. Rich Bernstein v. Borough of Northvale (2005-41) Case Closed

**C.W. v. William Paterson University (2003-113)**

Mr. Dice reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. The Executive Director presented the following recommendations to the Council.

The Council re-affirm their November 9, 2004 Final Decision in its entirety and without amendment or qualification. This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division.

Mr. Maltese called for a motion to accept the recommendations of the Executive Director as written. The motion was made by Mr. Fishman and seconded by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Mr. Fishman, Ms. Minus-Vincent, Mr. Maltese

Nays: None

**Robert Gorman vs. Gloucester County (2004-108)**

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. Malloy presented the following recommendations of the Executive Director to the Council.

The Executive Director respectfully recommended that the Council refer the case to the Office of Administrative Law for a hearing to determine:

1. Whether the "copy of the videotape from the patrol vehicle assigned to Officer William Johnson on 1/24/03," is disclosable in whole or in part, pursuant to N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-5(g)?
2. Whether the special service charge of \$48,000.00 relating to the request for "all no tag light tickets issued by the Gloucester City Police Department for violations of Local Ordinance 73-15 and for non-operational tag lights," is reasonable pursuant to N.J.S.A. 47:1A-5(c)? If not, what charges would be incurred in preparing them for release to the Complainant?
3. Whether the handwritten notes redacted from the CJP schedule are disclosable pursuant to N.J.S.A. 47:1A-1, N.J.S.A. 47:1A-1.1, and N.J.S.A. 47:1A-3?
4. For all records responsive to the request that are to be released, what charges would be incurred, pursuant to the OPRA, in preparing them for release to the Complainant?

Mr. Maltese called for a motion to accept the recommendations of the Executive Director as written. The motion was made by Mr. Fishman and seconded by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Mr. Fishman, Ms. Minus-Vincent, Mr. Maltese

Nays: None

**Joseph Rena vs. County of Union (2004-136)**

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. Malloy presented the following recommendations of the Executive Director to the Council.

The Executive Director respectfully recommended that the Council refer the case to the Office of Administrative Law to determine if the Custodian's failure to provide the Complainant with the records in the medium requested constitutes a knowing and willful violation of the OPRA under the totality of the circumstances.

Mr. Maltese called for a motion to accept the recommendations of the Executive Director as written. The motion was made by Ms. Minus-Vincent and seconded by Mr. Fishman. The motions was passed on roll call:

Ayes: Mr. Fishman, Ms. Minus-Vincent, Mr. Maltese

Nays: None

**Jeffery Smith vs. Department of Corrections (2004-163)**

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. Malloy presented the following recommendations of the Executive Director to the Council.

The Executive Director respectfully recommended that the Council dismiss this case on the basis that:

1. The Custodian should not release the itemized telephone numbers contained in the cellular telephone billing records pursuant to the common law standards that provide for a balanced consideration of the public need for the numbers called and the need for confidentiality pursuant to North Jersey Newspapers Company v. Passaic County Board of Chosen Freeholders, 127 N.J. 9 (1992).
2. A balanced consideration of the public need for the numbers called and the need for confidentiality and privacy issues implicated pursuant to North New Jersey, Doe v. Portiz, 142 N.J. 1 (1995) and N.J.S.A. 47:1A-9(b) reveals that the need for confidentiality and the privacy issues implicated weigh heavier than the public's interest in access to sufficient information to enable the public to understand and evaluate the reasonableness of a public official's actions.
3. The impracticality of OPRA's requirement that prior to allowing access to any government record, all custodians must redact from a record any information which discloses the unlisted telephone numbers of any person pursuant to N.J.S.A. 47:1A-5(a).
4. Therefore, records responsive to the Complainant's request have been provided.

Mr. Maltese called for a motion to accept the recommendations of the Executive Director as written. The motion was made by Mr. Fishman and seconded by Ms. Minus-Vincent. The

motions was passed on roll call:

Ayes: Mr. Fishman, Ms. Minus-Vincent, Mr. Maltese

Nays: None

**Sean DiSomma vs. Borough of Paramus (2004-192)**

Mr. Knoedler reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. Knoedler presented the following recommendations of the Executive Director to the Council.

The Executive Director respectfully recommended that:

1. The Council should find that the Committee is not a public agency pursuant to N.J.S.A. 47:1A-1.1.
2. The Council should find that the Committee's records are not government records pursuant to N.J.S.A. 47:1A-1.1. However, at the time that the Committee gave its records (already redacted) to the Custodian, those records became "government records" because they were then "... kept on file ..." pursuant to OPRA.
3. The Council should find that the Custodian should have responded to the Complainant's request in writing, however, this does not rise to the level of a knowing and willful violation of OPRA under the totality of the circumstances.
4. The Council should find that OPRA does not have jurisdiction over the redactions of the government record disclosed because the redactions were made prior to the document becoming a government record pursuant to OPRA.
5. The Council should dismiss the case based on items one (1) through (4).

Mr. Maltese called for a motion to accept the recommendations of the Executive Director as written. The motion was made by Ms. Minus-Vincent and seconded by Mr. Fishman. The motions was passed on roll call:

Ayes: Mr. Fishman, Ms. Minus-Vincent, Mr. Maltese

Nays: None

**The following cases have been rescheduled for July Council Meeting.**

1. Rick Engler vs. NJ Dept. of Environmental Protection (2005-4)
2. John Paff vs. Township of Plainsboro (2005-29)
3. Dorothy Argyros vs. Township of Neptune (2005-37)

**Gregory Slate vs. Woodbridge Municipal Police Department (2004-198)**

Ms. Gardner reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. Gardner presented the following recommendations of the Executive Director to the Council.

The Executive Director respectfully recommended that the Council refer the case to the Office of Administrative Law for a hearing to determine:

1. Whether the \$60,007.08 special service charge is reasonable and based upon the actual cost of providing redacted copies of the records at issue in the Denial of Access Complaint pursuant to N.J.S.A. 47:1A-5(c)?
2. The basis for changing the original fee of \$216.75 to the special service charge of \$60,007.08? Were any of the four records at issue in the Denial of Access Complaint provided and included in the \$216.75 fee?
3. Whether the radio transmissions and telephone records need to be completely transcribed in order to fulfill the request?
4. Whether there was a lawful explanation for appropriate redactions or non-disclosure of records at issue in the Denial of Access Complaint pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-6?
5. Whether supplying the requested records at issue in the Denial of Access Complaint is considered a substantial disruption of operations?

Mr. Maltese called for a motion to accept the recommendations of the Executive Director as written. The motion was made by Mr. Fishman and seconded Ms. Minus-Vincent by. The motions was passed on roll call:

Ayes: Mr. Fishman, Ms. Minus-Vincent, Mr. Maltese

Nays: None

### **Joseph Sooy vs. Department of Corrections (2004-215)**

Ms. McGann reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. McGann presented the following recommendations of the Executive Director to the Council.

The Executive Director respectfully recommended that the Council conduct an *in camera* inspection of the "November 18, 2004 e-mail from Gail Reed to Natalie Jaroni" to determine what, if any, factual information contained in the requested document remains to be released.

Mr. Maltese called for a motion to accept the recommendations of the Executive Director as written. The motion was made by Mr. Fishman and seconded Ms. Minus-Vincent by. The motions was passed on roll call:

Ayes: Mr. Fishman, Ms. Minus-Vincent, Mr. Maltese

Nays: None

**Thomas Caggiano vs. Sussex County Prosecutor's Office (2004-216)**

Ms. Gardner reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. Gardner presented the following recommendations of the Executive Director to the Council.

The Executive Director respectfully recommended that the Council dismiss this case on the basis that the Custodian has certified that the records responsive to the request are "criminal investigatory records" and are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

Mr. Maltese called for a motion to accept the recommendations of the Executive Director as amended by the dates. The motion was made by Mr. Fishman and seconded Ms. Minus-Vincent by. The motions was passed on roll call:

Ayes: Mr. Fishman, Ms. Minus-Vincent, Mr. Maltese

Nays: None

**Reports:**

There are changes to the search mechanism on the website.  
Ms. Arozamena discusses the changes to the website with the council.

**Communications:**

Mr. Dice received a letter from Mr. Martin O'Shea and read the letter in its entirety into the record as written.

Mr. O'Shea asked the Council about the following cases  
2004-111 – The Council stated that no agenda date has been set so far for the case.  
2004-87 - Mr. Dice will follow up Mr. O'Shea and present the findings to the Council.

**Public Comment:**

Dorothy Argyros addresses the Council and read a letter into the record.

Tina Renna addressed the Council and made eight complaints. Mr. Maltese addressed Ms. Renna's complaint. Ms. Starghill made several comments relating to Knowing and Willful.

Mr. Paff asked the Council to describe what criteria is established that sends cases to the Office of Administrative Law.

Mr. Maltese called for a motion to adjourn. The motion was made by Mr. Fishman and seconded Ms. Minus-Vincent by. The motions was passed on roll call:

Ayes: Mr. Fishman, Ms. Minus-Vincent, Mr. Maltese

Nays: None

Meeting adjourned at 12:00PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "De Anna Minus-Vincent", is displayed within a light gray rectangular box.

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De Anna Minus-Vincent  
Secretary

Dated: September 8, 2005