

MINUTES OF THE GOVERNMENT RECORDS COUNCIL
June 10, 2004

The meeting was called to order at 9:20AM in the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meetings Act statement was read.

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.)

Mr. Maltese read a 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. Richman. All members present unanimously approved the motion. The Council met in closed session from 9:20AM to 10:45AM. The Council reconvened in open session at 11:00AM 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, Department of Education.)

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

Mr. Maltese asked for the Executive Director's report on personnel. There was no information to report on the subject.

Mr. Maltese called for a motion to accept the Closed Session Meeting Minutes from the April 26, 2004 meeting as written. A motion was made by Mr. Spigner and seconded by Ms. Hook. The motion was adopted by roll call:

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

Nays: None

Abstain: Mr. Richman

Mr. Maltese called for a motion to accept the Open Public Meeting Minutes for the April 26, 2004 meeting as written. A motion was made by Ms. Schonyers and seconded by Mr. Spigner. The motion was adopted by roll call:

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

Nays: None

Abstain: Mr. Richman

Mr. Maltese called for the report of the Executive Director, Mr. Dice. Mr. Dice presented the following Executive Director's monthly report: Current status of complaints: a total of thirty-seven scheduled, twenty cases for the June Council meeting, thirteen cases scheduled for the July 8, 2004 meeting; five cases on appeal; six cases in the Office of Administrative Law; fifteen cases in mediation; nine cases were work in progress; and two-hundred sixty four total closed cases. There were a total of six hundred two inquiries for 2004 with one hundred four for May and eighteen as of June 10, 2004.

Mr. Dice noted that the GRC Website lists outreach presentations attended by Mr. Dice and Ms. Luzzatto, and an additional list of upcoming presentations. He added that in September and October their audience would include Police Departments, Business Administrators, and School Administrator's. Ms. Schonyers expressed interest in participating in the presentations involving the business and school administrators.

Mr. Maltese noted for the record that he recused himself from the following cases during the both the Closed and Open Session of the June 10, 2004 meeting:

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

Albert Poreda v. Hudson County (2004-14)

Anne Rademacher v. Borough of Eatontown (2004-18)

Marc Kagan v. University of Medicine and Dentistry of NJ 2004-38)

Donna Janeczko v. Division of Criminal Justice (2002-79)

Ms. Luzzatto reviewed the case stating the Council rendered their decision in the case on August 14, 2003 finding the records sought were criminal investigatory records and the case was appealed to the Superior Court, Appellate Division on September 8, 2003. The GRC received a decision from Superior Court, Appellate Division on May 26, 2004, affirming the Council's decision.

It was the Executive Director's recommendation that the Council close the case on the basis of the Appellate Division of the Superior Court of New Jersey affirming the Government Records Council's Final Decision.

Mr. Maltese called for a motion to accept the Executive Director's recommendation but amend the recommendation to read, "dismiss" instead of "close" and include a copy of the Supplemental Findings and Recommendation. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by roll call:

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

Nays: None

Abstain: None

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

Mr. Dice stated that the case was on follow up from the March 11, 2004 GRC Council meeting.

Mr. Dice reviewed the Custodian's response to the interim decision, and the Complainant's response to same as set forth in the June 4, 2004 Findings and Recommendations of the Executive Director and recommended that the Council dismiss the case on the basis of said recommendations.

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

Nays: None

Abstain: None

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

Ms. Luzzatto reviewed the case explaining the Council's April 26, 2004 interim decision ordered the Custodian to disclose all documents responsive to the Complainant's January 8, 2004 request and certify when they had complied with the request. She reviewed the details of the Custodian's response to the Council's interim decision as set forth in the May 28, 2004 Findings and Recommendations of the Executive Director. It was the Executive Director's recommendation that the Council dismiss the case on the basis of the Custodian's certification stating all available records responsive to the request were provided to the Complainant.

Mr. Maltese called for a motion to accept the Executive Director's May 28, 2004 findings and recommendation as written. A motion was made by Ms. Schonyers and seconded by Mr. Spigner. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Martin O'Shea v. Township of West Milford (2004-17)

Mr. Dice reviewed the case indicating it was on follow-up from the April 26, 2004 meeting. He reviewed the Custodian's response to the Council's order in which the Custodian admittedly failed to respond verbally or in writing to the Complainant's January 29, 2004 request until May 7, 2004 and responded to the January 12, 2004 request on the day it was submitted, but there was nothing to support the Custodian's allegation. He indicated further the Complainant maintained that he did not receive responses to the January 12 and 29 requests. The Executive Director presented his recommendations to the Council as set forth in the June 2, 2004 Findings and Recommendations of the Executive Director.

Mr. Dice noted an administrative change to the Findings and Recommendations under in #1 of the Executive Director's recommendation that should read, "complained" instead of "grieve."

Mr. Maltese called for a motion to accept the Executive Director's June 2, 2004 findings and recommendations as written. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Kathie Pontus v. NJ Schools Construction Corporation (2004-34)

Mr. Dice reviewed the case stating that it was previously heard at the May 13, 2004 public meeting and the Council ordered additional information from the Custodian. Mr. Dice continued stating that when the request was received, the Custodian did a search for the records and found what she thought were the only documents in existence pertaining to the request. The Custodian offered a certification explaining her actions and the GRC staff found it to be acceptable. It was the Executive Director's recommendation that the Council dismiss the case as set forth in the Executive Director's June 4, 2004 findings and recommendations.

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

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

Nays: None

Abstain: None

Gerri Doukali v. Borough of Magnolia (2004-35)

Mr. Dice stated that the case was previously heard at the May 13, 2004 meeting and was on follow-up regarding the Council's interim decision.

It was the Executive Director's recommendation set forth in the Findings and Recommendations that the Council dismiss the case as the Custodian complied with all aspects of the May 13, 2004 Council's Interim Decision.

Mr. Maltese called for a motion to accept the Executive Director's June 4, 2004 findings and recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Arthur Mourad v. Borough of Saddle River (2004-30)

Mr. Dice explained that at the May 13, 2004 public meeting the Council ordered the Custodian to provide the Complainant with all the documents and information responsive to the request consistent with the provisions of N.J.S.A. 47:1A-10. Mr. Dice explained further that the case has been returned to the Council because the Custodian alleged the Complainant was a convicted felon and the disclosure of the records would present a security risk. He reviewed the June 2, 2004 Findings and Recommendations of the Executive Director pertaining to the Custodian's allegations and recommended that the Council should order the Custodian to comply with the staff's June 3, 2004 letter to provide a written explanation and that failure to do so would result in determination the records are disclosable pursuant to the Final Decision issued on May 13, 2004.

Mr. Maltese called for a motion to accept the Executive Director's recommendation with the following amendments:

To affirm its May 13, 2004 decision ordering the custodian of records to provide the complainant with all the documents and information responsive to the request consistent with the provisions of N.J.S.A. 47:1A-10 of Open Public Records Act ("OPRA") subject to appropriate redaction. The case would be dismissed because the supplemental information

provided by the custodian did not meet the burden of proof pursuant to N.J.S.A. 47:1A-6 and the documents sought are to be disclosed pursuant to N.J.S.A. 47:1A-10 subject to appropriate redaction.

A motion was made by Mr. Spigner and seconded by Ms. Hook to accept the Executive Director's recommendations with the amended changes. The motion was adopted by roll call.

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

Nays: None

Abstain: None

Absent: Ms. Schonyers

Ronald Miles v. Borough of Barnegat (2004-36)

Ms. Luzzatto explained that the case was previously heard at the April 26, 2004 meeting and the Complainant was to provide specific details of the information still being sought in the request, and the Custodian was ordered to provide a certification to explain the delay in responding to the request and why it should not be considered a "knowing and willful" violation under OPRA. As set forth in the June 2, 2004 Findings and Recommendations of the Executive Director, Ms. Luzzatto reviewed the information submitted by the parties in response to the Council's interim decision. It was recommended that the Council dismiss the case as set forth in the Executive Director's recommendation.

Mr. Maltese called for a motion to accept the Executive Director's June 2, 2004 findings and recommendation as written. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Gerard Lanosga v. Borough of Princeton (2004-37)

Ms. Luzzatto explained that the case was previously heard at the April 26, 2004 meeting and the Council ordered the Custodian to certify in whole or in part what information or documentation was or was not released in accordance with the request dated September 16, 2004 and to explain their position concerning information they did not disclose. The Custodian certified and provided sufficient information to confirm that all the remaining documents that were being sought in regard to the initial request are criminal investigatory and would exempt from disclosure under OPRA. It was the Executive Director's recommendation that the Council dismiss the complaint as set forth in the said findings and recommendations.

Mr. Maltese called for a motion to accept the Executive Director's June 2, 2004 findings and recommendation as written. A motion was made by Ms. Schonyers and seconded by Mr. Spigner. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Andrew Johnson v. NJ State Police (2004-46)

Ms. Luzzatto reviewed the case and the parties respective positions set forth in the May 31, 2004 Findings and Recommendations of the Executive Director. She noted that the case involved a denial of access to investigatory reports from a specific identified file held by the State Police Norris Barracks and an assertion that because the case is closed and the investigation is no longer open, the information should be disclosed. Based on the Custodian's detailed explanation concerning the requested investigatory reports, they met the burden of proving said records were exempt from disclosure under OPRA. It was respectfully recommended that the Council dismiss the case based on the Executive Director's recommendation set forth in May 31, 2004 findings and recommendations.

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

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

Nays: None

Abstain: None

Ms. Schonyers excused herself for the balance of the meeting.

Andrew Bilarczyk v. Over Brook High School (2004-56)

Ms. Luzzatto stated that the Custodian and the requestor voluntarily signed Agreements to Mediate. Based on same, the Executive Director recommended that the Council forego any adjudicatory action pending the outcome of mediation.

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

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

Nays: None

Abstain: None

Absent: Ms. Schonyers

The following cases were presented together as they involved referrals to mediation:

**Michael Shasho v. Borough of Ramsey (2004-57) and
Barbara Schwarz v. Department of Treasury (2004-59)**

In each case the Custodian and the Complainant voluntarily signed Agreements to Mediate. Based on same, the Executive Director recommended that the Council forego any adjudicatory action pending the outcome of mediation.

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

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

Nays: None

Abstain: None

Absent: Ms. Schonyers

Barbara Schwarz v. Department of Human Services (2004-60)

Ms. Luzzatto reviewed the case that involved a denial of access to records concerning specific identifiable individuals and the Church of Scientology. The respective positions of the parties were reviewed as set forth in the May 31, 2004 Executive Director's Findings and Recommendations. It was recommended that the Council order a detailed explanation of the Custodian's justification supporting their claimed exemption to the requested records.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as set forth in May 31, 2003 findings and recommendations. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Absent: Ms. Schonyers

Robert Campbell v. Township of South Harrison (2004-62)

Mr. Dice stated that this case involved a request for details of operating cost for the South Harrison police department for certain budget years. The Custodian contends that the Complainant received the records responsive to his May 19, request. However, he indicated that it was unclear if the records released were responsive to the May 2 request and recommended further clarification from the Custodian as set forth in the Executive Director's recommendations to the Council.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as set forth in the May 31, 2004 Executive Director's findings and recommendations. A motion was made by Mr. Spigner and seconded by Ms. Hook. The motion was adopted by roll call vote.

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

Nays: None

Abstain: None

Absent: Ms. Schonyers

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

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

Mr. Dice stated that this case was heard at the May 13, 2004 meeting at which time the Council considered the Executive Director's recommendation at that the time seeking various certifications and clarifications. Mr. Dice reviewed the Custodian's response to the Council's Interim Decision as set forth in the April 7, 2004 Findings and Recommendations of the Executive Director. Mr. Dice recommended that the Council dismiss the case on the basis that the Custodian has complied with all aspects of the Council's Interim Decision.

Mr. Spigner called for a motion to accept the Executive Director's recommendation as set forth in the April 7, 2004 Executive Director's findings and recommendations. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call vote.

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

Nays: None

Abstain: None

Absent: Ms. Schonyers

Recused: Mr. Maltese

Albert Poreda v. Hudson County (2004-14)

Ms. Luzzatto stated that this case was initially heard at the Council's Public Meeting held on April 8, and May 13, 2004. This case involved a denial of access, lack of disclosure as well as a delay in responding to the request. The Custodian indicated he complied with all aspects of the request; however, the Complainant disagreed. In the May 13, 2004 Interim Decision, the Council ordered a legal certification from the Custodian of records setting forth in detail what and when information was provided to the Complainant and explaining the delay in responding to the requests. Ms. Luzzatto reviewed the details of the Custodian's response to the order as set forth in the May 25, 2004 Executive Director's Findings and Recommendations and recommended that the Council dismiss the case on the basis of said findings and recommendations.

Mr. Spigner called for a motion to accept the May 25, 2004 Executive Director's findings and recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call vote.

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

Nays: None

Abstain: None

Absent: Ms. Schonyers

Recused: Mr. Maltese

Ann Rademacher v. Borough of Eatontown (2004-18)

Mr. Dice stated reviewed the case that involved a denial of access for a copy of a study done by a non-public Jersey Professional Management Study and a claim by the Custodian that the study was advisory, consultative or deliberative material and not disclosable under OPRA. He explained that the GRC staff sought legal council in this case because it involved a non-pubic agency and the question arose whether the advisory, consultative or deliberative privilege was applicable. Deputy Attorney Grundfest reviewed the applicable legal considerations set forth in the June 9, 2004 Findings and Recommendations of the Executive Director and concluded that the report prepared for the Borough by the Jersey Professional Management Company was exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1

The Executive Director recommended that the Council dismiss the case based on the fact that the requested report was prepared by an outside third party consultant and does meet the definition of "inter-agency or intra-agency advisory, consultative, or deliberative" exemption under OPRA.

Mr. Spigner called for a motion to accept the June 9, 2004 Executive Director's findings and recommendation as written. A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call vote.

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

Nays: None

Abstain: None

Absent: Ms. Schonyers

Recused: Mr. Maltese

Margaret Wolenski v. Bayonne Police Department (2004-31)

Mr. Dice reviewed the case as set forth in the June 2, 2004 Findings and Recommendations of the Executive Director explaining that the case was on follow-up from the Council's April 26, 2004 Interim Decision seeking additional information from the Complainant.

The Executive Director recommended that the Council dismiss the complaint on the basis that the Complainant did not respond to the May 25, 2004 e-mail from the Government Records Council staff.

Mr. Spigner called for a motion to accept the June 2, 2004 Executive Director's findings and recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call vote.

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

Nays: None

Abstain: None

Absent: Ms. Schonyers

Recused: Mr. Maltese

Marc Kagan v. University of Medicine & Dentistry of NJ (2004-38)

Mr. Dice reviewed the case as set forth in the June 2, 2004 Findings and Recommendations of the Executive Director and recommended that the Council find that the records identified in "1" of the

Executive Director's recommendations be disclosed, that the records identified in "2" and "4" of said recommendations are non-existent, and that the records identified in "3" of said recommendations are not disclosable under OPRA.

Mr. Spigner called for a motion to accept the Executive Director's June 2, 2004 findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call vote.

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

Nays: None

Abstain: None

Absent: Ms. Schonyers

Recused: Mr. Maltese

Mr. Spigner asked Mr. Dice if there was any new business, hearing none Mr. Spigner opened the meeting for public comment.

Public Comment:

Mr. Robert Campbell thanked the Government Records Council staff and Council for their efforts in bringing his case to a successful completion.

There were no other public comments. Mr. Spigner called for a motion to adjourn and by a consensus the meeting was adjourned at 12:55 PM.

Respectfully submitted

/s/Virginia Hook, Secretary

Dated: _____