

**Minutes of the Government Records Council
September 8, 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. Ms. Tabakin arrived at 9:30AM.

The Council met in closed session from 9:25AM to 10:50AM. Ms. Tabakin arrived at 9:30AM.

Open Session reconvened at 11:00AM.

Personnel Matters:

Mr. Dice stated that Ms. Dara Lownie would be joining the GRC staff starting September 19, 2005 filing the position vacated by Ms. Knoedler's position.

Minutes:

Mr. Maltese call for a motion to accept the May 12, 2005 Open and Closed Sessions Minutes as amended. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by roll call.

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

Nays: None

Abstain: Mr. Fishman

Not In Attendance: Ms. Schonyers

Mr. Maltese call for a motion to accept the June 9, 2005 Open and Closed Sessions Minutes as amended. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by roll call.

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

Nays: None

Abstain: Ms. Tabakin

Not In Attendance: Ms. Schonyers

Administrative Closures

Ms. Luzzatto presented the following Administrative Closures:

Christian Fernandez v. NJ State Parole Board 2005-114 – withdrawn.
Scott Mooney, Esq. v. Bergen County Prosecutors Office 2005-105 –withdrawn.
Doanl Meyers v. Borough of Fairlawn 2005-106 – settled in mediation.
Frank Weeden v. City of Trenton 2005-113 – withdrawn.
Tucker Kelley v. Township of Rockaway 2005-139 – agreed to mediation.
Stephen Biss v. City of Patterson 2005-156 – agreed to mediation.
John Paff v. Borough of Jamesburg 2005-120 – agreed to mediation.
Gerard J. Morey v. Central Regional School District 2005-124 – agreed to mediation.
Janet Renshaw v. City of Hoboken 2005-128 – withdrawn.
Scott McKnight v. Atlantic County 2005-141 – no records responsive to the request.
Nick Sunday v. NJ State Council on the Arts 2005-155 – agreed to mediation.
Joseph Petrucelli v. Township of Edison 2004-210 – withdrawn.
Pat Smith v. NJ Department of Health 2005-85 – withdrawn.
Larry Kohn v. Township of Livingston 2004-12 - settled in mediation.
Larry Kohn v. Township of Livingston 2004- 43 -settled in mediation.

Mr. Dice stated the Richard Rivera v. Township of West New York moved to the October Agenda.

John Paff v. Department of Labor 2003-128

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 recommendation to the Council:

In accordance with the August 2, 2005 Superior Court of New Jersey - Appellate Division decision, the Council will conduct an *in camera* inspection of the requested documents in this case at its October 13, 2005 meeting.

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

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

Nays: None

Abstain: None

Not In Attendance: Ms. Schonyers

Anne Rademacher v. Borough of Eastontown 2004-18

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 recommendation to the Council:

In accordance with the August 2, 2005 Superior Court of New Jersey - Appellate Division decision, the Council will conduct an *in camera* inspection of the requested documents in this case at its October 13, 2005 meeting.

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

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

Nays: None

Abstain: None

Not In Attendance: Ms. Schonyers

Jeffrey Sauter v. Township of Colts Neck 2004-68

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 find that the Custodian has complied with the August 11, 2005 Interim Decision by providing the Complainant with the redacted records within ten (10) days of receipt of the decision.

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

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

Nays: None

Abstain: Mr. Maltese

Not In Attendance: Ms. Schonyers

Beth Burns v. Borough of Collingswood 2004-169

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 request that un-redacted copies of all the marketing studies as requested be presented at the October 13, 2005 Council meeting for an *in camera* inspection to determine whether the documents are exempt from disclosure, in whole or in part, because the document is "advisory, consultative, or deliberative material" and "information which, if disclosed, would give an advantage to competitors or bidders" pursuant to 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 Mr. Fishman and seconded by Ms. Minus-Vincent. The motion was adopted by roll call.

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

Nays: None

Abstain: Mr. Maltese

Not In Attendance: Ms. Schonyers

Jill Glasser v. Richard Stockton College 2004-194

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. Mr. Dice presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council order an *in camera* inspection of the consultant's report sought in the OPRA request for the October 13, 2005 meeting.

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

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

Nays: None

Abstain: None

Not In Attendance: Ms. Schonyers

Joseph Sooy v. NJ 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. Ms. McGann presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council close the case with no further action because the Custodian has complied with the August 11, 2005 Interim Decision by providing the Complainant with the unredacted records within ten (10) days of receipt of the Council's decision.

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

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

Nays: None

Abstain: None

Not In Attendance: Ms. Schonyers

John Paff v. Township of Plainsboro 2005-29

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. Ms. McGann presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council conduct an *in camera* review of the unredacted October 27, 2004 minutes of the Township Committee's executive sessions for the October 13, 2005.

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

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

Nays: None

Abstain: None

Not In Attendance: Ms. Schonyers

Mr. Maltese asked Mr. Dice to be very specific when requesting documents for *in-camera* inspections.

Esti Mosee v. Atlantic City Police Department 2005-33

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. Ms. McGann presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Complainant has a Superior Court case pending which also addresses the subject matter of this denial of access complaint.
2. The Council lacks jurisdiction to make a determination in this Complaint pursuant to N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7(g).

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

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

Nays: None

Abstain: None

Not In Attendance: Ms. Schonyers

Eugene Mulero v. Morristown Business Administrator 2005-57

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. Ms. Gardner presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council find that the requested record is not disclosable, because it is attorney-client privilege and is exempt from disclosure pursuant to 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. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by roll call.

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

Nays: None

Abstain: None

Not In Attendance: Ms. Schonyers

Louis Toscano v. NJ Department of Labor 2005-59

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 find that:

1. The Custodian has met the burden of proving that there was no unlawful denial of access and that the Complainant was provided access to all records responsive to the request.
2. The Custodian did not respond in a timely manner pursuant to N.J.S.A. 47:1A-5(i), the Custodian should have responded to the Complaint, as soon as possible, but not later than seven business days. Also, pursuant to N.J.S.A. 47:1A-5(g) the Custodian should have provided a written response to the Complainant when he/she is unable to comply with the request.
3. Pursuant to N.J.S.A. 47:1A-7(b), the GRC does not have the authority over the condition of records sent by the Custodian of Records.

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

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

Nays: None

Abstain: None

Not In Attendance: Ms. Schonyers

Beth Burns v. Borough of Collingswood 2005-68

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. Ms. McGann presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Custodian has borne the burden of proving that the Complainant was in receipt of all contracts and agreements responsive to the request. Therefore, there was no unlawful denial of access.
2. The Custodian has violated N.J.S.A. 47:1A-5(e) in not providing immediate access to the requested contracts and has violated N.J.S.A. 47:1A-5(g) in not providing the Complainant a written response to the request.
3. In view of the fact that the records were released to the Complainant and the Complainant was given a reason for the delay, the Custodian's actions do not rise to the level of a knowing and willful violation of N.J.S.A. 47:1A-1, et. seq. under the totality of the circumstances.

Ms. Minus-Vincent called for a motion to accept the Executive Director's recommendation. A motion was made by Ms. Tabakin and seconded by Mr. Fishman. The motion was adopted by roll call.

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

Nays: None

Abstain: None

Recused: Mr. Maltese

Not In Attendance: Ms. Schonyers

Martin O'Shea v. Township of West Milford 2004-207 & 2005-31

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

The Executive Director respectfully recommended that the Council find that:

1. The Custodian provided a copy of the un-redacted invoice to the Complainant on August 9, 2005 and has complied with the Council's July 14, 2005 Interim Decision in this matter.
2. The Council should reaffirm its May 12, 2005 decision and find that the delay in providing access to the un-redacted copy of the invoice pursuant to the Council's

July 14, 2005 Interim Decision did not knowingly and willfully violate OPRA under the totality of the circumstances.

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

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

Nays: None

Abstain: None

Recused: Ms. Tabakin

Not In Attendance: Ms. Schonyers

Martin O'Shea v. West Milford 2004-87

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

The Executive Director respectfully recommended that the Council:

1. Reaffirm the analysis of the Executive Director's Findings and Recommendation of October 7, 2004 that was unanimously accepted by the Council in October 14, 2004 final decision.
2. After reconsidering the facts of this case and the legal standard for knowing and willful, the Council should find that the Custodian's actions do not rise to the level of 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 written. A motion was made by Ms. Minus-Vincent and seconded by Mr. Fishman. The motion was adopted by roll call.

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

Nays: None

Abstain: None

Recused: Ms. Tabakin

Not In Attendance: Ms. Schonyers

John Paff v. Borough of Far Hills 2005-30

Mr. Dice stated that at its September 8, 2005 public meeting, the Government Records Council (Council) conducted an *in camera* inspection of the following unredacted document for a determination on access in the Complainant's OPRA request:

- August 9, 2004 Executive Session Meeting Minute's

After completing the *in camera* review of the unredacted August 9, 2004 Executive Session Meeting Minutes in Closed Session, the Council concluded by a unanimous vote that the Open Public Meetings Act provisions N.J.S.A. 10:4-12(b)7 and N.J.S.A. 10:4-12(b)8 are applicable exemptions to the information contained in the three paragraphs of the requested August 9, 2004 Executive Session Meeting Minutes and therefore, not disclosable pursuant to N.J.S.A. 47:1A-9.

John Paff v. Borough of Somerville 2005-55

Mr. Dice stated that at the September 8, 2005 public meeting, the Government Records Council ("Council") was to conduct an *in camera* inspection of Executive Session minutes sought in the OPRA request and the subject of the Denial of Access Complaint pursuant the Council's August 11, 2005 Interim Decision. The Custodian provided only the unredacted December 20, 2004 Executive Session Workshop minutes and did not provide the March 1, 2004 and June 7, 2004 Executive Session Workshop minutes which were also subject of the OPRA and request and the Denial of Access Complaint. The Council, therefore, voted unanimously that the Custodian present the March 1, 2004 and June 7, 2004 Executive Session Workshop minutes to the Council for the *in camera* inspection at the October 13, 2005 meeting.

Public Members:

Martin O'Shea – West Milford, NJ

Mr. O'Shea stated that he had a problem with the reconsideration of 2004-87. Mr. O'Shea read from the Executive Director's recommendation dismissing the complaint. Mr. O'Shea objected to the dismissal of the complaint and would like to see this rectified. Mr. O'Shea continued on with his discussion of this case.

Mr. O'Shea also discussed the following cases O'Shea v. Township of West Milford 2004-207 & 2005-31 and Martin O'Shea v. Township of West Milford 2004-207 & 2005-31.

Mr. Maltese called for a motion to adjourn. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by consensus.

Meeting Adjourned 11:50AM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "DeAnna Minus-Vincent". The signature is fluid and cursive, with a large initial "D" and "M".

DeAnna Minus-Vincent, Secretary

Dated: November 10, 2005