

MINUTES OF THE GOVERNMENT RECORDS COUNCIL
September 9, 2004

The meeting was called to order at 9:15AM 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, Charles Richman (designee of Commissioner Susan Bass Levin, Department of Community Affairs),

Absent: Bernard Spigner, and 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 second by Mr. Richman. All members present unanimously approved the motion. The Council met in closed session from 9:15AM to 10:30AM. The Council reconvened in open session at 10:45AM 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, Charles Richman (designee of Commissioner Susan Bass Levin, Department of Community Affairs).

Also Present: Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, Deputy Attorney General Debra Allen, GRC Attorney Advisor David Zipin, Staff Associates Christopher Malloy, Marion Davies, Erin Mallon, and Kimberly Gardner.

Mr. Maltese asked for the Executive Director's report on personnel. The Executive Director Dice stated an offer was made for the Case Management position; however, no start date had been set. Also an advertisement has been placed in the New Jersey Law Journal as well as an ad on the New Jersey League of Municipalities website to recruit independent counsel.

Mr. Maltese called for a motion to accept the Closed Session Meeting Minutes from the July 8, 2004 meeting as written. A motion was made by Mr. Richman, and second by Ms. Hook. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Mr. Maltese called for a motion to accept the Open Public Meeting Minutes for the July 8, 2004 meeting as written. A motion was made by Ms. Hook and second by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Mr. Maltese stated that he would need to recuse himself from a several cases listed on the agenda, which would mean the Council would not have a quorum. Therefore, the following cases were adjourned until the next meeting: Hugh Sharkey v. Borough of Oceanport (2004-67), and Smith v. Department of Corrections (2004-790). Mr. Maltese also stated that the Martin O'Shea v. West Milford Township Board of Education case would not be heard because additional documentation was received from both the Complainant and Custodian of Records, and it is of importance that the council members review the correspondence and then discuss the case at the next meeting.

Mr. Maltese stated for the record that the Council would do a single motion on cases with similar dispositions. The following cases should be dismissed because the complaints were settled in mediation: Jeffrey Matfus v. Rivervale Board of Education (2003-50), Jeffrey Matfus v. Rivervale Board of Education (2003-60), Lois Lebbing v. Middlesex County Department of Planning (2004-27), Kate Burlett v. Monmouth County Board of Freeholders (2004-75), and Richard Rivera v. Town of West New York (2004-77). A motion was made by Ms. Hook to dismiss the named cases for the reason stated, and second by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Mr. Maltese noted that there was a group of cases withdraw by the complainants, which are: Antoine Hayes v. New Jersey State Parole Board (2004-84), Joseph Renna v. County of Union (2004-102), and Joseph Bernardell v. Moorestown Township (2004-117). A motion was made to dismiss the cases for the reason stated by Ms. Hook, and second by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Mr. Maltese noted for the record the third category of cases were moved into mediation at the request of the parties, which are the following cases: David Herron v. Township of Montclair (2004-115), Amy Hollenbeck v. Somers Point Police Department (2004-116), Barbara Schwarz v. Department of Law and Public Safety (2004-121), Barbara Schwarz v. New Jersey State Library (2004-123), and Barbara Schwarz v. Department of Commerce (2004-124).

Mr. Maltese called for a motion to hold the cases in abeyance pending the outcome of mediation. A motion was made by Ms. Hook, and second by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

The next order of business on the agenda was to review the following cases:

Thomas Toth v. Ewing Township (2004-21)

Ms. Gardner stated that this case was heard at the Government Records Council Meeting on April 8th. At that time, the case was going to mediation. The case was not settled in mediation; therefore, the case is before the Council today.

The Complainant requested access to the financial documents submitted by the Mayor to township Council at the 02/23/04 agenda meeting, supporting the early retirement proposal. He does not want individual identifying information, but seeks aggregate data that provides estimated savings, costs, and other aggregate information. The Complainant does not believe that the information he requested is “inter-agency or intra-agency advisory, consultative, or deliberative material.”

During the mediation process, the Township provided the Complainant with copies of redacted documents responsive to his request on April 15, 2004, with redactions of employee vacation and sick time and the analyses performed to estimate the annualized impact of various potential early retirement situations.

It was the Executive Director’s recommendation that the Council dismiss on the basis that the requested documents could not be released in whole or in part to the Complaint pursuant to OPRA.

Mr. Maltese called for a motion that the staff determine if the agenda meeting was a public meeting, if so, the document(s) requested be released to the requester within ten (10) days of receipt of the order, and a final determination will be made at the next meeting. A motion was made by Ms. Hook, and second by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Gerald Weimer v. Township of Middletown (2004-22)

Ms. Mallon stated that this case was before the Council at the July 8th, 2004 public meeting. At that time the Council ordered a number of actions to be executed by the Custodian, primarily a disclosure of records responsive to the request with appropriate redactions, and in the findings and supplemental findings and recommendations of the case as outlined.

In response to the Council's final decision on July 15th, 2004, all parties were informed that all orders by the Council were to be completed within ten (10) days from receipt of the decision, and a written confirmation transmitted to the Government Records Council (GRC) staff that the ordered actions were completed. On August 10, 2004, the Complainant received a letter from the Custodian's counsel informing the Complainant that by fulfilling the request as ordered a special service charge would apply. As to date the Complainant has not received the requested documents and the Custodian has not complied with the Council's final decision.

It was the Executive Director's recommendation that the Council refer the case to the Office of Administrative Law (OAL) for a hearing to determine whether or not the Custodian's non compliance with the Council's order was effectively resulting in a denial of access to the requested documents as well as a knowing and willful violation under the totality of the circumstances under the Open Public Records Act (OPRA).

Mr. Maltese called for a motion to send the matter to OAL for a determination of a knowing and willful violation and a referral back to the Council as to whether there should be a penalty. A motion was made by Ms. Hook, and second by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Karen Leibel v. Manalapan Englishtown Regional Board of Education (2004-50 & 2004-53)

Ms. Mallon stated that the Complainant made an OPRA request on Complaint No. 2004-53 on April 2, 2004 seeking various items regarding the transportation facility as outlined in items one through nine (1-9). The Complainant alleged that the Custodian did not disclose all the records in response to her request. The Custodian denied items one through three, six, eight, and nine (1-3, 6, 8, and 9) because the requests were too broad in scope. Regarding items four and five (4 and 5), the Custodian denied access to the Complainant's request because it was not applicable to

the repair facility and no records were kept on file in response to that portion of the request. Item seven (7) was released to the Complainant, however, she argues that the record was not given out at the meeting on January 21, 2004, and was not in response to her request.

In Complainant No. 2004-50, the Custodian asked for clarification and resubmission of the OPRA request for the items that were too broad on April 12, 2004, however, the Custodian never received any clarification for requested items.

It was the Executive Director's recommendation that the Council find that the Custodian did not knowingly and willfully violate OPRA by seeking clarification of above mentioned items, therefore, Government Records Council (GRC) asked the Council to give the Custodian seven business days to respond to the request that were too broad, and to notify the Executive Director upon completion.

Mr. Maltese called for a motion to focus on the Custodian's response being proper. A motion was made by Ms. Hook, and second by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Karen Leibel v. Manalapan Englishtown Regional Board of Education (2004-51)

Ms. Mallon stated that the Complainant filed a Denial of Access Complaint on April 26, 2004, alleging that the Custodian did not disclose all bills pertaining to the running of the bus garage and transportation office as well as all documents pertaining to the maintenance and state inspection of each bus. The Custodian responded to the request on April 2, 2004, and disclosed two documents pertaining to the certificate of occupancy for the bus repair facility, and the construction cost for the bus garage. On April 2, 2004 the Custodian upon clarification and resubmission of the request also denied the other four requests. The Complainant must be more specific including a bus number, or range of dates in order for the Custodian to fill the request.

It was the Executive Director's recommendation that the Council dismiss the case on the basis that the Custodian was proper in denying access to said records because he has met the burden of proof that clarification is needed to fulfill the request, which the Complainant failed to resubmit request for items in question.

Mr. Maltese called for a motion to accept the recommendation to dismiss. A motion was made by Mr. Richman, and second by Ms. Hook. The motion was adopted by roll call:

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

Nays: None

Abstain: None

John Paff v. City of Perth Amboy (2004-58)

Ms. Gardner presented that the Complainant submitted a request to the Custodian for several items, and in response to his request were four issues in his complaint to the Government Records Council (GRC). The first issue of the Complainant's request was the Custodian failed to provide the records in the medium he requested. The second issue was the Custodian improperly denied him closed session meeting minutes. The third was the December 8, 2003 meeting minutes were not included with the release information, and the fourth issue was the Custodian's dilatoriness in releasing the records five (5) weeks after the Complainant's request.

The Custodian did release the records to the Complainant in paper form as kept on file by the City of Perth Amboy. The denial of access to the closed session meeting minutes was not released because the Complainant did not specify the information he sought. The December 8, 2003 meeting minutes were released to the Complainant on June 23, 2004, and lastly there was ongoing communication between the Custodian and Complainant in regard to the clarification and cost of the records.

It was the Executive Director's recommendation that the Council find that the Custodian needed to explain the reason the records could not be converted and the cost for the conversion pursuant to the Open Public Records Act N.J.S.A. 47:1A-1 et. seq. Also the Custodian should have release any and all information pertaining to the closed session meeting minutes with the appropriate redactions pursuant to N.J.S.A. 47:1A-1.1 et. seq. The issue for the December 8, 2003 meeting minutes should be dismissed because the Custodian did provide the records to the Complainant. Finally, the Custodian was not knowingly and willfully in violation of OPRA under the totality of circumstances for failure to fully explain the fee charge for the copies requested by the Complainant.

Mr. Maltese called for a motion to order the Custodian to convert records from paper form to electronic if the Complainant still wants it. A motion was made by Ms. Hook, and second by Mr. Richman. The motion was adopted by roll call:

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

Nays: None

Abstain: None

Josef Wodeslavsky v. City of Englewood (2004-70)

Ms. Davies stated that the Complainant made his initial request for records to the City of Englewood on June 1, 2004. The request went to the Construction Official Zoning Officer, who acknowledges receipt of the request after his return from vacation on June 17, 2004, however, the Custodian did not send out any information to the Complainant until June 22, 2004. After no response to the Complainant's request, he filed a Denial of Access Complaint with the

Government Records Council (GRC) on June 10, 2004 pursuant to N.J.S.A. 47:1A-1 et. seq. The Complainant acknowledges that he received some records from the Custodian, but had not received all the information requested in his original request.

In a letter dated August 24, 2004, the Complainant accused the Custodian of hiding and fabricating documents, however, there was no evidence to support the allegation against the Custodian. Therefore, the Complainant's allegation of the fabrication of documents could not be addressed as this issue was outside of the Council's jurisdiction pursuant to N.J.S.A. 47:1A-7(b).

It is the Executive Director's recommendation that the Council should refer the case to the Office of Administrative Law to determine if the Custodian and/or the personnel of the City of Englewood knowingly and willfully violated OPRA by providing untimely responses, and unexplained and staggered document submissions to the Complainant.

Mr. Maltese called for a motion to accept the recommendation as written. A motion was made by Ms. Hook, and second by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hooks, Mr. Richman, and Mr. Maltese

Nays: None

Abstain: None

Josef Wodeslavsky v. New Jersey Administrative Office of the Courts (2004-91)

Ms. Davies stated that the Complainant filed a Denial of Access Complaint with the Government Records Council (GRC) on July 13, 2004 alleging a denial of access to information about the courts Automated Case Management System (ACMS), the fees collected by the courts on complaints, motions, answers with counter claims, and information on court personnel being able to make changes at their discretion. The Complainant received a response on July 12, 2004, but was not satisfied with the response from the Custodian. The Custodian denied the Complainant access to view a demonstration of the ACMS pursuant to Court Rule 1:38.

It is the Executive Director's recommendation that the Council dismiss the case because the GRC does not have jurisdiction to regulate the Administrative Office of the Courts' (AOC) process. Therefore, the GRC lacks jurisdiction in this matter pursuant to OPRA.

Mr. Maltese called for a motion to accept the recommendation because the GRC lacked jurisdiction. A motion was made by Mr. Richman, and second by Ms. Hook. The motion was adopted by roll call:

Ayes: Mr. Richman, Ms. Hooks, and Mr. Maltese

Nays: None

Abstain: None

Mr. Maltese opened the meeting for public comment. Having no public comments, Mr. Maltese called for a motion to adjourn.

A motion was made by Ms. Hook, and second by Mr. Richman. The motion was passed by consensus. The meeting was adjourned at 12:00 pm.

Respectfully submitted

/s/Virginia Hook, Secretary

Dated: 1-13/05