

Minutes of the Government Records Council
November 10, 2005 Public Meeting - Open Session

The meeting was called to order at 9:12 a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read. Ms. Davies called the roll:

Present: Mr. Maltese, Ms. DeAnna Minus-Vincent (designee of Acting Commissioner Charles Richman, Department of Community of Affairs), Ms. Robin Berg-Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Dara Lownie, Jennifer Arozamena, Colleen McGann and Marion Davies.

Not In Attendance: Ms. Schonyers (designee of Acting Commissioner, Lucille Davy, Department of Education)

Mr. Maltese called for a motion to go into closed session to discuss *in camera* decisions and other legal advise. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by a unanimous vote.

The Council met in closed session from 9:16 a.m. to 10:45 a.m.

Open Session reconvened at 10:50a.m.

The pledge of allegiance was recited.

Ms. Luzzatto called the roll:

Present Council Members: Mr. Maltese, Ms. Minus-Vincent, Ms.Tabakin.

Not In Attendance: Ms Schonyers

Executive Director's Report:

Mr. Dice stated that the GRC will be attending the New Jersey League of Municipalities Convention in Atlantic City. The OPRA outreaches for custodians have begun to be scheduled for 2006 and we will close 2005 with a total of 28 outreaches.

Mr. Dice discussed correspondence regarding closed session minutes which are now posted for the public's consumption on our website.

Minutes:

Mr. Maltese called for a motion to accept the Open and Closed session minutes for September and October 2005. A motion was made by Ms. Tabakin and seconded by Ms.

Minus-Vincent. The motion passed unanimously.

Administrative Dispositions – Council Consent:

Mr. Maltese presented the following Administrative Case Dispositions:

1. Claudine Scozzari v. NJ Department of Transportation 2005-152 Israel
Rodriques v. NJ State Parole Board - 2005-153
2. Nick Sunday v. NJ Council on Arts - 2005-155
3. Steven Biss v. Passaic County Sheriff's Office 2005-157
4. Martin O'Shea v. Township of West Milford 2005-187
5. Paul Graupe v. City of Clifton - 2005-189
6. Joy DeSanctis v. Township of Ocean – 2005-194
7. John Paff v. Borough of Metuchen 2005-201

Mr. Maltese called for a motion to accept the Executive Director's Administrative Case Dispositions. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

Mr. Dice stated that the Council will be re-opening the Libertarian Party v. the Division of Youth and Family Services 2004-114 for reconsideration.

Mr. Maltese discussed the *in camera* cases that would be heard at the meeting. He stated that the process time is consuming however, each case requires proper consideration. Mr. Dice stated that a new *in camera* process is being considered which would expedite the *in camera* process.

John Paff v. Borough of Somerville 2005-55

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director at the October 13, 2005 meeting.

At the November 10, 2005 public meeting, the Government Records Council ("Council") considered the November 4, 2005 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian has complied with the Council's October 13, 2005 decision.

James Colby v. Pittsgrove Township (Board of Fire Commissioners) 2005-88

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

The Executive Director respectfully recommended the Council find that:

1. Pursuant to the fact that the record requested did not exist at the time of the request, there would not have been an unlawful denial of access except that the Custodian's delay in responding to the Complainant's request resulted in a "deemed" denial of access pursuant to N.J.S.A. 47:1A-5.i.
2. The Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances on the basis that the Custodian responded to the request on the eighth business day, one day later than the OPRA allows.
3. The Council has ruled that a form is not necessary to make a request for records. Therefore, a lack of form did not create a Denial of Access to other records, giving the Government Records Council the authority to act.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. Motion passed unanimously.

John McCormack v. NJ Department of Treasury 2005-102

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 to the Council:

The Executive Director respectfully recommended the Council find that:

1. Based on the fact that, while Custodian's reasons for denying access to the requested monthly reports are compelling there is insufficient evidence to determine if the documents are exempt from access. Therefore, the Council should perform an *in camera* inspection of the requested reports.
2. In view of the facts that the Custodian in this case did inform the Complainant as to the reasons for the Denial of Access and there is no evidence that the Custodian's actions "had a positive element of conscious wrongdoing" or were, "intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional" it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of the OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Starghill added an amendment to the findings and recommendations stating that the issue of knowing and willful should read an unreasonable denial of access according to the statutory language of OPRA not unlawful, which is a different legal standard.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. Motion passed unanimously.

John Brennan v. Monmouth County Prosecutor 2005-119

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

The Executive Director respectfully recommended the Council find that:

Based on the Custodian's certification, as well as Janeczko there was no unlawful denial of access to the June 27, 2003 letter from Robert Linton to Prosecutor Kaye as the Custodian has met their burden of proving that the letter is a "criminal investigatory record" and therefore not required to be made, maintained or kept on file pursuant to the OPRA.

A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin not to adopt the Executive Director's Findings and Recommendations, but instead concluded that the requested letter from Mr. Linton be disclosed with necessary redactions pursuant to the Open Public Records Act ("OPRA") because the letter preceded the investigation and was determined not to be part of the investigation. Therefore, the Custodian is to disclose the requested letter with necessary redactions pursuant to the OPRA and simultaneously provide written notice to the Executive Director of compliance. The motion passed unanimously.

Eric Wiggins v. Atlantic County Justice Facility 2005-142

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

The Executive Director respectfully recommended that the Council find:

Pursuant to N.J.S.A. 47:1A-5.g., an unlawful denial of access cannot be substantiated without proof of the OPRA request that is subject in this complaint therefore this case should be dismissed.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. Motion passed unanimously.

Brian McCrone v. Burlington County Prosecutor's Office 2005-146

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

The Executive Director respectfully recommended the Council find that:

The Custodian has borne the burden of proving that the denial of access was authorized by law due to the criminal investigatory records exemption pursuant to N.J.S.A. 47:1A-1.1 and released all other records responsive to the request.

Mr Maltese called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The Motion passed unanimously.

Tina Renna v. County of Union 2005-178 and 2005-180

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

The Executive Director respectfully recommended the Council find that:

1. The Custodian has born the burden of proving that the denial of access was lawful pursuant to N.J.S.A. 47:1A-6.
2. The Custodian has provided immediate access to bills as prescribed under N.J.S.A. 47:1A-5.e.
3. The Custodian has properly responded to the September 6, 2005 and September 20, 2005 requests within the statutorily required seven (7) business days pursuant to N.J.S.A. 47:1A-5.i.
4. The Custodian's actions to not rise to a knowing and willful violation of OPRA and unreasonable denial of access under the totality of circumstances pursuant to N.J.S.A. 47:1A-7.e.

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 Ms. Tabakin. Motion passed unanimously.

Gilda Gill v. Salem County Clerk's Office 2005-185

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

The Executive Director respectfully recommended the Council find that:

In accordance with N.J.S.A. 47:1A-1 et seq., the Custodian should disclose the document(s) responsive to the request, with appropriate redactions and a legal justification for same, or submit a legal certification stating that the document does not exist to the Executive Director within ten (10) calendar days of receipt of the Council's decision.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. Motion passed unanimously.

Robert Ross v. Atlantic County Prosecutors Office 2005-191

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

The Executive Director respectfully recommended that the Council find that:

1. The Complainant has a Superior Court case pending which also addresses the subject matter of this Denial of Access Complaint.
2. The Council does not have jurisdiction to make a determination in this Complaint pursuant to Mosee v. Atlantic City Police Department, GRC Complaint No. 2005-33 as well as 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 as written. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. Motion passed unanimously.

Mr. Dice stated that at the next meeting the Council will have for its review and vote an Advisory Opinion on Prevailing Party and Subsequent Attorneys Fee. Mr. Dice also stated that he would also give the Council a report on a similar Advisory Opinion on Knowing and Willful violations.

Mr. Dice also addressed the discontinuing of the use of the Matrix.

Anne Rademacher v. Borough of Eatontown – 2004-18

During the Closed Session, the Council conducted the *in camera* inspection of the unredacted report prepared for the Borough of Eatontown by the New Jersey Professional Management Company sought in the OPRA request.

A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin to order that the Custodian disclose the requested Management Study for the Borough of Eatontown – Task I Organizational Structure, except the information as specifically set forth below which is exempt from disclosure as “inter-agency or intra-agency advisory, consultative or deliberative material” pursuant to N.J.S.A. 47:1A-1.1.

The motion passed unanimously.

Management Study For the Borough of Eatontown (Study) – Task I Organizational Structure:

The Study, Task I consists of twenty-seven (27) total pages: 4 pages include the cover page, table of contents and Task II table of contents, the written report with numbered pages 1 through 16, and 7 pages identified as Appendix A through Appendix G.

1. **Page 2:** Redact all sentences after the first sentence in paragraph one, the third sentence in paragraph two, the second and third sentences in paragraph three.
2. **Page 3:** Redact the third and fourth sentences in paragraph one and all of paragraph three.
3. **Page 4:** Redact paragraph one, the first, second and fourth sentences in paragraph two, and paragraph five.
4. **Page 5:** Redact paragraph two, the third and fourth sentences in paragraph three, the second sentence in paragraph five, and the second sentence in paragraph six.
5. **Page 6:** Redact the last sentence in paragraph one after “ADP” and the last sentence in paragraph four.
6. **Page 7:** Redact paragraph one, the fifth sentence in paragraph two and the second sentence in paragraph three.
7. **Page 8:** Redact the second, fifth, sixth, seventh and eighth sentences in paragraph two, the second sentence after “such” and the first four words in the fourth sentence in paragraph three.
8. **Page 9:** Redact the paragraph on this page.
9. **Page 10:** Redact paragraph five and the first sentence in paragraph six.

10. **Page 11 and 12:** Redact the third sentence in paragraph one, the second sentence in paragraph three, all of paragraph four, the sixth sentence in paragraph five on page 11 and ending on page 12.
11. **Page 13:** Redact paragraph three.
12. **Page 14:** Redact the two paragraphs on this page.
13. **Page 15:** Redact the second sentence in paragraph two, the second sentence in paragraph three and the last sentence in paragraph four.
14. **Page 16:** Redact the last sentence in paragraph two.
15. **Appendices A through G:** The Council concluded that it was unclear which charts are proposed or current tables of the organization referenced in Task I and therefore, the Custodian is to provide access to the current tables of the organization contained in Appendices A through G with redactions of proposed organization changes.

Public Comments:

Michael Rizzo – Fairfield, NJ.

Mr. Rizzo – Title Search Industry. Discussed his concerns with OPRA and the title search industry.

Martin O’Shea – West Milford, NJ.

Mr. O’Shea distributed eight (8) copies of two (2) letters referencing his denial of access complaints.

John Paff – Somerville, NJ

Mr. Paff discussed the custodian consequence policy. Mr. Paff also spoke on a letter from Senator Martin to the Government Records Council.

Mr. Maltese called for motion to go into closed session for the purpose of discussing two *in camera* cases. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. Motion passed unanimously.

The Council met in closed session from 12:00 noon until 12:55.

Mr. Maltese called for a motion to go back into open session. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

Resume Open Session 1:05 pm

Mr. Maltese stated that there would be discussion on the following cases:

1. John Paff v. Department of Labor 2003-128
2. Ann Glasser v. Stockton College 2004-194

Ann Glasser v. Stockton College 2004-194

During closed session the Council conducted the *in camera* inspection of the unredacted consultant's report performed by Victor Augustia on July 20 and 21, 2004 pertaining to the media center at the Richard Stockton College of New Jersey October 27, 2004 sought in the OPRA request.

After completing the *in camera* review of the unredacted record in closed session, the Council concluded that, all the redacted information in the document was properly withheld pursuant to N.J.S.A. 47:1A-10 as the information related to employee evaluations, managerial recommendations for disciplinary action and terminations with the exception of the redaction on Page 1 of the report in the upper right hand corner for which there was no lawful basis for not disclosing same. The Council noted further that the redacted document was stamped "confidential" on each page of said report however; the unredacted document did not contain a "confidential" stamp on all pages.

A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent to accept the Council's *in camera* conclusions.

Therefore by a unanimous vote, the Council finds that pursuant to N.J.S.A. 47:1A-10 there was a lawful basis for the denial of access to all the redacted information contained in the requested document with the exception of the information appearing in the upper right hand corner of Page 1 of said document and that the Custodian is to provide the Executive Director with an explanation of why the redacted document was stamped "confidential" on each page of said report, but the unredacted document did not contain a "confidential" stamp on all pages.

John Paff v. Department of Labor 2003-128

During the closed session the Council conducted the *in camera* inspection of the two unredacted records dated August 17, 2000 and September 1, 1999.

After completing the *in camera* review of the unredacted records in closed session, the Council concluded the following:

1. **Document - Letter Dated August 17, 2000**: Disclose the name and address, to which the letter is written, the date of the letter, and the salutation including the sender's name pursuant to N.J.A.C. 12:15-2.1 and 2.2(a) 3; all other information

in the document is exempt from disclosure pursuant to N.J.S.A. 43:21-11.g. and N.J.A.C. 12:15-2.1 thru 2.4.

2. **Document – Letter Dated September 1, 1999:** Disclose the name and address in the letterhead, the date, the method of delivery, and the signature including the sender's name under the signature pursuant to N.J.A.C. 12:15-2.1 and 2.2(a) 3; all other information in the document is exempt from disclosure pursuant to N.J.S.A. 43:21-11.g. and N.J.A.C. 12:15-2.1 thru 2.4.

The Custodian is to provide the Complainant access to the requested records as set forth herein within ten (10) business days from receipt of the decision and provide confirmation to the Executive Director that the Custodian has complied with the Council's decision.

Mr. Maltese called for a motion to accept the Councils conclusion from the *in camera* inspection. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin the motion passed unanimously.

Mr. Maltese called for a motion to adjourn. Motion passed unanimously.

Meeting adjourned 1:15 pm

Respectfully submitted,



Deanna Minus-Vincent, Secretary

Dated Approved: April 11, 2006

