

**Minutes of the Government Records Council
December 8, 2005 Public Meeting – Open Session**

The meeting was called to order at 9:35a.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: Ms. Diane Schonyers (designee of Acting Commissioner Lucille Davy Department of Education), 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: Mr. Maltese, Chairman

Ms. Schonyers called for a motion to go into closed session to discuss *in camera* decisions and other legal advice. 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 9:40 a.m. to 9:55 a.m.

Open Session reconvened at 10:00 a.m.

The pledge of allegiance was recited.

Ms. Davies called the roll:

Present: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin.

Not In Attendance: Mr. Maltese

Minutes – October 13, 2005

Ms. Schonyers reviewed the minutes of the October 13, 2005 Open and Closed Sessions meeting. Ms. Schonyers called for a motion to accept the Open and Closed Session minutes as amended.

A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent to adopt the minutes with the amendments. The motion passed by a unanimous vote.

Louise Andreaci v. Port Republic School (2004-202)

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 recommendation to the Council:

The Executive Director respectfully recommended that the Council accept the Initial Decision Settlement of the Office of Administrative Law and close this case without further action.

Ms. Schonyers 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.

James Cody v. Middletown Township Public School (2005-98)

Ms. McGann 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. McGann presented the following recommendations to the Council:

The Executive Director respectfully recommended the Council find that:

1. In the case of the records that needed clarification, there is no denial of access to records because the Custodian did properly respond to those requests in writing within the statutorily required seven (7) business days, indicating to the Complainant that clarification was necessary but did not receive a response in return from the Complainant.
2. The Custodian did violate N.J.S.A. 47:1A-5.i. and -5.g. and N.J.S.A. 47:1A-6 by not providing a specific lawful basis for the denial of access to Records Requested "9," "29," "31," "34," and "36" within the statutorily prescribed seven (7) business days
3. The Custodian violated N.J.S.A. 47:1A-5.e. and N.J.S.A. 47:1A-5.g. in not providing immediate access or an immediate response to the request for contracts and bills.
4. Pursuant to N.J.S.A. 47:A-5.c. and given that the Complainant was allowed time to review and object to the special service charge, but instead agreed to and paid the full amount of the charge, this portion of the Complaint should be dismissed.

Ms. Schonyers 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. The motion passed unanimously.

John McCormack v. NJ Department of Treasury (2005-103)

Ms. McGann 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. McGann presented the following recommendation to the Council:

The Executive Director respectfully recommended the Council find that an *in camera* inspection of the requested records is necessary to determine if they are disclosable because there is insufficient evidence to conclude whether the documents are exempt from access because of the advisory, consultative or deliberative exemption under OPRA.

Ms. Schonyers 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. The motion passed unanimously.

John McCormack v. NJ Department of Treasury (2005-104)

Ms. McGann 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. McGann presented the following recommendations to the Council:

The Executive Director respectfully recommended the Council find that:

1. The two (2) memoranda from April 15, 2005 should be released to the Complainant as the "individual in interest" of the personnel record pursuant to N.J.S.A. 47:1A-10.
2. The Council should conduct and *in camera* review of the requested handwritten notes to determine if the ACD exemption set forth in N.J.S.A. 47:1A-1.1 applies.
3. In view of the facts that the Custodian in this case did inform the Complainant as to the reason for the Denial of Access in a timely manner 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.
4. The Custodian shall comply with "1" within ten (10) business days from receipt of this decision on the basis of the Council's above determination and provide confirmation to the Executive Director that the Custodian has complied with the Council's decision.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation with amendments. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

John Fox v. Township of Parsippany (2005-109)

Ms. McGann 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. McGann presented the following recommendation to the Council:

The Executive Director respectfully recommended the Council find that:

Pursuant to N.J.S.A. 47:1A-9.a. and HIPAA, and further supported by the decision of the Superior Court of NJ in Michelson v. Wyatt and City of Plainfield, the Custodian lawfully denied access to the requested cost of healthcare benefits supplied to each individual Council member.

Ms. Schonyers 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. The motion passed unanimously.

Donal Meyers v. Borough of Fair Lawn (2005-127)

Ms. Gardner 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. Gardner presented the following recommendations to the Council:

The Executive Director respectfully recommended that the Council find that:

1. The Custodian may have unlawfully denied access to a government records.
2. The Custodian has not borne her burden of proving that the records responsive to the request are not government records.
3. The Custodian should obtain the government records that are responsive to the request and release them pursuant to the OPRA within ten (10) business days of receipt of the decision and inform the Executive Director of same.

Ms. Schonyers 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. The motion passed unanimously.

Tina Renna v. County of Union (2005-137)

Ms. Gardner 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. Gardner presented the following recommendations to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Custodian has certified that all records responsive to the request have been disclosed to the Complainant.
2. The Council's authority includes decision on access, not on the content of the records released pursuant to N.J.S.A. 47:1A-7.b.
3. The Custodian did lawfully respond to the records request. The Custodian did release records in a timely manner and has not violated N.J.S.A. 47:1A-5.i.
4. The Custodian did not knowingly and willfully violate the OPRA and unreasonably deny access under the totality of the circumstances.

Ms. Schonyers 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.

Jean Varga v. Township Middletown (2005-140)

Ms. Gardner 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. Gardner presented the following recommendation to the Council:

The Executive Director respectfully recommended that the Council find the requested records are criminal investigatory and not disclosable pursuant to N.J.S.A.47:1A-1.1

Ms. Schonyers called for a motion to accept the Executive Director's recommendation with amendments. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. The motion passed unanimously.

Tina Renna v. County of Union (2005-172)

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:

1. The Custodian violated N.J.S.A. 47:1A-5.i. by not properly responding to the August 25, 2005 request within the statutorily required seven (7) business days, therefore causing an unlawful denial of access.
2. 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.

Ms. Schonyers 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. The motion passed unanimously.

John Windish v. Mount Arlington Board of Education (2005-176)

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 to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Complainant has provided written correspondence to GRC staff that confirms that he was able to view the records. Therefore, access is no longer at issue in this Complaint and that portion of the Complaint requires no further action of the Council.
2. The Custodian did violate N.J.S.A. 47:1A-5.e. Contracts are considered immediate access records and the Custodian did delay the release of those records.
3. The Custodian did supply a written response to the Complainant within seven business days; therefore the Custodian did not violate N.J.S.A. 47:1A-5.i.
4. The Custodian did violate N.J.S.A. 47:1A-6 by not providing a lawful basis for the delay in access, however 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.

Ms. Schonyers 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. The motion passed unanimously.

Mr. Dice stated that a request for stay was submitted to the GRC in GRC case No. 2005-119. Ms. Schonyers stated that the Council will be seeking advice from counsel on litigation strategy.

Administrative Case Disposition – Council Consent:

1. Virginia Jeffries v. East Orange Board of Education (2005-112)
2. Marcia Ibrahim v. Department of Law & Public Safety, Div. of Consumer Affairs (2005-117)
3. John Paff v. Borough of Jamesburg (2005-120)
4. Tucker Kelley v. Rockaway Township (2005-139)
5. David Mann v. Legal Services of NJ (2005-143)
6. Stephen Biss v. City of Paterson (2005-156)
7. David Mann v. Bergen County Family Division (2005-195)
8. Leroy T. Moore v. Department of Corrections (2005-199)

9. John Paff v. Borough of Metuchen (2005-201)
10. Philip Stephen Fuoco v. Camden County (2005-223)

Ms. Schonyers called for a motion to accept the Executive Director's administrative case dispositions as written. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. The motion passed unanimously.

Cases Referred to Mediation (Agreements to Mediate)

1. John Paff v. Elizabeth Board of Education (2005-210)
2. Nick Sunday v. Paterson Free Public Library (2005-206)
3. Vesselin Dittrich v. City of Hoboken (2005-218)
4. Vesselin Dittrich v. City of Hoboken (2005-222)

No vote needed on above cases this is for information purposes only.

Executive Director Report and New Business:

Mr. Dice discussed with the Council the letters received from Mr. Paff and letters in response sent to Mr. Paff from the Government Records Council. Mr. Paff's letters reference GRC case No. 2005-197.

Mr. Dice presented Mr. Mitchell Fishman's letter of resignation from the Council. Ms. Schonyers called for a motion to accept Mr. Fishman's resignation as Council member. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. The motion was adopted unanimously.

Mr. Dice discussed the outreach at the League of Municipalities conference. He also stated that he met with NJFOG and ACLU and discussed the outreach in Boston on OPRA and the Freedom of Information Law. He also discussed the outreaches that are planned for 2006.

Public Comment:

Mr. John Paff – Somerville, NJ

Martin O'Shea – West Milford, NJ

Mr. O'Shea distributed letters to the Council for their consideration.

Elizabeth Mason – NJFOG

John McCormack – Trenton, NJ

Hearing no other discussion, Ms. Schonyers called for a motion to adjourn.

A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

Meeting adjourned 11:30 am.

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 Approved: April 11, 2006