

Minutes of the Government Records Council
February 13, 2003

The meeting was called to order at 9:30 a.m. at the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meeting Act statement was read.

Mr. Pfeiffer called the roll:

Present: Chair Vincent Maltese, Dale Caldwell, Assistant Commissioner Department of Community Affairs, Virginia Hook and Bernard Spigner. Mr. Caldwell was designated substitute for Susan Bass Levin, Commissioner of the Department of Community Affairs.

Absent: Dr. Dwight Pfennig, designee of Commissioner William Librera of the Department of Education.

The Chair read a resolution to convene in closed session to receive legal advice concerning the complaints scheduled for adjudication today. Mr. Caldwell moved to adopt the resolution, which was seconded by Ms. Hook. All members present approved the motion. The Council conducted a closed session between 9:35 a.m. and 10:35 a.m.

The Council reconvened in public session at 10:45 a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meeting Act statement was read and attendees said the Pledge of Allegiance.

Mr. Pfeiffer called the roll:

Present: Chair Vincent Maltese, Dale Caldwell, Assistant Commissioner Department of Community Affairs, Virginia Hook and Bernard Spigner. Commissioner Susan Bass Levin provided a letter designating Mr. Caldwell as her representative.

Absent: Dr. Dwight Pfennig, designee of Commissioner William Librera, Department of Education.

Also Present: Acting Executive Director Marc Pfeiffer, Assistant Executive Director Paul Dice, Deputy Attorney General Barbara Conklin, and GRC staff members Marc Leavitt and Joseph Greer.

Mr. Maltese opened the floor to Public Comment. No comments were made.

Mr. Maltese called for adoption of the Minutes of the January 17, 2003 regular meeting as prepared. Mr. Caldwell asked the Executive Director to ensure that meeting minutes reflected that the Council voted by Resolution to go into Closed Session and reconvened its regular meeting at the conclusion of the closed-door session.

Mr. Caldwell moved to adopt the minutes, with a second by Mr. Spigner. The motion was adopted by roll call:

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

Mr. Maltese called for adoption of the Minutes of the January 17, 2003 Executive Session. Mr. Spigner moved to adopt the minutes, with a second by Mr. Caldwell. The motion was adopted by roll call:

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

The Council stated its intention to release the February 13, 2003 Executive Session minutes once all litigation concerning the Complaints discussed therein concludes.

Mr. Pfeiffer read the Executive Director's report, a copy of which is available for public inspection. Mr. Pfeiffer indicated that the GRC now has an index of complaints listed on its website, that the GRC received no communications, and that there was one item of old business:

- **Complaint 2002-33: Serrano v. South Brunswick Township**

Mr. Pfeiffer briefly explained the history of this complaint and indicated that the Middlesex County Prosecutor's Office had sought a stay of the Council's Final Decision pending appeal in the Appellate Division. Mr. Pfeiffer noted that the Chair had extended the deadline for providing access to the tape from January 31 to February 13.

Ms. Conklin noted that the requester opposed the application and summarized the parties' arguments for and against the stay. Ms. Conklin stated that the Council could decide the Prosecutor's application using the criteria used by Courts in deciding stay applications, specifically; 1) irreparable harm if the stay is not granted; and, 2) likelihood of success on appeal by the party requesting the stay. Ms. Conklin stated that the requester argued that there would be no irreparable harm from disclosing the content of the tape because Judge DeVesa had denied the prosecutor's request for a protective order on January 16, ruling that the parties could obtain a fair trial despite release of the tape.

Mr. Caldwell observed that the Council should judge the stay application on its own merits in reference to the appropriate legal criteria and not on the basis of how they had voted on the original OPRA Complaint. Ms. Conklin stated that if the Council decided not to grant the application it would be appropriate for the Council to extend the deadline for access to the 911 by a few days more, to provide the prosecutor time to submit an application for a stay to the Appellate Division. The Council discussed the matter further and Mr. Spigner made a motion to deny the Prosecutor's application for a stay. Ms. Hook seconded the motion. The motion was adopted by roll call:

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

Mr. Maltese called for any New Business.

- **Complaint 2002-6, Teeters v. NJ DYFS**

Mr. Pfeiffer briefly explained the issues presented by the requester and the custodian concerning this request for information for a comprehensive set of records from the DYFS' Bureau of Licensing concerning "A Child's Hope International, Inc.", an adoption agency. Mr. Pfeiffer recommended that instead of adopting the F&R, the Council should give DYFS until February 28, 2003 to: 1) produce documents contained in the complainant's original request as described in the Director's F&R or provide a statement explaining why the records are not accessible under OPRA or do not exist; and 2) submit written arguments whether the requester was a prevailing party and whether the custodian should be penalized for willfully and knowingly violating the law.

The Council held a brief discussion concerning this matter.

Ms. Hook moved to accept Mr. Pfeiffer's oral recommendation, with a second by Mr. Caldwell. The motion was adopted by roll call:

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

- **Complaint 2002-15: Teeters v. NJ DYFS**

Mr. Pfeiffer briefly described the issues presented in the request for access to records of an investigation that "A Child's Hope International, Inc." was falsely advertising it was licensed to perform adoptions in the State of New Jersey. Mr. Pfeiffer observed that several days prior to the meeting, DYFS had produced a copy of an October 2000 letter from DYFS to the agency finding the charges valid, but failed to provide a copy of the complaint that initiated the investigation.

Mr. Pfeiffer recommended that instead of adopting the Director's F&R, the Council should give DYFS until February 28, 2003 to: (a) to produce the complaint mentioned in the October, 2000 letter and any DYFS investigation of it, or explain why they were not accessible under OPRA or did not exist; and (b) submit written arguments whether the requester was a prevailing party and whether the custodian should be penalized for willfully and knowingly violating the law.

Mr. Maltese moved to accept Mr. Pfeiffer's oral recommendation, with a second by Mr. Caldwell. The motion was adopted by roll call:

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

- **Complaint 2002-30: Durkin v. NJ State Police**

Mr. Pfeiffer explained that this case involved a request for a portion of a State Police Intelligence Services Section (ISS) report created by a detective with the NJ State Police. Ms. Conklin explained that there is a federal statute, which prohibits the State Police from disclosing such intelligence reports to persons who were not in law enforcement and did not have a need to know the information. In this case, the State Police affirmed that the requester was neither in law enforcement nor had a need to know the information. The Executive Director recommended that the Council dismiss this case.

Mr. Caldwell moved to adopt the F&R and dismiss the complaint, with a second by Ms. Hook. The motion was adopted by roll call:

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

- **Complaint 2002-88: Minuskin v. NJ Department of Transportation**

Mr. Pfeiffer briefly explained that this matter involved a request for a copy of an appraisal of certain property conducted for the NJ State Department of Transportation and submitted on DOT's behalf in a condemnation proceeding which was now on appeal in Superior Court.

Mr. Maltese proposed that the Council convene a hearing to learn how appraisals were used in condemnations and subsequent appeals and who had access to them.

Ms. Hook moved to hold a hearing on this matter, with a second by Mr. Caldwell. The motion was adopted by roll call:

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

- **Complaint 2002-47: Blue v. Wall Township Police Department**

Mr. Pfeiffer briefly explained the issues presented by the requester and the custodian concerning this request for any and all police records, operations reports, supplemental reports related to police contact with Robert E. Sammon and an arrest which allegedly occurred February 20, 2002. Mr. Pfeiffer recommended that the Council defer action on this complaint pending advice from the Division of Criminal Justice.

Ms. Hook moved to defer action on this complaint, with a second by Mr. Spigner. The motion was adopted by roll call:

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

Mr. Pfeiffer introduced the new Assistant Executive Director of the GRC, Paul Dice. Mr. Dice provided an overview of his professional training and experience

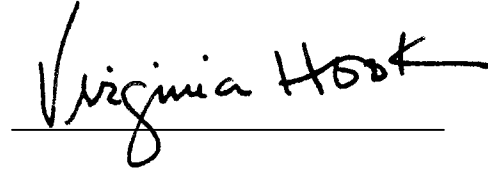
Mr. Maltese opened the floor to public comment. No comments were made.

Mr. Caldwell moved to adjourn the meeting, with a second by Mr. Spigner. The motion was adopted by roll call:

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

Mr. Maltese adjourned the meeting at 11:30 a.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Virginia Hook". The signature is written in a cursive style and is positioned above a solid horizontal line.

Virginia Hook, Secretary