

**MINUTES OF THE GOVERNMENT RECORDS COUNCIL
FEBRUARY 27, 2004**

The meeting was called to order at 9:00 AM. at the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Mr. Dice called the roll:

Present: Chairman Vincent Maltese, Virginia Hook, Bernard Spigner,
Charles Richman, (designee of Commissioner Susan Bass Levin,
Department of Community Affairs

Absent: 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 seconded by Mr. Spigner. All members present approved the motion. The Council met in closed session from 9:00AM to 11:40AM

The Council reconvened in open session at 11:45 AM 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.

Mr. Dice called the roll:

Present: Chairman Vincent Maltese, Virginia Hook, Bernard Spigner,
Charles Richman, (designee of Commissioner Susan Bass Levin,
Department of Community Affairs)

Absent: Diane Schonyers, (designee of Commissioner William Librera)

Also Present: Deputies Attorney General Karen Dumars, Acting Executive Director Paul Dice and GRC Attorney Advisor Susan Jacobucci, Staff Associates Chris Malloy, Anthony Carbabelli, Erin Mallon, Kimberly Gardner and Gloria Luzzatto.

Mr. Dice introduced the new staff members.

Mr. Maltese called for a motion to accept the minutes as written, from the February 10, 2004 open session. A motion was made by Mr. Richman, and seconded by Mr. Spigner. The motion was adopted by a roll call:

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

Absent: Ms. Schonyers

Nays: None

Mr. Maltese called for a motion to accept the minutes from the February 10, 2004 closed session as written, a motion was made by Mr. Spigner, and seconded by Ms. Hook. The motion was adopted by a roll call:

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

Absent: Ms. Schonyers

Nays: None

Mr. Maltese asked for the report of the Acting Executive Director. Mr. Dice indicated there were 93 open cases. He reviewed the breakdown of the cases as follows: Sixty- seven are scheduled to be heard by the GRC; ten cases are work in progress; two on appeal to the Superior Court Appellate Division; six are in the office of Administrative Law; eight cases are in mediation. Total closed cases one hundred ninety.

Mr. Maltese thanked the Council and the staff for all their efforts in bringing the GRC up to date.

Mr. Maltese asked for a review of any communications. Mr. Dice indicated that there were no communications to report.

Mr. Maltese stated that case 2003-34, Warren Cundiff v. NJ Dept. of Law and Public Safety would not be heard on this agenda.

Mr. Maltese indicated that he would recuse himself from the meeting during the discussion of the following cases:

Jim Edwards v. City of Jersey City (2002-71)

Raymond Cibo, Jr. V. Rowan University (2003-42)

Jose Falto v. Union City (2003-62)

Jim Edwards v. Jersey City Municipal Utilities Authority (2003-72)

Andrew McCalley v. Rowan University (2003-90)

Jim Edwards v City of Jersey (2002-71)

Mr. Dice stated, the complainant challenges the denial of access to copies of a memorandum prepared by Assistant Corporation Counsel Nora Kallen addressed to former Corporation counsel Alexander Booth, Jr.; an April 2002 memorandum advising the Jersey City Municipal Utilities Authority (“MUA”), and the City’s construction code official, that the mayor’s rescinding of MUA fees was illegal; and any correspondence between Booth and Jersey City Building Official Michael Regan. Certifications from various current and former City officials

establish that the April 2002 advice concerning the legality of the mayor's rescinding of the MUA fees was communicated verbally, and does not exist in written form. In addition, the certifications allege that with the exception of the Kallen memorandum, all documents requested by Mr. Edwards were either provided to him or do not exist or are not maintained by the City.

The Acting Executive Director respectfully recommended the Council dismiss the case for the following reason:

1. The Kallen memorandum created by the City Law Department and conveyed to the MUA is the only document at issue in this case and is exempt from disclosure under N.J.S.A. 47:1A-1.1 because it constitutes "inter -agency or intra-agency advisory, consultative, or deliberative material."
2. Based on the Certification submitted by the custodian all documents requested were either provided by the requestor or do not exist.

Mr. Spigner called for a motion to accept the Acting Executive Director's recommendation and amended the recommendations to include "2" above. A motion was made by Ms. Hook and seconded by Mr. Richman made the motion. The was adopted by a roll call:

Ayes: Ms. Hook, Mr. Richman, Mr. Spigner

Recused: Mr. Maltese

Absent: Ms. Schonyers

Nays: None

Raymond Cibo, Jr. V Rowan University (2003-42)

Mr. Dice stated the requestor is seeking information concerning the reasons for raises awarded to Management employees. Information about the salaries of the employees during the specified time period was provided, but the Custodian denied access to the reasons for salary increases on the grounds that this information was exempt from disclosure as confidential personnel records, that pursuant to N.J.S.A. 47:1A-10. The case should be dismissed.

The Acting Executive Director respectfully recommended that the Council dismiss the case pursuant to N.J.S.A. 47:1A-10.

Mr. Spigner called for a motion to accept the Acting Executive Director's recommendation. The motion was made by Ms. Hook, and seconded by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Mr. Spigner

Recused: Mr. Maltese

Absent: Ms. Schonyers

Nays: None

Jose Falto v. Union City (2003-62)

Mr. Dice reviewed the case indicating that the requestor was provided an opportunity by the custodian to review the information in question.

The Acting Executive Director recommended the Council find that if the requestor has not responded to the Government Records Council staff's February 18, 2004 letter giving him five business days to make arrangements with Union City to review the documents, the case should be dismissed. Mr. Spigner noted for the record that the custodian failed to meet the statutory time frame in responding to the request. Mr. Spigner called for a motion to accept the Acting Executive Director's recommendation to dismiss. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Mr. Spigner

Recused: Mr. Maltese

Absent: Ms. Schonyers

Nays: None

Jim Edward v. Jersey City Municipal Authority (2003-72)

Mr. Dice stated that the requestor received approximately 300 pages of documents responsive to the request and the custodian withheld approximately five pages of material claimed to be privileged. The Custodian asserted that the redacted portions of the Booth memorandum, and the McManimon and Carr memoranda all are exempt from disclosure pursuant to attorney-client privilege. The Kallen memorandum cannot be provided because it cannot be found among the files of the JCMUA or the files turned over to its current attorneys from the former counsel who allegedly received the memorandum from the Jersey City Law Department. In addition, the Custodian noted that a "Vaughn Index" would be redundant in this case, because the claims of privilege were listed and explained in the two responses provided to the Requestor on September 23, 2002 and June 11, 2003. Counsel for the JCMUA argued further

that no fine should be granted because the Requestor seeks a penalty against the JCMUA, which cannot itself be fined under OPRA. The JCMUA contended that the Custodian responded to the OPRA request in good faith by turning over approximately 300 pages of documents, and withholding fewer than five pages of material for which detailed and legally justifiable explanations were provided on two separate occasions. Finally, the Custodian argued that since the Requestor does not assert that he received advice of counsel, he did not incur legal fees compensable pursuant to OPRA.

The Acting Executive Director recommended the Council find that the complaint should be dismissed because:

1. The Custodian met its burden of showing that the redactions in the Booth memorandum, and the entire McManimon and Carr memoranda properly invoked the exception for attorney-client privilege to deny access under N.J.S.A. 47:1A-1.1 of OPRA.
2. The certification of the Custodian adequately explained why the Kallen memorandum was not supplied.
3. A “Vaughn Index” is unnecessary as the custodian met its burden in showing the privileged nature of information and documents in this matter.
4. The custodian violated the requirements of OPRA in failing to respond to the request within a seven business day time period. The custodian responded on September 23, 2002 and provided over 300 pages documents responsive to the request. The delay in response was not “knowing and willful” under the OPRA statute and no fine is warranted.
5. The June 11, 2003 response of the JCMUA to the Requestor’s April and May 2003 telephonic requests for reconsideration of his claims also does not provide a basis for a fine, since there currently are no time requirements for a response to a request for reconsideration, nor does an oral demand for documents constitute an OPRA request subject to the seven-day deadline.
6. Since all the challenged denials of access are soundly based in law and fact, and the requestor was not represented no issues of attorney’s fees are warranted.

Mr. Spigner called for a motion to accept the Acting Executive Director’s recommendation. A motion was made by Mr. Richman seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Mr. Spigner

Recused: Mr. Maltese

Absent: Ms. Schonyers

Nays: None

Andrew Mc Calley v. Rowan University (2003-90)

Mr. Dice stated, the requestor is seeking information concerning the reasons for raises awarded to Management employees. Information about the salaries of the employees during the specified time period was provided, but the Custodian denied access to the reasons for salary increases on the grounds that this information was exempt from disclosure as confidential personnel records.

The Acting Executive Director recommended the council find that the denial of access was properly withheld pursuant to N.J.S.A. 47:1A-10 and the complaint should be dismissed.

Mr. Spigner called for a motion to adopt the Acting Executive Director's recommendation. The motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Mr. Spigner

Recused: Mr. Maltese

Absent: Ms. Schonyers

Nays: None

Mr. Maltese returned to the meeting after discussions of the above cases and decisions adopted.

Yehuda Shain V. Lakewood Township (2002-112)

Mr. Dice stated, that this complaint involves a request to review all the applications for tax exemption, the initial and further statements, supporting documents, and all correspondence and notes pertaining to residential real estate owned by Beth Medrash Govoha.

He stated further at issue in the case is the redaction of resident's names in the forms entitled "Standard Questions for Parsonages, Faculty, Student Housing, etc." and a claim that some of requested supporting documentation was missing.

The custodian maintained that all requested documents were provided to the requestor and the only information not disclosed were residents' names, the number of children residing at the property and personal income information, citing specific provisions in support of their position. Also, the custodian's counsel provided an Affidavit to the requestor to affirm that the documents provided were true and complete and the only information not disclosed were the residents' names and letters to and from the Municipal Attorney and the Municipal Tax Attorney to the Assessor.

The Acting Executive Director recommended the Council dismiss the complaint on the basis of:

1. All requested documents were provided to the requestor

2. The redaction of the residents' names to protect the disclosure of financial information included in the requested documents was proper under Executive Order #26 and the provisions of N.J.S.A. 47:1A-9.
3. An affidavit was provided from the Township certifying that true and accurate copies of the files were made, with the exception of the names of residents, and attorney/client communications, which the requestor does not appear to be seeking.

A motion to accept the Acting Executive Director's recommendation was made by Mr. Spigner and seconded by Ms. Hook. The vote was adopted by roll call.

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

Absent: Ms. Schonyers

Nays: None

Dale V. Baranoski v. NJ Dept. of Law, Division of Criminal Justice (2003-5)

Mr. Dice stated that the complaint involved four requests for on-site inspection, review and copies as determined by the requestor of documents and information concerning allegations of misconduct and/or complaints filed by the requestor against the police agencies in Burlington County and forwarded to the Division of Criminal Justice (CDJ) through the Burlington County Prosecutor. The custodian's counsel indicates that documents sought in request C-225 and C-227 are the same documents sought in requests C-226 and C-281.

A privilege index was provided to the GRC on January 14, 2004 concerning the records to which access was denied. However, Mr. Dice noted that the index did not provide sufficient facts for the Acting Executive Director to reach a conclusion whether the records being withheld from the requestor were "advisory consultative or deliberative" or "Attorney Client privilege" as claimed.

The Acting Executive Director recommended the Council find that:

1. The requestor was provided access to a portion of the administrative file and the complete transcript pertaining to the request and received copies of documents requested.
2. The custodian properly denied access to the requested criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1
3. The privilege index provided by the custodian's council does not adequately document why the records withheld from the requestor were privileged and its connection to the claimed privilege.

4. The custodian should be given an opportunity to submit to the Acting Executive Director, by a date certain, further documentation in support of the claim of privilege for each of the documents identified in the custodian counsel's privileged index.

Mr. Maltese called for a motion to accept the Acting Director's recommendation and order the custodian's counsel to provide a detailed explanation of each document contained in the privileged index by March 5 to the Acting Executive Director and that a lack of providing said information would result in an order by the council to release the documents at issue subject to necessary redactions.

A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call:

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

Absent: Ms. Schonyers

Nays: Mr. Spigner

Alisa Camacho v. City of Paterson (2003-9)

Mr. Dice stated, the requestor asserts that the custodian did not promptly and fully respond to her records request. He indicated that the requestor's claim is based on the fact that she was directed by the custodian to contact the Deputy Police Chief for the requested records only to be informed by him that he did not maintain such records.

Mr. Dice stated that the custodian claims that all information requested and what was available through the Special Events Coordinator was submitted to Ms. Camacho on January 17, 2003, and responded to the issue of timeliness by stating that there was a newly appointed Special Events Coordinator who needed to search for the records.

The Acting Executive Director recommended the Council find that:

1. The custodian violated the requirements of OPRA by not denying or providing access to copies of requested records that were responsive to the Complainant's request within the statutorily required seven business days.
2. The custodian violated the requirements of OPRA in failing to respond to the request within a seven business day time period. The delay in response was not "knowing and willful" under the OPRA statute.
3. That the complaint should be dismissed.

Mr. Maltese called for motion to accept the Acting Executive Director's recommendation, and noted for the record that the custodian did not adhere to the statutory time frame in responding

to the request. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

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

Absent: Ms. Schonyers

Nays: None

Mr. Spigner excused himself for the balance of the meeting.

Joseph Belth v. N.J. Dept of Banking & Insurance (2003-29)

Mr. Dice stated this complainant requested a copy of the request by Clarendon National Insurance Co. for permission to pay interest on outstanding surplus notes, and a copy of DOBI's denial of this request.

Mr. Dice stated further that the requestor also argued that DOBI should have supplied copies of the requested documents, with confidential information redacted. However, he stated DOBI maintained that the documents were entirely confidential and could not be redacted

DOBI denied the request in its entirety, based on the Open Public Records Act ("OPRA") exemptions for "proprietary commercial or financial information obtained from any source" and "information, which, if disclosed, would give an advantage to competitors."

The Acting Executive Director recommended that the Council dismiss the complaint because:

1. DOBI has met its burden of showing that the requested documentation is exempt from disclosure under the "proprietary commercial or financial information," and "advantage to competitors" sections of OPRA. N.J.S.A. 47:1A-1.1.
2. DOBI has met its burden of showing that the requested information is exempt pursuant to laws that include, but are not necessarily limited to, N.J.S.A. 17:23-24f; N.J.S.A. 17:27A-6. N.J.S.A. 47:1A-9.

Mr. Maltese called for a motion to accept the Acting Executive Director's recommendation. The motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call:

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Ed Meakem v. Municipal Clerk of Pompton Lakes (2003-66)

Mr. Dice stated that the complaint filed June 4, 2003 alleges denial of an OPRA request to the Borough of Pompton Lakes seeking to inspect a letter from the Pompton Lakes Borough Administrator to the Pompton Lakes Borough Board of Adjustment Attorney.

Mr. Dice indicated that the record reflects in the OPRA request, the requester did receive access to the plans dated October 27, 2000 and also received a letter from the Pompton Lakes Borough Engineer regarding the RSIS standard for Baker Cannonball Run. The custodian stated, however, that access to the letter from the Borough Administrator to the Borough Attorney was denied alleging it is not public information as it is considered “attorney-client” privilege due to potential litigation. The custodian also alleges that a Board of Adjustment Attorney would include all attorneys or attorneys hired for special cases.

Mr. Dice noted further that the custodian affirms in the Statement of Information that the letter is subject to “attorney-client privilege,” therefore exempt from OPRA.

The Acting Executive Director respectfully recommended that the Council dismiss the complaint because:

1. N.J.S.A. 47:1A-1.1 (“OPRA”) states “A government record shall not include the following information, which is deemed to be confidential for the purposes of P.L.1963, c.73 (N.J.S.A. 47: 1A-1 et seq.) as amended and supplemented: any record within the attorney-client privilege.”

Mr. Maltese called for a motion to accept the Acting Executive Director’s recommendation. A motion was made by Mr. Richman seconded by Ms. Hook. The motion was adopted by roll call:

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Harvey Kesner v. NJ Dept. of Banking & Insurance (2003-67)

Mr. Dice stated, at issue in this case is the denial of access to documents regarding the MIIX Group, Inc. (“MIXX”) and its subsidiaries, which concerned its request to continue operations in “solvent run-off”, and the draft financial documents submitted by MIIX Advantage regarding its proposed business operations. On December 24, 2002, the custodian released 175 pages of requested documents as follows:

- DOBI’s report of examination as to the organization of the MIIX Advantage’s application for certificate

- Revised MIIX Advantage feasibility plan dated May 17, 2002, and other undescribed documents.

Mr. Dice stated further that the custodian asserted that all the documents withheld were exempt from disclosure under N.J.S.A. 17:23-24f, N.J.A.C. 11:1-36.6 and –39.10(a), and N.J.S.A. 47:1A-1.1 (exempting proprietary financial information and advisory, consultative or deliberative records).

The Acting Executive Director recommended the Council dismiss the case on the basis the documents at issue in the case are exempt under “Other laws regulations, privileges complaint on the basis that the custodian has met its burden of showing that the requested unaffected” and “advisory, consultative and deliberative” provisions of OPRA. N.J.S.A. 47: 1A-9 and N.J.S.A. 17:23-24f, N.J.A.C.11-36.6, N.J.A.C. 11:2-39.10(a) and N.J.S.A.47:1A-1-1.

Mr. Maltese made a motion to accept the Acting Executive Director’s recommendation.. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call.

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Tina Renna v. County of Union (2003-100)

Mr. Dice stated, the complaint involved a request for a copy of the proposal of Xerox to the County of Union to run print shop. At the time of the request, the custodian was told that the information was proprietary information and that, if released, it would have given an unfair advantage to the competition of Xerox.

After receiving approval through the counsel of Xerox, the records were released to the complainant.

The Acting Executive Director recommended the Council dismiss the complaint on the basis Of:

1. The custodian properly denied access at the time of the request because:
 - The information was considered proprietary based on representation made by Xerox Corporation.
 - The information would have given an unfair advantage to the competition based on representation made by Xerox Corporation.
2. The county did release the documents with proper approval from the counsel of Xerox.

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

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

T.S. v. NJ Division of Criminal Justice (2003-102

Mr. Dice stated that the this case involved a request for records alleged to be, or to have been, contained in the Department of Law Public Safety, Division of Criminal Justice's file #CJ 95-3614-H. The Division of Criminal Justice denied the request on the grounds that "there is no record information."

Mr. Dice indicated that the requestor stated his belief that the documents in the Department of Criminal Justice's file #CJ95-3614-H may have been destroyed an on June 1, 2003, explained that his request included documents relating to such destruction, if it is proven that the file documentation was in fact destroyed.

Mr. Dice stated that alternatively, the phrase "no record" information" is a unique term used in N.J.S.A. 2C:52-15 and is the mandatory response to requests for access to records that have been expunged. Expunged records are not destroyed. They are, however, not publicly accessible as a matter of law.

The Acting Executive Director recommended that the Council accept the custodian's certification in the Statement of Information that there is "no record information," conclude that file #CJ95-3614-H is not accessible under the Open Public Records Act ("OPRA") and dismiss the complaint.

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

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Star- Ledger v. New Jersey Sports & Exposition Authority (2003-107)

Mr. Dice stated, that the complaint involved a denial of access to the NJSEA’s contract with Bruce Springsteen for 10 concerts at Giants Stadium in July and August of 2003; the NJSEA contract for Jon Bon Jovi’s two concerts Aug. 7 and 8, 2003 at Giants Stadium; and all related correspondence, both regular and electronic, directly related to these contracts.

Mr. Dice stated, on February 12, 2004, the requestor’s attorney confirmed by letter to the GRC that the Star-Ledger received the requested information from the custodian and wished to withdraw their complaint.

The Acting Executive Director respectfully recommended, that the Council dismiss the case on the basis the Star- Ledger received all requested information and withdrew their complaint.

Mr. Maltese called for a motion to accept the Acting Executive Director’s recommendation. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call:

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Michael Dean V. Chatham Borough (2003-108)

Mr. Dice stated that the requestor asserted the custodian did not fully respond to his records requested and believed that he has not been given an exact cost to date of the tax appeal for 181 Passaic Avenue, Block 34, Lot 73. The complainant believed that he has been denied his request for the breakdown of time spent by the mayor, each councilperson, and all other borough employees on this matter. The October 31, 2003 Affidavit of Pat Aceto, the tax assessor of the Borough of Chatham, states, “I do not provide nor am I required to provide, produce or manufacture a document showing a detailed breakdown of time expended.”

The Acting Executive Director respectfully recommended the Council dismiss the case because:

1. It is not in the jurisdiction of the Government Records Council to verify the accuracy of the records in question.
2. The credible information shows that the Borough has no records responsive to the amount of time spent by the Assessor, Borough employees, the mayor and each council

person on the tax appeal or the bills for real estate experts and the portion of the complaint pertaining to these records request should be dismissed.

3. Upon information supplied to the GRC, the Borough of Chatham does not use a tax appeal attorney. There are, therefore, no records responsive to the request.

The council voted unanimously to hold the case in abeyance until the next meeting. It was further decided that Mr. Dice would seek a certification from the custodian that there were no attorney bills resulting from the tax appeal and if same exists, they will be provided to the requestor subject to necessary redactions.

Irvin Beaver v. Township of Middletown (2003-111)

Mr. Dice reviewed the issues in the case regarding the delay in the custodian's response. The custodian explained the delay was attributed to the following:

- The Township needed to retrieve information that dated back 40 years and thus, the project involved extensive research
- The Middletown clerk went on maternity leave on September 5, 2003
- The Township hired a deputy clerk in November 2003

The Acting Executive Director recommended the Council find that:

1. The custodian violated the requirements of OPRA by not denying or providing access to copies of requested records that were responsive to the Complainant's request within the statutorily required seven business days.
2. The custodian violated the requirements of OPRA in failing to respond to the request within a seven business day time period. The custodian responded on October 17, 2003 with all of the requested records where they existed. The delay in response was not "knowing and willful" under the OPRA statute. It is recommended that this case be dismissed.

Mr. Maltese asked that the custodian be informed of the statutory time frame involved in responding to a request pursuant to the OPRA. Mr. Maltese called for a motion to accept the Acting Executive Director's recommendation with the additional recommendation. A motion was made by Ms. Hook, and seconded by Mr. Maltese. The motion was adopted by roll call:

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Cynthia McBride v. Gloucester Twp. Tax office (2003-118)

Mr. Dice stated that based on the requestor's February 23, 2004 Email to the GRC, he respectfully recommended that the Council dismiss the complaint.

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

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Gina Calogero v. Borough of Emerson (2003-119)

Mr. Dice stated this is a request for various documents comprising approximately 29 items, and he indicated that the custodian has not met the burden of proof regarding a claim for a special service charge, that resulted in a denial of access. The Acting Executive Director recommended the Council find that:

1. The custodian has not demonstrated that a special service charge is warranted in this case.
2. Access should be granted to all documents in existence at the time of the request, which the borough had custody of, and which are not exempt under the Open Public Records Act ("OPRA").
3. The complaint should be dismissed.

Mr. Maltese noted for the record that the custodian violated the OPRA statutory time frame in responding to an OPRA request. Mr. Maltese called for a motion to accept the Acting Executive Director's recommendation. A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call:

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Marie Bailey V. NJ Dept of Treasury (2003-124)

Mr. Dice stated that the case involved a denial of access for a copy of an investigation and determination report from the Hunterdon County Board of Taxation to the New Jersey Department of Treasury-Division of Taxation and reports/correspondence from the "respected"

New Jersey Department of Agriculture employee who inspected the property in question. Furthermore, the name of the party within the Division of Taxation who received the report from Hunterdon County Board of Taxation and who communicated the report.

The Acting Executive Director recommended that the Council dismiss the complaint because:

1. The June 4, 2003 request was addressed by the custodian alleging that the records in question were verbally reported, therefore, unable to be produced.
2. The June 16, 2003 request was addressed by the custodian stating the identity of the Division of Taxation employee responsible for the receipt of the reports and the status of his employment.
3. On October 17, 2003, the custodian affirmed that all the responsibilities under OPRA were carried out and the requester received information regarding the request specifically the inability to produce the report.
4. According to OPRA (N.J.S.A. 47:1A-1.1), a government record is defined as “any paper, written or printed book, document, drawing, map, planphotograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business,” therefore, no records exist in the above defined form.

Mr. Maltese called for a motion to accept the Acting Executive Director’s recommendation. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call:

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Michael Dean v. Chatham Borough (2003-130)

Mr. Dice stated that the statement of information provided by the Custodian and the legal arguments presented by the Custodian’s counsel fail to address the question of whether or not any other “government records” (as defined by OPRA) exist with respect to the Complainant’s request.

The Acting Executive Director respectfully recommended that the Council order the custodian:

1. Ascertain the existence of any additional documents that (a) are relevant to the Complainant’s request and (b) meet the definition of “government record” under OPRA;

2. If such documents do exist, determine whether there is any exception to granting public access to the document under OPRA or other applicable law; and
3. If no exception exists, make such document(s) available to the Complainant.
4. Provide certification to the above items, within five business days to the Acting Executive Director.

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

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Christopher Maloney v. Borough of Jamesburgh (2003-137)

Mr. Dice stated that the complaint involved a denial of access to a list of all municipal employees by salary, title and overtime for the years 1999, 2000, 2001, 2002, 2003.

Mr. Dice indicated that the Custodian certified in writing that the requested records were provided to the Complainant in the exact form which such records are maintained by the municipality (subject to appropriate redaction) and that a more concise form of the requested records did not exist.

The Acting Executive Director recommended the Council dismiss this denial of access complaint for the following reasons:

1. The fees charged by the Custodian were within the fee limitations set forth under OPRA;
2. The Custodian has certified that the records were provided to the Complainant in the form that they are maintained by the municipality, therefore the Custodian responded appropriately to the request;
3. The allegedly non-responsive information provided to the Complainant was, in fact, responsive or, in the alternative, was reasonably maintained by the Custodian as part and parcel of the information provided to the Complainant; and
4. Current year information was immediately accessible in a form that complies with the immediate access provisions of OPRA.

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

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Jordan Mariano v. NJ Dept. of Environmental Protection (2003-140)

Mr. Dice stated that this OPRA Complaint filed November 3, 2003 alleged a denial of an OPRA request to the New Jersey Department of Environmental Protection (“NJDEP”) for the dissemination of the list of users of chlorine gas in New Jersey. The Requestor is a representative of Chlorinators Incorporated, a Florida-based distributor of equipment for the chlorine industry.

Mr. Dice explained that the NJDEP maintained that the denial of the OPRA request was proper because the release of such records would violate Executive Order No. 21, which provides for confidential treatment of information that would, if released, “substantially interfere with the State’s ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or . . . would materially increase the risk or consequences of potential acts of sabotage or terrorism.” Because the release of the list of chlorine users could assist terrorists/saboteurs in targeting the facilities of such chlorine users, NJDEP denied the OPRA request.

The Acting Executive Director respectfully recommended that the Council dismiss this complaint because the information requested was within the ambit of Executive Order No. 21.

Mr. Maltese called for a motion to accept the Acting Executive Director’s recommendation. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call:

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Walter McDonald v. NJ Dept. of Treasury (2003-147)

Mr. Dice stated that the Requestor challenged the sufficiency of the Division of Taxation’s response to four OPRA requests, all of which sought records related to a 1997 state tax judgment against the requestor recouping an improperly issued tax refund and subsequent years’ underpayment of tax. Requestor denies ever receiving the refund check, the notice of the

tax deficiency dated September 26, 1996 or the subsequent judgment against him recorded electronically in Essex County Superior Court on August 11, 1997.

He noted that Department of Treasury, Office of Management and Budget maintained that they provided the requestor a copy of the refund check in question, signed by him, from its files at 33 West State Street, and also provided an electronic computer entries describing the various stages of notice to requestor and entry of judgment, as the hard copies of the documents were destroyed in March 2000 pursuant to Disposal Authorization #45-690

The Acting Executive Director recommended the Council find that:

1. The complaint should be dismissed because the Division custodian provided access to all Division of Taxation records extant that are responsive to the 4 OPRA requests at issue.
2. The one record withheld, a Division investigation of a complaint filed by the requestor against a named Division employee, is a confidential record within a Division employee's personnel file pursuant to N.J.S.A. 47:1A-10. Requestor has been informed, however, of the result of the investigation, specifically, that the Division's Office of Criminal Investigation (OCI) found no evidence to support requestor's allegations.

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

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Richard Linderman v. NJ Dept of Community Development (2003-1540)

Mr. Dice stated that denial of access complaint filed December 20, 2003 alleged a denial of an OPRA requests to review copies of the original certificate of occupancy issued by North Brunswick for each of the Condominium units located in the Renaissance Village I condominium development.

Mr. Dice stated the custodian sent a request to Mr. Linderman on 1/15/2004 requesting address information so that they could clarify the request.

The Acting Executive Director respectfully recommended that the Council send a letter to Mr. Linderman requesting that he provide the information requested by the custodian to the custodian's office within five business days of receipt.

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

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

David Herron v. Montclair Board of Education (2004-2)

Mr. Dice stated that this OPRA Complaint alleges a denial of a request to review copies of expense checks related to certain accounts managed by the Montclair Board of Education. The Custodian filed a Statement of Information in connection with this complaint, alleging that records were made available with the exception of November 2003 account statements as they had not yet been received.

The Acting Executive Director respectfully recommended that the Council dismiss the complaint because the Custodian affirmed in the Statement of Information that the records requested were made available to the Complainant with the exception of account statements for November 2003, which had not been received at the time of the OPRA request

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

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

John Pusterhofer v. Shrewsbury Boro School District (2004-5)

Mr. Dice stated that on February 19, 2004, the requestor advised the GRC he wished to withdraw his complaint.

The Acting Executive Director respectfully recommended that the Council close this case on the basis of the requestor's withdrawal.

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

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

Absent: Ms. Schonyers, Mr. Spigner

Nays: None

Yehuda Shain v. Lakewood Township (2002-111)

Mr. Dice stated that this case was considered in the December 11, 2003 meeting and referred to the Office of Administrative Law for an evidentiary hearing on whether there was a knowing and willful violation of the OPRA. Subsequent to the referral, the case was returned to the GRC by the OAL based on a letter from the requestor indicating he wanted to close the file. Mr. Dice recommended that the Council dismiss the case based on the requestor's wishes that the case be closed.

Mr. Maltese indicated that the requestor is unable to close the case in this matter given the fact that at the OAL hearing he would be a witness. Mr. Maltese stated that he would prefer that the GRC council confer with the Office of Administrative Law and report back at the next meeting. The council voted unanimously to modify the Acting Executive Directors recommendation to seek legal counsel regarding whether the council should refer the complaint back to the OAL for a continuation of the determination on whether there was a knowing and willful violation under OPRA in the totality of the circumstances. The Council concluded that the case would be held in abeyance based the Chairman's recommendations.

Hearing no public comments, Mr. Maltese called for a motion to adjourn. The motion was made by Ms Hook and seconded by Mr. Richman. The motion was approved by a consensus.

The meeting adjourned at 1:25pm

Respectfully submitted,

/s/Virginia Hook, Secretary

Dated: _____

