

**Minutes of the Government Records Council
October 28, 2005 Public Meeting - Open Session**

The meeting was called to order at 10:05 a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read. The pledge of allegiance was recited.

Ms. Davies called the roll:

Present: Ms. DeAnna Minus-Vincent (designee of Acting Commissioner Charles A. Richman in, Department of Community of Affairs), Ms. Diane Schonyers (designee of Acting Commissioner Lucille Davy, Department of Education) 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. Vincent Maltese, Mr. Mitchell Fishman.

Ms. Schonyers called for a motion to go into closed session. 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 10:13a.m.to 10:35a.m.

Open Session reconvened at 10:35a.m.

Ms. Davies called the roll:

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

Not In Attendance: Mr. Maltese, Mr. Fishman.

Minutes: Ms. Schonyers called for a motion to approve the July & August, 2005 Open and Closed Session minutes. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent to approve the minutes as amended.

The motion passed unanimously.

Administrative Closures

Mr. Dice presented the following Administrative Closures:

1. Michael Bent v. Stafford Township Police Department (2004-78)
2. Virginia Jeffries v. East Orange Board of Education (2005-34)
3. James Donato v. Oradell Police Department (2005-108)

4. Carl Varriale v. Borough of Montvale (2005-118)
5. John Painter v. Readington Public Schools (2005-134)
6. Steven Kossup v. New Jersey Department of Corrections (2005-173)
7. Robert Shinn v. Department of Environmental Protection (2005-183)
8. Dr. Charles Bonanno v. Garfield Board of Education (2005-184)
9. George Goros v. Township of Hillside (2005-190)

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

Richard Rivera v. Town of West New York 2004-201

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

The Executive Director respectfully recommended that the Council find that:

1. Based on the assertion by the Custodian and the Complainant that the records were immediately accessible to the Complainant for review and copies were made available within two days of the receipt of the request, there is no denial of access pursuant to the OPRA.
2. The Custodian has acted in accordance with the OPRA by providing copies of the requested Tax Book pages within the statutorily required seven business day period pursuant to N.J.S.A. 47:1A-5.i.
3. Based on the forgoing conclusions this case should be closed with no further action by the Council.

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.

Jesse Rosenblum v. Borough of Closter 2005-16

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

The Executive Director respectfully recommended that the Council find that:

1. The Custodian unlawfully denied access to the Form DD214 at the time of the request.
2. The Custodian has not born her burden of proving that the Form DD214 was lawfully exempt from disclosure.

3. The Form DD214 is now exempt from disclosure pursuant to the recent amendment to N.J.S.A. 47:1A-1.1.
4. The Custodians actions do not rise to a level of a knowing and willful violation of OPRA and unreasonable denial of access 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. Tabakin and seconded by Ms. Minus-Vincent. Motion passed unanimously.

Philip Boggia v. Borough of Oakland 2005-36

Mr. Malloy 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. Mr. Malloy presented the following recommendations to the Council:

The Executive Director respectfully recommended that the Council find that:

1. While the custodian has provided facts in support of the legal conclusions asserted, the Council must determine whether the legal conclusions asserted by the Custodian (that the information which, if disclosed, would give an advantage to competitors or bidders) are properly applied to the redactions. Therefore, the Council must conduct an *in camera* inspection of the redacted Morris Land Conservancy reports.
2. Based on the January 25, 2005 submission from Custodian's counsel showing a response to the January 19, 2005 letter (stating that the reports are privileged) the Custodian has not violated N.J.S.A. 47:1A-5.i. or N.J.S.A. 47:1A-5.g.
3. Based on the fact that Custodian's counsel certified that the reason the records were not immediately released is because they were in other Borough files, and, therefore, not able to be located within the files specifically relating to Mr. Boggia's client's property. And, in light of the Superior Court's admonishment of OPRA requests being used as "research tool[s] of litigants in Mag Entertainment, LLC., the Custodian's actions do not rise to the level of a knowing and willful violation of [OPRA] under the totality of the circumstances.
4. Based on the fact that the courts of the state have determined that the state's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff not an attorney who is the plaintiff representing himself, the Complainant is not entitled to reasonable attorney's fees pursuant to OPRA.

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. Motion passed unanimously.

Joseph Haelig v. Seaside Heights Business Improvement District 2005-50

Mr. Dice 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.

Mr. Dice presented the following recommendations to the Council:

The Executive Director respectfully recommended that the Council find that:

1. The Seaside Heights Business Improvement District is a "Public Agency" as defined in N.J.S.A. 47:1A-1.1 and is, therefore, subject to OPRA.
2. The Custodian is to provide a detailed and complete list to the Council and the Complainant itemizing what records the BID maintains that are responsive to the Complainant's November 16, 2004 request, in whole or in part.
3. The Custodian should provide immediate access to any records that are responsive to the Complainant's November 16, 2004 request and which have not already been provided. The Custodian must indicate specifically what records, if any, it alleges have already been provided.
4. Based on the facts that the Custodian responded to the Complainant's OPRA request more than four months late, and that the response remains incomplete, the Council should refer this case to the Office of Administrative Law to determine if the Custodian knowingly and willfully violated OPRA.

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. Motion passed unanimously.

Mr. Dice introduce Ms. Dara Lownie as a new case manager replacing Ms. Erin Knoedler.

John Paff v. Borough of Montvale 2005-54

Ms. Lownie 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. Lownie 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-6 for failing to prove that the denial of access to Closed Session minutes was authorized by law.
2. The Custodian should redact the exempt information contained in the requested Closed Session minutes, providing a detailed and lawful basis for each redacted part thereof and provide access to those redacted minutes that have not already been released, specifically minutes from the Borough Council's March 9, 2004, April 27, 2004, July 13, 2004, and September 28, 2004 Closed Sessions.
3. The Custodian violated OPRA in not releasing the Closed Session minutes to the Complainant within the seven (7) business day time period as prescribed in N.J.S.A. 47:1A-5.i.
4. The Borough violated N.J.S.A. 47:1A-5.h. by not forwarding the OPRA request to the Custodian.
5. The Borough's OPRA request form is currently in compliance with N.J.S.A. 47:1A-5.f. and does not require an amendment.
6. Dictating office policies to Custodians is not within the Council's authority pursuant to N.J.S.A. 47:1A-7.b.
7. That while the Custodian did not fully comply with OPRA statutes, her actions do not meet the legal standard required to determine a knowing and willful violation of OPRA 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.

Motion passed unanimously.

Tina Renna v. County of Union 2005-89

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:

1. On the basis of the Custodian's certification, there is no denial of access to government records pursuant to N.J.S.A. 47:1A-1.1 because the requested documents do not exist.
2. The Custodian's actions do not rise to the level of a knowing and willful violation of OPRA under the totality of the circumstances on the basis that the Complainant was not unlawfully denied access to a government record, was provided a response to her OPRA request within the statutory seven business days and has not provided evidence that the Custodian's actions in this case meet the standard for a knowing and willful violation of the OPRA under the totality of the circumstances.
3. Based on the forgoing conclusions this case should be closed with no further action by the Council.

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.

Martin O'Shea v. Township of West Milford 2005-93

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

The Executive Director respectfully recommended that the Council find:

1. The Custodian is in violation of N.J.S.A. 47:1A-6 for failing to bear their burden of proving that the denial of access was lawful.
2. The Custodian is in violation of N.J.S.A. 47:1A-5.i. for not providing the Complainant with the requested documents within the statutorily required seven (7) business days.
3. The Custodian's actions do 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 amended. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. Motion passed unanimously.

Richard Rivera v. Town of Weehawken 2005-95

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 that the Council find that:

1. Based on the assertion by the Custodian and the Complainant that the records were immediately accessible to the Complainant for review and copies were made available within two days of the receipt of the request, there is no denial of access pursuant to the OPRA.
2. The Custodian has acted in accordance with the OPRA by providing copies of the requested Tax Book pages within the statutorily required seven business day period pursuant to N.J.S.A. 47:1A-5.i.
3. Based on the forgoing conclusions this case should be closed with no further action by the Council.

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.

Vesselin Dittrich v. City of Hoboken 2005-97

Mr. Malloy 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. Mr. Malloy presented the following recommendations to the Council:

The Executive Director respectfully recommended the Council find that because there are issues in this case that are unclear and in dispute, the case should be referred to the Office of Administrative Law for a hearing to determine:

1. What records does the Custodian maintain that are responsive to the April 25, 2005 OPRA request?
2. Of the records maintained by the Custodian that are responsive to the April 25, 2005 OPRA request what was provided to the Complainant on May 5, 2005? What was provided to the Complainant on May 10, 2005?
3. Of the records provided on May 5, 2005 and May 10, 2005 what records did the Complainant receive?
4. Were any records responsive to the April 25, 2005 request not provided by the Custodian? If so, what is the statutory basis for the denial of access?
5. Does the Custodian maintain the letter written by Housing Inspector Joe Farina? If the record exists but has not been provided, what is the statutory basis for the denial of access?

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. Motion passed unanimously.

Thomas Neff/Republican General Assembly v. Department of Law & Public Safety 2005-101

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

The Executive Director respectfully recommended that the Council find that:

1. There are contested facts in this case regarding access to records sought in the February 22, 2005 OPRA request. Thus, this case should be referred to the Office of Administrative Law for a hearing to determine:
 - a. What records are being sought in the February 22, 2005 OPRA request?
 - b. What records are made, maintained or kept on file, or received by the L&PS and are under the responsibility of the Custodian?
 - c. Whether the request was too broad in scope that it required clarification pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (March 2005). If the request was sufficiently clarified by the Complainant for the Custodian to fulfill the request and were the requested records provided based on the clarified request?
 - d. What records were provided to the Complainant in response to the OPRA request and of the records provided were all records responsive to the OPRA request and under the responsibility of the L&PS Custodian?
 - e. What fees, if any, should be assessed for records still outstanding and not already provided in response to the request pursuant to N.J.S.A. 47:1A-5?
 - f. If all requested records were not provided, what is the basis for not providing access pursuant to OPRA or any other law?
2. There is no written verification substantiating that an agreed to extension was made between the parties based on the submissions from the Complainant and the Custodian in this case. Thus, the Custodian violated N.J.S.A. 47:1A-5.e, N.J.S.A. 47:1A-5.g, and N.J.S.A. 47:1A-5.i in not providing the Complainant a written response to the request within the statutorily required time period
3. This case should be referred to the Office of Administrative Law to determine whether the Custodian's actions regarding the February 22, 2005 OPRA request was an unreasonable denial of access and rise to the level of a knowing and willful violation of 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. Motion passed unanimously.

Eric Wiggins v. Atlantic County Justice Facility 2005-142

This case was moved to the November 10, 2005 agenda.

Ms. Schonyers called for a motion to go into closed session to discuss the following cases for in-camera review:

Anne Rademacher v. Borough of Eatontown (2004-18)
Martin O'Shea v. West Milford Township Board of Education (2004-93)
Thomas Seibert v. Readington Township (2004-150)
Beth Burns v. Borough of Collingswood (2004-169)
Jill Glasser v. Richard Stockton College of New Jersey (2004-194)
John Paff v. Township of Plainsboro (2005-29)

The Government Records Council will disclose to the public the matters discussed or determined as soon as possible after Final Decisions have been issued in the above cases.

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

Closed session reconvened at 11:15a.m.

The Council reconvened in open session at 12:10pm. Ms. Davies called the roll.

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

Not In Attendance: Mr. Maltese, Mr. Fishman.

Ms. Schonyers stated there would be a change in procedure at which time she asked Mr. Dice to give the specific information on the following cases:

Thomas Seibert v. Readington Township (2004-150)
Beth Burns v. Borough of Collingswood (2004-169)
Jill Glasser v. Richard Stockton College of New Jersey (2004-194)
Anne Rademacher v. Borough of Eatontown (2004-18)

The Executive Director respectfully requested that the Council direct the Executive Director to prepare in-camera Findings and Recommendations of the Executive Director and submit same with the source documentation for adjudication.

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

Martin O'Shea v. West Milford Township Board of Education (2004-93)

Ms. Schonyers stated that based on the review of the unredacted documents, the Council concluded that the Board Secretary's handwritten notes taken during the June 22, 2004 executive session meeting are exempt from disclosure under the "inter-agency, intra-agency advisory, consultative, or deliberative" privilege pursuant to N.J.S.A. 47:1A-1.1.

The Council voted unanimously to accept this decision.

John Paff v. Township of Plainsboro (2005-29)

Ms. Schonyers stated that after completing the *in camera* review of the unredacted October 27, 2004 executive session minutes in Closed Session, the Council determined that the Custodian had not borne the burden of proving that the redacted portions of the October 27, 2004 executive session minutes were exempt from disclosure, as asserted, pursuant to N.J.S.A. 47:1A-3 and 10. However, the Council concluded that while the Custodian has not presented the correct lawful basis for non-disclosure, the Council has an obligation and duty to apply the provisions of the OPRA. The Council determined that the provisions of N.J.S.A. 10:4-12.b. (8) of the Open Public Meetings Act and N.J.S.A. 47:1A-9 were applicable in this case.

Therefore by a unanimous vote, the Council finds that pursuant to N.J.S.A. 10:4-12.b.(8) of the Open Public Meetings Act and N.J.S.A. 47:1A-9 there was a lawful basis for the denial of access to the redacted information contained in the requested document.

Executive Director Report and New Business:

Mr. Dice clarified the employment of Catherine Starghill. Ms. Starghill does not work and did not work for the Attorney General; she is employed only by the Government Records Council.

Mr. Dice discussed an OPRA request and the waving of Attorney Client Privilege. The Council unanimously agreed not waive the right to Attorney Client Privilege in this matter.

Public Comment :

Mr. Martin O'Shea – West Milford, New Jersey

Mr. O'Shea had several comments on the meeting. Mr. O'Shea also discussed several cases of concern to him.

Mr. Michael J. Rizzo – Fairfield, New Jersey

Mr. Rizzo discussed his concern on the phasing out of title searching and eminent domain.

Mr. John Paff - Somerset, New Jersey

Mr. Paff discussed having communication and correspondence on file that might relate to other cases that might relate to him or other complainants. He also discussed his letter sent to the Government Records Council on the Open Public Meetings Act.

Ms. Schonyers called for a motion to adjourn. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by consensus.

Meeting Adjourned @ 12:55pm

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: December 8, 2005