



**Minutes of the Government Records Council
January 31, 2007 Public Meeting – Open Session**

The meeting was called to order at 9:43 a.m. at the Department of Community Affairs, Conference Room 126, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Hairston called the roll:

Present: Vincent Maltese, Chairman, Michelle Richardson (designee of Department of Community Affairs Commissioner Susan Bass Levin) and Anthony D’Elia (designee of Department of Education Commissioner Lucille Davy).

GRC Staff: Executive Director Catherine Starghill, Brigitte Hairston, Sayantani Dasgupta, Jyothi Pamidimukkala, Dara Lownie, Tiffany Mayers, Rebecca Steese, Designated Outside Counsel Meagan Tuohey-Kay, and Deputy Attorney General Debra Allen.

Mr. Maltese read the Resolution for Closed Session (Resolution Number 2007-01-31) to go into closed session pursuant to N.J.S.A. 10:4-12.b(7) to discuss the legal implications of the recent Appellate Division decision in NJ Builders Association v. NJ Council on Affordable Housing, Decided January 24, 2007, with regards to pending litigation/appeals of prior Council decisions.

A motion was made by Mr. D’Elia and seconded by Ms. Richardson to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Mr. D’Elia and seconded by Ms. Richardson to end the closed session. The motion was adopted by a unanimous vote. The Council met in closed session from 9:46 a.m. until 10:05 a.m.

Open Session reconvened at 10:10 a.m. and Ms. Hairston called the roll.

In attendance:

Mr. Maltese, Ms. Richardson and Mr. D’Elia.

The pledge of allegiance was recited.

There was not a quorum to approve the open and closed session minutes of December 14, 2006 (because Mr. D’Elia was not in attendance at that meeting), therefore Mr. Maltese did not call for a motion to approve these minutes.

Council Adjudication:

The following complaints were presented to the Council for summary administrative adjudication:

GRC Complaint Case and Number	Disposition
1. Steven Kossup v. City of Newark Police Department (2006-110)	Settled in Mediation
2. Harriet Rubenstein v. NJ Department of Health & Senior Services (2006-119)	Settled in Mediation
3. Dwight deStefan v. Bergen County Office of the County Counsel (2006-141)	Settled in Mediation
4. Linda Brnicevic (2006-155)	Settled in Mediation
5. Matthew Barrick, Jr. v. Town of Dover (Morris) (2006-183)	Settled in Mediation
6. John Paff v. Hillside Township (Union) (2006-189)	Settled in Mediation
7. David Drukaroff v. NJ Department of Law & Public Safety, Division of the State Police (2006-194)	Complaint withdrawn
8. Darryl Davis v. NJ Department of Corrections (2006-198)	Settled in mediation
9. Richard Rivera v. NJ Department of Law & Public Safety, Division on Criminal Justice (2006-207)	Complaint withdrawn
10. James Krivacska v. NJ Department of Corrections (2006-209)	No Valid OPRA Request
11. Frank Landrigan v. Town of Secaucus (2007-01)	Complaint withdrawn
12. William McCray v. NJ Department of Correction (2007-02)	No records responsive to the request exist
13. Julian Leonard Grauer v. NJ Department of Children & Family (2007-04)	Complaint withdrawn
14. James Vogel v. Borough of Beach Haven (Ocean) (2007-12)	No records responsive to the request exist
15. Joy DeSanctis v. City of Orange (Essex) (2007-15)	Complaint withdrawn
16. Howard Vogel v. Township of Marlboro (2007-18)	No records responsive to the request exist
17. Warren Cooper v. Hunterdon Central Regional High School (Hunterdon) (2007-41)	Complaint withdrawn

Mr. Maltese called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. A motion was made by Ms. Richardson and seconded by Mr. D'Elia. The motion passed unanimously.

The following complaints were presented to the Council for individual adjudication:

James Donato v. Township of Union (2005-182)

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

The Executive Director respectfully recommends the Council find that:

- 1) Based on the decision in Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534 (March 2005), the Custodian was obligated to fulfill the records request which requires that she search her files for the requested identifiable government records. Therefore, the Custodian unlawfully denied access to the requested records.
- 2) **The Custodian shall provide the requested records to the Complainant with appropriate redactions, if any, including a detailed document index explaining the lawful basis for each redaction within five (5) business days from receipt of the Council's Interim Order, and simultaneously provide certified confirmation of compliance to the Executive Director.**
- 3) The Custodian erroneously believed that the Complainant's request was not specific enough. Though this belief may be classified as negligent or heedless, it does not contain the element of conscious wrongdoing needed in order to find a knowing and willful violation of OPRA. Therefore, the Custodian's actions do not constitute a knowing and willful violation of OPRA.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Richardson and seconded by Mr. D'Elia. The motion passed unanimously.

Steven Siebenlist v. NJ Department of Health & Senior Services (2006-81)

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

The Executive Director respectfully recommends the Council find that pursuant to the Custodian's December 22, 2006 certification, the Custodian has complied with the Council's December 14, 2006 Interim Order within the required time frame.

Mr. Maltese called for a motion to accept the Executive Director's supplemental findings and recommendations as written. A motion was made by Ms. Richardson and seconded by Mr. D'Elia. The motion passed unanimously.

John Paff v. City of Plainfield (2006-103)

Mr. Maltese recused himself from a vote in this matter. This complaint was not heard due to lack of a quorum.

Toni Catrell v. NJ Department of Corrections (2006-121)

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the inmate's visitors list pursuant to N.J.S.A. 47:1A-1 and Avin v. Borough of Ramsey, GRC Complaint No. 2004-181 (March 2005), due to the privacy interests implicated and the possibility that unsolicited contact would occur between the Complainant and the individuals on the requested list.
2. According to Buttimore v. NJ Department of Law & Public Safety, GRC Complaint No. 2005-92 (March 2006), the Custodian did not unlawfully deny access to the inmate's criminal record of offenses because the Department of Corrections' proposed OPRA rules are valid and exempt those records from public access.
3. According to Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006), the Custodian did not unlawfully deny access to the items ordered by the inmate from the prison commissary and the balance in the inmate's commissary account because the Complainant did not request identifiable government records.
4. The Custodian did not unlawfully deny the Complainant access to the inmate's prison work wages pursuant to Executive Order 26. Pursuant to Paragraph 4 of Executive Order 26, "information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed" are exempt from disclosure.
5. The Custodian unlawfully denied the Complainant access to the inmate's work record and type of work. There is no applicable disclosure exemption for this information provided in OPRA. Thus, the Custodian did not bear her burden of proof for such denial pursuant to N.J.S.A. 47:1A-6. **Therefore, the Custodian shall provided the inmate's work record and type of work to the Complainant within five (5) business days from receipt of the Council's Interim Order, and simultaneously provide certified confirmation of compliance to the Executive Director.**
6. The Custodian certified that the Department of Corrections does not have any records responsive to the offenses committed in prison by the inmate identifying any offenses the inmate committed in prison.
7. **The Custodian shall comply with "5." above within five (5) business days from receipt of this Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.**

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Richardson and seconded by Mr. D'Elia. The motion passed unanimously.

Martin O'Shea v. NJ Intergovernmental Insurance Fund (2006-137)

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

The Executive Director respectfully recommends the Council find that the Custodian did not comply with the Council's Interim Order in a timely manner. Specifically, the Custodian released the resolutions and minutes with redactions and legal justifications for each redaction in a timely manner. However, the Custodian unlawfully denied access to a chart in response to the GRC's October 19, 2006 Interim Order. The Custodian later released the chart in its entirety without explanation to the Complainant.

Mr. Maltese called for a motion to accept the Executive Director's supplemental findings and recommendations as written. A motion was made by Mr. D'Elia and seconded by Ms. Richardson. The motion passed unanimously.

Steven Kossup v. City of Newark Police Department (2006-174)

Mr. Maltese recused himself from a vote in this matter. This complaint was not heard due to lack of a quorum.

Frederick Rembis v. Clifton Board of Education (2006-186)

Ms. Lownie reviewed 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 recommends the Council find that:

1. As the Custodian certifies that she provided the Complainant with all existing requested records or certifies that the requested records do not exist, the Custodian would not have unlawfully denied access to the requested records, except that the Custodian's failure to provide a written response to the Complainant's OPRA request within the statutorily mandated seven (7) business days resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.i. and N.J.S.A. 47:1A-5.g.
2. The Custodian is in violation of N.J.S.A. 47:1A-5.e for not providing immediate access to the requested budgets and public employee salary information.
3. The GRC administers OPRA and adjudicates denial of access complaints. The GRC does not have authority over the accuracy of those records disclosed pursuant to OPRA.
4. In light of the legal standards established for knowing and willful violations and the fact that the Custodian has released those documents which exist and certified that the unreleased records do not exist, the Custodian's actions do not meet the legal standard for a knowing and willful violation pursuant to OPRA or unreasonable denial of access under the totality of the circumstances in this case. However, the Custodian's actions do appear to be at least negligent regarding her knowledge of OPRA.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. D'Elia and seconded by Ms. Richardson. The motion passed unanimously.

Suzanne Mendes v. Monmouth Regional High School (2006-200)

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

The Executive Director respectfully recommends the Council find that:

- 1) At the time of the request, the Custodian unlawfully denied the Complainant access to the requested records because resumes of successful candidates are disclosable pursuant to NJ. Exec. Order No. 26 (Aug. 13, 2002). Subsequently, the records responsive were provided to the Complainant by the Custodian on November 29, 2006.

- 2) In view of the fact that the Custodian sought legal advice from its legal counsel and promptly released the records responsive once she received a copy of Executive Order No. 26, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's unlawful denial was negligent since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Richardson and seconded by Mr. D'Elia. The motion passed unanimously.

Tina Renna v. Union County Improvement Authority (2006-218)

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

The Executive Director respectfully recommends the Council find that while the Custodian certifies that all records responsive to the request have been provided, the Custodian's failure to respond within the statutorily mandated seven (7) business days is a "deemed" denial of the requests pursuant to N.J.S.A. 47:1A-5.i.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Richardson and seconded by Mr. D'Elia. The motion passed unanimously.

Complaints Adjudicated on Appeal in Superior Court:

None.

Motion for Reconsideration:

None.

Executive Director's Report:

Ms. Starghill discussed the new Appellate Division decision (New Jersey Builders' Association v. New Jersey Council on Affordable Housing, Decided January 24, 2007) and a letter to the GRC from the New Jersey Press Association regarding issues with the GRC's model request form. Ms. Starghill also discussed the much anticipated updated GRC website.

Public Comment:

- (1) Julian Grauer, Consultant Engineer
- (2) Beth Mason, President of the NJ Foundation for Open Government.
- (2) Elena Flynn, Records Custodian of the NJ Department of Human Services

A motion to end the Council's meeting was made by Mr. D'Elia and seconded by Ms. Richardson. The motion passed unanimously.

Meeting adjourned at 11:17 a.m.

Respectfully submitted,

Vincent Maltese, Chairman

Date Approved: