

Minutes of the Government Records Council
May 12, 2005 Public Meeting - Open Session

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

Ms. Luzzatto called roll call:

Present: Chairman Vincent Maltese, DeAnna Minus-Vincent (designee of Commissioner Susan Bass Levin, Department of Community of Affairs), Diane Schonyers (designee of Commissioner Librera, Department of Education), 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, Erin Knoedler, Jennifer Arozamena, Colleen McGann and Marion Davies.

Mr. Maltese read the resolution to convene in closed session to receive legal advice concerning the complaints to be adjudicated that day. Ms. Schonyers moved to adopt the resolution that was seconded by Mrs. Tabakin. All members present approved the motion. The Council met in closed session from 9:15 a.m. to 10:45 a.m.

The Council reconvened in open session at 11:00 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. The Open Public Meetings Act statement was read and attendees recited the Pledge of Allegiance.

Mr. Dice: No Personnel Matters

Mr. Maltese called for a motion to accept the minutes of December 9, 2004 open and closed session. A motion was made by Ms. Minus-Vincent and second by Ms. Schonyers. The motion was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Maltese

Nays: None

Administrative Action taken by Executive Director:

- 1) Robert Blau vs. Essex County Register (2003-97)
Settled in mediation April 28th.
- 2) Richard Giuditta vs. Township of West Orange (2004-88)
Withdrawal by Complainant April 20, 2005.
- 3) Rory Moore vs. Township of Old Bridge (2004-129)
No records responsive to the request.
- 4) Luis Perez vs. Borough of Glassboro (2005-8)
No records responsive to the request.
- 5) Margie Semler vs. City of Passaic (2005-10)
No records responsive to the request.
- 6) Rory Moore vs. Old Bridge Township (2005-14)
All records responsive to the request released to Complainant.
- 7) Richard Holland vs. Gloucester County Prosecutors Office (2005-18)
No records responsive to the request.

- 8) Richard Holland vs. Gloucester County Prosecutors Office (2005-28)
Complainant seeks information not a government record.
- 9) Kathleen Fallstick vs. Haddon Township (2005-25)
Complainant seeks information not a government record.
- 10) Kathleen Fallstick vs. Haddon Township (2005-26)
Complainant seeks information not a government record.
- 11) Virginia Jeffries vs. East Orange Board of Education (2005-34)
Currently in Mediation.
- 12) Frank D'Amore, Sr. vs. Borough of North Plainfield (2005-35)
Complainant seeks information not a government record.
- 13) Dennis Ricci vs. Atlantic City Housing Authority (2005-42)
Withdrawal by Complainant March 16, 2005.
- 14) Arthur Mourad vs. Borough of Bogota (2005-53)
No records responsive to the request.
- 15) Michael Jester vs. Atlantic City Housing Authority (2005-56)
Agreed to mediation.
- 16) Louis Toscano vs. NJ Dept of Personnel (2005-60)
Agreed to mediation
- 17) Michael Deluca vs. Department of Community Affairs (2005-61)
Agreed to mediation.
- 18) Scott Mooney, Esq. Vs. Bergen County Board of Chosen Freeholders (2005-62)
Withdrawal by Complainant April 27, 2005.
- 19) Beth Burns vs. Borough of Collingswood (2005-67)
Withdrawal by the Complainant May 5, 2005.
- 20) Frank Scarafile vs. City of Union (2005-72)
Agreed to mediation.
- 21) Arthur Mourad vs. Cliffside Park (2005-77)
Withdrawal by the Complainant April 28, 2005.
- 22) Latonia Moore vs. NJ State Police (2005-160)
Case settled - April 30, 2005.
- 23) Gayle Reedy vs. Borough of Collingswood (2004-222)
Withdrawal by the Complainant May 4, 2005.

Cynthia Teeters vs. NJ Division of Youth & Family Services (2002-6) & (2002-15)

Ms. Luzzatto stated that these cases were referred to the Office of Administrative Law (OAL) September 11, 2003 because the Council was unable to determine what records had been provided, what had not been provided and why in response to the Complainant's OPRA requests. The OAL or the Government Records Council rendered no final determination on access; rather, the parties reached a settlement on all issues of access on January 29, 2005. The Complainant's Counsel now seeks a determination from the Council on whether he is entitled to "a reasonable attorney's fee.

The Executive Director respectfully recommended that the Council dismiss this case on the basis that the Complainant was not a "prevailing party" and the Complainant's Counsel is not entitled to attorney's fees pursuant to OPRA.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Schonyers and second by Mrs. Tabakin. The motion was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Maltese

Nays: None

Martin O'Shea vs. Township of West Milford (2004-17)

Ms. Luzzato read the Final Decision of this case into the record verbatim.

The Council **CONCLUDED** that the Custodian did not commit a knowing and willful violation of OPRA under the totality of the circumstances in its handling of Martin O'Shea's January 12, 2004 and January 29, 2004 requests. Therefore, the imposition of a civil penalty against the Custodian is not warranted. It is **ORDERED** that Case No. 2004-17 be dismissed with prejudice.

In accordance with the Rules Governing the Superior Court of New Jersey, there is a period of 45 days from the date of this final decision to file an appeal with the Superior Court, Appellate Division.

Mr. Maltese called for a motion to accept the Final Decision as written. A motion was made by Ms. Minus-Vincent and seconded by Mrs. Tabakin. The motion passed by roll call.

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Maltese

Nays: None

Larry Loigman vs. Township of Middletown (2004-165)

Ms. Mc Gann 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. She presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council find:

1. That Dominick Carmagnola, Esq., Francis J. Vernioa, Esq. and Diamond State Insurance Company do not fall under the definition of a public agency, therefore their records do not fit the definition of a government records pursuant to N.J.S.A. 47:1A-1.1.
2. All documents that are made, maintained or kept on file in the course of the Township's official business and responsive to the request were provided to the Complainant.
3. The GRC does not have jurisdiction to regulate how a Custodian utilizes its counsel in its response to records requests.
4. Council no longer needs to hold a hearing on this matter and the case should be closed.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. The motion was made by Ms. Schonyers and second by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin and Mr. Maltese

Nays: None

Mrs. Tabakin rescued herself from the following case.

Martin O’Shea vs. Township vs. West Milford (2004-207) & (2005-31)

Ms. Knoedler 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. She presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that:

1. The Council should find that the Custodian did not violate N.J.S.A. 47:1A-5(e) as the vouchers and bills could not be disclosed immediately as no personnel were available to comply with the request and further legal review was required by the Planning Board and Township Attorneys.
2. The Council should find that the Custodian did not violate the statutory seven-business day deadline as he clearly responded to the Complainant’s November 16, 2005 OPRA request in writing on November 22, 2005 pursuant to N.J.S.A. 47:1A-5(i).
3. The Council should find that the Custodian violated N.J.S.A. 47:1A-5(i) by not providing a time frame, in writing, in which items one (1) and four (4) should be available to the Complainant.
4. The Council should find that the Custodian violated N.J.S.A. 47:1A-5(g) by not providing the Complainant with the specific reasons for the redactions of the invoice and the OPRA or other provision allowing for the exemption. It should be noted, however, that the Complainant was informed of the reasons for the redactions and the OPRA provision allowing the exemption in a letter provided to him.
5. The Council should find that the Custodian was warranted in redacting the information contained in the invoice due to attorney-client privilege pursuant to N.J.S.A. 47:1A-1.1.
6. The Council should find that the Custodian did not meet his burden of proving the denial of access is warranted by not providing a written response to the Complainant as to when items one (1) and four (4) should be available to him. If additional responsive records exist, the Custodian should provide the remaining records responsive to items one (1) and four (4) within 10 business days or the reason for the records exemption pursuant to OPRA.
7. The Council should find that the Custodian did not knowingly and willfully violate OPRA under the totality of the circumstances.

Mr. Maltese suggested that the Council order an in-house hearing on the Invoice in unredacted form to see if the information that was redacted was properly redacted after which will revisit the case and render a decision.

Mr. Maltese called for a motion to defer this case at this time. A motion was made by Ms. Minus-Vincent seconded by Ms. Schonyers. The motion passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mr. Maltese

Nays: None

Recused: Mrs. Tabakin

Rich Bernstein vs. Borough of Woodcliff Lake (2005-2)

Rich Bernstein vs. Borough of Ho Ho Kus (2005-13)

Rich Bernstein vs. Borough of Harrington Park (2005-6)

Ms. Knoedler 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 for all three cases. Ms. Knoedler stated that the Borough of Harrington Park released names only. She presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council dismiss this case on the basis that pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 the records should not be disclosed.

Mr. Maltese suggested that a decision on all three (3) cases be deferred until there is a response from the DOL with regard to the balancing test. This response should be available by the next meeting.

Mr. Maltese called for a motion to defer these cases until there is a decision from the Division of Law and the results of a Balancing Test. The motion was made by Mrs. Tabakin and seconded by Ms. Schonyers. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Maltese

Nays: None

Joseph Petrucelli vs. Edison Township (2004-210)

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. He presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council refer the case to the Office of Administrative Law for a hearing to determine:

1. Whether the Bank Reconciliation for March 2002, December 2003, and October 2004 for all Township accounts exist, and whether they have been provided to the Complainant? If the records exist but have not been provided, what is the statutory basis for the denial of access?
2. Whether Cash Disbursement details and Cash Deposit details reports for March 2002, December 2003, and October 2004 exist, and whether they have been provided to the Complainant. If the records exist but have not been provided, what is the statutory basis for the denial of access?
3. Whether the work paper on supporting detail for sheet 19 of the Financial Statement detailing surplus regeneration in 2003 exist, and whether they have been provided to the Complainant? If the records exist but have not been provided, what is the statutory basis for the denial of access?

4. For all records responsive to the request that are to be released, what charges would be incurred in preparing them for release to the Complainant?

Mr. Maltese called for a motion to defer the entire case to OAL. The motion was made by Ms. Schonyers and second by Mrs. Tabakin. The motion was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin and Mr. Maltese

Nays: None

Mr. Maltese rescued himself from the following case.

Jeffery Sauter vs. Township of Colts Neck (2004-68)

Ms. Mc Gann 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. She presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council find that:

1. The Custodian did violate N.J.S.A. 47:1A-5(e) by not providing the Complainant immediate access to the requested bills.
2. The Custodian did not release those documents responsive to the request within the statutorily required seven business days. Therefore, the Custodian did violate N.J.S.A. 47:1A-5(i).
3. The Custodian violated N.J.S.A. 47:1A-5(g) in not promptly notifying the Complainant in writing of the reasons for the denial.
4. The Custodian must certify to the reasons for the delay in access to bills and lack of timely response to the Complainant's request for records.
5. It is the responsibility of the municipal clerk, pursuant to N.J.S.A. 47:1A-1.1, to respond to the request and obtain any records responsive held by the Fire Department necessary to fulfill the records request and release such documents in accordance with OPRA unless there is a claimed exemption.
6. The Custodian is to provide an itemized list of all documents for which the Township is claiming an exemption, including any documents maintained by the Colts Neck Fire Department with a general nature description of each document, identification of the asserted privilege for each individual document, and the basis for same.
7. The Custodian should provide a response to the Executive Director in "4" through "6" above within ten (10) business days from receipt of the Council's decision

Ms. Schonyers recommended we issue an in-term order requesting the information be provided as outlined in 4, 5 and 6 within 10 business days.

Ms. Schonyers called for a motion to accept the Executive Director's recommendations as amended. The motion was made by Ms. Minus-Vincent and second by Mrs. Tabakin. The motion was passed on roll call:

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

Nays: None

Tina Renna vs. County of Union (2004-5)

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. She presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council dismiss this case on the basis that:

1. The Custodian has certified that all records responsive to the request have been released the Complainant.
2. The Custodian did violate N.J.S.A. 47:1a-5(i) by not responding to the records request in a timely manner. However, the violation does not rise to a level of a knowing and willful violation of OPRA under the totality of the circumstances.

Mr. Maltese requested that the Custodian be placed on the matrix in this case.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. The motion was made by Ms. Schonyers and second by Ms. Minus-Vincent. The motion passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin and Mr. Maltese

Nays: None

Yocheved Reiss vs. Rutgers University (2005-19)

Ms. Mc Gann 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. She presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommends that the Council find:

1. The Complainant agreed to payment of the special service charge after being given the opportunity to review and object, pursuant to N.J.S.A. 47:1A-5(c); therefore this portion of the complaint should be dismissed.
2. The Complainant received all documents responsive to the request in a timely manner; therefore, the actions of the Custodian do not rise to a level of knowing and willful pursuant to OPRA under the totality of the circumstances.

Mr. Maltese called for a motion to accept Executive Director's recommendation as written. The motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Maltese

Nays: None

Kathleen Fallsick vs. Township oh Hadden (2005-22)

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. He presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council dismiss the case on the basis that:

1. The Complainant stated that the information she requested was received from the Township Clerk's office.
2. The Government Records Council does not have jurisdiction over whether Commissioner Kathleen Hogan should pay back the tax payers of Haddon Township \$102.00 for a book that was sent to her house, as well as the \$5.00 postage.

Mr. Maltese called for a motion to accept Executive Director's recommendations as written. The motion was made by Ms. Schonyers and second by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Maltese

Nays: None

Reports: None

The Council had discussion on the Government Record Council website.

New Business: Draft Regulations ... There are four (4) sub-chapters:

1. General Provisions
2. Complaint Process
3. Inquiries
4. Advisory Opinion

Mr. Maltese called for a motion from the council to get the necessary approval to continue with the Draft Regulations. The motion was made by Ms. Schonyers and second by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin, Mr. Maltese

Nays: None

Public Comment:

A discussion took place between the following individuals and the Council members.

Martin O'Shea expressed his concerns to the Council about the process of the Knowing and

Willfully.

John Paff expressed his concern about the law not defining what is a Public Official, Officer, Employee or Custodian?

Fran Brooks wanted to know what constitutes an ex-ordinary request?

Mr. Maltese called for a motion to adjourn. The motion was made by Ms. Schonyers and second by Ms. Minus-Vincent. The motion passed unanimously.

Meeting adjourned at 12:50PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "De Anna Minus-Vincent", is written over a light gray rectangular background.

De Anna Minus-Vincent,
Secretary

Dated: September 8, 2005