

1 STATE OF NEW JERSEY
2 DEPARTMENT OF COMMUNITY AFFAIRS
3 GOVERNMENT RECORDS COUNCIL

4

5

6 PUBLIC SESSION

7

8 TRANSCRIPT OF PROCEEDINGS

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12 AT: DEPARTMENT OF COMMUNITY AFFAIRS

13 101 South Broad Street - Room 129

14 Trenton, New Jersey 08625-0819

15 DATE: WEDNESDAY, JANUARY 30, 2008

16 TIME: 9:34 A.M. TO 11:17 A.M.

17

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19

20 GUY J. RENZI & ASSOCIATES
21 GOLDEN CREST CORPORATE CENTER
22 2277 STATE HIGHWAY #33, SUITE 410
23 TRENTON, NEW JERSEY 08690-1700
24 TEL: (609) 989-9199 TOLL FREE: (800) 368-7652
25 www.renziassociates.com

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1 B O A R D M E M B E R S:

2

3 ROBIN BERG TABAKIN, Chairperson

4 KATHRYN FORSYTH

5 DAVID FLEISHER, Secretary

6 JANICE L. KOVACH

7 CHARLES RICHMAN (for Burdick matter only)

8

9 B O A R D P R O F E S S I O N A L S:

10 CATHERINE STARGHILL, ESQ., Executive Director

11 DEBRA A. ALLEN, ESQ., D.A.G.

12 KARYN GORDON, ESQ.

13 MEAGHAN TUOHEY-KAY, ESQ.

14

- 15 FRANK F. CARUSO, Case Manager
- 16 DARA LOWNIE, Case Manager
- 17 TIFFANY L. MAYERS, Case Manager
- 18 JYOTHI PAMIDIMUKKALA, Case Manager
- 19 JOHN STEWART, ESQ., Case Manager
- 20
- 21 BRIGITTE HAIRSTON, Council Secretary
- 22
- 23
- 24
- 25

3

1 A G E N D A

2 P A G E

3 CALL TO ORDER 6

4 MEETING NOTICE 6

5 ROLL CALL 7

6 SPECIAL PRESENTATION TO PAST CHAIRMAN,

7 MR. VINCENT P. MALTESE, ESQ. 7

8 CLOSED SESSION:

9 Closed Session Resolution

10 APPROVAL OF MINUTES:

11 November 28, 2007 - Closed Session Minutes n/a

12 November 28, 2007 - Open Session Transcript n/a

13 December 19, 2007 - Closed Session Minutes 19

14 December 19, 2007 - Open Session Transcript 20

15 CASES SCHEDULED FOR ADJUDICATION:

16 A. ADMINISTRATIVE COMPLAINT COUNCIL ADJUDICATION:

17 (Taken as one vote)

18 1. Nicole Brennan v. Township of Bloomfield

19 (Essex)(2007-91) 21

20 2. Cynthia McBride v. Kingwood Township

21 (Hunterdon)(2007-110) 21

22 3. Steven Kossup v. City of Newark

23 (Essex)(2007-122) 21

24 4. Kenneth MacRitchie v. Atlantic City

25 (2007-256) 21

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1 A G E N D A (Continued)

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3 5. Kenneth MacRitchie v. County of Hudson

- 4 (2007-257) 21
- 5 6. Ada-Jean Ericsson v. Borough of
- 6 Westville (Gloucester)(2007-261) 21
- 7 7. Donald Baldwin v. Township of Readington
- 8 (Hunterdon)(2007-304) 21
- 9 8. Michael Bright v. Essex County
- 10 Prosecutor's Office (Essex)(2008-1) 21
- 11 B. INDIVIDUAL COMPLAINT COUNCIL ADJUDICATION:
- 12 1. George Burdick v. Franklin Township, BOE
- 13 (Hunterdon)(2007-74)-KF/JK RECUSAL 11
- 14 2. Cynthia Teeters v. NJ Division of
- 15 Youth & Family Services (2002-6) 21
- 16 3. Cynthia Teeters v. NJ Division of
- 17 Youth & Family Services (2002-15) 21
- 18 4. Joseph Murray v. Township of Warren
- 19 (Somerset)(2007-169)(PULLED FROM AGENDA)
- 20 5. Jerald Albrecht v. NJ Department of
- 21 Treasury (2006-191)(PULLED FROM AGENDA)
- 22 6. Thomas Johnston v. Township of Hillside,
- 23 Municipal Council (Union)(2006-202) 22
- 24 7. Linda Janney v. Estell Manor City

25 (Atlantic)(2006-205) 26

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1 A G E N D A (Continued)

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3 8. Nancy Diaz v. City of Perth Amboy

4 (Essex)(2007-53) 28

5 9. Diomedes Valenzuela v. Twp. Of Irvington

6 (Essex)(2007-53) 29

7 10. John Paff v. Township of Dover

8 (Ocean)(2007-72) 30

9 11. Laurel Kornfeld v. Highland Park Borough

10 (Middlesex)(2007-113) 33

11 12. John Paff v. Township of Maurice River

12 (Cumberland)(2007-168) 35

13 13. Tyler Van Pelt v. Edison Township BOE

14 (Middlesex)(2007-179) 38

15 14. Abdiel Avila v. NJ Department of State

16 (2007-286) 42

17 C. COMPLAINTS RECONSIDERED:

18 None

19 D. COMPLAINTS ADJUDICATED IN SUPERIOR COURT:

20 None

21 EXECUTIVE DIRECTOR'S REPORT AND NEW BUSINESS 43

22 PUBLIC COMMENT 44

23 ADJOURNMENT 45

24

25

6

1 CHAIRPERSON TABAKIN: Good morning.

2 Welcome to our first meeting of 2008. Please

3 rise for the Pledge of Allegiance.

4 (All stand in Pledge of Allegiance.)

5 CHAIRPERSON TABAKIN: Pursuant to

6 the Open Public Meetings Act notice is hereby

7 given that the Government Records Council will

8 hold a regular meeting. At which, formal action

9 may be taken commencing at 9:30 a.m., Wednesday

10 January 30, 2008 at the Department of Community

11 Affairs which is located at 101 South Broad

12 Street, Trenton, New Jersey.

13 Proper notice having been given, the

14 Secretary is directed to include this statement

15 in the minutes of this meeting.

16 Notices of this meeting were faxed

17 to the Newark Star Ledger, the Trenton Times, the

18 Courier-Post in Cherry Hill, the Secretary of

19 State, and e-mailed to the New Jersey Foundation

20 for Open Government on January 28, 2008.

21 In the event of a fire alarm

22 activation, please exit the building following

23 the exit signs located within the conference

24 rooms and throughout the building. The exit

25 signs will direct you to the two fire evacuation

7

1 stairways located in the building. Upon leaving,

2 please follow the fire wardens which can be

3 located by their yellow helmets. Please follow

4 the flow of traffic away from the building.

5 And at this time, roll call, please.

6 MS. HAIRSTON: Charles Richman?

7 MR. RICHMAN: Here for the purpose

8 of Burdick vs. Franklin Township.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 CHAIRPERSON TABAKIN: Here.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Present.

13 MS. HAIRSTON: Dave Fleisher?

14 MR. FLEISHER: Here.

15 MS. HAIRSTON: Kathryn Forsyth is

16 late.

17 CHAIRPERSON TABAKIN: We are now

18 going to have a special presentation to Chairman

19 Maltese who has resigned from the Council after

20 having served its inception in 2002.

21 And, Catherine, would you like to...

22 (Plaque Presentation.)

23 MS. STARGHILL: Yes, and I'll come

24 around. I'll ask Mr. Maltese to step forward.

25 I want to read this plaque and I did

8

1 read your statement. You can do some again if

2 you would like.

3 The plaque reads:
4 Government Records Council,
5 Vincent P. Maltese, Esq., Chairman 2002-2007, in
6 appreciation of your five years of devoted
7 service and dedication to the citizens of the
8 state of New Jersey, we honor you for your
9 leadership.

10 And that could not be a truer
11 statement. You have been with this Council from
12 the very beginning when you all were cowboys
13 dealing with Indians and you have formed the GRC
14 into what it is today and we really appreciate
15 all your hard efforts. And I know you and I have
16 been talking about how we're going to stay in
17 contact.

18 MR. MALTESE: That's true.

19 MS. STARGHILL: But we just really
20 wanted to take this time to acknowledge five
21 years of sweat and toil. Thank you.

22 (Applause after accepting the
23 plaque.)

24 MR. MALTESE: Thank you very much.

25 If I may just say a couple of words.

9

1 I am deeply appreciative and
2 extremely honored and humbled by this
3 recognition.

4 I have no doubt that GRC's
5 supporters and critics alike someday will come
6 together in greater praise and recognition for
7 the honest and good work that the volunteers on
8 this Council perform every month on behalf of the
9 citizens of New Jersey -- work which is performed
10 in a fair, non-partisan and responsible manner.

11 The GRC is blessed with one of the
12 most dedicated, if not the most dedicated, staffs
13 in State government today. It is blessed with
14 an Executive Director whose mantra is "let's get
15 it right the first time," and it's blessed with
16 legal advisors who do a great job assisting the
17 Council to navigate through uncharted waters.

18 I will continue to follow the

19 Council's progress with great interest and will
20 always hold fond memories of my limited time that
21 I spent with each of you, and with those who
22 preceded you, genuine public servants like Marc
23 Pfeiffer, Paul Dice, Virginia Hook, Diane
24 Schoonyers, Chuck Richman, and the late Bernard
25 Spigner.

10

1 Transparency in State government at
2 all levels through access to government records
3 is the intended goal of OPRA and you have been
4 selected as stewards of that ideal. You are the
5 individuals sworn to uphold the law and advance
6 its spirit by your conduct and through your
7 decisions -- for only through your continued
8 efforts can the Council best insure transparency
9 in New Jersey government.

10 I want to thank you very much and I
11 look forward to seeing you many, many more times.
12 Keep up the good work.

13 MS. STARGHILL: Vince, are you going

14 to stick around just for a few minutes?

15 MR. MALTESE: Yes.

16 MS. STARGHILL: Vince now has to
17 actually go to work.

18 MS. KOVACH: You want me to get
19 Christian?

20 MS. STARGHILL: Yes.

21 MS. KOVACH: I will recuse myself
22 and go get Christian.

23 (Janice Kovach recuses herself.)

24 MS. STARGHILL: And I would like to
25 point out while the verdict was on the closed

11

1 session resolution, we don't need to discuss it

2 we can take the vote now.

3 CHAIRPERSON TABAKIN: Are we waiting
4 for her?

5 MS. STARGHILL: No, she recused
6 herself.

7 CHAIRPERSON TABAKIN: All right.

8 We're going to first adjudicate George Burdick v.

9 Franklin Township BOE (Hunterdon)(2007-74).

10 Note that Janice Kovach is recused.

11 MS. STARGHILL: But that Chuck

12 Richman is here in her stead for the Commissioner

13 of the Department of Community Affairs.

14 Additionally, Kathryn Forsyth has also recused

15 herself from the matter. Kathryn is running

16 late, but it didn't matter.

17 MS. LOWNIE: Before I begin reading

18 the conclusions and recommendations, I just want

19 to note on page 13 of the analysis we added a

20 number two under the request for a stay of the

21 Council's interim order and also on page 14 of

22 the last paragraph before the conclusion, we

23 added a few sentences to update the analysis a

24 little bit.

25 The Executive Director respectfully

12

1 recommends the Council find that:

2 1. The Council declines to withdraw

3 its October 31, 2007 Interim Order for the

4 following reasons:

5 a. The Council's Order is based on

6 substantial evidence in the record because the

7 Complainant requested identifiable government

8 records (attendance records) and the Custodian

9 failed to bear her burden of proving a lawful

10 denial of access to records maintained on file

11 entitled "Franklin Township School Staff

12 Attendance Record."

13 b. Although the Complainant's

14 request may be clear to the GRC, the Council held

15 that if the Custodian required clarification of

16 said request, she could have requested such

17 pursuant to *James Cody v. Middletown Township*

18 *Public Schools*, GRC Compliant No. 2005-98

19 (December 2005).

20 c. Because the Complainant

21 requested attendance records of all full-time

22 employees and all members of the administration

23 at Franklin Township School for the period of

24 July 1, 2005 to June 30, 2006 inclusive and the

25 "Franklin Township School Staff Attendance

13

1 Record" has been identified as a record
2 maintained on file, the Council ordered the
3 Custodian to release the "Franklin Township
4 School Staff Attendance Record" of all full-time
5 employees and all members of the administration
6 at Franklin Township School for the period of
7 July 1, 2005 to June 30, 2006 inclusive with
8 appropriate redactions and a legal justification
9 for each redacted part thereof.

10 d. If any information contained
11 within the requested record is exempt under OPRA
12 or any other law, it is the Custodian's
13 responsibility, not the GRC's, to redact said
14 information in accordance with the law and
15 provide a legal citation for each redacted
16 portion pursuant to N.J.S.A. 47:1A-6.

17 e. Pursuant to N.J.S.A. 47:1A-7.e.,
18 the Council was within its authority as part of

19 the adjudicatory process to issue its Interim
20 order compelling production of the requested
21 record, that is, the Council" [made] a
22 determination as to a record's accessibility
23 based upon the complaint and the custodian's
24 response thereto."

25 f. The Council was also within its

14

1 authority as part of the adjudicatory process to
2 note that the Custodian's actions may have
3 violated OPRA and preserve the issue for a
4 hearing pursuant to N.J.S.A. 47:1A-7.e.,
5 analyzing the totality of the circumstances
6 surrounding the record's accessibility. See In
7 re: Request for Solid Waste Utilities Customer
8 Lists, 106 N.J. 508 (1987).
9 No. 2., Because the Custodian's
10 Counsel failed to bear the burden of proving the
11 requirements for a stay set forth in Crowe v.
12 DeGioia, 90 N.J. 126, (1982), Counsel's request

13 for a stay should not be granted.

14 No. 3., The Custodian shall release
15 the requested attendance records labeled
16 "Franklin Township School Staff Attendance
17 Record" of all full-time employees and all
18 members of the administration at Franklin
19 Township School for the period of July 1, 2005 to
20 June 30, 2006 to the Complainant with appropriate
21 redactions. The Custodian must provide a
22 redaction index detailing the nature of the
23 information redacted and the lawful basis of the
24 redactions.

25 No. 4., The Custodian shall comply

15

1 with Item 3 above within five business days from
2 receipt of the Council's Interim Order and
3 simultaneously provide certified confirmation of
4 compliance, in accordance with New Jersey Court
5 Rule 1:4-4, as well as a legal explanation and
6 statutory citation for each redaction, if any, as
7 required under N.J.S.A. 47:1A-6, to the Executive

8 Director.

9 No. 5, As previously decided by the
10 Council on October 31, 2007, because the
11 Custodian failed to include the "Franklin
12 Township School Staff Attendance Record" as a
13 record responsive to the Complainant's request in
14 the Custodian's Statement of Information and
15 because the Custodian has not carried her burden
16 of proving a lawful denial of access to the
17 requested attendance records, it is possible that
18 the Custodian's actions were intentional and
19 deliberate, with knowledge of their wrongfulness,
20 and not merely negligent, heedless or
21 unintentional.

22 As such, this complaint shall be
23 referred to the Office of Administrative Law for
24 determination of whether the Custodian knowingly
25 and willfully violated OPRA and unreasonably

1 denied access under the totality of the

2 circumstances.

3 However, the Council defers such
4 referral pending the Custodian's compliance with
5 the Council's Interim Order.

6 CHAIRPERSON TABAKIN: Any discussion
7 on this case?

8 Roll call.

9 Oh, we need a motion on this.

10 MR. RICHMAN: I'll move.

11 MR. FLEISHER: Second.

12 CHAIRPERSON TABAKIN: Roll call.

13 MS. HAIRSTON: Charles Richman?

14 MR. RICHMAN: Yes.

15 MS. HAIRSTON: Robin Berg Tabakin?

16 CHAIRPERSON TABAKIN: Yes.

17 MS. HAIRSTON: Dave Fleisher?

18 MR. FLEISHER: Yes.

19 MS. STARGHILL: Okay, thank you,

20 Mr. Richman.

21 We're going to have to wait for

22 Janice to come down.

23 MS. HAIRSTON: She's down.

24 MS. STARGHILL: Oh, she is down?

25 I think we should take pictures at

17

1 this time and then we can go into closed session.

2 (At this time pictures are being

3 taken of Mr. Maltese with staff members. Off the

4 record.)

5 CHAIRPERSON TABAKIN:

6 WHEREAS, N.J.S.A. 10:4-12 permits a

7 public body to go into closed session during a

8 public meeting; and

9 WHEREAS, the Government Records

10 Council has deemed it necessary to go into closed

11 session to discuss certain matters which are

12 exempt from public discussion under the Open

13 Public Meetings Act; and

14 WHEREAS, the regular meeting of the

15 Council will reconvene at the conclusion of the

16 closed meeting;

17 NOW, THEREFORE, BE IT RESOLVED, that

18 the Council will convene in closed session to
19 receive legal advice and discuss anticipated
20 litigation in which the Council may become a
21 party pursuant to N.J.S.A. 10:4-12.b(7) in the
22 following matters: Cynthia Teeters v. New Jersey
23 Division of Youth & Family Services 2002-6,
24 Cynthia Teeters v. New Jersey Division of Youth &
25 Family Services 2002-15, Thomas Johnston v.

18

1 Township of Hillside, Municipal Council (Union)
2 (2006-202), George -- Joseph E. Murray v.
3 Township of Warren (Somerset)(2006-169).

4 BE IT FURTHER RESOLVED, that the
5 Council will disclose to the public the matters
6 discussed or determined in closed session as soon
7 as possible after final decisions are issued in
8 the above cases.

9 May I have a motion please?

10 MS. FORSYTH: So moved.

11 MR. FLEISHER: Second.

12 CHAIRPERSON TABAKIN: Roll call.

13 MS. HAIRSTON: Robin Berg Tabakin?
14 CHAIRPERSON TABAKIN: Yes.
15 MS. HAIRSTON: Janice Kovach?
16 MS. KOVACH: Yes.
17 MS. HAIRSTON: Kathryn Forsyth?
18 MS. FORSYTH: Yes.
19 MS. HAIRSTON: Dave Fleisher?
20 MR. FLEISHER: Yes.
21 CHAIRPERSON TABAKIN: Thank you we
22 are now in closed session.
23 (Closed session. The time is
24 9:56 a.m.)
25 (Back in open session. The time is

19

1 10:50 a.m.)
2 CHAIRPERSON TABAKIN: Motion to
3 open?
4 MS. KOVACH: Move.
5 MR. FLEISHER: Second.
6 CHAIRPERSON TABAKIN: Roll call.

7 MS. HAIRSTON: Robin Berg Tabakin?

8 CHAIRPERSON TABAKIN: Yes.

9 MS. HAIRSTON: Janice Kovach?

10 MS. KOVACH: Yes.

11 MS. HAIRSTON: Kathryn Forsyth?

12 MS. FORSYTH: Yes.

13 MS. HAIRSTON: Dave Fleisher?

14 MR. FLEISHER: Yes.

15 CHAIRPERSON TABAKIN: Okay. First

16 we'll approve the minutes.

17 Could I have a motion to approve the

18 closed session minutes from December 19, 2007?

19 MS. KOVACH: So moved.

20 MR. FLEISHER: Second.

21 MS. FORSYTH: I have to recuse

22 myself, I wasn't there.

23 CHAIRPERSON TABAKIN: Roll call.

24 MS. HAIRSTON: Robin Berg Tabakin?

25 CHAIRPERSON TABAKIN: Yes.

1 MS. HAIRSTON: Janice Kovach?

2 MS. KOVACH: Yes.

3 MS. HAIRSTON: Kathryn Forsyth?

4 MS. FORSYTH: I have to recuse

5 myself. I wasn't there.

6 MS. HAIRSTON: Okay.

7 Dave Fleisher?

8 MR. FLEISHER: Yes.

9 CHAIRPERSON TABAKIN: Okay. Motion
10 to approve December 19, 2007 open session
11 transcript?

12 MR. FLEISHER: So moved.

13 MS. KOVACH: Second.

14 CHAIRPERSON TABAKIN: Roll call.

15 MS. HAIRSTON: Robin Berg Tabakin?

16 CHAIRPERSON TABAKIN: Yes.

17 MS. HAIRSTON: Janice Kovach?

18 MS. KOVACH: Yes.

19 MS. HAIRSTON: Dave Fleisher?

20 MR. FLEISHER: Yes.

21 CHAIRPERSON TABAKIN: And now we
22 will do the Administrative Complaint Council

23 Adjudications.

24 MS. STARGHILL: For the record, we
25 not vote on the November opening and closed

21

1 for lack of quorum. The closed session minutes
2 and the open session transcript will not be voted
3 on for lack of quorum.

4 CHAIRPERSON TABAKIN: Can I have the
5 Administrative Complaint Council Adjudication,
6 can I have a motion to --

7 (Taken as one vote.)

8 MS. FORSYTH: So moved.

9 MS. KOVACH: Second.

10 CHAIRPERSON TABAKIN: Roll call.

11 MS. HAIRSTON: Robin Berg Tabakin?

12 CHAIRPERSON TABAKIN: Yes.

13 MS. HAIRSTON: Janice Kovach?

14 MS. KOVACH: Yes.

15 MS. HAIRSTON: Kathryn Forsyth?

16 MS. FORSYTH: Yes.

17 MS. HAIRSTON: Dave Fleisher?

18 MR. FLEISHER: Yes.

19 CHAIRPERSON TABAKIN: Now we'll move

20 on to Cynthia Teeters v. New Jersey Division of

21 Youth & Family Services (2002-6).

22 MS. FORSYTH: I'm recusing myself.

23 MS. STARGHILL: Judge Albright -- I

24 think you're fine to sit.

25 MS. FORSYTH: I'm sorry.

22

1 MS. STARGHILL: That's all right,

2 trying to get away from us.

3 Both 2002-6 and 2002-15 were settled

4 together and included in one finding and

5 recommendation.

6 The Executive Director respectfully

7 recommends the Council accept the settlement on

8 reasonable attorney's fees as reached by the

9 parties and approved by the Administrative Law

10 Judge at the Office of Administrative Law.

11 CHAIRPERSON TABAKIN: Okay. Any

12 questions on that?

13 Can I have a motion?.

14 MS. KOVACH: So moved.

15 MR. FLEISHER: Second.

16 CHAIRPERSON TABAKIN: Roll call.

17 MS. HAIRSTON: Robin Berg Tabakin?

18 CHAIRPERSON TABAKIN: Yes.

19 MS. HAIRSTON: Janice Kovach?

20 MS. KOVACH: Yes.

21 MS. HAIRSTON: Kathryn Forsyth?

22 MS. FORSYTH: Yes.

23 MS. HAIRSTON: Dave Fleisher?

24 MR. FLEISHER: Yes.

25 CHAIRPERSON TABAKIN: And that was

23

1 on both of the cases?

2 MS. STARGHILL: Yes.

3 CHAIRPERSON TABAKIN: That was on

4 both 2002-6 and 2002-15.

5 MS. STARGHILL: Yes.

6 CHAIRPERSON TABAKIN: Okay. Thomas

7 Johnston v. Township of Hillside, Municipal

8 Council (Union)(2006-202).

9 MS. LOWNIE: The Executive Director

10 respectfully recommends the Council find that:

11 1. The Custodian violated N.J.S.A.

12 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to

13 provide the Complainant with a written response

14 to his OPRA requests dated June 9, 2006 and June

15 20, 2006 until August 31, 2006, approximately two

16 months following the date of the Complainant's

17 requests, which far exceeds the statutorily

18 mandated seven business days, thus resulting in a

19 "deemed" denial of the Complainant's OPRA

20 requests. See Tucker Kelley v. Township of

21 Rockaway, GRC Complaint No. 2007-11 (October

22 2007) and John Paff v. Bergen County Prosecutor's

23 Office, GRC Complaint No. 2005-115 (March 2206).

24 No. 2., Because the Complainant

25 resubmitted his June 9, 2006 OPRA request on June

1 20, 2006, after the closed session minutes were
2 approved by the governing body on June 13, 2006,
3 the closed session minutes dated May 17, 2006 are
4 government records pursuant to N.J.S.A. 47:1A-1.1
5 and are subject to public access with appropriate
6 redactions.

7 The fact that the Township Attorney
8 has not yet authorized the closed session minutes
9 for release is not a lawful basis for a denial of
10 access, and as such, the Custodian has not borne
11 her burden of proving a lawful denial of access
12 to the closed session minutes dated May 17, 2006
13 pursuant to N.J.S.A. 47:1A-6.

14 No. 3., The Custodian shall release
15 the Township's closed session minutes dated May
16 17, 2006 to the Complainant with appropriate
17 redactions, if any, including a detailed document
18 index explaining the lawful basis for each
19 redaction.

20 No. 4., The Custodian shall comply
21 with No. 3 above within five business days from
22 receipt of the Council's Order and simultaneously

23 provide certified confirmation of compliance, as
24 well as a redaction index detailing each
25 redaction asserted and the lawful basis for the

25

1 denial, to the Executive Director pursuant to
2 New Jersey Court Rule 1:4.4.

3 No. 5., The Council defers analysis
4 of whether the Custodian knowingly and willfully
5 violated OPRA and unreasonably denied access
6 under the totality of the circumstances pending
7 the Custodian's compliance with the Council's
8 Interim Order.

9 And No. 6., The Council defers
10 analysis of whether the Complainant is a
11 prevailing party pursuant to N.J.S.A. 47:1A-6 and
12 entitled to reasonable attorney's fees pending
13 the Custodian's compliance with the Council's
14 Interim Order.

15 CHAIRPERSON TABAKIN: Any questions
16 or comments?

17 May I have a motion, please?

18 MS. FORSYTH: So moved.

19 MS. KOVACH: Second.

20 CHAIRPERSON TABAKIN: Roll call.

21 MS. HAIRSTON: Robin Berg Tabakin?

22 CHAIRPERSON TABAKIN: Yes.

23 MS. HAIRSTON: Janice Kovach?

24 MS. KOVACH: Yes.

25 MS. HAIRSTON: Kathryn Forsyth?

26

1 MS. FORSYTH: Yes.

2 MS. HAIRSTON: Dave Fleisher?

3 MR. FLEISHER: Yes.

4 CHAIRPERSON TABAKIN: Linda Janney

5 v. Estell Manor City (Atlantic)(2006-205).

6 MS. MAYERS: The Executive Director

7 respectfully recommends the Council find that:

8 No. 1., The Custodian has complied

9 with the Council's December 19, 2007 Interim

10 Order by certifying that she provided the

11 Complainant with the reimbursement check and the

12 open public meeting minutes from January 12,
13 2006; February 1, 2006; February 22, 2006, and
14 October 4, 2006.

15 No. 2., Because the requested
16 executive session minutes were approved by the
17 governing body as of the date of the
18 Complainant's OPRA request, the Custodian's
19 denial of same is unlawful. OPRA does not
20 require the governing body to approve the release
21 of records which have been previously approved as
22 the minutes of a public or closed governing body
23 meeting.

24 While redactions of closed session
25 minutes may be required before such minutes are

27

1 disclosed pursuant to OPRA, a governing body may
2 not delay access by approving the release of such
3 government records. N.J.S.A. 47:1A-1. et seq.

4 No. 3., Although the Custodian's
5 failure to provide access to the requested

6 executive session minutes was unlawful because
7 such records were approved by the governing body
8 as of the date of the Complainant's OPRA request,
9 the Custodian did certify that such minutes will
10 be made available to the Complainant on January
11 9, 2008, if she wishes to purchase them.

12 Therefore, it is concluded that the
13 Custodian's actions do not rise to the level of a
14 knowing and willful violation of OPRA and
15 unreasonable denial of access under the totality
16 of the circumstances.

17 However, the Custodian's unlawful
18 deemed denial of access appears negligent and
19 heedless since she is vested with the legal
20 responsibility of granting and denying access in
21 accordance with the law.

22 CHAIRPERSON TABAKIN: Any comments?

23 Motion?

24 MS. KOVACH: So moved.

25 MR. FLEISHER: Second.

1 CHAIRPERSON TABAKIN: Roll call.

2 MS. HAIRSTON: Robin Berg Tabakin?

3 CHAIRPERSON TABAKIN: Yes.

4 MS. HAIRSTON: Janice Kovach?

5 MS. KOVACH: Yes.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Yes.

8 MS. HAIRSTON: Dave Fleisher?

9 MR. FLEISHER: Yes.

10 CHAIRPERSON TABAKIN: Nancy Diaz v.

11 City of Perth Amboy (Essex)(2007-53).

12 MS. FORSYTH: I do have to recuse

13 myself. I've done that a couple of times.

14 MR. CARUSO: The Executive Director

15 respectfully recommends the Council find that:

16 1. The Custodian has complied with

17 the Council's December 19, 2007 Interim Order.

18 2. Because the Custodian has

19 complied with the Council's December 19, 2007

20 Interim Order, it is concluded that the

21 Custodian's actions do not rise to the level of a

22 knowing and willful violation of OPRA and
23 unreasonable denial of access under the totality
24 of the circumstances.

25 However, the Custodian's actions

29

1 appear to be negligent and heedless since she is
2 vested with he legal responsibility of granting
3 and denying access in accordance with the law.

4 CHAIRPERSON TABAKIN: Any comments?

5 Motion?

6 MR. FLEISHER: So moved.

7 MS. KOVACH: Second.

8 CHAIRPERSON TABAKIN: Roll call.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 CHAIRPERSON TABAKIN: Yes.

11 MS. HAIRSTON: Janice Kovach?

12 MS. KOVACH: Yes.

13 MS. HAIRSTON: Dave Fleisher?

14 MR. FLEISHER: Yes.

15 CHAIRPERSON HAIRSTON: Should we go

16 back and get her?

17 (Ms. Forsyth returns.)

18 CHAIRPERSON TABAKIN: Diomedes

19 Valenzuela v. Township of Irvington

20 (Essex)(2007-54).

21 MS. LOWNIE: The Executive Director

22 respectfully recommends the Council accept the

23 settlement as reached by the parties at the

24 Office of Administrative Law.

25 CHAIRPERSON TABAKIN: Any questions

30

1 or comments?

2 Motion?

3 MS. FORSYTH: So moved.

4 MR. FLEISHER: Second.

5 CHAIRPERSON TABAKIN: Roll call.

6 MS. HAIRSTON: Robin Berg Tabakin?

7 CHAIRPERSON TABAKIN: Yes.

8 MS. HAIRSTON: Janice Kovach?

9 MS. KOVACH: Yes.

10 MS. HAIRSTON: Kathryn Forsyth?

11 MS. FORSYTH: Yes.

12 MS. HAIRSTON: Dave Fleisher?

13 MR. FLEISHER: Yes.

14 CHAIRPERSON TABAKIN: John Paff v.
15 Township of Dover (Ocean)(2007-72).

16 MS. MAYERS: The Executive Director
17 respectfully recommends the Council find that:
18 No. 1., the Custodian did not bear
19 his burden of proof that the denial of access to
20 the requested letter was authorized by law
21 pursuant to N.J.S.A. 47:1A-6 by not seeking
22 clarification of the request. See Cody v.
23 Middletown Township Public Schools, GRC Complaint
24 No 2005-98 (December 2006).

25 No. 2., The Custodian did not

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1 unlawfully deny access to the requested
2 resolutions for September 26, 2006 or October 24,
3 2006 since he has certified that such records
4 were not prepared and approved prior to the
5 Complainant's OPRA request.

6 No. 3., The Custodian unlawfully
7 denied access to the requested minutes and
8 resolutions of the September 12, 2006 meeting and
9 failed to bear his burden of proof that the
10 denial of access was authorized by law pursuant
11 to N.J.S.A. 47:1A-6.

12 No. 4., The access sought by the
13 Complainant came about due to the Complainant's
14 filing of a Denial of Access Complaint and as
15 such, the Complainant is a prevailing party
16 entitled to an award of a reasonable attorney's
17 fee pursuant to N.J.S.A. 47:1A-6 and *Teeters v.*
18 *DYFS*, 387 N.J. Super.423 (App. Div. 2006).

19 Thus, this complaint should be
20 referred to the Office of Administrative Law for
21 the determination of reasonable prevailing party
22 attorney's fees.

23 No. 5., While the Custodian provided
24 the Complainant with the September 12, 2006
25 meeting minutes, including the resolution on

1 March 29, 2007, within the Custodian's Statement
2 of Information, which was 102 business days
3 following the date of the Complainant's OPRA
4 request, the Custodian has not carried his burden
5 of proving a lawful denial of access to the
6 September 12, 2006 meeting minutes and
7 resolutions at the time the request was made.

8 Therefore, it is possible that the
9 Custodian's actions were intentional and
10 deliberate, with knowledge of their wrongfulness,
11 and not merely negligent, heedless or
12 unintentional.

13 As such, this complaint should be
14 referred to the Office of Administrative Law for
15 determination of whether the custodian knowingly
16 and willfully violated OPRA and unreasonably
17 denied access under the totality of the
18 circumstances.

19 CHAIRPERSON TABAKIN: Any questions
20 or comments?

21 Motion?

22 MS. KOVACH: So moved.
23 MR. FLEISHER: Second.
24 CHAIRPERSON TABAKIN: Roll call.
25 MS. HAIRSTON: Robin Berg Tabakin?

33

1 CHAIRPERSON TABAKIN: Yes.
2 MS. HAIRSTON: Janice Kovach?
3 MS. KOVACH: Yes.
4 MS. HAIRSTON: Kathryn Forsyth?
5 MS. FORSYTH: Yes.
6 MS. HAIRSTON: Dave Fleisher?
7 MR. FLEISHER: Yes.
8 CHAIRPERSON TABAKIN: Laurel
9 Kornfeld v. Highland Park Borough
10 (Middlesex)(2007-113).
11 MR. CARUSO: The Executive Director
12 respectfully recommends the Council find that:
13 1. The Custodian's failure to
14 respond in writing to the Complainant's OPRA
15 request granting access, denying access, seeking

16 clarification or requesting an extension of time
17 within the statutorily mandated seven business
18 days, as required by N.J.S.A. 47:1A-5.g. and
19 N.J.S.A. 47:1A-5.i., results in a "deemed" denial
20 of the Complainant's OPRA request. Kelley v.
21 Township of Rockaway, GRC Complaint No. 2007-11
22 (August 2007).

23 2. In this complaint, although the
24 Custodian failed to respond in writing to the
25 Complainant's OPRA request granting access to the

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1 requested records until the 49th business day
2 following receipt of the Complainant's request,
3 the Complainant was granted access to the
4 requested records free of charge on April 16,
5 2007. Based on the evidence of record,
6 therefore, it is concluded that the Custodian's
7 actions do not rise to the level of a knowing and
8 willful violation of OPRA and unreasonable denial
9 of access under the totality of the
10 circumstances.

11 However, the Custodian's actions
12 appear to be negligent and heedless since she is
13 vested with the legal responsibility of granting
14 and denying access in accordance with the law.

15 CHAIRPERSON TABAKIN: Any questions
16 or comments?

17 Motion?

18 MS. FORSYTH: So moved.

19 MS. KOVACH: Second.

20 CHAIRPERSON TABAKIN: Roll call.

21 MS. HAIRSTON: Robin Berg Tabakin?

22 CHAIRPERSON TABAKIN: Yes.

23 MS. HAIRSTON: Janice Kovach?

24 MS. KOVACH: Yes.

25 MS. HAIRSTON: Kathryn Forsyth?

35

1 MS. FORSYTH: Yes.

2 MS. HAIRSTON: Dave Fleisher?

3 MR. FLEISHER: Yes.

4 CHAIRPERSON TABAKIN: John Paff v.

5 Township of Maurice river (Cumberland)(2007-168).

6 MS. LOWNIE: The Executive Director

7 respectfully recommends the Council find that:

8 1. Although seeking legal advice on

9 how to appropriately respond to an OPRA request

10 is reasonable pursuant to John Paff v. Bergen

11 County Prosecutor's Office, GRC Complaint No.

12 2005-115 (March 2006) and although the -- this

13 should read Custodian not Complainant -- and

14 although the Custodian requested an extension of

15 time in writing within the statutorily mandated

16 seven business days pursuant to N.J.S.A.

17 47:1A-5.g., N.J.S.A. 47:1A-5.i., John Paff v.

18 Bergen County Prosecutor's Office, GRC Complaint

19 No. 2005-215 (March 2006), and Sandra Schuler v.

20 Borough of Bloomsbury (Hunterdon), GRC Complaint

21 No. 2007-151 (December 2007), said request for an

22 extension is unreasonable because the

23 Complainant's request was not voluminous, did not

24 require an extraordinary expenditure of time and

25 effort and was not in storage or archived. See

1 Thomas Caggiano v. Borough of Stanhope (Sussex),
2 GRC Complaint No. 2007-161 (October 2007).

3 Thus, the Custodian unlawfully
4 denied access to the records responsive to Item
5 No. 3 of the Complainant's request.

6 No. 2., Pursuant to N.J.S.A.
7 47:1A-6, the Custodian has not carried his burden
8 of proving a lawful denial of access to the
9 redacted portions of the executive session
10 minutes dated November 13, 2006. As such, the
11 Custodian should release unredacted copies of
12 said minutes to the Complainant.

13 No. 3., The Custodian shall comply
14 with paragraph No. 2 above within five business
15 days from receipt of the Council's Interim Order,
16 with appropriate redactions, including a detailed
17 document index explaining the lawful basis for
18 each redaction, and simultaneously provide
19 certified confirmation of compliance, in
20 accordance with New Jersey Court Rule 1:4-4, to

21 the Executive Director.

22 No. 4., Because the Custodian stated
23 in the Statement of Information that all of the
24 requested records were provided to the
25 Complainant, and because the Custodian was

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1 required, as part of the Statement of
2 Information, to certify that the statements
3 contained therein are true, the Custodian has
4 provided the meeting minutes requested by the
5 Complainant to the Complainant.

6 No. 5., The Council defers analysis
7 of whether the Custodian knowingly and willfully
8 violated OPRA and unreasonably denied access
9 under the totality of the circumstances pending
10 the Custodian's compliance with the Council's
11 Interim Order.

12 No. 6., The Council defers analysis
13 of whether the Complainant is a "prevailing
14 party" pursuant to N.J.S.A. 47:1A-6 and entitled
15 to reasonable attorney's fees pending the

16 Custodian's compliance with the Council's Interim

17 Order.

18 CHAIRPERSON TABAKIN: Any questions

19 or comments?

20 Motion, please, as amended?

21 MS. KOVACH: So moved.

22 MR. FLEISHER: Second.

23 CHAIRPERSON TABAKIN: Roll call.

24 MS. HAIRSTON: Robin Berg Tabakin?

25 CHAIRPERSON TABAKIN: Yes.

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1 MS. HAIRSTON: Janice Kovach?

2 MS. KOVACH: Yes.

3 MS. HAIRSTON: Kathryn Forsyth?

4 MS. FORSYTH: Yes.

5 MS. HAIRSTON: Dave Fleisher?

6 MR. FLEISHER: Yes.

7 CHAIRPERSON TABAKIN: Tyler Van Pelt

8 v. Edison Township Board of Education

9 (Middlesex)(2007-179).

10 MS. MAYERS: The Executive Director
11 respectfully recommends the Council find:
12 No. 1., The Custodian's failure to
13 respond in writing to the Complainant's OPRA
14 request granting access, denying access, seeking
15 clarification or requesting an extension of time
16 within the statutorily mandated seven business
17 days, as required by N.J.S.A. 47:1A-5.g. and
18 N.J.S.A. 47:1A-5.i., results in a "deemed" denial
19 of the Complainant's OPRA request. See Kelley v.
20 Township of Rockaway, GRC Complaint No. 2007-11
21 (October 2007).

22 No. 2., Even though the Custodian
23 violated N.J.S.A. 47:1A-5.g. and N.J.S.A.
24 47:1A-5.i. by not responding to the Complainant's
25 OPRA request in writing within the statutorily

1 mandated seven business days, the Custodian has
2 certified that the Complainant received all
3 records responsive to his OPRA request on May 9,
4 2007. The Custodian also certified that the

5 remaining requested records were not provided

6 because such records do not exist.

7 Therefore, the Custodian did not

8 unlawfully deny access to the sealed plans for

9 rooms 121, 129, and 127 or the Form 124 for rooms

10 120, 123, 125, 128 and 132 because he has

11 certified that such records do not exist. See

12 Pusterhofer v. New Jersey Department of

13 Education, GRC Complaint No. 2005-49 (July 2005).

14 No. 3., Pursuant to N.J.S.A.

15 47:1A-7.b., which delineates the Council's powers

16 and duties, the GRC does not have the authority

17 to regulate the manner in which a Township

18 maintains its files or which records a Township

19 must maintain. See Kwanzaa v. Department of

20 Corrections, GRC Complaint No. 2004-167 (March

21 2005)(the GRC does not have authority over the

22 content of a record); Gillespie v. Newark public

23 Schools, GRC Complaint No. 2004-105 (November

24 2004)(the GRC does not have the authority to

25 adjudicate the validity of a record); Katinsky v.

1 River Vale Township, GRC Complaint No. 2003-68
2 (November 2003)(the integrity of a requested
3 record is not within the GRC's authority to
4 adjudicate); Toscano v. New Jersey Department of
5 Labor, GRC Complaint No. 2005-59 (September
6 2005)(the GRC does not have the authority over
7 the condition of records provided by a
8 Custodian.)

9 No. 4., Although the Custodian's
10 failure to provide a written response to the
11 Complainant's OPRA request within the statutorily
12 mandated seven business days resulted in a
13 "deemed" denial, the Complainant was provided
14 with all of the records responsive to the request
15 with the exception of those records which the
16 Custodian legally certified do not exist.

17 Therefore, it is concluded that the
18 Custodian's actions do not rise to the level of a
19 knowing and willful violation of OPRA and
20 unreasonable denial of access under the totality

21 of the circumstances.

22 However, the Custodian's unlawful
23 "deemed" denial of access appears negligent and
24 heedless since he is vested with the legal
25 responsibility of granting and denying access in

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1 accordance with the law.

2 CHAIRPERSON TABAKIN: Okay. On page
3 6, second full paragraph, second to the last line
4 it reads 121, 1279, should that be 127?

5 MS. MAYERS: Yes, 127.

6 CHAIRPERSON TABAKIN: Okay, as well
7 as in the conclusion No. 2, it should read --

8 MS. MAYERS: -- it should read 127.

9 CHAIRPERSON TABAKIN: Okay, third
10 line from -- and I guess fourth line from the
11 bottom of, I guess, paragraph two.

12 Motion as amended, please?

13 MS. FORSYTH: So moved.

14 MS. KOVACH: Second.

15 CHAIRPERSON TABAKIN: Roll call.
16 MS. HAIRSTON: Robin Berg Tabakin?
17 CHAIRPERSON TABAKIN: Yes.
18 MS. HAIRSTON: Janice Kovach?
19 MS. KOVACH: Yes.
20 MS. HAIRSTON: Kathryn Forsyth?
21 MS. FORSYTH: Yes.
22 MS. HAIRSTON: Dave Fleisher?
23 MR. FLEISHER: Yes.
24 CHAIRPERSON TABAKIN: Abdiel Avila
25 v. New Jersey Department of State (2007-286).

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1 (Dave Fleisher recuses himself.)

2 MR. CARUSO: The Executive Director

3 respectfully recommends the Council find that:

4 1. Because the Custodian responded

5 within the statutorily mandated seven business

6 days providing three records and stating that no

7 other records responsive exist, the Custodian has

8 not violated N.J.S.A. 47:1A-5.g. and N.J.S.A.

9 47:1A-5.i.

10 2. Because the Custodian certifies
11 that he did not receive an OPRA request dated on
12 or about October 18, 2007 from the Complainant,
13 the complaint is without a reasonable factual
14 basis to pursue pursuant to Megargal v. New
15 Jersey Department of Military and Veterans
16 Affairs, GRC Complaint No. 2007-250 (October
17 2007).

18 CHAIRPERSON TABAKIN: Any comments?

19 Motion?

20 MS. FORSYTH: So moved.

21 MS. KOVACH: Second.

22 CHAIRPERSON TABAKIN: Roll call.

23 MS. HAIRSTON: Robin Berg Tabakin?

24 CHAIRPERSON TABAKIN: Yes.

25 MS. HAIRSTON: Janice Kovach?

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1 MS. KOVACH: Yes.

2 MS. HAIRSTON: Kathryn Forsyth?

3 MS. FORSYTH: Yes.

4 CHAIRPERSON TABAKIN: Thank you.

5 (Dave Fleisher comes back.)

6 MS. STARGHILL: Also for the record

7 I'd like just point out that Joseph Murray v.

8 Township of Warren (2006-169) and Jerald Albrecht

9 v. New Jersey Department of Treasury (2006-191)

10 were pulled from the agenda this morning.

11 CHAIRPERSON TABAKIN: Okay. There

12 are no complaints to reconsider. There are no

13 complaints adjudicated Superior Court.

14 Would you like to give your report?

15 MS. STARGHILL: Very brief.

16 Normally our January meeting is the

17 meeting in which we elect officials. I would ask

18 the Council to just hold off a month in hopes

19 that the Governor will appoint and the Senate

20 will approve Vince's replacement and the third

21 public member's replacement. I mean, obviously,

22 if that's not done by our next meeting, then we

23 should probably elect the officers.

24 CHAIRPERSON TABAKIN: At this time

25 we would have public comment.

1 In the interest of time speakers are
2 limited to five minutes. Speakers with prepared
3 testimony should provide eight copies also for
4 the Council.

5 Is there anyone that would like to
6 speak?

7 Please come to the table and state
8 your name and address.

9 MS. SZABO: Good morning, Denise
10 Szabo. I'm the Municipal Clerk in Bernard's
11 Township, but I'm here this morning representing
12 the MCANJ, the Municipal Clerk's Association of
13 New Jersey.

14 I'm Chairman of the Records
15 Committee for the MCANJ, and I'm just here to say
16 that we are committed to upholding the OPRA laws,
17 and I think education is key. And Ms. Starghill
18 and I have talked off-line and hopefully she's
19 going to provide the last two municipal clerks

20 regarding significant decisions, some of which I
21 heard this morning, especially concerning
22 executive session minutes. So I just want to let
23 you know we're committed.

24 And, of course, you have no
25 jurisdiction over this, but we would love to have

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1 a retired member of the Municipal Clerk's
2 Association sit on the Council. I think it would
3 add value. I know you have no jurisdiction, I
4 just wanted to get that statement on the record.
5 So thank you.

6 MS. STARGHILL: Write a letter to
7 the Governor.

8 CHAIRPERSON TABAKIN: Thank you.

9 Is there anyone else?

10 May I have a motion to adjourn,
11 please?

12 MS. KOVACH: So moved.

13 MS. FORSYTH: Second.

14 CHAIRPERSON TABAKIN: Roll call.

15 MS. HAIRSTON: Robin Berg Tabakin?

16 CHAIRPERSON TABAKIN: Yes.

17 MS. HAIRSTON: Janice Kovach?

18 MS. KOVACH: Yes.

19 MS. HAIRSTON: Kathryn Forsyth?

20 MS. FORSYTH: Yes.

21 MS. HAIRSTON: Dave Fleisher?

22 MR. FLEISHER: Yes.

23 CHAIRPERSON TABAKIN: We're

24 adjourned.

25 (HEARING CONCLUDED AT 11:17 A.M.)

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1

2 CERTIFICATE

3

4 I, LINDA P. CALAMARI, a Professional

5 Reporter and Notary Public of the State of New

6 Jersey, do hereby certify the foregoing to be a

7 true and accurate transcript of my original

8 stenographic notes taken at the time and place

9 hereinbefore set forth.

10

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13

LINDA P. CALAMARI

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17 Dated: FEBRUARY 11, 2008.

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