

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

4

5

6           PUBLIC SESSION

7

8           TRANSCRIPT OF PROCEEDINGS

9

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11

12          AT: DEPARTMENT OF COMMUNITY AFFAIRS

13                 101 South Broad Street - Room 129

14                 Trenton, New Jersey 08625-0819

15          DATE: WEDNESDAY, MAY 28, 2008

16          TIME: 9:39 A.M. TO 11:56 A.M.

17

18

19          GUY J. RENZI & ASSOCIATES

20 CERTIFIED COURT REPORTERS & VIDEOGRAPHERS  
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1 COUNCIL MEMBERS:

2 ROBIN BERG TABAKIN, Chairperson

3 DAVID FLEISHER, (financial planner and Executive

4 with the financial services firm

5 of Firstrust Financial

6 Resources, LLC)

7 KATHRYN FORSYTH (designee of Commissioner

8 Lucille Davy, Department

9 of Education)

10 CHARLES RICHMAN (Deputy Commissioner of

11 Community Affairs)

12

13 COUNCIL PROFESSIONALS:

14 CATHERINE STARGHILL, ESQ., Executive Director

- 15 DEBRA A. ALLEN, ESQ., D.A.G.
- 16 KARYN GORDON, ESQ., (In-House Counsel)
- 17 GINA R. OROSZ, ESQ., (Outside Counsel)
- 18 FRANK F. CARUSO, (Case Manager)
- 19 DARA LOWNIE, (Senior Case Manager)
- 20 SHERIN KEYS, ESQ., (Case Manager/Staff Attorney)
- 21 JYOTHI PAMIDIMUKKALA, (Resource Manager)
- 22 JOHN E. STEWART, ESQ., (Case Manager/  
23 In Camera Attorney)
- 24 ELIZABETH ZIEGER-SEARS, ESQ. (Case Manager)
- 25 BRIGITTE HAIRSTON, (Council Secretary)

1 A G E N D A

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3 CALL TO ORDER.....7

4 MEETING NOTICE.....7

5 ROLL CALL.....8

6 CLOSED SESSION:

7 Closed Session Resolution.....10

8 APPROVAL OF MINUTES

9 (No Quorum for these.).....11

10 November 28, 2007 - Closed Minutes.....n/q

11 March 26, 2008 - Closed Session Minutes...n/q

12 March 26, 2008 - Open Session Transcript..n/q

13 April 30, 2008 - Closed Session Minutes...n/q

14 April 30, 2008 - Open Session Transcript..n/q

15 CASES SCHEDULED FOR ADJUDICATION

16 A. ADMINISTRATIVE COMPLAINT COUNCIL

17 ADJUDICATION:

18 (TAKEN AS ONE VOTE).....11

19 1. Jane Dornick v. South Plainfield Board of

20 Education (Middlesex)(2007-290)

21 2. Jane Dornick v. South Plainfield Board of

22 Education (Middlesex)(2007-291)

23 3. Hilary Downing v. NJ Department of Health &

24 Senior Services (2008-55)

25 (Continued)

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3 4. Halyna Markey v. Cinnaminson Township Tax

4	Assessment Office (2008-56)	
5	5. Michael McGowan v. NJ Housing & Mortgage	
6	Finance Agency (2008-64)	
7	6. Michael Hogan v. Borough of Emerson	
8	(Bergen)(2008-73)	
9	7. Romeo Cascaes v. Town of Harrison	
10	(Hudson)(2008-75)	
11	8. Joseph Oswald v. NJ Motor Vehicle Commission	
12	(2008-87)	
13	B. INDIVIDUAL COMPLAINT COUNCIL ADJUDICATION:	
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15	(2004-108).....PULLED	
16	2. Thomas Caggiano v. Borough of Stanhope	
17	(2006-2)-CR RECUSAL.....12	
18	3. Joseph Elcavage v. West Milford Township	
19	(2006-55).....14	
20	4. Joseph Elcavage v. West Milford Township	
21	(2006-64).....18	
22	5. Michael DeLuca v. Town of Guttenberg	
23	(2006-102).....20	
24	6. Jerald Albrecht v. NJ Department of Treasury	

25 (2006-191).....20

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3 7. Michael Della Vella v. City of Wildwood

4 (Cape May)(2007-71).....22

5 8. Michelle Ewing v. NJ Department of

6 Law & Public Safety, Division of

7 Consumer Affairs (2007-119).....23

8 9. Paul Bellan-Boyer v. NJ Department of

9 Community Affairs, Commissioner's Office

10 (2007-143)-CR RECUSAL.....13

11 10. Andrew Faulkner v. Rutgers University

12 (2007-149)-RBT RECUSAL.....25

13 11. Corey Morris v. Trenton Police Department

14 (Mercer)(2007-160).....29

15 12. Roberto Mejias v. NJ Department of

16 Corrections (2007-181).....31

17 13. Nia Gill v. NJ Department of Banking &

18 Insurance (2007-189).....PULLED

19 14. John Bart v. County of Passaic Public Housing

20 Authority (2007-215).....34

21 15. Ronald Pittore v. University of Medicine &

22 Dentistry of NJ (2007-216)-RBT RECUSAL....26

23 16. Martin O'Shea v. Township of West Milford

24 (Passaic)(2007-237).....36

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3 17. Dale Baranoski v. Township of Hamilton

4 (Mercer)(2007-268).....40

5 18. John Paff v. Willingboro Board of Education

6 (Burlington)(2007-272).....43

7 19. Beverly Jones v. Trenton Board of Education

8 (Mercer)(2007-282)-KF RECUSAL.....47

9 20. Tina Renna v. Somerset County Board of

10 Chosen Freeholders (2008-39).....49

11 21. Nicole Donnell v. NJ Department of

12 Children & Family Service (2008-47).....51

13 C. COMPLAINTS RECONSIDERED:

14 None.....52

15 D. COMPLAINTS ADJUDICATED IN SUPERIOR COURT:

16 None.....52

17 EXECUTIVE DIRECTOR'S REPORT AND NEW BUSINESS:

18 - GRC Promulgated Regulations (May 5, 2008)...52

19 PUBLIC COMMENT.....53

20 ADJOURNMENT.....54

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25

1 CHAIRPERSON TABAKIN: Okay, I'm  
 2 calling the meeting to order.

3 Would we all please rise for the  
 4 Pledge of Allegiance?

5 (Whereupon, the Pledge of Allegiance  
 6 was given.)

7 CHAIRPERSON TABAKIN: This meeting  
 8 was called pursuant to the provision of the Open

9 Public Meetings Act. Notice of this meeting was  
10 faxed to the Newark Star-Ledger, Trenton Times,  
11 Courier-Post Cherry Hill, Secretary of State and  
12 e-mailed to the New Jersey Foundation of Open  
13 Government, May 22, 2008. Proper notice having  
14 been given, the secretary is directed to include  
15 the statement in the minutes of the meeting.

16 In the event of a fair alarm  
17 activation, please exit the building following  
18 the exit signs located both in the conference  
19 room and throughout the building. The exit signs  
20 will direct you to the two fire evacuation  
21 stairways located in the building. Upon leaving,  
22 please follow the fire wardens which can be  
23 located by yellow helmets. Please follow the  
24 flow of traffic away from the building.

25 Roll call.

8

1 MS. HAIRSTON: Robin Berg Tabakin?

2 CHAIRPERSON TABAKIN: Here.

3 MS. HAIRSTON: Charles Richman?

4 MR. RICHMAN: Charles Richman for

5 Commissioner Kovach.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Here.

8 MS. HAIRSTON: Dave Fleisher?

9 MR. FLEISHER: Here.

10 CHAIRPERSON TABAKIN: Okay. We are

11 going to move into closed session.

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

13 public body to go into closed session during a

14 public meeting; and

15 WHEREAS, the Government Records

16 Council has deemed it necessary to go into closed

17 session to discuss certain matters which are

18 exempt from the Open Public Meetings Act; and

19 WHEREAS, the regular meeting of the

20 Council will reconvene at the conclusion of the

21 closed meeting;

22 NOW, THEREFORE, BE IT RESOLVED, that

23 the Council will convene in closed session to

24 receive legal advice and discuss anticipated

25 litigation in which the Council may become a

9

1 party pursuant to N.J.S.A. 10:4-12.b(7) in the

2 following matters:

3 1. Robert Gorman v. Gloucester City

4 (2004-108) In-camera review.

5 2. Jerald Albrecht v. New Jersey

6 Department of Treasury (2006-191) In-camera

7 review.

8 3. Bellan-Boyer v. New Jersey

9 Department of Community Affairs, Commissioner's

10 Office (2007-143) In-camera review.

11 BE IT FURTHER RESOLVED, that the

12 Council will disclose to the public the matters

13 discussed or determined in closed session as soon

14 as possible after final decisions are issued in

15 the above cases.

16 Can I have motion?

17 MS. FORSYTH: So moved.

18 MR. FLEISHER: Second.

19 CHAIRPERSON TABAKIN: Roll call.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 CHAIRPERSON TABAKIN: Yes.

22 MS. HAIRSTON: Charles Richman?

23 MR. RICHMAN: Yes.

24 MS. HAIRSTON: Kathryn Forsyth?

25 MS. FORSYTH: Yes.

10

1 MS. HAIRSTON: And Dave Fleisher?

2 MR. FLEISHER: Yes.

3 CHAIRPERSON TABAKIN: Okay, we are

4 in closed session now.

5 (Whereupon, the Council goes into

6 closed session. The time is 9:44 a.m.)

7 (Back in open session. The time is

8 11:11 a.m.)

9 CHAIRPERSON TABAKIN: Welcome back,

10 everyone.

11 Could I have a motion to open?

12 MR. FLEISHER: So moved.

13 CHAIRPERSON TABAKIN: Second?

14 MS. FORSYTH: Second.

15 CHAIRPERSON TABAKIN: Roll call.

16 MS. HAIRSTON: Robin Berg Tabakin?

17 CHAIRPERSON TABAKIN: Yes.

18 MS. HAIRSTON: Charles Richman?

19 MR. RICHMAN: Yes.

20 MS. HAIRSTON: Kathryn Forsyth?

21 MS. FORSYTH: Yes.

22 MS. HAIRSTON: And Dave Fleisher?

23 MR. FLEISHER: Yes.

24 CHAIRPERSON TABAKIN: There are

25 minutes from the November closed session, March

11

1 closed session, March open session, April closed

2 session and April open session. We are not able

3 to approve any of those. We have a lack of

4 quorum, actually, for all of those. So we will

5 resume that next month.

6 And now we will do the

7 Administrative Complaint Council Adjudication.

8 There are eight cases.

9 Could I have a motion to approve

10 those?

11 MS. FORSYTH: So moved.

12 MR. FLEISHER: Second.

13 CHAIRPERSON TABAKIN: Roll call.

14 MS. HAIRSTON: Robin Berg Tabakin?

15 CHAIRPERSON TABAKIN: Yes.

16 MS. HAIRSTON: Charles Richman?

17 MR. RICHMAN: Yes.

18 MS. HAIRSTON: Kathryn Forsyth?

19 MS. FORSYTH: Yes.

20 MS. HAIRSTON: Dave Fleisher?

21 MR. FLEISHER: Yes.

22 CHAIRPERSON TABAKIN: Okay. Now we

23 will move into the Individual Complaints.

24 MS. STARGHILL: Madam Chairwoman, it

25 should be noted that No. 1 of the agenda has been

12

1 pulled, tabled until next month, Robert Goreman

2 v. Gloucester City (2004-108).

3 CHAIRPERSON TABAKIN: Thank you.

4 MS. STARGHILL: And Mr. Richman has  
5 to recuses himself from No. 2, Thomas Caggiano  
6 vs. Borough of Stanhope (2006-2). And since he  
7 has to recuse himself from No. 9, Paul  
8 Bellan-Boyer v. NJ Department of Community  
9 Affairs, Commissioner's Office (2007-143), we  
10 should likely do both of these.

11 CHAIRPERSON TABAKIN: Agreed.

12 MR. RICHMAN: Thank you.

13 Also let the record reflect the fact  
14 that I did not participate in the in camera  
15 review relative to Paul Bellan-Boyer.

16 (Charles Richman recuses himself  
17 from these two matters and leaves the room.)

18 CHAIRPERSON TABAKIN: Okay, Thomas  
19 Caggiano v. Borough of Stanhope (2006-2).

20 MS. LOWNIE: The Executive Director  
21 respectfully recommends the Council accept the  
22 Administrative Law Judge's Initial Decision dated  
23 April 17, 2008.

24 CHAIRPERSON TABAKIN: Motion to

25 accept?

13

1 MR. FLEISHER: So moved.

2 MS. FORSYTH: Second.

3 CHAIRPERSON TABAKIN: Roll call.

4 MS. HAIRSTON: Robin Berg Tabakin?

5 CHAIRPERSON TABAKIN: Yes.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Yes.

8 MS. HAIRSTON: Dave Fleisher?

9 MR. FLEISHER: Yes.

10 CHAIRPERSON TABAKIN: All right, now

11 we will do Paul Bellan-Boyer v. New Jersey

12 Department of Community Affairs, Commissioner's

13 Office (2007-143).

14 MR. STEWART: 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 by

18 providing the Council with all records set forth

19 in Paragraph 2 of the Order within five business  
20 days of receiving the Council's Order, as  
21 extended.

22 No. 2. On the basis of the  
23 Council's determination in this matter, the  
24 Custodian shall comply with the Council's  
25 Findings of the In Camera Examination set forth

14

1 in the above table within five business days from  
2 receipt of this Order and provide certified  
3 confirmation of compliance pursuant to N.J. Court  
4 Rules, R. 1:4-4 to the Executive Director.

5 CHAIRPERSON TABAKIN: Thank you.

6 Motion?

7 MS. FORSYTH: So moved.

8 MR. FLEISHER: Second.

9 MS. HAIRSTON: Robin Berg Tabakin?

10 CHAIRPERSON TABAKIN: Yes.

11 MS. HAIRSTON: Kathryn Forsyth?

12 MS. FORSYTH: Yes.

13 MS. HAIRSTON: Dave Fleisher?

14 MR. FLEISHER: Yes.

15 MS. STARGHILL: I'll get

16 Mr. Richman.

17 (Charles Richman returns to the

18 dais.)

19 CHAIRPERSON TABAKIN: Okay. Joseph

20 Elcavage v. West Milford Township (2006-55).

21 MR. STEWART: The Executive Director

22 respectfully recommends the Council find that:

23 1. Pursuant to N.J.S.A. 47:1A-6,

24 the Custodian has not carried her burden of

25 proving a lawful denial of access to the contents

15

1 of the 261 unopened e-mails in Councilman

2 Warden's township e-mail account, therefore the

3 contents of these e-mails shall be disclosed to

4 the Complainant with any lawful redactions.

5 Additionally, the Custodian shall disclose all

6 e-mails with any lawful redactions in Councilman

7 Warden's township account responsive to the

8 Complainant's request for the period of January

9 1, 2005 through January 30, 2005.

10 2. Because the Custodian has

11 certified that only one e-mail responsive to the

12 Complainant's request was in Councilman Warden's

13 personal e-mail account and it was made available

14 for disclosure to the Complainant, and because

15 the Complainant has not offered any compelling

16 evidence to the contrary, the Custodian did not

17 unlawfully deny access to the records in the

18 Councilman's personal e-mail account.

19 No. 3. The Custodian shall comply

20 with Item No. 1 above within five business days

21 from receipt of the Council's Interim Order with

22 appropriate redactions, including a detailed

23 document index explaining the lawful basis for

24 each redaction, and simultaneously provide

25 certified confirmation of compliance, in

1 accordance with N.J. Court Rule 1:4-4, to the

2 Executive Director.

3 4. The Council defers analysis of  
4 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 CHAIRPERSON TABAKIN: Thank you.

10 Motion.

11 MR. FLEISHER: So moved.

12 MS. FORSYTH: I have a question.

13 In the chronology of events in this  
14 document, it appears that the complaint was  
15 forwarded to the Office Dispute Resolutions for  
16 mediation on March 17th, 2006, but it didn't come  
17 back to the GRC until February 15, 2008.

18 MR. STEWART: Yes, ma'am, that's  
19 correct.

20 MS. FORSYTH: Is there any reason  
21 that it would take two years for --

22 MR. STEWART: I can't answer that  
23 because I'm not involved with the Office of

24 Dispute Settlement.

25 MS. FORSYTH: Okay.

17

1 MS. STARGHILL: We do periodically  
2 discuss with our mediator the length of the  
3 mediation process. Because it's dictated by the  
4 parties --

5 MS. FORSYTH: Okay.

6 MS. STARGHILL: -- it's hard to  
7 force the parties, per se, to come back to the  
8 GRC. Our mediator is a lot more patient than me.  
9 She works to really try to resolve the matter.

10 MS. FORSYTH: Okay.

11 MS. STARGHILL: It's an ongoing  
12 battle and our mediator understands our goals to  
13 get these cases adjudicated as soon as possible.  
14 It's hard to sometimes because of the level of  
15 activities between the parties.

16 MS. FORSYTH: All right, thank you.

17 CHAIRPERSON TABAKIN: Second?

18 MS. FORSYTH: Second.

19 MS. HAIRSTON: Who motioned?

20 MR. FLEISHER: I did.

21 MS. HAIRSTON: Robin Berg Tabakin?

22 CHAIRPERSON TABAKIN: Yes.

23 MS. HAIRSTON: Charles Richman?

24 MR. RICHMAN: Yes.

25 MS. HAIRSTON: Kathryn Forsyth?

18

1 MS. FORSYTH: Yes.

2 MS. HAIRSTON: Dave Fleisher?

3 MR. FLEISHER: Yes.

4 CHAIRPERSON TABAKIN: Joseph

5 Elcavage v. West Milford Township (2006-64).

6 MR. STEWART: The Executive Director

7 respectfully recommends the Council find that:

8 1. Because the Complainant's

9 requests in Items No. 1, No. 3 and No. 4 is

10 overbroad and of the nature of a blanket request

11 for a class of various documents rather than a

12 request for specific government documents, and

13 because OPRA does not require custodians to  
14 research files to discern which records may be  
15 responsive to a request, the Custodian had no  
16 legal duty to conduct research to locate records  
17 potentially responsive to the Complainant's  
18 request pursuant to the Superior Court's  
19 decisions in *MAG Entertainment v. Division of*  
20 *Alcoholic Beverage Control*, 375 N.J. Super. 534  
21 (App. Div. 2005), *Bent v. Stafford Police*  
22 *Department*, 381 N.J. Super. 30 (App. Div. 2005)  
23 and the Council's decision in *Asarnow v.*  
24 *Department of Labor and Workforce Development*,  
25 *GRC Complaint No. 2006-24* (May of 2006).

19

1           2. Because the Custodian certified  
2 that no records responsive to the Complainant's  
3 request exists for Items No. 1, No. 3, No. 4 and  
4 No. 6, and because the Custodian certified that  
5 with respect to Item No. 2 concerning Councilman  
6 Warden's personal e-mail account there are no

7 records responsive to the Complainant's request,  
8 and because the Custodian certified all e-mails  
9 in Councilman Warden's township e-mail account  
10 were made available to the Complainant, the  
11 Custodian has met her burden of proof pursuant to  
12 N.J.S.A. 47:1A-6 that the denial of access was  
13 authorized by law.

14 CHAIRPERSON TABAKIN: Any questions?

15 Motion?

16 MS. FORSYTH: So moved.

17 CHAIRPERSON TABAKIN: Thank you.

18 Second?

19 MR. FLEISHER: Second.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 CHAIRPERSON TABAKIN: Yes.

22 MS. HAIRSTON: Charles Richman?

23 MR. RICHMAN: Yes.

24 MS. HAIRSTON: Kathryn Forsyth?

25 MS. FORSYTH: Yes.

1 MS. HAIRSTON: Dave Fleisher?

2 MR. FLEISHER: Yes.

3 CHAIRPERSON TABAKIN: Michael DeLuca

4 v. Town of Guttenberg (2006-102).

5 MS. LOWNIE: The Executive Director

6 respectfully recommends the Council accept the

7 Administrative Law Judge's Initial Decision dated

8 April 8, 2008.

9 CHAIRPERSON TABAKIN: Thank you.

10 Motion to accept?

11 MR. FLEISHER: So moved.

12 MS. FORSYTH: Second.

13 MR. RICHMAN: Second.

14 MS. HAIRSTON: Robin Berg Tabakin?

15 CHAIRPERSON TABAKIN: Yes.

16 MS. HAIRSTON: Kathryn Forsyth?

17 MS. FORSYTH: Yes.

18 MS. HAIRSTON: Chuck Richman?

19 MR. RICHMAN: Yes.

20 MS. HAIRSTON: Dave Fleisher?

21 MR. FLEISHER: Yes.

22 CHAIRPERSON TABAKIN: Jerald

23 Albrecht v. New Jersey Department of Treasury

24 (2006-191).

25 MR. STEWART: The Executive Director

21

1 respectfully recommends that the Council find

2 that:

3 1. The Custodian has complied with  
4 the Council's July 25, 2007 Interim Order, in  
5 part, by providing the Council with all records  
6 set forth in Paragraph 1 of the Order within five  
7 business days of receiving the Council's Order.

8 No. 2. On the basis of the  
9 Council's determination in this matter, the  
10 Custodian shall comply with the Council's  
11 Findings of the In Camera Examination set forth  
12 in the above table within five business days from  
13 receipt of this Order and provide certified  
14 confirmation of compliance pursuant to N.J. Court  
15 Rules, 1969 R. 1:4-4 (2005) to the Executive  
16 Director.

17 No. 3. The Custodian shall comply

18 with Paragraph 2 of the Council's July 25, 2007  
19 Interim Order by disclosing the requested Chest  
20 Pain Assessment with appropriate redactions, if  
21 any, and a legal justification and statutory  
22 citation for each redacted part thereof within  
23 five business days from receipt of this Order and  
24 provide certified confirmation of compliance  
25 pursuant to Rule 1:4-4 to the Executive Director.

22

1 CHAIRPERSON TABAKIN: Motion?

2 MR. FLEISHER: So moved.

3 CHAIRPERSON TABAKIN: Second?

4 MS. FORSYTH: Second.

5 MS. HAIRSTON: Robin Berg Tabakin?

6 CHAIRPERSON TABAKIN: Yes.

7 MS. HAIRSTON: Charles Richman?

8 MR. RICHMAN: Yes.

9 MS. HAIRSTON: Kathryn Forsyth?

10 MS. FORSYTH: Yes.

11 MS. HAIRSTON: And Dave Fleisher?

12 MR. FLEISHER: Yes.

13 CHAIRPERSON TABAKIN: Michael Della

14 Vella v. City of Wildwood (Cape May)(2007-71).

15 MR. CARUSO: The Executive Director

16 respectfully recommends the Council accept the

17 Complainant's request to withdraw this complaint

18 from the Office of Administrative Law. No

19 further adjudication is required.

20 CHAIRPERSON TABAKIN: Thank you.

21 Motion?

22 MR. FLEISHER: So moved.

23 CHAIRPERSON TABAKIN: Second?

24 MS. FORSYTH: Second.

25 CHAIRPERSON TABAKIN: Roll call,

23

1 please.

2 MS. HAIRSTON: Robin Berg Tabakin?

3 CHAIRPERSON TABAKIN: Yes.

4 MS. HAIRSTON: Charles Richman?

5 MR. RICHMAN: Yes.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Yes.

8 MS. HAIRSTON: Dave Fleisher?

9 MR. FLEISHER: Yes.

10 CHAIRPERSON TABAKIN: Michelle Ewing

11 v. New Jersey Department of Law & Public Safety,

12 Division of Consumer Affairs (2007-119).

13 MS. GORDON: The Executive Director

14 respectfully recommends the Council find that:

15 1. Based on the classification

16 provided by the Custodian, it is now clear to the

17 GRC that the determination that the AVC letter

18 was subject an in camera inspection as advisory,

19 consultative and deliberative material was

20 erroneous and that the AVC letter is not

21 considered "advisory" as that term is utilized in

22 Section 1.1 of OPRA.

23 2. Because it is now clear that the

24 Custodian does not assert that the AVC letter is

25 exempt from disclosure pursuant to OPRA as

1 advisory, consultative and deliberative material,  
2 no in camera review of the letter by the GRC is  
3 necessary to confirm the applicability of that  
4 exemption.

5 3. Because the new evidence the  
6 Custodian seeks to introduce before the Council  
7 may be probative on the issue of whether the AVC  
8 letter should be considered confidential under  
9 N.J.S.A. 45:1-36, and because the Custodian has  
10 requested the opportunity for oral argument in  
11 support of this contention, this matter should be  
12 referred to the Office of Administrative Law for  
13 a hearing to develop the record in this regard.

14 CHAIRPERSON TABAKIN: Motion?

15 MR. FLEISHER: So moved.

16 CHAIRPERSON TABAKIN: Second?

17 MS. FORSYTH: Second.

18 CHAIRPERSON TABAKIN: Roll call.

19 MS. HAIRSTON: Robin Berg Tabakin?

20 CHAIRPERSON TABAKIN: Yes.

21 MS. HAIRSTON: Charles Richman?

22 MR. RICHMAN: Yes.

23 MS. HAIRSTON: Kathryn Forsyth?

24 MS. FORSYTH: Yes.

25 MS. HAIRSTON: Dave Fleisher?

25

1 MR. FLEISHER: Yes.

2 CHAIRPERSON TABAKIN: Okay. I am

3 recused from the next case and also -- so I am

4 recused from Andrew Faulkner v. Rutgers

5 University (2007-149), as well as Ronald Pittore

6 v. University of Medicine & Dentistry of New

7 Jersey (2007-216).

8 (Chairperson Tabakin recuses herself

9 from these two matters and leaves the room. Dave

10 Fleisher Chairs these two matters.)

11 MR. FLEISHER: Thank you. Got it.

12 Tiffany, you're up.

13 MS. STARGHILL: The Executive

14 Director respectfully recommends the Council find

15 that, similar to the Council's decision in Avin

16 v. Borough of Ramsey, GRC Complaint No. 2004-181

17 (March 2005), the evidence of record shows that  
18 the Complainant's responses to the balancing  
19 test --

20 MR. FLEISHER: Sorry.

21 MS. STARGHILL: -- exemplifying his  
22 need for access do not outweigh the Custodian's  
23 responses to the balancing test exemplifying the  
24 need to safeguard the requested season ticket  
25 holder's personal information on the lists. The

26

1 release of the requested lists of names and  
2 addresses may result in unsolicited contact  
3 between the Complainant and the individuals whose  
4 names and addresses are being requested.

5 Therefore, the Custodian did not  
6 unlawfully deny the Complainant access to the  
7 requested season ticket holder's lists pursuant  
8 to N.J.S.A. 47:1A-1, which states that a public  
9 agency has the responsibility and the obligation  
10 to safeguard from public access a citizen's  
11 personal information with which it has been

12 entrusted when disclosure thereof would violate  
13 the citizen's reasonable expectation of privacy.

14 MR. FLEISHER: Entertain a motion?

15 MR. RICHMAN: I'll move it.

16 MS. FORSYTH: I'll second.

17 MR. FLEISHER: Thank you.

18 Roll call, please.

19 MS. HAIRSTON: Charles Richman?

20 MR. RICHMAN: Yes.

21 MS. HAIRSTON: Kathryn Forsyth?

22 MS. FORSYTH: Yes.

23 MS. HAIRSTON: Dave Fleisher?

24 MR. FLEISHER: Yes.

25 Pittore.

27

1 MS. LOWNIE: The Executive Director  
2 respectfully recommends the Council find that:

3 No. 1. The Custodian's failure to

4 either grant access, deny access, seek

5 clarification or request an extension of time in

6 writing within the statutorily mandated seven  
7 business days results in a "deemed" denial  
8 pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A.  
9 47:1A-5.i., and Kelley v. Township of Rockaway,  
10 GRC Complaint No. 2007-11 (October 2007).  
11 No. 2. Pursuant to Paff v. New  
12 Jersey Department of Labor, Board of Review, 379  
13 N.J. Super. 346 (App. Div. 2005), the GRC must  
14 conduct an in camera review of the requested  
15 record to confirm the Custodian's legal assertion  
16 that the record constitutes attorney-client  
17 privileged information which is exempt from  
18 disclosure pursuant to Section 1.1 of OPRA.  
19 No. 3. The Custodian must deliver  
20 to the Council in a sealed envelope nine copies  
21 of the requested unredacted document (see No. 2  
22 above), a document or redaction index, as well as  
23 a legal certification from the Custodian, in  
24 accordance with New Jersey Court Rule 1:4-4, that  
25 the document provided is the document requested

1 by the Council for the in camera inspection.  
2 Such delivery must be received by the GRC within  
3 five business days from receipt of the Council's  
4 Interim Order.

5 No. 4. Pursuant to *Mid-Atlantic*  
6 *Recycling technologies v. The City of Vineland,*  
7 *District of New Jersey, 2004,* the Custodian's  
8 denial of the Complainant's OPRA request, on the  
9 grounds that the Complainant is precluded from  
10 obtaining records under OPRA because the  
11 Complainant filed a claim under the New Jersey  
12 Tort Claims Act, is not a lawful basis for a  
13 denial of access.

14 No. 5. The Council defers analysis  
15 of whether the Custodian knowingly and willfully  
16 violated OPRA and unreasonably denied access  
17 under the totality of the circumstances pending  
18 the outcome of the in camera review.

19 No. 6. The Council defers analysis  
20 of whether the Complainant is a prevailing party  
21 pursuant to Section 6 of OPRA and entitled to

22 reasonable attorney's fees pending the outcome of  
23 the in camera review.

24 MR. FLEISHER: I'll entertain a  
25 motion?

29

1 MR. RICHMAN: So moved.

2 MS. FORSYTH: Second.

3 MR. FLEISHER: Roll call.

4 MS. HAIRSTON: Charles Richman?

5 MR. RICHMAN: Yes.

6 MS. HAIRSTON: Kathryn Forsyth?

7 MS. FORSYTH: Yes.

8 MS. HAIRSTON: Dave Fleisher?

9 MR. FLEISHER: Yes.

10 (Chairperson Tabakin returns to the  
11 dais.)

12 CHAIRPERSON TABAKIN: Corey Morris  
13 v. Trenton Police Department Mercer(2007-160).

14 MS. KEYS: The Executive Director  
15 respectfully recommends the Council find that:

16 1. While the Custodian's denial of

17 the Complainant's OPRA request was within the  
18 time allowed by N.J.S.A. 47:1A-5.i., the  
19 Custodian's failure to supply the Complainant  
20 with a detailed lawful basis for denial violates  
21 N.J.S.A. 47:1A-5.g.

22           2. Because the Complainant's OPRA  
23 request did not specify an identifiable  
24 government record but instead sought information,  
25 the Complainant's OPRA request is invalid. MAG

30

1 Entertainment, LLC v. Division of Alcoholic  
2 Beverage Control, 375 N.J. Super. 534 (App. Div.  
3 2005); Bent v. Stafford Police Department, 381  
4 N.J. Super. 30 (App. Div. 2005).

5           3. Although the Custodian violated  
6 OPRA by failing to provide a detailed legal basis  
7 for the denial of access, the Complainant's OPRA  
8 request is invalid pursuant to MAG Entertainment,  
9 LLC v. Division of Alcoholic Beverage Control,  
10 375 N.J. Super. 534 (App. Div. 2005), and Bent v.

11 Stafford Police Department, 381 N.J. Super. 30

12 (App. Div. 2005).

13 Therefore, it is concluded that the

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

15 knowing and willful violation of OPRA and

16 unreasonable denial of access under the totality

17 of the circumstances. However, the Custodian's

18 failure to supply the Complainant with a detailed

19 lawful basis for the denial of access appears

20 negligent and heedless since he is vested with

21 the legal responsibility of providing the

22 Complainant with a detailed lawful basis for

23 denial.

24 CHAIRPERSON TABAKIN: Thank you.

25 Any questions?

31

1 Motion?

2 MR. FLEISHER: So moved.

3 MS. FORSYTH: Second.

4 MS. HAIRSTON: Robin Berg Tabakin?

5 CHAIRPERSON TABAKIN: Yes.

6 MS. HAIRSTON: Charles Richman?

7 MR. RICHMAN: Yes.

8 MS. HAIRSTON: Kathryn Forsyth?

9 MS. FORSYTH: Yes.

10 MS. HAIRSTON: Dave Fleisher?

11 MR. FLEISHER: Yes.

12 CHAIRPERSON TABAKIN: Roberto Mejias

13 v. New Jersey Department of Corrections

14 (2007-181).

15 MS. LOWNIE: The Executive Director

16 respectfully recommends the Council find that:

17 No. 1. The Custodian shall release

18 the requested records to the Complainant with

19 appropriate redactions, if any, including a

20 detailed redaction index explaining the legal

21 basis for each redaction, as previously ordered

22 in the Council's March 26, 2008 Interim Order,

23 for the following reasons:

24 a. New Jerseyans for a Death

25 Penalty Moratorium, Law Division (October 22,

1 2002 Opinion) is inapposite to the matter

2 currently before the Council.

3 b. Because every state is entitled

4 to enforce in its own courts the policy of its

5 own statutes on subjects properly the incidents

6 of its jurisdiction, and the Full Faith and

7 Credit Clause of the United States Constitution

8 does not require otherwise, and because New

9 Jersey has a strong public policy in favor of

10 public access to government records, Section 9.b.

11 of OPRA does not operate to permit the exemption

12 from disclosure set forth in Virginia Freedom of

13 Information Act in the matter currently before

14 the Council.

15 c. By the specific terms of the

16 Interstate Corrections Compact and the Department

17 of Correction's regulations implementing that

18 statute, New Jersey law, not Virginia law, is

19 applicable to the Complainant in the instant

20 matter. In other words, the Complainant's

21 accessibility to government records is subject to

22 the provisions of OPRA rather than the Virginia  
23 Freedom of Information Act. In this context,  
24 N.J.A.C. 10A:10-3.15(b) is of significant  
25 consequence to the OPRA issue in this case.

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1           2. The Custodian shall comply with  
2 Item No. 1 above within five business days from  
3 receipt of the Council's Interim Order and  
4 simultaneously provide certified confirmation of  
5 compliance, in accordance with New Jersey Court  
6 Rule 1:4-4, including a detailed and redaction  
7 index explaining the legal basis for each  
8 redacted portion of the requested records to the  
9 Executive Director.

10           CHAIRPERSON TABAKIN: Okay. Motion,  
11 please?

12           MR. FLEISHER: So moved.

13           CHAIRPERSON TABAKIN: Second?

14           MS. FORSYTH: Second.

15           MS. HAIRSTON: Robin Berg Tabakin?

16 CHAIRPERSON TABAKIN: Yes.

17 MS. HAIRSTON: Charles Richman?

18 MR. RICHMAN: Yes.

19 MS. HAIRSTON: Kathryn Forsyth?

20 MS. FORSYTH: Yes.

21 MS. HAIRSTON: And Dave Fleisher?

22 MR. FLEISHER: Yes.

23 CHAIRPERSON TABAKIN: The case Nia

24 Gill v. The New Jersey Department of Banking &

25 Insurance (2007-189).

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1 MS. STARGHILL: This matter has been

2 pulled from our agenda. We're actually under

3 Court Order as of yesterday evening six p.m. to

4 stay the adjudication of this matter until such

5 time as the Appellate Division has had an

6 opportunity to make a determination or decision

7 on whether Geico, the insurance company, is

8 allowed to intervene in this complaint.

9 CHAIRPERSON TABAKIN: Thank you.

10 Okay, we continue.

11 John Bart v. County of Passaic

12 Public Housing Authority (2007-215).

13 MS. LOWNIE: The Executive Director

14 respectfully recommends the Council find:

15 1. Because the Complainant's OPRA

16 requests are not requests for specific

17 identifiable government records and because the

18 Custodian is not required to conduct research in

19 response to an OPRA request, the Complainant's

20 requests are invalid and the Custodian has not

21 unlawfully denied access to the requested records

22 pursuant to *MAG Entertainment, LLC v. Division of*

23 *Alcoholic Beverage Control, Law Division March*

24 *2005; Bent v. Stafford Police Department, Law*

25 *Division October 2005; New Jersey Builders*

35

1 *Association v. New Jersey Council on Affordable*

2 *Housing, Appellate Division 2007; and Taylor v.*

3 *Elizabeth Board of Education, Union County, GRC*

4 *Complaint No. 2007-214 (April 2008).*

5           However, the Custodian's written  
6 response to the Complainant's request in which  
7 the Custodian provided records that are not  
8 responsive to the Complainant's request is  
9 insufficient pursuant to Section 5.g. of OPRA.

10           No. 2. Because the Custodian did  
11 not unlawfully deny access to the requested  
12 records, because the Complainant's OPRA requests  
13 are not requests for specific identifiable  
14 government records, as well as because the  
15 Custodian is not required to conduct research in  
16 response to an OPRA request and as such the  
17 Complainant's requests are invalid, it is  
18 concluded that the Custodian's actions do not  
19 rise to the level of a knowing and willful  
20 violation of OPRA and unreasonable denial of  
21 access under the totality of the circumstances.

22           However, the Custodian's  
23 insufficient response of providing records which  
24 are not responsive to the Complainant's request  
25 rather than requesting clarification of said

1 request appears negligent and heedless since he  
2 is vested with the legal responsibility of  
3 granting and denying access in accordance with  
4 the law.

5 CHAIRPERSON TABAKIN: Thank you.

6 Motion?

7 MR. FLEISHER: So moved.

8 CHAIRPERSON TABAKIN: Second?

9 MR. RICHMAN: Second.

10 MS. HAIRSTON: Robin Berg Tabakin?

11 CHAIRPERSON TABAKIN: Yes.

12 MS. HAIRSTON: Charles Richman?

13 MR. RICHMAN: Yes.

14 MS. HAIRSTON: Kathryn Forsyth?

15 MS. FORSYTH: Yes.

16 MS. HAIRSTON: Dave Fleisher?

17 MR. FLEISHER: Yes.

18 CHAIRPERSON TABAKIN: Martin O'Shea

19 v. Township of West Milford (Passaic)(2007-237).

20 MS. LOWNIE: The Executive Director

21 respectfully recommends the Council find that:

22           No. 1. Because of the nature of the  
23 requested records responsive to the Complainant's  
24 April 24, 2007 OPRA request (a Council member's  
25 suggested changes to a Township ordinance), said

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1 records are exempt from disclosure pursuant to  
2 Section 1.1 of OPRA as advisory, consultative or  
3 deliberative material because said records are  
4 predecisional and contain opinions,  
5 recommendations, or advice about agency policies  
6 or decisions. See *In Re: Liquidation of*  
7 *Integrity Insurance Co.*, New Jersey Supreme Court  
8 2000. As such, the Custodian has carried her  
9 burden of proving a lawful denial of access  
10 pursuant to OPRA Section 6.

11           No. 2. Although the Custodian's  
12 initial written response to the Complainant's  
13 OPRA request dated August 22, 2007 did not make  
14 the requested records available in the medium  
15 requested, because the Custodian made the

16 requested records available to the complainant in  
17 her subsequent response to the Complainant, which  
18 was within the statutorily mandated seven  
19 business day time period to respond pursuant to  
20 Section 5.i. of OPRA, the Custodian did not  
21 violate Section 5.d. of OPRA.

22           No. 3. Because public agencies are  
23 expressly directed to adopt an official OPRA  
24 request form and because the Township of West  
25 Milford has adopted its own form, as well because

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1 the GRC's Advisory Opinion No. 2006-01 states  
2 that a requestor may use the model form when a  
3 public agency has not adopted an official form,  
4 the GRC declines to order the Township of West  
5 Milford to adopt the model request form.

6           No. 4. The Custodian shall either  
7 delete the portion of the Township's OPRA request  
8 form regarding the personnel records exemption or  
9 amend said statement to include the remainder of

10 the applicable provision of OPRA.

11 Specifically, quote, the personnel  
12 or pension records of any individual in the  
13 possession of a public agency, including but not  
14 limited to records relating to any grievance  
15 filed by or against an individual, shall not be  
16 considered a government record and shall not be  
17 made available for public access, except that:

18 \* an individual's name, title,  
19 position, salary, payroll record, length of  
20 service, date of separation and the reason  
21 therefor, and the amount and type of any pension  
22 received shall be a government record;

23 \* personnel or pension records of  
24 any individual shall be accessible when required  
25 to be disclosed by another law, when disclosure

39

1 is essential to the performance of official  
2 duties of a person duly authorized by this State  
3 in the United States, or when authorized by an  
4 individual in interest; and

5           \* data contained in information  
6 which disclose conformity with specific  
7 experiential, educational or medical  
8 qualifications required for government employment  
9 or for receipt of a public pension, but not  
10 including any detailed medical or psychological  
11 information, shall be a government record, end  
12 quote. That's from Section 10 of OPRA.

13           No. 5. The Custodian shall comply  
14 with Item No. 4 above within five business days  
15 from receipt of the Council's Interim Order and  
16 provide certified confirmation of compliance, in  
17 accordance with N.J. Court Rule 1:4-4, to the  
18 Executive Director.

19           No. 6. The Council defers analysis  
20 of whether the Custodian knowingly and willfully  
21 violated OPRA and unreasonably denied access  
22 under the totality of the circumstances pending  
23 the Custodian's compliance with the Council's  
24 Interim Order.

25           No. 7. The Council defers analysis

1 of whether the Custodian is a prevailing party  
2 pursuant to Section 6 of OPRA and entitled to  
3 reasonable attorney's fees pending the  
4 Custodian's compliance with the Council's Interim  
5 Order.

6 CHAIRPERSON TABAKIN: Thank you.

7 Any questions? Any comments?

8 MS. FORSYTH: So moved.

9 MR. FLEISHER: Second.

10 CHAIRPERSON TABAKIN: Thank you.

11 MS. HAIRSTON: Robin Berg Tabakin?

12 CHAIRPERSON TABAKIN: Yes.

13 MS. HAIRSTON: Charles Richman?

14 MR. RICHMAN: Yes.

15 MS. HAIRSTON: Kathryn Forsyth?

16 MS. FORSYTH: Yes.

17 MS. HAIRSTON: Dave Fleisher?

18 MR. FLEISHER: Yes.

19 CHAIRPERSON TABAKIN: Dale Baranoski

20 v. Township of Hamilton (Mercer)(2007-268).

21           MR. STEWART: The Executive Director  
22 respectfully recommends the Council find that:  
23           1. The Custodian complied with the  
24 provisions of OPRA Sections 5.g. and 5.i. by  
25 providing a written response to the Complainant's

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1 request releasing one motor vehicle accident  
2 report and denying access to all other government  
3 records within seven business days of receiving  
4 complainant's OPRA request.  
5           2. Because the Complainant's  
6 request was overly broad and not for specific  
7 identifiable records, and because agencies are  
8 required to disclose only identifiable government  
9 records not otherwise exempt pursuant to the  
10 Superior Court's decisions in MAG Entertainment,  
11 LLC v. Division of Alcoholic Beverage Control,  
12 (App. Div. 2005) and Bent v. Stafford Police  
13 Department, (App. Div. 2005), the Custodian had  
14 no lawful duty to respond to the Complainant's

15 invalid OPRA request and has met her burden of  
16 proof that access to the requested records was  
17 not unlawfully denied pursuant to OPRA Section 6.

18           3. The two arrest reports on  
19 Michael A. Fisher dated April 6, 2002 and  
20 September 29, 2002 shall be released with  
21 appropriate redactions pursuant to OPRA Section  
22 1.1 and Section 3.b. and the Council's decision  
23 in *Bart v. City of Passaic*, GRC Complaint No.  
24 2007-162 (February 2008).

25           Because at the time of the request

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1 the GRC held that an arrest report was a criminal  
2 investigatory record exempt from disclosure  
3 pursuant to OPRA Section 1.1., the Custodian did  
4 not violate OPRA by failing to disclose these  
5 records at that time.

6           MS. STARGHILL: And we will edit  
7 this F.R. to add a fourth paragraph which simply  
8 sets out the time, the five days with which the  
9 Custodian has to comply with No. 3 above.

10 CHAIRPERSON TABAKIN: I have one  
11 other edit, I think, page 2. October 15th of  
12 2007, the last sentence, "The Complainant's  
13 Counsel also informed the Complainant that he may  
14 be able to cure his request..." I think that's  
15 "Custodian's Counsel" or is that "Complainant's"?

16 MS. STARGHILL: That's Custodian's  
17 Counsel, right.

18 CHAIRPERSON TABAKIN: All right. So  
19 the last that you were talking about was an edit?

20 MS. STARGHILL: Yeah.

21 CHAIRPERSON TABAKIN: So could I  
22 a motion to accept as edited?

23 MR. FLEISHER: So moved.

24 MS. FORSYTH: Second.

25 CHAIRPERSON TABAKIN: Roll call.

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1 MS. HAIRSTON: Robin Berg Tabakin?

2 CHAIRPERSON TABAKIN: Yes.

3 MS. HAIRSTON: Charles Richman?

4 MR. RICHMAN: Yes.

5 MS. HAIRSTON: Kathryn Forsyth?

6 MS. FORSYTH: Yes.

7 MS. HAIRSTON: Dave Fleisher?

8 MR. FLEISHER: Yes.

9 MS. FORSYTH: I have to recuse  
10 myself on the Paff and Jones.

11 CHAIRPERSON TABAKIN: Okay.

12 (Kathryn Forsyth recuses herself  
13 from these two matters and leaves the room.)

14 CHAIRPERSON TABAKIN: So let us show  
15 that Kathryn Forsyth is recused from John Paff v.  
16 Willingboro Board of Education  
17 (Burlington)(2008-272).

18 MR. CARUSO: The Executive Director  
19 respectfully recommends the Council find that:

20 1. Although the Custodian responded  
21 in writing to the Complainant's August 28, 2007  
22 OPRA request within the statutorily mandate time  
23 frame pursuant to Section 5.i. of OPRA, the  
24 Custodian's response was legally insufficient  
25 because he failed to respond to each request item

1 individually. Therefore, the Custodian has  
2 violated Section 5.g. of OPRA.

3           2. Although the Complainant asserts  
4 that he tendered payment for the requested  
5 records on September 7, 2007, the Custodian  
6 submitted a receipt for payment of \$5.25 dated  
7 October 11, 2007. The parties agree that certain  
8 requested records were disclosed on October 11,  
9 2007.

10           Therefore, there was no delay in the  
11 release of records to the Complainant because the  
12 requested records were sent upon receipt of  
13 payment from the Complainant.

14           3. The GRC has no authority over  
15 the legibility of records produced pursuant to  
16 *Toscano v. New Jersey Department of Labor*, GRC  
17 Complaint No. 2005-59 (September 2005).

18           4. Because the special meeting  
19 Executive Session minutes were not yet approved

20 by the Board at the time of the Complainant's  
21 OPRA request, these minutes are exempt from  
22 disclosure under OPRA as ACD material pursuant to  
23 Parave-Fogg v. Lower Alloways Creek Township, GRC  
24 Complaint No. 2006-51 (August 2006) and Section  
25 1.1 of OPRA. The Custodian has borne his burden

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1 of proof that the denial of access to the Special  
2 Meeting Executive Session minutes was lawful  
3 under Section 6 of OPRA.

4 5. Additionally, O'Shea v. Kearny  
5 Board of Education, Docket No. HUD-L-856-07 is a  
6 disclosure order from the Law Division of the  
7 Superior Court of New Jersey. A disclosure order  
8 at the trial level is only binding on the parties  
9 in that particular case and is not a general  
10 ruling on the disclosure of meeting minutes.

11 Therefore, the order of disclosure  
12 in O'Shea v. Kearny Board of Education, Docket  
13 No. HUD-L-856-07 is not the matter now before the  
14 Council.

15           6. Although the Custodian failed to  
16 respond to each request item individually within  
17 the statutorily mandated seven business days  
18 resulting in a deemed denial regarding those  
19 items of the OPRA request, the Custodian bore the  
20 burden of proving that the unapproved special  
21 meeting Executive Session minutes are exempt from  
22 disclosure under OPRA and did provide all other  
23 records responsive to the Complainant on October  
24 11, 2007.

25           Therefore, it is concluded that the

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1 Custodian's actions do not rise to the level of a  
2 knowing and willful violation of OPRA and  
3 unreasonable denial of access under the totality  
4 of the circumstances. However, the Custodian's  
5 unlawful denial of access appears negligent and  
6 heedless since he is vested with the legal  
7 responsibility of granting and denying access in  
8 accordance with the law.

9           7. The Complainant failed to  
10 achieve the desired result of disclosure of a  
11 requested record because the Custodian provided  
12 all records upon receipt of payment from the  
13 Complainant with the exception of the special  
14 meeting Executive Session meeting minutes which  
15 had not been approved by the Board at the time of  
16 the Complainant's OPRA request and are therefore  
17 exempt from disclosure under OPRA as ACD. The  
18 Complainant, therefore, is not entitled to  
19 prevailing party attorney's fees. See Teeters v.  
20 DYFS (App. Div. 2006) and New Jersey Builders  
21 Association v. New Jersey Council on Affordable  
22 Housing (App. Div. 2007).

23           CHAIRPERSON TABAKIN: Any questions?

24           Motion?

25           MR. FLEISHER: So moved.

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1           CHAIRPERSON TABAKIN: Second?

2           MR. RICHMAN: Second.

3           MS. HAIRSTON: Robin Berg Tabakin?

4 CHAIRPERSON TABAKIN: Yes.

5 MS. HAIRSTON: Charles Richman?

6 MR. RICHMAN: Yes.

7 MS. HAIRSTON: Dave Fleisher?

8 MR. FLEISHER: Yes.

9 CHAIRPERSON TABAKIN: Beverly Jones

10 v. Trenton Board of Education (Mercer)(2007-282).

11 MR. CARUSO: The Executive Director

12 respectfully recommends the Council find that:

13 1. Because the report was created

14 by special counsel for the Trenton Board of

15 Education in the context of anticipated and

16 pending litigation, the report is subject to

17 attorney-client privilege and is therefore exempt

18 from disclosure pursuant Section 1.1 of OPRA.

19 And I wanted to make an amendment to

20 No. 2.

21 2. The GRC must conduct an in

22 camera of the requested report in order to decide

23 whether the attorney-client privilege has been

24 waived.

25 As opposed to whether or not it's

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1 exempt from disclosure.

2 Okay, and that is see United Jersey  
3 Bank v. Wolosoff, (App. Div. 1984).

4 3. The Custodian must deliver to  
5 the Council in a sealed envelope nine copies of  
6 the requested unredacted record (see No. 2  
7 above), a document or redaction index, as well as  
8 a legal certification from the Custodian, in  
9 accordance with New Jersey Court Rule 1:4-4, that  
10 the document provided is the document requested  
11 by the Council for the in camera inspection.  
12 Such delivery must be received by the GRC within  
13 five business days from receipt of the Council's  
14 Interim Order.

15 4. The Custodian shall comply with  
16 Item No. 3 above within five days from receipt of  
17 the Council's Interim Order with appropriate  
18 redactions, including a detailed document index  
19 explaining the lawful basis for each redaction

20 and simultaneously provide certified confirmation  
21 of compliance, in accordance with New Jersey  
22 Court Rule 1:4-4, to the Executive Director.

23           5. The Council defers analysis of  
24 whether the Custodian knowingly and willfully  
25 violated OPRA and unreasonably denied access

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1 under the totality of the circumstances pending  
2 the Custodian's compliance with the Council's  
3 Interim Order.

4           CHAIRPERSON TABAKIN: Okay. Any  
5 questions?

6           MR. FLEISHER: So moved.

7           CHAIRPERSON TABAKIN: As amended?

8           MR. FLEISHER: As amended.

9           MR. RICHMAN: Second.

10          MS. HAIRSTON: Robin Berg Tabakin?

11          CHAIRPERSON TABAKIN: Yes.

12          MS. HAIRSTON: Charles Richman?

13          MR. RICHMAN: Yes.

14 MS. HAIRSTON: Dave Fleisher?

15 MR. FLEISHER: Yes.

16 (Kathryn Forsyth returns to the

17 dais.)

18 CHAIRPERSON TABAKIN: Tina Renna v.

19 Somerset County Board of Chosen Freeholders

20 (2008-39).

21 MR. CARUSO: The Executive Director

22 respectfully recommends the Council find that:

23 1. Because the mylar tax maps were

24 originally government records received in the

25 course of the Somerset County GIS Office and

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1 because the maps were scanned in order to create

2 a GIS parcel data set, the Custodian Counsel's

3 assertion does not apply.

4 2. Because the watermark does not

5 affect access to the scanned images, Council does

6 not have jurisdiction over the watermark included

7 in the requested scanned images of all county tax

8 maps pursuant to Section 7.b. of OPRA, Kwanzaa v.

9 Department of Correction, GRC Complaint No.  
10 2004-167 (March 2005); Toscano v. New Jersey  
11 Department of Labor, GRC Complaint No. 2005-50  
12 (September 2007); Gillespie v. Newark Public  
13 Schools, GRC Complaint NO. 2004-105 (November  
14 2004); Katinsky v. River Vale Township, GRC  
15 Complaint No. 2003-68 (November 2003).

16 3. The Complainant failed to  
17 achieve the desired result because the GRC has no  
18 jurisdiction over content of records pursuant to  
19 Kwanzaa v. Department of Corrections, GRC  
20 Complaint No. 2004-167 (March 2005). The  
21 Complainant is therefore not entitled to  
22 prevailing party attorney's fees. See Teeters v.  
23 DYFS, (App. Div. 2006) and New Jersey Builders  
24 Association v. New Jersey Council on Affordable  
25 Housing, (App. Div. 2007).

1 CHAIRPERSON TABAKIN: Question.  
2 Under No. 2, GRC Complaint No. 2205-59 (September

3 2005), I think you said 2007.

4 MR. CARUSO: Oh, did I? Yes.

5 CHAIRPERSON TABAKIN: Motion?

6 MR. FLEISHER: So moved.

7 MS. FORSYTH: Second.

8 MS. HAIRSTON: Robin Berg Tabakin?

9 CHAIRPERSON TABAKIN: Yes.

10 MS. HAIRSTON: Charles Richman?

11 MR. RICHMAN: Yes.

12 MS. HAIRSTON: Kathryn Forsyth?

13 MS. FORSYTH: Yes.

14 MS. HAIRSTON: Dave Fleisher?

15 MR. FLEISHER: Yes.

16 CHAIRPERSON TABAKIN: Nicole Donnell

17 v. New Jersey Department of Children & Family

18 Service (2008-47).

19 MR. STEWART: The Executive director

20 respectfully recommends that the Council find

21 that the requested records are statutorily exempt

22 from disclosure exempt from provisions of

23 N.J.S.A. 9:6-8.10a, and therefore exempt from

24 disclosure under OPRA pursuant to OPRA Section

25 9.a. and that no exception to the statutory

52

1 exemption of N.J.S.A. 9:6-10a has been determined

2 to apply based upon the evidence of record.

3 CHAIRPERSON TABAKIN: Thank you.

4 Motion?

5 MS. FORSYTH: So moved.

6 MR. FLEISHER: Second.

7 CHAIRPERSON TABAKIN: Roll call.

8 MS. HAIRSTON: Robin Berg Tabakin?

9 CHAIRPERSON TABAKIN: Yes.

10 MS. HAIRSTON: Charles Richman?

11 MR. RICHMAN: Yes.

12 MS. HAIRSTON: Kathryn Forsyth?

13 MS. FORSYTH: Yes.

14 MS. HAIRSTON: Dave Fleisher?

15 MR. FLEISHER: Yes.

16 CHAIRPERSON TABAKIN: Thank you.

17 There are no complaints

18 reconsidered.

19 MS. STARGHILL: There were two.

20 They were included with the complaint

21 adjudication.

22 CHAIRPERSON TABAKIN: Okay.

23 MS. STARGHILL: I simply want to

24 point out that the GRC rules were promulgated on

25 May 5th, 2008. A copy of which can be found on

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1 our website planning on to download as well as of

2 course the traditional message link in the New

3 Jersey Administrative Code.

4 CHAIRPERSON TABAKIN: That's it.

5 MS. STARGHILL: That's a great

6 accomplishment, finally.

7 CHAIRPERSON TABAKIN: Yes, it is,

8 really. Thank you very much.

9 Okay, now it is time for public

10 comment. In the interest of time, speakers are

11 limited to five minutes. Speakers with prepared

12 testimony should provide eight copies for the

13 Council.

14 Would anyone like to make a comment?

15 No?

16 Then could I have a motion to

17 adjourn, please?

18 MS. FORSYTH: So moved.

19 MR. FLEISHER: Second.

20 MS. HAIRSTON: Robin Berg Tabakin?

21 CHAIRPERSON TABAKIN: Yes.

22 MS. HAIRSTON: Charles Richman?

23 MR. RICHMAN: Yes.

24 MS. HAIRSTON: Kathryn Forsyth?

25 MS. FORSYTH: Yes.

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1 MS. HAIRSTON: Dave Fleisher?

2 MR. FLEISHER: Yes.

3 CHAIRPERSON TABAKIN: Thank you very

4 much, see you all next month.

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7 (HEARING CONCLUDED AT 11:56 A.M.)

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## CERTIFICATE

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3 I, LINDA P. CALAMARI, a Professional  
4 Reporter and Notary Public of the State of New  
5 Jersey, do hereby certify the foregoing to be a  
6 true and accurate transcript of my original  
7 stenographic notes taken at the time and place  
8 hereinbefore set forth.

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LINDA P. CALAMARI

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16 Dated: JUNE 18, 2008.

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