

**OPEN SESSION MEETING MINUTES
GOVERNMENT RECORDS COUNCIL
JANUARY 13, 2005**

The meeting was called to order at 9:05 a.m. at the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Luzzatto called the roll:

Present: Chairman Vincent Maltese, Secretary Virginia Hook, Diane Schonyers (designee of Commissioner William Librera, Department of Education) DeAnna Minus-Vincent (designee of Commissioner Susan Bass Levin, Department of Community Affairs)

Also Present: Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, Case Managers Chris Malloy, Kimberly Gardner, Erin Knoedler, Marion Davies and Colleen McGann, Deputy Attorney General Debra Allen, Staff Advisor David Zipin

Mr. Maltese read the resolution to convene in closed session to receive legal advice concerning the complaints to be adjudicated that day. Ms. Hook moved to adopt the resolution that was seconded by Ms. Schonyers. All members present approved the motion. The Council met in closed session from 9:05 a.m. to 10:45 a.m.

The Council reconvened in open session at 10:55 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. The Open Public Meetings Act statement was read and attendees recited the Pledge of Allegiance.

Mr. Maltese called for a motion to reconvene in Open Session. A motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was adopted by roll call.

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

Nays: None

Mr. Maltese stated that this is the reorganization meeting and called for nominations for election of officers:

Nominations for Secretary:

Ms. Minus-Vincent nominated Ms. Hook for the position of Secretary, Ms. Schonyers seconded the nomination there were no other nominations. The motion was adopted by a unanimous vote of the council.

Nominations for Office of the Vice-chair:

Ms. Minus-Vincent nominated Ms. Schonyers for the position of Vice-Chair, Ms. Hook seconded the nomination there were no other nominations. The motion was adopted by a unanimous vote of the council.

Nominations for Chair of the Council:

Ms. Schonyers nominated Mr. Maltese for the position of the Chair, Ms. Hook seconded the nomination there were no other nominations. The motion was adopted by a unanimous vote of the council.

Mr. Maltese asked Mr. Dice to review personnel matters. There were no personnel matters to discuss.

There was a unanimous approval by the Council to accept the Open and Closed session minutes for the following meetings: August 12, 2004 Open and Closed minutes, September 9, 2004 Open and Closed minutes, October 14, 2004 Open and Closed. Mr. Dice stated that the minutes would be posted on the Website and available to the public by January 14, 2005.

Mr. Maltese informed the public of the following Administrative Action; No Vote Needed.

- 1) Richard Rivera vs. Fairview Police Department (2004-200) *Complaint Withdrawn*
- 2) Thomas Masciocchi vs. Middlesex County Prosecutor's Office (2004-153) *Complaint Withdrawn*
- 3) Kathleen Fallstick vs. Township of Haddon (2004-157) *Complaint Withdrawn*
- 4) Richard Bernstein v. Village of Ridgewood (2004-187) *Settled in Mediation*

Mr. Maltese stated that there is one in camera review Larry Loigman v. The Township of Middletown and one plenary hearing Martin O'Shea v. Township of West Milford, the hearing was postponed until the February 10, 2005 due to the illness regarding the Custodian's attorney.

Mr. Maltese reviewed the procedure for the "in camera" review of documents in said case that would take place in closed session following the discussion of the other cases on the agenda. Mr. Maltese received the documents in question from the Township of West Milford's Custodian Heidi Abs, which were presented to Executive Director Paul Dice in a sealed envelope. The Township's Counsel Reilly informed the Council that the envelope contained a certification from the Custodian as to the documents contained in the envelope and an index of said documents.

Robert Blau vs. Union County Clerk (2003-75)

Mr. Malloy stated that this case was originally referred to the Office of Administrative Law. On November 12, 2004 the Complainant sent a letter to the Office of Administrative Law withdrawing the case.

The Executive Director recommended the Council find that the case be dismissed based on the November 12, 2004 letter.

The Council voted unanimously to accept the Executive Director's recommendation as written. The motion was made by Ms. Hook and seconded by Ms Minus-Vincent. This motion passed on roll call:

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

Nays: None

Darren Nance v. Scotch Plains Township Police Department (2003-125)

Ms. Gardner reviewed the background information of the case set forth in the Executive Director's January 10, 2005 Findings and Recommendations and all related documentation submitted by the parties. The Council reviewed said Findings and Recommendations and amended same to incorporate the Division of Law's supplemental advisory opinion and summary memo. The Council, therefore, dismissed the case on the basis of:

1. The Custodian certified that the Disorderly Persons Complaint and the Arrest Report were released to the Complainant pursuant to N.J.S.A. 47:1A-1 et seq.
2. The remaining requested records in which access was denied are criminal investigatory records as defined by N.J.S.A. 47:1-1.1 and are, therefore, exempt from disclosure.
3. Although the Complainant is correct that the applicable criminal statute, N.J.S.A. 2C:2-4(b), labels disorderly persons offenses as "petty offenses and not crimes," a more thorough reading of the statute shows that this statutory designation is limited for the purposes of ensuring a speedy disposition of the charges without indictment or trial by jury. Therefore, the distinction set forth under N.J.S.A. 2C:2-4(b) does not mean that disorderly persons offenses cannot be treated as crimes. Furthermore, the Code of Criminal Justice defines the term "crime" broadly, to mean "a crime, a disorderly persons offense or a petty disorderly persons offense unless a particular section in this code is intended to apply to less than all three." N.J.S.A. 2C:1-14 (General Definitions). Thus, records pertaining to disorderly persons offenses, including petty offenses, which are not required by law to be made, maintained or kept on file that is held by a law enforcement agency involving a criminal investigation are deemed to be "criminal investigatory records," and are not disclosable, pursuant to OPRA.

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

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

Nays: None

Fred Burnett v. Bergen County (2004-6)

Mr. Maltese recused himself.

Mr. Malloy reviewed the background information of the case set forth in the Executive Director's January 14, 2005 Findings and Recommendations and all related documentation submitted by the parties.

Ms. Schonyers called for a motion to amend the Executive Director's recommendations to the following:

1. Accept the Complainant's California based counsel's submissions because a New Jersey based law firm also represents the Complainant.
2. Refer the case to the Office of Administrative Law to determine the actual and reasonable direct cost of copying the information in the medium requested, pursuant to N.J.S.A. 47:1A-1 et seq.

The motion was made by Ms. Minus-Vincent and seconded by Hook. The motion passed on roll call:

Ayes: Ms. Schonyers, Ms. Hook, and Ms. Minus-Vincent.

Nays: None

Recusals: Mr. Maltese

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

The Council moved the expedited hearing to February 10, 2005 because of conflicts with appearances. No further action was taken.

Fisher v. Department of Law and Public Safety (2004-55)

Mr. Dice reviewed the background as stated in his January 6, 2005 Supplemental Findings and Recommendation of the Executive Director. The Council unanimously decided that:

1. The Division of Law's request for a Stay to assemble the requested documents and to apply the special service charges is denied.
2. The Council's December 9, 2004 Interim Decision is reaffirmed; however, a Stay of the Council's decision will be granted should the Division of Law file an appeal to the Appellate Division of the Superior Court of New Jersey on or before January 28, 2005 and provide evidence of same to the Executive Director.

3. The Stay shall be automatically dissolved should the Division of Law not take action to file an appeal in the time frame provided and, in which case, the Council's December 9, 2004 Interim Decision will remain in effect.

The motion was made by Ms. Hook and seconded by Ms. Schonyers. This motion passed on roll call:

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

Nays: None

Josef Wodeslavsky v. Englewood City Hall (2004-70)

Ms. Davies reviewed the background information of the case set forth in the December 28, 2004 Supplemental Findings and Recommendation of the Executive Director with the recommendation that the Council dismiss the case due to the Complainant's voluntary withdrawal. Mr. Maltese called for a motion to accept the Executive Director's recommendation.

The motion was made by Ms. Hook and seconded by Ms Minus-Vincent. This motion passed on roll call:

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

Nays: None

Fisher v. Department of Law and Public Safety (2004-55)

Mr. Dice reviewed the background as stated in his January 6, 2005 Supplemental Findings and Recommendation of the Executive Director. The Council unanimously decided that:

1. The Division of Law's request for an *in camera* review is denied.
2. The Council's December 9, 2004 Interim Decision is reaffirmed; however, a Stay of the Council's decision will be granted should the Division of Law file an appeal to the Appellate Division of the Superior Court of New Jersey on or before January 28, 2005 and provide evidence of same to the Executive Director.
3. The Stay shall be automatically dissolved should the Division of Law not take action to file an appeal in the time frame provided and, in which case, the Council's December 9, 2004 Interim Decision will remain in effect.

The motion was made by Ms. Schonyers and seconded by Ms Minus-Vincent. This motion passed on roll call:

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

Nays: None

John Paff v. Division of Consumer Affairs (2004-103)

Ms. Knoedler reviewed the background information set for the in January 7, 2004 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council reviewed said Findings and Recommendations, stated that Executive Order 21 take precedent over OPRA. Mr. Maltese called for motion to accept the Executive Director’s Findings and recommendations as written.

The motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motion was adopted by roll call:

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

Nays: None

NJ Libertarian Party v. Division of Youth and Family Services (2004-114)

Mr. Malloy reviewed the background information of the case set forth in January 4, 2005 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council reviewed and accepted said findings and recommendations with the amendment that “including all applicable fees” be added to item #1 of the Executive Director’s conclusions and recommendations and that the Custodian’s name be listed on the “Matrix.” Mr. Maltese called for a motion to accept the amended Findings and Recommendations.

The motion was made by Ms. Hook and seconded by Ms Minus-Vncent. The motion was adopted by roll call:

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

Nays: None

Tina Renna v. County of Union (2004-134)

Ms. Gardner reviewed the background information of the case set forth in the Executive Director’s January 3, 2005 Findings and Recommendations and all related documentation submitted by the parties. The Council considered said findings and recommendations with the amendment that the special service charge of \$2,260.00 is modified to \$1035.17 on the basis of utilizing thirty-five (35) hours of Clerical time, five (5) hours of Photographer’s time and three (3) hours of Supervisory time. Mr. Maltese called for a motion to accept the Executive Director’s recommendation with amendments.

The motion was made by Ms. Minus-Vincent and seconded by Ms. Hook. The motion was adopted by roll call:

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

Nays: None

Michael DeLuca v. Town of Guttenberg (2004-139)

Ms. Knoedler reviewed the background information of the case set forth in the Executive Director's January 4, 2005 Findings and Recommendations and all related documentation submitted by the parties. The Council unanimously agreed to adopt the entirety of said findings and recommendations with the amendment that the Custodian's name be listed on the "Matrix." Mr. Maltese called for a motion to accept the Executive Director's Finding and Recommendations with amendments.

The motion was made by Ms. Schonyers and seconded by Ms. Hook. The motion was adopted by roll call:

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

Nays: None

Falto v. Union County Parking Authority (2004-144)

Ms. McGann reviewed the background of this case as stated in the January 7, 2005 Findings and Recommendations of the Executive Director. The Council unanimously agreed to adopt the entirety of said findings and recommendations finding that:

1. The Custodian failed to prove that records responsive to "1" and "2" of the "Records Requested" in the findings and recommendations were released to the Complainant, therefore, the records should be released in accordance with N.J.S.A. 47:1A-1 et. seq.
2. While the Custodian did not respond to the Complainant's request in writing there was verbal communication and the Custodian's actions do not rise to the level of a knowing and willful violation of N.J.S.A. 47:1A-5(i) under the totality of the circumstances.
3. The requested record in "3" of the "Records Requested" in the findings and recommendations has been released to the Complainant and this portion of the complaint should be dismissed.
4. The Custodian's name will be listed on the "Matrix."
5. The Custodian shall comply with "1" directly above within ten (10) business days from receipt of the Council's decision and provide confirmation this to the Executive Director.

The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was adopted by roll call:

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

Nays: None

Barron v. Highland Park (2004-145)

Mr. Malloy reviewed the background of this case as stated in the December 21, 2005 Findings and Recommendations of the Executive Director. The Council, therefore, dismissed the case on the basis of:

1. There was no written request pursuant to N.J.S.A. 47:1A-5(g).
2. The Council does not have jurisdiction to adjudicate a denial of access complaint when there is no written OPRA request.

The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was adopted by roll call:

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

Nays: None

The Council decided at 12:15 p.m. to move into closed session to perform an *in camera* inspection on the document in question in the Loigman v. Township of Middletown (2004-112) case.

The Council reconvened the open session at 1:55 p.m.

Loigman v. Township of Middletown (2004-112)

The Council performed an *in camera* inspection of the March 25, 2004 letter of resignation from Chief John Pollinger. After completing the *in camera* review of the un-redacted “letter of resignation from Chief Pollinger,” the Council concluded that the redacted information contained in said letter is neither “inter-agency or intra-agency advisory, consultative or deliberative material” or otherwise exempt from disclosure under the Open Public Records Act. N.J.S.A. 47:1A-1, et seq. The Council, therefore, voted unanimously that the requested document should be disclosed in its entirety and the case be dismissed following the Custodian providing the Complainant access to the requested record.

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

Nays: None

Mr. Maltese then opened the floor for public comment.

Mr. Martin O’Shea stated his frustration with the hearing in his case having been postponed because of conflicts with the availability of West Milford personnel. He said that he has had similar problems with counsel for West Milford – William DeMarco – in the past.

Ms. Tina Renna, in comments relating to the Council's decision in her case, stated that citizens should not have to pay \$1,000 for public records. She said that that situation should be changed.

Mr. John Paff stated that he noticed that the Blau and Wodeslavski cases had been referred to the Office of Administrative Law (OAL) and then voluntarily withdrawn by the complainants. He said he wonders what happened to those cases while they were at the OAL.

The meeting was adjourned at 3:00 p.m. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent. The motion was adopted by roll call:

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

Nays: None

Respectfully submitted,

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

DeAnna Minus-Vincent
Secretary

Dated: July 14, 2005