

MINUTES OF THE GOVERNMENT RECORDS COUNCIL

Closed Session of March 11, 2004

The Council convened at 8:30a.m.in Room 235 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Chairman Vincent Maltese, Vice Chairman Bernard Spigner, Secretary Virginia Hook, Council Member Charles Richman (Designee of Commissioner Susan Bass Levin), Diane Schonyers (Designee of William Librera Department of Education) Deputy Attorney Generals Karen DuMars Andrea Grundfest, GRC Counsel Advisor, Susan Jacobucci, Executive Director Paul Dice and Assistant Executive Director Gloria Luzzatto.

Mr. Dice reviewed the meeting agenda with the Council. Mr. Maltese stated that he would be recusing himself for the following cases:

- Michael Galdieri vs. Jersey City Incinerator Authority (2003-152)
- Michael Galdieri vs. Jersey City Incinerator Authority (2003-153)
- C.W. vs. William Patterson University (2004-10)

The Council sought legal advice in the following cases:

Yehuda Shain vs. Lakewood (2002-111):

Mr. Dice stated that the case was referred to the Office of Administrative Law for a hearing to determine whether there was a knowing and willful violation of OPRA. Subsequent to the referral, the Complainant withdrew his participation in the OAL proceedings and the OAL closed the case based on the Complainant's actions. He stated further that the Custodian's counsel seeks reconsideration and the Complainant opposes same. He continued to state that we view the OAL's actions to be improper and sought legal advice on how to proceed. Ms. Jacobucci advised the Council that the OAL erred in closing the case and should follow through on the process. Ms. Grundfest advised that the Administrative Law Judge bases their findings on facts and the Council should accept the Custodian counsel's request for reconsideration since the motion is proper and is within the Council's purview. She stated further that the Council should consider referring the case back to the OAL for a determination on a knowing and willful violation.

Dale Baranoski v. Division of Criminal Justice (2003-5):

Mr. Dice stated that the GRC received a letter from the DAG Solomon in the Division of Criminal Justice (DCJ) offering the release of documents that they previously deemed were privileged in return for not finding a knowing and willful violation. He stated that this offer presents legal issues for the Council and recommended the following actions:

1. Order the custodian to release the documents it believes are fully disclosable, arguably the 28 records referenced in the OAG proposal, pursuant to N.J.S.A. 47:1A-1 et seq. to the Complainant within five business days of the custodian's receipt of the Council's order.
2. Order the custodian to release the documents it believes are partially disclosable, arguably the 40 records referenced in the OAG proposal, pursuant to N.J.S.A.

- 47:1A-1 et seq. to the Complainant within five business days of the custodian's receipt of the Council's order.
3. Order the custodian to provide Executive Director Paul Dice written confirmation of compliance with "1" and "2" immediately above within five business days of the custodian's receipt of the Council's order.
 4. Order the custodian to provide Executive Director Paul Dice with a detailed certification of why the Council should not consider the custodian to have knowing and willfully violated N.J.S.A. 47:1A-1 et seq. in the totality of the circumstances surrounding the complainant's July 12, 2002 and July 30, 2002 Open Public Records Act requests within five business days of the custodian's receipt of the Council's order.
 5. Forego any determination of the acceptability of the custodian's March 5, 2004 explanations of why the Council should accept the arguments that selected are privileged and, therefore, nondisclosable until the custodian has complied with "1-4" immediately above.

Mr. Maltese stated that he was inclined to have our counsel review the index submitted by DCJ and determine whether there was a lawful basis for not disclosing the requested documents and then revisit which documents may be released at our next meeting.

Probe v. Department of Law and Public Safety (2003-63):

Ms. Jacobucci stated that a review of the regulations and the NJ Insurance Fraud Protection Act cited by DOL in this case, the regulations and law are applicable and clearly an exemption to disclosure of the requested documents. Additionally, she stated that the documents meet the exception of criminal investigatory records under OPRA.

Merino v. Borough of Ho-Ho-Kus (2003-110) :

Mr. Maltese stated that in reviewing the case, he was concerned about the release of address information as it may pertain to privacy concerns, which may require notification to the person if the address information is released. Mr. Dice stated that the OPRA does not have an exception to the release of addresses and referred to N.J.S.A. 47:1A-1.1 (personal information exceptions). The DAG's offered to do research and provide an advisory opinion regarding any standard that the Council might apply in making a determination on the disclosure of address information. Mr. Maltese stated that he was inclined to defer making a decision in this case until the Council receives the DOL's advice. Mr. Dice asked that the Council consider addressing the other issues in the case at this meeting and defer the decision on disclosure of the address information to the next meeting. The Council members acknowledged that they would consider these options in open session.

Gober v. City of Burlington (2003-139):

Mr. Maltese stated that the request was overbroad and the Custodian should not be required to do the research pursuant to OPRA. He offered further that the requestor should provide a list of what records he did not receive. Mr. Dice stated that there is an issue of no response to the GRC's request for a statement of information and a failure to respond in the statutory 7 business day required time period under OPRA. The Council members concurred that the custodian must explain the delay in the form of a

certification and the Council would review their response in terms of making a determination of whether there is a knowing and willful violation of the OPRA.

Mr. Maltese asked for a motion to adjourn the closed session. A motion was made by Ms. Hook and seconded by Mr. Spigner. All members present accepted the motion.

Meeting adjourned at 10:55AM.

Respectfully submitted,

A handwritten signature in black ink that reads "Virginia Hook". The signature is written in a cursive style and is contained within a light gray rectangular box.

Virginia Hook, Secretary

Dated: April 26, 2005