

**MINUTES OF THE
GOVERNMENT RECORDS COUNCIL MEETING
July 8, 2004**

The meeting was called to order at 9:10AM. 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, Virginia Hook, Bernard Spigner, Charles Richman (designee of Commissioner Susan Bass Levin, Department of Community Affairs), Diane Schonyers, (designee of Commissioner William Librera, Department of Education.)

Mr. Maltese read a resolution to convene in closed session to receive legal advice concerning the complaints to be adjudicated that day. Mr. Spigner moved to adopt the resolution that was seconded by Ms. Hook. All members present unanimously approved the motion. The Council met in closed session from 9:10AM to 10:30AM. The Council reconvened in open session at 10:45AM in room 129 of the Department of Community Affairs, Trenton, New Jersey. The Open Public Meeting Act statement was read and attendees recited the Pledge of Allegiance.

Ms. Luzzatto called the roll:

Present: Chairman Vincent Maltese, Virginia Hook, Bernard Spigner, Charles Richman (designee of Commissioner Susan Bass Levin, Department of Community Affairs), Diane Schonyers, (designee of Commissioner William Librera, Department of Education.)

Also Present: Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, Deputy Attorney General Andrea Grundfest, GRC Attorney Advisor David Zipin, Staff Associates Chris Malloy, Anthony Carabelli, Erin Mallon, Kimberly Gardner, Marion Davies, Administrative Assistant.

Mr. Maltese called for a motion to add the discussion of independent counsel to the July 8, 2004 closed session meeting minutes. A motion was made by Mr. Spigner and seconded by Ms. Hook. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

The May 13, 2004 open and closed session minutes will be presented to the Council for approval at the August 12, 2004 Council meeting.

The Executive Director had no information to report on personnel matters.

Mr. Maltese called for reports from the Executive Director, Mr. Dice. Mr. Dice stated that the Executive Director's monthly report read as follows: The current status of complaints are a total of thirty-three (33) cases scheduled - fourteen (14) for this council meeting; seventeen (17) are cases scheduled for the August 12, 2004 meeting; two (2) for September 9, 2004 - five (5) cases on appeal; five (5) cases are in the Office of Administrative Law; fourteen (14) cases are in mediation; sixteen (16) cases are work in progress and there are a total of two-hundred seventy-nine (279) closed cases. The GRC staff is averaging approximately one hundred four (104) inquiries per month. In January there were ninety two (92); February, one hundred fifty eight (158); March, one hundred fifty five (155); April seventy four (74); May, one hundred four (104); June, seventy (78). Mr. Maltese asked about the status of the appeals at this time. Ms. Grundfest stated that the Department of Law has filed the Statement of Items on all five cases and they are waiting for the Appellate's to file their briefs. Mr. Maltese asked for a report on the status of what is in the Appellate Court to be presented at the next meeting.

Mr. Maltese asked Mr. Dice for a report on communications. Mr. Dice discussed the various articles and information with reference to OPRA. Mr. Dice also stated the GRC would continue to utilize the mediation service of the Office of Dispute Settlement under the same contractual basis for the next fiscal year.

Mr. Maltese stated that he would be speaking at the League of Municipalities in November. Mr. Dice briefly discussed the success of the outreach presentations to date.

Mr. Dice discussed the website and the changes that he plans to implement over the next few months with the assistance of the Office of Information Technology.

Eugene Reda v. Township of West Milford (2003-58)

The Executive Director respectfully recommended that the Council dismiss the case because the Complainant voluntarily withdrew the complaint.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

Eugene Reda v. Township of West Milford (2003-49)

The Executive Director respectfully recommended that the Council dismiss the case because the Complainant voluntarily withdrew the complaint.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

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

Ms. Luzzatto noted the following administrative changes to the Findings and Recommendations of the Executive Director:

1. Include under documents reviewed a March 17, 2004 letter from the Custodian's council to the Government Records Council as a follow-up to the interim decision.
2. Correction to pages 4 and 5 to read "Borough of Ho-Ho-Kus"

Ms. Luzzatto stated that the case was continued from the March 11, 2004 Council meeting and the Council's interim decision seeking a legal advice on whether the address information contained on the summonses were properly redacted. She also indicated a second issue in the case involved the cost of duplicating the requested videotape. Concerning the issue of disclosure, she stated that under advice of legal counsel, the GRC staff was advised to apply a weighing or balancing test in this case to determine whether the disclosure of the requested documents was proper. She explained that the seven factors to be considered come from case law and Supreme Court decisions and are to be applied in issues concerning third party privacy issues. In applying the balancing principals, it was the Executive Director's recommendation that the requested addresses contained in the moving violation summonses of Officer Tuttle should be disclosed pursuant to the Open Public Records Act.

With respect to the \$50.00 charge for coping the requested videotape, the GRC staff solicited information from the custodian to explain the basis of those costs. While the custodian explained the copying involved approximately one and one-half hour of time, the explanation did not support a special service charge in this particular case pursuant to OPRA. Ms. Luzzatto reviewed the Executive Director's recommendations that the Council find:

1. The requested addresses of moving violation summonses of Officer Tuttle should not have been redacted pursuant to the Open Public Records Act and balancing the privacy interest against the interest in disclosure.

2. A special service charge for copying the videotape is not warranted in this case. The Custodian shall charge no more than the actual cost of the materials and supplies in duplicating the record excluding the labor cost.
3. The Custodian shall reimburse the Complainant for the difference in the cost determined in “2” and what the Complainant actually paid.
4. The Custodian should provide access to the requested addresses of moving violation summonses and reimburse the Complainant \$25 for the reproduction of the requested video.

There was discussion between the council members concerning their role in applying the balance test, the seven factors and weighing the reasonable expectation of privacy versus the public's right to access the address information sought in the case. Ms. Grundfest stated that the Council's determination in the subject case and the application set forth by the Supreme Court in *Doe v. Portiz* does not mean that home addresses will always be accessible under every circumstance. She explained that the Supreme Court decision provides the Council with the ability to weigh and balance various circumstances present in the subject case, the right to access that is weighed against the privacy interest of the third party, which in the subject case are the individuals who received the traffic summons. She explained further that the Council's decision in this case was not a declaration of a future policy to be applied in all cases involving home addresses. She commented that the GRC staff analyzed the seven factors and recommended to the Council that the presumption was in favor of access and out weighed the expectation of privacy individual's who received the traffic summons. She added that among the information appearing on the summonses, the driver's license number is not disclosable and was properly redacted. She added further that OPRA does not specifically say that home addresses have to be redacted; rather the Council is required to analyze the competing interests and come to a determination.

Mr. Maltese discussed the balancing principles and his understanding of how it is applied in determining whether or not disclosure is proper. Mr. Richman indicated his concerns with a determination that would result in disclosure of the addresses. Ms. Schooners was not uncomfortable with the balancing test but felt she needed more clarification regarding its application. The Council continued in their discussion about the adjudicatory function and their decision in regard to access and the reasonable expectation of privacy. Mr. Spigner and Ms. Hook indicated their concern in releasing the address information in cited case. Ms. Grundfest stated that the Council had the ultimate determination to make the final decision in the subject case. Mr. Dice stated that while respecting Ms. Grundfest expertise he disagreed with her conclusions.

Mr. Maltese called for a motion to accept the Executive Director's recommendation to disclose the address information on the summonses as it relates to this case. A motion was made by Mr. Signer and seconded Ms. Schooners. The motion was not adopted.

Ayes: Ms. Schooners, Mr. Maltese

Nays: Ms. Hook, Mr. Spigner

Abstain: Mr. Richman

Mr. Maltese and the other Council members discussed their options with the Executive Director and the Deputy Attorney General. The discussions concluded with Mr. Maltese calling for a second motion to not disclose the address information contained in the summonses. A motion was made by Mr. Richman and seconded by Mr. Spigner. The motion was adopted by roll call.

Ayes: Mr. Richman, Ms. Hook, Mr. Spigner

Nays: Ms. Schonyers, Mr. Maltese

Abstain: None

The Council voted unanimously to adopt items “2,” “3” and “4” of said findings and recommendations. By a majority, the Council voted not to accept the Executive Directors recommendations in item “1” of said findings and recommendations concerning the disclosure of the address information and to review its decision in this matter at the August 12, 2004 public meeting after seeking legal counsel.

Robert Tombs v. Brick Township Municipal Authorities (2003-123)

Ms. Luzzatto presented the information concerning the case as set forth in the “Findings and Recommendations of the Executive Director” and indicated that through all the information submitted by the parties, it was unclear why the requested geographical information system could not be provided in digital format and could not be redacted to eliminate any domestic security risk. Additionally, it was unclear from the information provided by the parties as to what documents were being sought. She reviewed the Executive Director’s recommendations that the Council find that:

1. The record in this complaint is unclear concerning precisely what documents are being sought.
2. The record in this complaint is also unclear regarding why the digitally formatted material cannot be redacted to eliminate domestic security risk(s).
3. The case should be referred to the Office of Administrative Law (OAL) for a hearing to determine:
 - a. What documents are being sought by the Complainant.
 - b. What documents are maintained by the Brick Township Municipal Utilities Authority and would be responsive to the Complainant’s request.
 - c. The Description of topographical mapping data on the GIS disc.

- d. Any other information the OAL considers pertinent in determining whether the information sought is disclosable.
- e. Whether copies of the Geographical Information System disc can be reproduced in redacted form.
- f. Whether a digital copy of the Brick Township Municipal Utilities Authorities (BTMUA) GIS topographical mapping data, as requested, is or is not disclosable, in whole or in part, pursuant to the Open Public Records Act (OPRA) and the domestic security exemption in Executive Order No. 21(1)(a).
- g. The expense(s) the BTMUA would have to incur to satisfy the Complainant's request if the BTMUA is found to have disclosable government records that are responsive to said request.

Mr. Maltese commented that although timeliness was not raised as an issue in the cases, a response to the request was not provided within the statutory time frame and should be noted on the Matrix.

Mr. Maltese called for a motion to accept the Executive Director's recommendations. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

John M. Ward v. Village of Ridgewood (2003-132)

The Executive Director respectfully recommended that the council dismiss the case because the parties reached a settlement of the case during mediation.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

John M. Ward v. Village of Ridgewood (2003-133)

The Executive Director respectfully recommended that the council dismiss the case because the parties reached a settlement of the case during mediation.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

Gerald Weimer v. Middletown Township Clerk (2004-22)

Mr. Dice reviewed the case stating that it was initially heard at the May 13, 2004 public meeting and the Council voted to elicit additional information from the Custodian concerning why the information at issue was not disclosable.

The Case Manager, Ms. Mallon, reviewed the details of the case and the Executive Director's recommendations as set forth in the findings and recommendations of said case.

Mr. Richman suggested that a statement to be added to the final decision to disclose the records with appropriate redactions.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written with the suggested addition. A motion was made by Mr. Spigner and seconded by Mr. Richman. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

Larry Loigman v. Department of Treasury (2004-45)

Ms. Luzzatto reviewed the case details as set forth in the Executive Directors findings and recommendations and presented the Executive Director's recommendations that the Council dismiss the case on the basis of:

1. The documents, which contain personal medical information, are exempt from disclosure pursuant to the Open Public Records Act (OPRA).

2. The Custodian violated N.J.S.A.47:1A-5(g) by not providing the complainant with the specific basis for its denial of access in response to the request on February 18, 2004. While the basis of the denial was provided on April 6, 2004, it should have been provided in the February 18, 2004 response pursuant to N.J.S.A. 47:1A-5(g).

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by roll call.

Ayes: Ms. Hook, Ms. Schonyers, Mr. Richman, Mr.. Maltese

Nays: None

Abstain: None

Not in Attendance: Mr. Spigner

Karen Leibel v. Manalapan/Englishtown Regional Schools (2004-52)

Mr. Dice stated that the case involved requests for a series of reports and adjustment records regarding buses and bus drivers from the Manalapan/Englishtown Regional School Board. The Case Manager, Ms. Mallon, reviewed the details of the case as set forth in the Executive Director's findings and recommendations and the Executive Director's conclusions and recommendations to the Council.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

Not in Attendance: Ms. Schonyers

Barbara Schwarz v. Department of Correction (2004-61)

Ms. Luzzatto reviewed the details of the Executive Director's findings and recommendations of the case that involved a request for records of specific identified individuals and the Church of Scientology. She indicated that the request was denied on the basis that no records existed with respect to the individual's cited in the request and there was no information on the Church of Scientology. She indicated further that the custodian's certification explained the process used in conducting the records search.

The Executive Director recommended that the Council dismiss the case on the basis of the custodian's certification the Department of Corrections had no records responsive to the request.

Mr. Maltese suggested that the Executive Director's recommendation should be amended to read all available records were provided existent to the request.

Mr. Maltese called for a motion to accept the Executive Director's recommendations as amended. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

Robert Campbell v. Township of South Harrison (2004-62)

Mr. Dice reviewed the details of the Executive Director's findings and recommendations of the case, stating that the Council ordered in the June 10, 2004 meeting for the custodian to provide a certification explaining in detail what records were provided and that which was not provided, and to explain the reason no written response was given to the Complainant. Mr. Dice reviewed the information submitted by the Custodian in response to the Council's June 10, 2004 Interim Decision and recommended that the Council dismiss the case.

Mr. Maltese called for a motion to accept the Executive Director's recommendations "1" through "4" and review recommendation "5" at the August meeting. A motion was made by Mr. Spigner and seconded by Ms. Schonyers to accept the Executive Director's recommendations as amended. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

Roger Harvey v. Division of State Police (2004-65)

Mr. Dice indicated that this case involved any and all records and document relating to an arrest of a specified individual. The Case Manager, Ms. Gardner, explained the details of the case that were found in the Executive Director's Findings and Recommendations. She presented the Executive Director's recommendation to the Council to dismiss the complaint because the records requested were criminal investigatory records and not disclosable pursuant to the Open Public Records Act.

Mr. Dice and Ms. Gardner noted a change to the findings and recommendations on page “2” under the “Analysis” to reflect N.J.S.A. 47:1A-9A.

Mr. Maltese called for a motion to accept the Executive Director’s recommendations as amended. A motion was made by Ms Schonyers and seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman, Mr. Maltese

Nays: None

Abstain: None

Jeffrey Sauter v. Township of Clots Neck (2004-68)

Mr. Dice stated that the Complainant and the Custodian voluntarily signed Agreements to Mediate and recommended that the Council and GRC staff forego adjudicatory action pending the outcome of mediation.

Mr. Maltese called for a motion to accept the Executive Director’s recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Spigner . The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman

Nays: None

Abstain: Mr. Maltese

William Heffron v. City of South Amboy (2004-69)

Mr. Dice stated that the Complainant and the Custodian voluntarily signed Agreements to Mediate and recommended that the Council and GRC staff forego adjudicatory action pending the outcome of mediation

Mr. Maltese called for a motion to accept the Executive Director’s recommendation as written. A motion was made by Ms. Schonyers and seconded by Ms. Hook. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Spigner, Ms. Schonyers, Mr. Richman

Nays: None

Abstain: Mr. Maltese

There was no New Business. Mr. Maltese opened the meeting for public comment. Hearing none, Mr. Maltese called for a motion to adjourn. The motion was adopted by consensus.

The meeting adjourned at 12:15PM

Respectfully submitted,

/s/Virginia Hook, Secretary

Dated: September 9, 2004