

**Government Records Council  
December 9, 2004 Public Meeting - Open Session**

The meeting was called to order at 9:10 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)

Absent: Bernard Spigner due to resignation from the Council

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 9:10 a.m. to 10:25 a.m.

Mr. Maltese called for a motion to reconvene in open session. The motion was made by Ms. Hook and seconded by Ms. Minus-Vincent.

The Council reconvened in open session at 10:30 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. Mr. Maltese read the Open Public Meetings Act statement and attendees recited the Pledge of Allegiance.

Mr. Maltese welcomed DeAnna Minus-Vincent to the Council.

Mr. Maltese asked Mr. Dice if he had any personnel matters to discuss. Mr. Dice read Bernard Spigner's resignation into the record. The resignation was effective on the date of receipt, December 9, 2004.

Mr. Maltese explained that Mr. Spigner now works for the New Jersey Sports and Exposition Authority as the Director of Communications and External Affairs. Mr. Maltese expressed his sentiment that the Council was losing a good person and that it would now be up to the Governor to appoint a replacement for the Council.

Mr. Maltese asked for a motion to accept Mr. Spigner's resignation. The motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. Ms. Luzzatto called the roll:

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

Nays: None

Mr. Maltese asked Mr. Dice to prepare an appropriate acknowledgement for Mr. Spigner's work on the Council. Mr. Dice said he would do so.

Mr. Dice reviewed the following GRC outreach efforts.

- Mr. Maltese and Mr. Dice addressed 275 attendees at the NJ League of Municipality's annual convention in November 2004. Mr. Dice and Ms. Luzzatto also worked a consulting table at the convention center.
- Mr. Dice gave a presentation at the Legal Services of New Jersey's annual convention in December.
- Mr. Dice attended a NJ Foundation for Open Government board meeting on December 8, 2004.
- Fran Snyder, GRC mediator, and Mr. Dice gave a presentation to the Somerset County Clerks Association in December. Mr. Dice stated that the audience received the case review format quite well.
- Mr. Dice said that the intervention in Highland Park that Ms. Ann Baron had requested had been canceled. It will be re-scheduled.
- Mr. Dice also said that he had scheduled a joint presentation with the Camden County Prosecutor's Office for police departments for January 20, 2005.

Mr. Dice said that the GRC is now tailoring training initiatives to specific audiences. He also said that to date, the Council has performed 25 outreaches and that the training initiative is going very well. He said he hopes to increase that number in 2005. Mr. Dice has been invited to give two presentations to the NJ League of Municipalities in May 2005.

Mr. Dice reviewed the open cases breakdown and noted an increase in the number of cases utilizing mediation.

Mr. Dice noted that a case referred to the Office of Administrative Law was returned for the Council to conduct the necessary hearing. The case (O'Shea v. Township of West Milford, 2004-17) will be hearing January 2005. He reviewed the current open case statistics as follows:

Scheduled:	63
12/9/04:	17
1/13/05:	30
2/10/05:	16
Work in progress:	15

Mr. Dice stated that the Work in progress cases are generally the newest cases and require investigation before they are scheduled for Council adjudication.

Mr. Dice gave the following review of inquiries to the Council's staff:

October – 70

November – 79

He explained that these are inquiries from people seeking guidance on OPRA issues.

Mr. Maltese said the approval for the minutes for August, September and October 2004 would be deferred to the next meeting. They have been transcribed, but now the Council is awaiting synopses of the transcript.

Mr. Dice interjected that the tapes of those sessions and the transcripts are available should anyone care to inspect them while the summary work is in progress.

Mr. Maltese then introduced the fourteen (15) cases scheduled for administrative action:

- 1) Rory Moore v. Township of Old Bridge, 2004-129—Agreement to Mediation
- 2) Rory Moore v. Town of Old Bridge, 2004-137—Agreement to Mediation
- 3) Rory Moore v. Town of Old Bridge, 2004-140—Agreement to Mediation
- 4) Rory Moore v. Town of Old Bridge, 2004-141—Agreement to Mediation
- 5) Rory Moore v. Old Bridge Township, 2004-154—Agreement to Mediation
- 6) Rory Moore v. Old Bridge Township, 2004-155—Agreement to Mediation
- 7) David Drukaroff v. Lakewood Board of Education, 2004-170—Agreement to Mediation
- 8) Rory Moore v. Old Bridge Township, 2004-171—Agreement to Mediation
- 9) Rory Moore v. Old Bridge Township, 2004-172—Agreement to Mediation
- 10) Rory Moore v. Old Bridge Township, 2004-173—Agreement to Mediation
- 11) David Weiner v. Passaic County Board of Social Services, 2004-189—Agreement to Mediation
- 12) Amy Searfoss v. City of Rahway Planning Board, 2004-164—Agreement to Mediation
- 13) Leslie Laffan v. Township of Ocean, 2004-156—Complaint withdrawn
- 14) Michael Lombardi v. Department of Labor, 2004-168—Complaint withdrawn
- 15) Drukaroff v. Lakewood Board of Education, 2004-170 – Settled in Mediation

Mr. Maltese asked for a motion to accept the referral to mediation for numbers one to twelve. The motion was made by Ms. Minus-Vincent and seconded by Diane Schonyers. Ms. Luzzatto called the roll:

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

Nays: None

Mr. Maltese then asked for an amendment to the above mentioned vote to include the Council's acceptance of numbers 13 and 14 as withdrawn and number 15 as settled in mediation. The motion for the amendment was made by Ms. Minus-Vincent and seconded by Diane Schonyers. Ms. Luzzatto called the roll:

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

Nays: None

Mr. Maltese then continued with the cases scheduled for adjudication.

**Ms. Debra Allen, Deputy Attorney General recused herself for the following two cases:**

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

Janon Fisher v. Division of Law and Public Safety (2004-82)

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

Mr. Dice presented to the Council all the facts concerning this case with reference to special service charges. The Executive Director stated that the Department of Law has met their burden of proving that this request was “extraordinary.” Mr. Dice respectfully disagreed with the fees charge by the Department of Law for the services provided citing the Courier Post v. Lenape Regional High School District where the judge stated that if a clerk could do the work a clerk should do the work and that there was no need for attorney’s to compile this information

The Executive Director recommended the following:

1. The Division of Law has meet the burden of justifying that the OPRA request is “extraordinary” pursuant to N.J.S.A. 47:1a-5(c)
2. The Division of Law has not meet the burden of proof justifying the use of attorneys for document compilation that comprises the assessed special service charge of \$1877.93
3. The Division of Law should fulfill the subject OPRA request and charge Complainant in accordance with OPRA’S routine copy charges outlined in N.J.S.A. 47:1A-5(b).

Mr. Maltese called for a motion to adopt the Findings and Recommendations of the Executive Director. A motion was made by Ms. Schonyers and seconded by Ms. Hook. The motion was passed on roll call

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

Nays: None

**Janon Fisher v. Department of Law and Public Safety (2004-82)**

Ms. Luzzatto stated that the case was on follow up from the November 9, 2004 meeting was similar to the previous case, that concern a request for records and how the fees were arrived at and any correspondence related to that. The Council decided at the November 9, 2004 meeting that the Custodian’s Counsel had not meet the burden of showing that the redacted information fell within the “intra-agency, inter-agency, advisory, consultative or deliberative material” or attorney-client privilege exemptions. The Council concluded that the documents should be disclosed without any redactions unless the Division of Law presented a Vaughn Index explaining the basis for the asserted privileges. The Executive Director received the Vaughn Index on November 23, 2004 in response to the interim decision. However the Vaughn Index was too general in nature and lacked specificity.

The Executive Director respectfully recommended the Council find that:

1. The Vaughn Index lacks specificity in justifying the claimed exemptions.

2. The Division of Law has not meet the burden of showing that the requested documents are privileged thereby exempt from disclosure under N.J.S.A. 47:1A-1,et seq.
3. The documents responsive to the April 12, 2004 OPRA request should be disclosed without redactions.

Mr. Maltese called for a motion to adopt the Findings and Recommendations of the Executive Director and asked the council to order the custodian to have the information disclosed immediately. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was passed on roll call.

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

Nays: None

**Barbara Schwarz v. New Jersey Department of Treasury 2004-59**

Mr. Malloy presented the case as set forth in the Findings and Recommendations of the Executive Director stating that the Custodian found no records responsive to the request. However the Department of Treasury located a payment history file that indicated there were six different names similar to the Complainant's. The Complainant declined these records because they did not concern her.

The Executive Director respectfully recommended that the Council dismiss the case on the basis of:

1. The Custodian's statement that no records were found pertaining to Barbara Schwarz/Barbara Schwartz, Mark C. Rathbun aka Mark De Rothschild, Scientology or Church of Scientology, L Ron Hubbard, and former President Dwight D. Eisenhower.
2. Ms. Schwarz's question to the custodian asking them to explain their records system is not a request for a government record and therefore is not under the jurisdiction of the Government Records Council.

Mr. Maltese called for a motion to adopt the Findings and Recommendations of the Executive Director as written.

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

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

Nays: None

**Larry Loigman v. Borough of Matawan (2004-98)**

Mr. Malloy stated that at the November 9, 2004 public meeting, the Government Records Council (Council) issued the following Interim Decision:

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1. The Custodian is in violation of N.J.S.A. 47:1A-5(g) in that they did not treat the Complainant's list as a valid OPRA request. Although there was a verbal response to the request, a written response was necessary. However, under the totality of the circumstances, it does not rise to the level of a knowing and willful violation.
2. Pursuant to N.J.S.A. 47:1A-5(e) the information requested does not fall under the immediate access provision in the Act therefore was not required to be available on demand.
3. Within ten (10) calendar days from receipt of the Council's decision, the Custodian shall provide the Complainant with access to view/inspect and receive a copy of the documents requested.

On December 2, 2004 the Complainant informed the Government Records Council staff by e-mail that he had received the records, therefore no further GRC action was required.

The Executive Director respectfully recommended that the Council dismiss the case on the basis that the complainant acknowledged receipt of the records responsive to his request. Mr. Maltese called for a motion to adopt the Findings and Recommendations of the Executive Director as written.

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

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

Nays: None

**Ross Kushner v. Township of West Milford (2004-111)**

Ms. Gardner stated that this case was heard at the November 9, 2004 Council meeting. The Township was ordered to release the requested digital GIS tax maps directly to the Complainant pursuant to N.J.S.A. 47:1A-1 et seq. without having the Complainant fill out or execute a "Request For Access to Township GIS Data" form and/or a "Data Distribution Agreement."

On December 1, 2004 the Complainant sent an e-mail to the Government Records Council staff stating that he had received the requested information

The Executive Director respectfully recommended that the Council dismiss the case on the basis Custodian complied with the Council's November 9, 2004 Interim Decision and the Complainant acknowledged receipt of the documents responsive to his OPRA request.

Mr. Maltese called for a motion to adopt the Findings and Recommendations of the Executive Director as written.

A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was passed on GRC Minutes of Public Session – December 9, 2004

roll call.

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

Nays: None

**Larry Loigman v. Township of Middletown (2004-112)**

Mr. Dice read a late submission letter faxed from the Custodian, which was received the morning of the Council meeting, December 9, 2004, that contained a December 6, 2004 letter from the Complainant who asserted that the redactions made to the requested document did not comply with the Council's Interim Decision. Since the Custodian and the Complainant were still not in agreement concerning the document, Mr. Maltese recommended that the Council hold an in-camera review of the document at the January GRC meeting, at which time a decision will be made as to whether or not the document should be disclosed.

Mr. Maltese called for a motion to hold an in-camera review the requested document at which time a final decision would be made. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was taken by roll call:

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

Nays: None

**David Frizell v. Division of Alcoholic Beverage Control (2004-113)**

Ms. Gardner reviewed the Findings and Recommendations of the Executive Director in the instant case. She stated that the Complainant requested for all complaints, reports, letters, inquires from any person to or from the Alcohol Beverage Control Board (ABC) concerning the Raritan Yacht Club, in Perth Amboy, New Jersey in the calendar year 2004. She stated that the Custodian contended that the requested records were exempt from public access pursuant to other regulations, specifically, N.J.A.C. 13:2-29.2 and OPRA.

The Executive Director respectfully recommended that the Council dismiss the complaint on the basis that N.J.A.C. 13:29-2.2 superceded OPRA and therefore access to the requested documents was not permitted pursuant to N.J.S.A. 27:1A-9(a).

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

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

Nays: None

**William Patterson v. Somerdales School District (2004-127)**

Ms. Knoedler reviewed the instant case as set forth in Findings and Recommendations of the Executive Director. She presented the Executive Director's recommendations to the Council that the case should be dismissed on the basis of:

1. The Custodian responded to the Complainant's July 13, 2004 OPRA request on July 14, 2004 notifying the Complainant that the request was in the process of being compiled. The Custodian, on August 12, 2004, notified the Complainant, in writing, the debt card transaction records were in the possession of the Prosecutor's Office and that they were trying to obtain the records.
2. The Custodian provided the Complainant with copies of the Bank Statements from July of 2000 to July of 2002.
3. The Council has no jurisdiction to compel disclosure of the debit card records because the sole copy of these records are in the possession of an arm of the judicial branch of government, i.e. the grand jury, to which OPRA does not apply.

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

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

Nays: None

**Clara Halper v. Township of Piscataway (2004-130)**

Ms. Gardner reviewed the instant case as set forth in the Findings and Recommendations of the Executive. Ms. Gardner reviewed the recommendations of the Executive Director. The Council suggested an amendment to the recommendations for the GRC staff to counsel the Custodian on their OPRA obligations and to formally appoint an assistant custodian in those occasions when the custodian is on vacation. The Council voted unanimously to adopt said findings and recommendations as amended:

1. While the Custodian violated N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i) and N.J.S.A. 47:1A-5(e), it does not rise to a level of a knowing a willful violation of OPRA under the totality of the circumstance.
2. The Complainant was provided access to all records responsive to her August 5, 2004 OPRA request.
3. The Government Records Council Staff is to counsel the Records Custodian on timeliness to access of records (N.J.S.A. 47:1A-5i), immediate access issues (N.J.S.A. 47:1A-5e), and the requirement of a written response (N.J.S.A. 47:1A-5g).



4. The Township of Piscataway is to formally appoint an Assistant Records Custodian within 45 calendar days.

**Lillian Foster v. NJ Department of Personnel (2004-135)**

Ms. Knoedler reviewed the background information set forth in the Findings and Recommendations of the instant case. She stated that the Complainant in this case was requesting various certifications from the Department of Personnel and alleged that the Custodian denied access to some of the requested records, but acknowledged that the Custodian responded to a portion of her request. Ms. Knoedler stated further that the Custodian responded verbally when a written response was required. Mr. Maltese recommended that the Custodian be placed on the Matrix for responding verbally, rather than providing a written response pursuant to OPRA. Mr. Maltese called for a motion to accept the Executive Director's recommendations as amended and to dismiss the case on the basis of:

1. The Custodian responded verbally to the request W10328 when a written response was required pursuant to N.J.S.A. 47:1A-5 (g).
2. The Custodian provided an additional certification to the Complainant after the NJDOP found that it was not included in the records provided to the Complainant for review on August 17, 2004.
3. The Custodian did not knowingly and willfully violate N.J.S.A. 47:1A et. seq. under the totality of the circumstances.
4. The Custodian provided access to all available records responsive to the Complainant's requests as originally provided to the Custodian.

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

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

Nays: None

**Michael Deluca v. Town of Guttenberg (2004-139)**

Ms. Knoedler reviewed the background information of case set forth in the Findings and Recommendations of the Executive Director. Mr. Maltese recommended that the Council postpone rendering a decision in the case until the next GRC meeting for the GRC staff to determine whether the Custodian's Counsel is an employee of the Town or retained by the Town as Counsel. A motion was made by Ms. Schonyers and seconded by Ms. Hook. The motion was adopted by roll call.

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

Nays: None

**Mr. Maltese recused himself from the following case:**

**Hugh Sharkey v. Borough of Oceanport (2004-67)**

Mr. Malloy reviewed the background information of the case as set forth in the October 12, 2004 Supplemental Findings and Recommendations of the Executive Director. Ms. Hook called for a motion to accept the Executive Director's recommendation as written. Ms. Schonyers made a motion to and seconded by Ms. Minus-Vincent. The Council voted unanimously to adopt said findings and recommendations and to dismiss the case on the basis that the Custodian complied with the Council's October 14, 2004 Interim Decision.

The motion was adopted by roll call.

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

Nays: None

Recused: Mr. Maltese.

**Jay Kohlman v. East Orange (2004-99)**

Ms. Gardner reviewed the background information of the case set forth in the Findings and Recommendations of the Executive Director. She stated that all records responsive to the request were provided, however, the Custodian failed to provide a written response to the Complainant indicating when the documents would be released. The Council recommended that the GRC staff offer the Custodian guidance in its obligations under OPRA and that the Custodian be placed on the "Matrix." Ms. Hook called for a motion to accept the Executive Director's recommendations with the suggested amendment.

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

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

Nays: None

Recused: Mr. Maltese.

**Cynthia Gallenthin v. County of Gloucester (2004-106)**

Mr. Malloy reviewed the background information of the case set forth in the Findings and Recommendations of the Executive Director. He noted that the Custodian certified that all records requested that their office had on file were released to the Complainant and the other documents which the Complainant sought were held by the Gloucester County Improvement Authority. Several administrative changes were noted for the record. Ms. Hook called for a motion to accept the Executive Director's recommendation as amended to:

1. Dismiss the case on the basis that the Custodian certified they made available all records
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made, maintained, and kept on file in the office of the County of Gloucester.

2. Recommend that the Complainant, if she so chooses, make an OPRA request to the Gloucester County Improvement Authority for the records she is still seeking.

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

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

Nays: None

Recused: Mr. Maltese.

**Robert Gorman v. Gloucester City (2004-108)**

Mr. Malloy reviewed the background information of the case set forth in the Findings and Recommendations of the Executive Director. He stated that the request concerns multiple police documents and information. The Council recommended that the Custodian respond to the Executive Director's recommendations within 30 calendar days for item 1. and 10 business days for items 4. and 5. of said recommendations. A motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motion was adopted by roll call.

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

Nays: None

Recused: Mr. Maltese.

**Tina Renna v. County of Union (2004-110)**

Mr. Malloy reviewed the background information of the case set forth in the Findings and Recommendations of the Executive Director. He stated that the Complainant alleged an untimely response to the OPRA request for bills and bids. He noted that the issue in the case involved the failure to provide immediate access to certain requested documents and not providing a written explanation for the delay. The Council requested that this Custodian be placed on the Matrix because the Custodian provided verbal communication to the Complainant, rather than a written response. Ms. Hook called for a motion to accept the Executive Director's recommendations to dismiss the case with the Council's suggested amendment.

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

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

Nays: None

Recused: Mr. Maltese

**Prince Cuba v. Essex County Superior Court (2004-131)**

Ms. Knoedler reviewed the case set forth in the Findings and Recommendations of the Executive Director. She noted that the issue in the case is the Council's authority since the records sought were held by the Essex county Superior Court. She presented the Executive Director's recommendations to the Council to dismiss the case because the Government Records Council lacked the jurisdiction in this matter pursuant to OPRA. N.J.S.A. 47:1A-7(g).

Ms. Hook called for a motion to accept the Executive Director's recommendations as written. A motion was made by Ms. Minus-Vincent and seconded by Ms. Schonyers. The motion was adopted by roll call.

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

Nays: None

Recused: Mr. Maltese

Mr. Maltese returned to the meeting and opened the meeting to public comment. There were no public comments and Mr. Maltese called for a motion to adjourn. The motion was made by Ms. Schonyers and seconded by Ms. Hook. The meeting was adjourned by consensus at 3:00 p.m.

Respectfully Submitted,

/s/ DeAnna Minus-Vincent

Dated: May 12, 2005