



**Minutes of the Government Records Council  
March 28, 2007 Public Meeting – Open Session**

The meeting was called to order at 9:45 a.m. at the Department of Community Affairs, Conference Room 126, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Hairston called the roll:

Present: Vincent Maltese, Chairman, Charles Richman (designee of Department of Community Affairs Commissioner Susan Bass Levin) and Kathryn Forsyth (designee of Department of Education Commissioner Lucille Davy).

GRC Staff: Executive Director Catherine Starghill, Brigitte Hairston, Karyn Gordon, Jyothi Pamidimukkala, Dara Lownie, Tiffany Mayers, Rebecca Steese, Frank Caruso, Designated Outside Counsel Meagan Tuohey-Kay, and Deputy Attorney General Debra Allen.

The pledge of allegiance was recited.

Mr. Maltese announced that the Council will deviate from its agenda and hear public comments before adjudicating complaints.

**Public Comment:**

- (1) Thomas Caggiano (presented evidence of alleged non-OPRA violations of various government officials)
- (2) George Burdick (expressed concern with custodian's potential violations of OPRA)
- (3) Tucker Kelley (complimented Fran Snyder (GRC Mediator) and GRC staff in the processing of his complaint).

**Minutes Approval:**

There was not a quorum to approve the open and closed session minutes of January 31, 2007, therefore Mr. Maltese did not call for a motion to approve these minutes. (The February meeting minutes were not available for approval.)

**Council Adjudications:**

The following complaints were presented to the Council for summary administrative adjudication:

GRC Complaint Case and Number	Disposition
1. Joe Truland, Jr. v. Monmouth County Prosecutor's Office (2006-125)	Complaint Withdrawn
2. David Herron v. Township of Montclair (2006-203)	Settled in Mediation
3. Peter Biondi v. NJ Department of Health & Senior Services (2006-212)	Settled in Mediation
4. Thomas Gandolfo v. Jersey City (Hudson)(2007-10)	Settled in Mediation
5. Steven Kossup v. County of Essex (2007-56)	No Jurisdiction to Adjudicate
6. Thomas Gandolfo v. Jersey City (Hudson)(2007-59)	Complaint Withdrawn
7. Julian Grauer v. NJ Department of Education	Complaint Withdrawn
8. Kurt Stieffel v. West Amwell School District (Hunterdon)(2007-76)	Action Pending in Superior Court
9. Kurt Stieffel v. West Amwell School District (Hunterdon)(2007-76)	Action Pending in Superior Court
10. Ali Morgano v. Superior Court-Essex Vicinage (2007-80)	No Jurisdiction to Adjudicate

Mr. Maltese called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. A motion was made by Mr. Richman and seconded by Ms. Forsyth. The motion passed by an unanimous vote except for one matter for which Ms. Forsyth recused herself (Julian Grauer v. NJ Department of Education (2007-60)) which was not voted on due to lack of a quorum.

The following complaints were presented to the Council for individual adjudication:

**John McCormack v. NJ Department of Treasury (2005-102)**

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that the Custodian has complied with the Council's Interim Order of February 28, 2007.

Mr. Maltese called for a motion to accept the Executive Director's supplemental findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Mr. Richman. The motion passed unanimously.

**Vincent Donato v. Emerson Borough (2005-125)**

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that based on the Custodian's certification dated March 5, 2007, the Custodian has complied with the Council's February 28, 2007 Interim Order.

Mr. Maltese called for a motion to accept the Executive Director's supplemental findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Forsyth. The motion passed unanimously.

### **Daniel Meaders v. William Paterson University (2005-131)**

Ms. Mayers reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the Complainant's request for documents showing evidence that certain named individuals have had State background checks and have been certified by the State because he certifies that he provided the Complainant with the only records responsive to the request.
2. The Custodian did not unlawfully deny the Complainant access to background investigations and psychological exams pursuant to N.J.S.A. 47:1A-1, N.J.S.A. 47:10, and Executive Order #26 (Gov. McGreevey, 2002).
3. While the Custodian certifies that the Complainant's request for the audit report for the Office of Continuing Education and Distance Learning are exempt from disclosure as ACD material pursuant to N.J.S.A. 47:1A-1.1 and as personnel records pursuant to N.J.S.A. 47:1A-10, the Council should conduct an *in camera* review of the requested minutes to determine if said document, or portions therein are exempt from disclosure as the Custodian asserts.
4. **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope six copies of the requested unredacted document (see #3 above), a document or redaction index detailing the document and/or each redaction asserted and the lawful basis for the denial, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the document provided is the document requested by the Council for the *in camera* inspection within five (5) business days from receipt of the Council's Interim Order.**
5. The Custodian did not unlawfully deny access to the Complainant's request for a list of all administrators and managers whose children received employment from the university during the Summer beginning in 2001 because he certifies that no such document exists.
6. Since the Custodian indicated in his response letter to the Complainant dated May 23, 2005 that there were no performance evaluations responsive for the President, but the performance evaluations responsive for the Provost and Vice President could be provided upon the Complainant advising such, the Custodian has borne his burden of making the responsive records available to the Complainant.
7. **The Custodian shall disclose the requested records in #6 above with appropriate redactions, including a detailed document index explaining the**

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<sup>1</sup> The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

**lawful basis for each redaction, within five (5) business days from receipt of this Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.**

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Forsyth. The motion passed unanimously.

**William Langford v. City of Perth Amboy (2005-181)**

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that

1. The Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by not providing a written response to the Complainant's May 12, 2005 OPRA request which either granted or denied access within the statutorily mandated seven (7) business days, therefore resulting in a "deemed" denial.
2. Based on the GRC's decision in John Windish v. Mount Arlington Public Schools, GRC Complaint No. 2005-216 (August 2006), the Custodian should have provided the Complainant with the requested rules instead of informing the Complainant where the requested rules are located (the Director of Human Services office). As such, the Custodian violated N.J.S.A. 47:1A-1.
3. The Custodian unlawfully denied access to the requested records since the Custodian failed to provide a written response to the Complainant's August 26, 2005 OPRA request within the statutorily mandated seven (7) business days violating N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., and resulting in a "deemed" denial.
4. Although the Complainant may have previously been provided with the requested documents, OPRA does not limit the amount of times a requestor may seek the same documents pursuant to Thomas Caggiano v. Borough of Stanhope, GRC Complaint No. 2005-211 et seq.<sup>2</sup>
5. As the Custodian failed to provide a written response to the Complainant's September 21, 2005 OPRA request, either granting or denying access, she violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. which results in a "deemed" denial.
6. As the Custodian failed to provide a written response to the Complainant's May 12, 2005 and September 21, 2005 OPRA requests creating a "deemed" denial, the Custodian should release the requested records to the Complainant, with appropriate redactions, if any, and provide a legal explanation for each redacted part thereof.
7. **The Custodian shall comply with # 6 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, pursuant to *N.J. Court Rules, 1969 R. 1:4-4 (2005)*, to the Executive Director.**

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<sup>2</sup> Actual citation is Caggiano v. Borough of Stanhope, GRC Case Nos. 2005-211, 2005-226, 2005-227, 2005-228, 2005-229, 2005-230, 2005-231, 2005-232, 2005-233, 2005-234, 2005-235, 2005-250, 2005-252.

8. While the Custodian believes that she has fully complied with the Complainant's request by releasing the requested records which exist, or informing of the requested records' location, it is clear that the Custodian does not fully understand the legal requirements of OPRA to which she is statutorily mandated to adhere. Therefore, the Custodian's actions appear negligent and do not meet the legal standard of a knowing and willful violation of OPRA and unreasonable denial of access pursuant to N.J.S.A. 47:1A-11.a.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Forsyth. The motion passed unanimously.

### **Larry Loigman v. Township of Ocean (2006-59)**

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian is in violation of N.J.S.A. 47:1A-5.i. and N.J.S.A. 47:1A-5.g. for failing to provide a written response to the Complainant's request granting access, denying access, requesting an extension of the statutory response time, or asking for clarification of the request within the statutorily mandated seven (7) business days and such failure results in a "deemed" denial.
2. Pursuant to N.J.S.A. 47:1A-9.a. and E.O. 26 the Custodian has lawfully denied access to the requested test scores of all individuals who were promoted or are still being considered for promotion to the positions of Lieutenant and Sergeant from January 1, 2005 to present.
3. Because the Custodian has certified that no records exist which are responsive to the request for rankings of all individuals who were promoted or are still being considered for promotion to the positions of Lieutenant and Sergeant from January 1, 2005 to present, the Custodian has not unlawfully denied access to such records.
4. Because a review of the Custodian's redactions of requested billing discloses that they are narrowly tailored and appear to protect the names of litigants in pending matters, the redactions are an appropriate method of protecting privileged or confidential information in an otherwise public document. Therefore, the Custodian has lawfully denied access to certain information in the requested bills concerning legal representation of the Township in grievances with the Police Benevolent Association pursuant to N.J.S.A. 47:1A-1.1.
5. Because there is no evidence that the Custodian knowingly or willfully violated OPRA, the Custodian's actions appear to be merely negligent and do not meet the legal standard of a knowing and willful violation of OPRA and unreasonable denial of access pursuant to N.J.S.A. 47:1A-11.a.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Forsyth. The motion passed unanimously.

**Charles Bonanno v. Garfield Board of Education (2006-62)**

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the recommendations to the Council as amended:

The Executive Director respectfully recommends the Council find that:

1. While seeking legal advice is reasonable and encouraged by the GRC, the Custodian should have sought permission from the Complainant to respond to the request some time beyond the statutory seven (7) business day time period prescribed under OPRA. Therefore, the Custodian is in violation of N.J.S.A. 47:1A-5.i. and N.J.S.A. 47:1A-5.g. for failing to provide a written response to the Complainant's request granting or denying access, or requesting an extension of time within the statutorily mandated seven (7) business days and such failure results in a "deemed" denial.
2. As teachers and administrators must meet specific requirements for employment in a New Jersey school district, the documents requested by the Complainant, i.e. an employee's field of study, date certificates were issued, names of higher educational institutions, copies of certificates, diplomas, and transcripts, are considered government records pursuant to N.J.S.A. 47:1A-10 (information which disclose conformity with specific experiential, educational, or medical qualifications required for government employment) and therefore should be releasable to the public with appropriate redactions, if any.
3. Pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 537 (March 2005), the Custodian is not required to create documents in response to records requests.
4. As the Complainant has made it abundantly clear that he is requesting actual copies of these documents, the Custodian should provide such access pursuant to N.J.S.A. 47:1A-5.d. Thus, the Custodian's calculation of \$546.28 as a special service charge for compiling information is invalid, as he is not required to create documents, but instead need simply copy the requested records and redact information as required by law. As such, the Custodian violated N.J.S.A. 47:1A-5.d. by not providing the requested records in the medium requested.
5. The Custodian should release the requested certificates, diplomas, and transcripts, with appropriate redactions, if any, to the Complainant.
6. **The Custodian shall comply with #5 above within five (5) business days from receipt of the Council's Interim Order, and simultaneously provide confirmation of compliance, pursuant to *N.J. Court Rules, 1969 R. 1:4-4*, to the Executive Director.**
7. As the Complainant never agreed to the cost of \$546.28 for the compiling of records prior to said cost being incurred, the Custodian violated N.J.S.A. 47:1A-5.c. As such, the Complainant is not required to reimburse the Board of Education for the incurred cost of \$546.28.

8. Based on the fact that the Complainant has made it clear that he is specifically requesting actual copies of certificates, transcripts and diplomas, and that the Custodian has yet to provide such records, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless, or unintentional. As such, this complaint should be referred to the Office of Administrative Law for determination of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as amended. A motion was made by Mr. Richman and seconded by Ms. Forsyth. The motion passed unanimously.

### **Tina Renna v. Union County Utilities Authority (2006-72)**

Ms. Mayers reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Mayers presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. The Custodian has unlawfully violated OPRA because he stated that the records would be sent to the Complainant on Monday, April 3, 2006 or Tuesday, April 4, 2006 via e-mail, and did not send them until Friday, April 7, 2006, which resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.i.
2. In prior GRC decision, Cottrell v. Borough of Glassboro, GRC Complaint No. 2005-247 (April 2006), the Council decided that awaiting legal advice is not a lawful reason for a delay in access, and the Custodian did not bear their burden of providing a lawful reason for the denial of access to the Complainant's request pursuant to N.J.S.A. 47:1A-6. Therefore, the Custodian in this case did not bear his burden of providing a lawful reason for a delay in access pursuant to N.J.S.A. 47:1A-6.
3. While the Custodian has provided the Complainant with the records, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional based on the totality of this complaint. As such, the complaint should be referred to the Office of Administrative Law for determination of a knowing and willful violation of OPRA under the totality of the circumstances.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Mr. Richman. The motion passed unanimously.

### **Irma Sandoval v. NJ State Parole Board (2006-167)**

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the recommendations to the Council as amended:

The Executive Director respectfully recommends the Council find that:

1. Based on the GRC decision in Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006), the Custodian has violated N.J.S.A. 47:1A-5.i. and N.J.S.A. 47:1A-5.g. by failing to respond to the Complainant's request in writing by granting access, denying access, requesting an extension of the statutory response time, or asking for clarification of the request within the statutorily mandated seven (7) business days, resulting in a deemed denial of access.
2. Because the completed Status of Interview forms for interviews conducted by Brown and Weinbaum in April 2006 may contain data "disclos[ing] conformity with specific experiential, educational or medical qualifications required for" the position of Administrative Analyst I with the SPB, the Custodian should have granted access to such records. The Custodian, therefore, has failed to bear his burden of proof that the denial of access to Complainant was authorized by law pursuant to N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-10. **The Custodian shall disclose this record with appropriate redactions, if any, and a redaction index detailing the general nature of the information redacted and the lawful basis for such redactions as required by N.J.S.A. 47:1A-6 and 47:1A-5.g.**
3. To the extent that the e-mails and written memoranda contain government records pursuant to N.J.S.A. 47:1A-10 and are not otherwise exempt from disclosure, the Custodian should have granted access to such records, redacting confidential or privileged information as necessary. The Custodian, therefore, has failed to bear his burden of proof that the denial of access to Complainant regarding the e-mails and other written communications between Brown and Weinbaum from April 1, 2005 through June 23, 2006 with certain key words was authorized by law. N.J.S.A. 47:1A-1. **The Custodian shall disclose this record with appropriate redactions, if any, and a redaction index detailing the general nature of the information redacted and the lawful basis for such redactions as required by N.J.S.A. 47:1A-6 and 47:1A-5.g.**
4. Because the Custodian certifies that he has not printed out or reviewed these e-mails, the Custodian cannot know whether any of these e-mails contain the kind of material protected by EO 26. The GRC should, therefore, conduct an *in camera* review of these records to determine if EO 26 applies. Because there is insufficient evidence in the record to determine if N.J.S.A. 47:1A-10 or any other exemption applies to the completed Statement of Interview forms requested by Complainant, the GRC should conduct an *in camera* review of these records.

**The Custodian must deliver<sup>3</sup> to the Council in a sealed envelope six copies of the requested unredacted documents, a document or redaction index detailing the document and/or each redaction asserted and the lawful basis for the denial, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the document provided is the document requested by the Council for the *in camera* inspection within five (5) business days from receipt of the Council's Interim Order.**

5. Because the questions, answers and interview notes of Brown and Weinbaum are pre-decisional and deliberative, the requested notes, questions and candidate answers are advisory, consultative or deliberative material and do not fall within the definition of a government record pursuant to N.J.S.A. 47:1A-1.1. See, In Re Liquidation of Integrity Insurance Co., 165 N.J. 75 (2000), Therefore, the Custodian has borne the burden of proof that he lawfully denied access to the questions, candidate answers and interview notes of Brown and Weinbaum. N.J.S.A. 47:1A-1.
6. Because the Custodian would have been required to identify, analyze, collate, and compile documents responsive to the Complainant's request for information related to the evaluation criteria used by Brown and Weinbaum in the final selection of candidates, this request is not a request for a specific government record under OPRA and is therefore invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). Therefore, the Custodian lawfully denied access to Complainant regarding this request. N.J.S.A. 47:1A-1.
7. To the extent that the Personnel Action Memoranda for Barbato and Angelucci requested by Complainant contain government records, i.e., a person's name, title, position, salary, payroll record, length of service, date of separation, type and amount of pension, the Custodian should have redacted confidential or privileged information and granted access to the document pursuant to N.J.S.A. 47:1A-10. Custodian has, therefore, failed to bear his burden of proof that the denial of access of the PAMs was authorized by law pursuant to N.J.S.A. 47:1A-1. **The Custodian shall disclose this record with appropriate redactions, if any, and a redaction index detailing the general nature of the information redacted and the lawful basis for such redactions as required by N.J.S.A. 47:1A-6 and 47:1A-5.g.**
8. Because the letters to candidates other than Complainant regarding the scheduling of interviews and the outcome of the interview

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<sup>3</sup> The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

process are part of the job application process and are therefore exempt from disclosure pursuant to Executive Order #26, the Custodian has borne his burden of proof that the denial of access to Complainant was authorized by law. N.J.S.A. 47:1A-1.

9. Based on the Custodian's denial of access to government records, misstatements regarding the existence of documents relating to this request and other contested facts in this case, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the Office of Administrative Law for determination of a knowing and willful violation of the Act under the totality of the circumstances. N.J.S.A. 47:1A-7.e.
10. **The Custodian shall comply with items #2, 3, 4, and 7 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.**

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as amended. A motion was made by Ms. Forsyth and seconded by Mr. Richman. The motion passed unanimously.

#### **Tucker Kelley v. Rockaway Township (2006-176)**

Ms. Steese reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Steese presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian did ultimately provide the Complainant with all of the records responsive, the Custodian violated N.J.S.A. 47:1A-5.i and N.J.S.A. 47:1A-5.g by failing to provide the Complainant with a written response granting access, denying access, seeking clarification or requesting an extension, within the statutorily mandated seven (7) business days.
2. It was reasonable for the Custodian to require a scheduled appointment to inspect the records responsive pursuant to N.J.S.A. 47:1A-5.a., so as to not interfere with the daily operations of the Custodian's office.
3. The Custodian's actions, most notably the thirty-three (33) business days it took for her to respond to the Complainant's OPRA request, appear to be negligent and heedless, but the evidence of record does not support a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.a.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Forsyth. The motion passed unanimously.

**Suzanne Mendes v. Tinton Falls Board of Education (2006-201)**

Ms. Steese reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Steese presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that:

1. Because Richard Wesler, the Director of Special Services, did not properly bear his burden of proving that the Denial of Access was authorized by law at the time of the denial, he is in violation of N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-5.i.
2. Even though the resumes were eventually provided to the Complainant, the Director of Special Services initially violated Executive Order No. 26 (Gov. McGreevey, 2002), which grants access to the resumes of successful candidates once they are hired, when he denied the Complainant access to the requested resumes.
3. Even though the redacted Counsel bills were eventually provided to the Complainant, the Director of Special Services violated N.J.S.A. 47:1A-5.e. by failing to grant the Complainant immediate access to the requested bills.
4. Because the Custodian did not properly bear her burden of proving that the denial of access was authorized by law at the time of the denial, subsequent to the Director of Special Services doing same, she is in violation of N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-5.i.
5. Even though the requested resumes were eventually provided to the Complainant, the Custodian initially violated Executive Order No. 26 (Gov. McGreevey, 2002), which grants access to the resumes of successful candidates once they are hired, when she denied the Complainant access to the resumes subsequent to the Director of Special Services doing same.
6. Even though the redacted Counsel bills were eventually provided to the Complainant, the Custodian violated N.J.S.A. 47:1A-5.e. by failing to grant the Complainant immediate access to the requested bills subsequent to the Director of Special Services doing same.
7. Because the Custodian has provided the GRC with contradicting legal certifications regarding the disclosure of this resume, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless, or unintentional. As such, this complaint should be referred to the Office of Administrative Law for determination of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Mr. Forsyth. The motion passed unanimously.

### **Dion Briggs v. City of Trenton (Mercer) (2007-58)**

Ms. Steese reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Steese presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that the denial of access was lawful as the requested records are criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1 and are exempt from disclosure.

Mr. Maltese called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Mr. Richman and seconded by Ms. Forsyth. The motion passed unanimously.

Mr. Maltese read the Resolution for Closed Session (Resolution Number 2007-03-28) to go into closed session pursuant to N.J.S.A. 10:4-12.b(7) to discuss anticipated litigation in which the public body may become a party and to conduct an *in camera* review:

1. Cynthia Colella-Gallenthin v. Borough of Merchantville (2004-95)
2. George Burdick, Jr. v. Franklin Township (2005-133) In-camera

A motion was made by Ms. Forsyth and seconded by Mr. Richman to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Ms. Robin Berg Tabakin and seconded by Mr. Fleisher to end the closed session. The motion was adopted by a unanimous vote. The Council met in closed session from 11:04 a.m. until 11:25 a.m.

Open Session reconvened at 11:30 a.m. and Ms. Hairston called the roll.

In attendance:

Mr. Maltese, Mr. Richman, and Ms. Forsyth.

### **Council Adjudications:**

#### **Cynthia Colella-Gallenthin v. Borough of Merchantville (2004-95)**

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that the Council accept the Initial Decision of Judge Martone that based on the reasons stated and to the extent that the complaint seeks the imposition of statutory penalties for the knowing and willfully violation of OPRA and unreasonable denial of access under the totality of the circumstances, the complaint is dismissed.

Mr. Maltese called for a motion to accept the Executive Director's supplemental findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Mr. Richman. The motion passed unanimously.

**George Burdick, Jr. v. Franklin Township (2005-133)**

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Ms. Starghill presented the recommendations to the Council as amended:

The Executive Director respectfully recommends the Council find that:

1. The Custodian has still not borne her burden of proving that the Hartmann Report is lawfully exempt from disclosure pursuant to N.J.S.A. 47:1A-6 as attorney work-product or attorney expert communications.
2. Given the legal standard for advisory, consultative or deliberative material discussed above, the custodian should disclose the Hartmann report with redactions, if any, consistent with this legal standard, as well as a redaction index detailing each redaction made with an explanation why such redacted information is exempt from disclosure as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1.
3. The Custodian should comply with item #2 above within ten (10) business days from receipt of the Council's Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.

Mr. Maltese called for a motion to accept the Executive Director's supplemental findings and recommendations as amended. A motion was made by Ms. Forsyth and seconded by Mr. Richman. The motion passed unanimously.

**Complaints Adjudicated on Appeal in Superior Court:**

None

**Motion for Reconsideration:**

None

**Executive Director's Report:**

Ms. Starghill discussed the re-proposal of the GRC's regulations.

A motion to end the Council's meeting was made by Ms. Forsyth and seconded by Mr. Richman. The motion passed unanimously.

Meeting adjourned at 12:15 p.m.

Respectfully submitted,

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Vincent Maltese, Chairman

Date Approved: 06/27/2007