



**Minutes of the Government Records Council  
July 27, 2010 Public Meeting – Open Session**

The meeting was called to order at 10:22 a.m. at the Department of Community Affairs, Conference Room 126, Trenton, New Jersey. The Open Public Meetings Act statement was read.

The pledge of allegiance was recited while standing by all.

The meeting notice and fire emergency procedure was read by Ms. Tabakin.

Ms. Hairston called the roll:

Present: Robin Berg Tabakin, Chairwoman, Charles Richman (designee of Department of Community Affairs Commissioner Lori Grifa), Stacy Spera (designee of the Department of Community Affairs Commissioner Lori Grifa for the sole purpose of adjudication Thomas Caggiano v. Borough of Stanhope (Sussex), 2010-132 & 2010-133, Beth Auerswald (designee of Department of Education Commissioner Bret Schundler) for the sole purpose of approve the May 27, 2010 open and closed meeting minutes, and Anthony Bland (designee of Department of Education Commissioner Bret Schundler).

GRC Staff In Attendance: Executive Director Catherine Starghill, In-House Counsel Karyn Gordon, GRC Secretary Brigitte Hairston, Case Managers: Dara Lownie, Frank Caruso, John Stewart, Darryl Rhone, Designated Outside Counsel Joseph Maddaloni and Deputy Attorney General Debra Allen.

Ms. Tabakin read the Resolution for Closed Session to go into closed session pursuant to N.J.S.A. 10:4-12.b(7) to receive legal advice and discuss anticipated litigation in which the public body may become a party in the following matters:

1. Richard Rivera v. Wall Township Police Department (Monmouth) (2008-281)

A motion was made to go into closed session by Mr. Bland and seconded by Mr. Richman to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Mr. Richman and seconded by Mr. Bland to end the closed session. The motion was adopted by a unanimous vote. The Council met in closed session from 10:28 a.m. until 10:31 a.m.

Open Session reconvened at 10:33 a.m. and Ms. Hairston called roll.

Present: Ms. Tabakin, Mr. Richman and Mr. Bland.

A motion was made by Mr. Richman and seconded by Ms. Auerswald to approve the closed session minutes of the May 27, 2010 meeting. The motion passes by an unanimous vote.

A motion was made by Mr. Richman and seconded by Ms. Auerswald to approve the open session minutes of the May 27, 2010 meeting. The motion passes by an unanimous vote.

### **Council Adjudication:**

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

1. Roger Billings v. NJ Department of Human Services, Division of Family Development (2009-232)
2. Lonnie Bedell v. Bergen County Housing Authority (2009-277)
3. John C. McCormack v. NJ Department of Treasury (2010-24)
4. Arti Sahni v. Ewing Township Board of Education (Mercer) (2010-91)
5. Anonymous v. NJ Department of Children and Families (2010-119)
6. Edward J. Mierzwa v. Superior Court of NJ Vicinage of Bergen (2010-131)
7. John Paff v. Borough of Frenchtown (Hunterdon) (2010-134)
8. Paul J. Gallagher (on behalf of Atlantic County Utilities Authority) v. Salem County Improvement Authority (2010-141)
9. Brian G. Lefke v. Salem County Improvement Authority (2010-142)
10. Brian G. Lefke v. Salem County Improvement Authority (2010-143)

Ms. Tabakin 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 Mr. Bland. The motion passed unanimously.

The following complaints requiring individual adjudication were not put to a vote due to the lack of quorum:

1. James D'Andrea v. NJ Department of Community Affairs, Division of Local Government Services (2007-64)
2. William Gettler v. Wantage Regional Schools, Board of Education (Sussex) (2007-105)
3. Joyce Blay v. Jackson Board of Education (Ocean) (2007-177)
4. John Paff v. Borough of Lavallette (Ocean) (2007-209)
5. David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306)
6. John Bentz v. Borough of Paramus (Bergen) (2008-89)
7. J.C. v. NJ Department of Education, Deputy Commissioner's Office (2008-91)
8. Robert Verry v. Borough of South Bound Brook (Somerset) (2008-161)
9. Gertrude Casselle v. NJ Department of Community Affairs, Division on Community Resources (2008-248)
10. Ursula Cargill v. NJ Department of Education (2009-9)
11. Ursula Cargill v. State Ethics Commission (2009-10)
12. Jason Alt v. NJ Department of Education (2009-114)

13. Joseph Armenti v. Robbinsville Board of Education (Mercer) (2009-154)

**John Paff v. Township of Toms River (Formerly Dover) (Ocean) (2007-72)**

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

The Executive Director respectfully recommends the Council accepts the Administrative Law Judge's Initial Decision dated July 2, 2010 in which the Judge ordered that the complaint be dismissed with prejudice and without costs.

Ms. Tabakin 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. Bland. The motion passed unanimously.

**Andrew J. Mayer v. Borough of Tinton Falls (Monmouth) (2008-245)**

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

The Executive Director respectfully recommends the Council finds:

1. Although Councilman Skudera provided access to the requested e-mail addresses within the five (5) business day time frame, because Councilman Skudera failed to simultaneously provide certified confirmation of his compliance to the GRC until April 26, 2010, or five (5) business days after the time frame for compliance set forth in the Council's April 8, 2010 Interim Order expired, Councilman Skudera has failed to fully comply with the Council's April 8, 2010 Interim Order pursuant to Jung & O'Halloran v. Borough of Roselle (Union), GRC Complaint Nos. 2007-299; 2007-307 (April 2009).
2. Based on the contested facts in this complaint, the GRC is unable to determine whether Councilman Skudera has provided all e-mail addresses collected between July, 2007 and September 15, 2009 via the Borough's website. Specifically, the Complainant provided documentary evidence that Councilman Skudera may have failed to provide to him all e-mail addresses ordered to be disclosed by the Council. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts, for a determination of whether Councilman Skudera failed to provide all records responsive pursuant to the Council's April 8, 2010 Interim Order, and whether Councilman Skudera's actions in responding to the original request and the Council's Interim Order amount to a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

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

**Pat Walsh v. Township of Middletown (Monmouth) (2008-266)**

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

The Executive Director respectfully recommends the Council find that because the Custodian has failed to establish in her request for reconsideration of the Council's November 18, 2009 Interim Order regarding the redactions made to the requested records and the Council's January 26, 2010 Interim Order regarding the award of attorney's fees were 1) based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees pursuant to the Council's April 28, 2010 Interim Order.

Ms. Tabakin 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. Bland. The motion passed unanimously.

**Jesse Wolosky v. Township of Sparta (Sussex) (2008-277)**

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:

1. Because the Custodian made the requested records available to the Complainant on seven (7) CD-ROMs at a total cost of \$2.45 (or \$0.35 per CD-ROM) and because the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within five (5) business days of receiving the Council's Interim Order, the Custodian has complied with the Council's May 27, 2010 Interim Order pursuant to N.J.S.A. 47:1A-5.b., and Mejias v. New Jersey Department of Corrections, GRC Complaint No. 2007-181 (July 2008).
2. Although the Custodian failed to bear her burden under N.J.S.A. 47:1A-6 of proving that the instant request for meeting recordings required a substantial amount of manipulation or programming of information technology and further failed to bear her burden of proving that the proposed special service charge associated with the reproduction of the requested meeting recordings was reasonable and based on the labor cost of personnel providing the service that is actually incurred by the agency, as required by N.J.S.A. 47:1A-5.d., and failed to bear her burden under N.J.S.A. 47:1A-6 of proving that the reproduction of the requested summary of all legal fees billed by the Township Attorney for December 2007 to March 2008 and the requested

vendor bill list for 2007 in fact required a substantial amount of manipulation or programming of information technology and further failed to bear her burden of proving that the proposed special service charge associated with the reproduction of the requested summary was reasonable and based on the labor cost of personnel providing the service that is actually incurred by the agency, as required by N.J.S.A. 47:1A-5.d., the Custodian timely complied with the Council's May 27, 2010 Interim Order by making the requested records available to the Complainant upon payment of the required copying fee. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006) and the Council's May 27, 2010 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Ms. Tabakin 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. Bland. The motion passed unanimously.

#### **Richard Rivera v. Wall Township Police Department (Monmouth) (2008-281)**

Mr. Stewart reviewed the GRC's analysis and issues in the case as set forth in the *Reconciliation of Complaint Status* Supplemental Findings and Recommendations of the Executive Director. Mr. Stewart presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that Item No. 1 through Item No. 6 of the records relevant to this complaint are overbroad and fail to specifically identify the records sought, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to conduct research to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008).

Ms. Tabakin 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. Bland. The motion passed unanimously.

**Veronica Silkes v. Town of Dover (Morris) (2009-60)**

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

The Executive Director respectfully recommends the Council render a final decision dismissing this complaint because the Complainant voluntarily withdrew the complaint in writing to the GRC on June 21, 2010.

Ms. Tabakin 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. Bland. The motion passed unanimously.

**Gary S. DeMarzo v. City of Wildwood (Cape May) (2009-61)**

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

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian failed and refused to comply with the terms of the Council's May 27, 2010 Interim Order by not disclosing a copy of the record relevant to the complaint in unredacted form to the Complainant and/or by failing to provide certified confirmation of compliance to the Executive Director within five (5) business days from receipt of the Order, the Custodian, Christopher H. Wood, is in contempt of the Council's May 27, 2010 Interim Order.
2. Because there is an allegation by the Complainant that his denial of access to the requested record was politically motivated, and because the Council found that the Custodian did unlawfully withhold the requested record from disclosure, and because the Custodian failed to comply with the terms of the Council's February 23, 2010 Interim Order by not providing the Council with a document index or certify that the document provided was the document requested by the Council, and because the Custodian failed and refused to comply with the terms of the Council's May 27, 2010 Interim Order by not disclosing a copy of the unredacted record to the Complainant and/or failing to provide certified confirmation of compliance to the Executive Director within five (5) business days from receipt of said Order, 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 whether the custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Ms. Tabakin 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. Bland. The motion passed unanimously.

**Philip Charles v. Plainfield Municipal Utilities Authority (Union) (2009-141)**

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

The Executive Director respectfully recommends the Council finds that:

1. The Custodian's failure to respond in writing to the Complainant's March 23, 2009 OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007) and DeLuca v. Town of Guttenberg, GRC Complaint No. 2006-126 (February 2007).
2. The Custodian certified in the Statement of Information that no certified transcripts responsive to the Complainant's March 23, 2009 OPRA request exist, and there is no credible evidence in the record to refute the Custodian's certification. Therefore, while the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to respond in writing to the Complainant's March 23, 2009 OPRA request within the statutorily required seven (7) business days resulting in a "deemed" denial, the Custodian has not unlawfully denied access to the Complainant's OPRA request pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. The evidence of record shows that the Custodian certified in the Statement of Information that no certified transcripts responsive to the Complainant's April 7, 2009 OPRA request exist, and there is no credible evidence in the record to refute the Custodian's certification. Therefore, the Custodian has not unlawfully denied access to the Complainant's OPRA request pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
4. Because the Custodian responded in writing to the Complainant's April 16, 2009 OPRA request in a timely manner stating that no responsive sound recording exists and subsequently certified to such in the Statement of Information, and because the Complainant has provided no credible evidence to refute the Custodian's certification in this regard, the Custodian has not unlawfully denied access to the requested records. *See* Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
5. Although the Custodian's failure to respond in writing to the Complainant's March 23, 2009 OPRA request resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., because the Custodian certified in the Statement of Information that no records responsive to the Complainant's March 23, 2009, April 7, 2009 and April 16, 2009 OPRA requests exist, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin 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 Mr. Bland. The motion passed unanimously.

**Philip Charles v. Plainfield Municipal Utilities Authority (Union) (2009-160)**

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

The Executive Director respectfully recommends the Council find that:

1. In the absence of any evidence indicating the specific identity of the Plainfield Municipal Utilities Authority employee who received the Complainant's OPRA request form and forwarded it to a third party on the same date as receipt of the request, the GRC is unable to determine the identity of the Plainfield Municipal Utilities Authority employee who violated OPRA pursuant to N.J.S.A. 47:1A-5.h. See Barkley v. New Jersey Department of Treasury, GRC Complaint No. 2009-128 (May 2010).
2. The Custodian has not unlawfully denied access to the Complainant's OPRA request because she certified that no request was received until the filing of this complaint pursuant to Avila v. Camden County Prosecutor's Office, GRC Complaint No. 2007-287 (July 2008).

Ms. Tabakin 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. Bland. The motion passed unanimously.

**Stultz Taylor v. Township of Downe (Cumberland) (2009-174)**

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

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian responded in writing to the Complainant's May 6, 2009 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response was legally insufficient because she failed to provide a date certain on which she would either grant or deny access to the requested records and failed to respond to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g., Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008), and Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. Because the Township Committee approved the January 5, 2009 and January 14, 2009 executive session minutes on May 4, 2009 and March 18, 2009 respectively, said minutes no longer constituted advisory, consultative or deliberative (ACD) material at the time of the Complainant's request and were therefore disclosable with appropriate redactions for discussions exempt from disclosure under the Open Public Meetings Act pursuant to N.J.S.A. 47:1A-9.a. and Wolosky v. Vernon Township Board of Education, GRC Complainant No. 2009-57 (December 2009). Accordingly,



the Custodian has failed to bear her burden of proving a lawful denial of access to the requested CD electronic recordings and executive session meeting minutes pursuant to N.J.S.A. 47:1A-6.

3. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested CD electronic recordings and executive session meeting minutes dated January 5, 2009 and January 14, 2009 to determine the validity of the Custodian's assertion that the record contains information which is exempt from disclosure pursuant to N.J.S.A. 47:1A-9.a and N.J.S.A. 10:4-12(b).
4. **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 3 above), a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4<sup>3</sup>, that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Ms. Tabakin 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. Bland. The motion passed unanimously.

#### **Jacqueline Andrews v. Township of Irvington (Essex) (2009-197)**

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 based on the inadequate evidence presented by the Township in this matter, the GRC is unable to determine whether or not the Custodian properly responded to the Complainant's OPRA request and whether or not the Custodian unlawfully denied access to the requested records. Thus, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. This complaint is also referred for a further determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Ms. Tabakin 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. Bland. The motion passed unanimously.

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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.

<sup>2</sup> The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

<sup>3</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

**Kerwyn Pierre v. Plainfield Municipal Utilities Authority (Union) (2009-207)**

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's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Because custodians are obligated to provide access to requested records in the medium requested pursuant to N.J.S.A. 47:1A-5.d., and because the Custodian failed to provide the Complainant access to electronic copies of the meeting minutes dated January 22, 2009, February 19, 2009 and March 17, 2009, as requested, the Custodian unlawfully denied access to said records. However, the Council need not order the Custodian to disclose said records to the Complainant since the Custodian's Counsel stated that said records were already provided to the Complainant in electronic format, via e-mail, on June 25, 2010.
3. Although the Custodian violated OPRA at N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, and despite the Custodian's unlawful denial of access to the requested meeting minutes because custodians are obligated to provide access to requested records in the medium requested pursuant to N.J.S.A. 47:1A-5.d., the Custodian's Counsel did provide access to the requested minutes in the medium requested on June 25, 2010. Additionally, the evidence of record suggests that the Custodian's violation of OPRA at N.J.S.A. 47:1A-5.d. was a misinterpretation of the OPRA request rather than any willful misconduct. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin 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. Bland. The motion passed unanimously.

**Michael Braden v. Township of Toms River, Police Department (Ocean) (2009-245)**

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

The Executive Director respectfully recommends the Council find that:

1. Under the state of the law at the time of the Complainant's request, the Complainant's letter request dated March 9, 2009 is not a valid OPRA request because the Complainant failed to submit said request on the Borough's official OPRA request form, and as such, there is no unlawful denial of access under OPRA pursuant to N.J.S.A. 47:1A-5.g., MAG Entertainment LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Twp. of Stafford Police Dept., 381 N.J. Super. 30, 33 (App. Div. 2005), and Gannett New Jersey Partners L.P. v. County of Middlesex, 379 N.J. Super. 205, 213 (App. Div. 2005).
2. The Custodian has violated N.J.S.A. 47:1A-5.f. by failing to direct the Complainant to Toms River Township Police Department's official OPRA request form upon receipt of the Complainant's March 9, 2009 letter specifically referencing OPRA, pursuant to Barron v. Essex County Superintendent of Registration, GRC Complaint No. 2006-95 (April 2007), and Spaulding v. Hudson County Register, GRC Complaint No. 2006-157 (September 2007). See also Brewer v. New Jersey Department of Law & Public Safety, Division of New Jersey State Police, GRC Complaint No. 2006-204 (October 2007).
3. To the extent that Complainant's request is an ongoing request for records on a monthly basis, such request is invalid pursuant to Blau v. Union County Clerk, GRC Complaint No. 2003-75 (November 2003). The Complainant must submit a new OPRA request each time he wishes to seek new records, specifically identifying the government records sought.
4. The Council declines to address the cost issue in the instant complaint because the Complainant's OPRA request is invalid inasmuch as the Complainant failed to submit said request on the Borough's official OPRA request form and as such, there is no unlawful denial of access under OPRA pursuant to N.J.S.A. 47:1A-5.g., MAG Entertainment LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Twp. of Stafford Police Dept., 381 N.J. Super. 30, 33 (App. Div. 2005), and Gannett New Jersey Partners L.P. v. County of Middlesex, 379 N.J. Super. 205, 213 (App. Div. 2005).
5. Although the Custodian failed to direct the Complainant to the Toms River Township Police Department's official OPRA request form upon receipt of the Complainant's March 9, 2009 letter referencing OPRA, the evidence of record does not indicate that such failure was intentional or deliberate, with knowledge of its wrongfulness. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin 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. Bland. The motion passed unanimously.

**Stanley Thomas Baker, Jr. v. NJ Civil Service Commission (2009-253)**

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

The Executive Director respectfully recommends the Council find that:

1. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the one (1) page New Jersey State Parole Board Release Unit organizational chart, the one (1) page Job Specification No. 61846 and the one (1) page salary history for employee Molly Logan to determine the validity of the assertion by the Custodian that the records are exempt from disclosure as personnel records under N.J.S.A. 47:1A-10.
2. **The Custodian must deliver<sup>4</sup> to the Council in a sealed envelope nine (9) copies each of the requested unredacted documents (see paragraph #1 above), a document or redaction index<sup>5</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>6</sup> that the documents provided are the documents requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. Because the Custodian certified that the balance of the requested records which provide justification and approval for an employee's Salary Adjustment Committee raise in salary are personnel records exempt from disclosure under OPRA, and because said records do not fall within any of the categories of records permitting disclosure specifically enumerated under OPRA, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-10 and the Council's decision in Cibo v. Rowan University, GRC Complaint No. 2003-42 (March 2004).
4. The Council defers analysis of whether the Custodian's denial of access to any of the requested records violates OPRA, and if so, rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Ms. Tabakin 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. Bland. The motion passed unanimously.

#### **Kimberly Smela v. County of Essex (2009-255)**

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

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian made the amount of the special service charge available to the Complainant by the third (3<sup>rd</sup>) business day from receipt of the Council's Interim

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<sup>4</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.

<sup>5</sup> The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Order, and because following the lapse of the tenth (10<sup>th</sup>) business day from receipt of the Council's Order the Custodian provided a legal certification to the Executive Director averring that the Complainant failed to pay the special service charge for the requested records, the Custodian has complied with the Council's May 27, 2010 Interim Order.

2. The Custodian made the amount of the special service charge available to the Complainant by the third (3<sup>rd</sup>) business day from receipt of the Council's Interim Order and provided a legal certification to the Executive Director averring that the Complainant failed to pay the special service charge for the requested records following the lapse of the tenth (10<sup>th</sup>) business day from receipt of the Council's Order; therefore the Custodian complied with the terms of the Council's May 27, 2010 Interim Order and it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Tabakin 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. Bland. The motion passed unanimously.

**Glenn L. Cavanagh, Esq. v. NJ Department of Law & Public Safety, NJ State Police (2009-302)**

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

The Executive Director respectfully recommends the Council find that because the Complainant's request for "[a]ny and all NJ State Police rules, regulations, policy, operating procedures, Attorney General opinions, Superintendent opinions and letters, reports and memoranda regarding or related to the policy and procedure of the NJ State Police regarding the collection, preservation and storage of evidence obtained during and in relation to criminal investigations and prosecutions including but not limited to United States or foreign currency seized as evidence" is overly broad and would require the Custodian to conduct research among all of the records in her control to locate records containing the specific subject matter requested by the Complainant, it is invalid under OPRA. *See* MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Ms. Tabakin 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. Bland. The motion passed unanimously.

**John Martocci v. NJ Department of Corrections, Southern State Prison (2010-22)**

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

The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in his motion for reconsideration of the Council's April 28, 2010 final administrative determination that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint, said motion for reconsideration is denied. *See Cummings v. Bahr*, 295 N.J. Super. 374 (App. Div. 1996); *D'Atria v. D'Atria*, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Ms. Tabakin 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. Bland. The motion passed unanimously.

**Thomas Caggiano v. Borough of Stanhope (Sussex) (2010-132) and Thomas Caggiano v. Borough of Stanhope (Sussex) (2010-133)**

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 these cases should be dismissed based on Judge Dana's December 3, 2008 Judgment prohibiting Thomas Caggiano from having any contact with any present or former employee or official of the Borough of Stanhope except that Mr. Caggiano may mail his tax and utility payments to the Borough and he may call 911 if he has an emergency.

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

**Complaints on Appeal:** James R. Smith v. Government Records Council, Docket No. A-5830-08T3 (July 19, 2010). This complaint was erroneously captioned by NJ Superior Court, Appellate Division. The correct caption is: James R. Smith v. NJ Department of Corections.

**Complaints Adjudicated on NJ Superior Court & NJ Supreme Court:** None.

**Executive Director's Report and New Business:** None.

**Public Comment:** Comments made by Mr. Tucker Kelly.

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

Meeting adjourned at 11:17 a.m.

Respectfully submitted,

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Charles Richman, Secretary

Date Approved: November 30, 2010