

## **Minutes of the Government Records Council January 17, 2003**

The meeting was called to order at 9:30 a.m. at the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meeting Act statement was read.

Mr. Pfeiffer called the roll:

Present: Chair Vincent Maltese, Dale Caldwell, Assistant Commissioner Department of Community affairs, Virginia Hook and Bernard Spigner. Mr. Caldwell was designated substitute for Susan Bass Levin, Commissioner, Department of Community Affairs.

Absent: Dr. Dwight Pfennig, designee of Commissioner William Librera, Department of Education.

The Chair read a resolution to convene in closed session for the purpose of receiving legal advice concerning the complaints scheduled for adjudication that day. Ms. Hook moved to adopt the resolution, which was seconded by Mr. Spigner. All members present approved the motion. The Council conducted a closed session between 9:35 a.m. and 10:45 a.m.

The Council reconvened in open session at 10:50 a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meeting Act statement was read and attendees recited the Pledge of Allegiance.

Mr. Pfeiffer called the roll:

Present: Chair Vincent Maltese, Dale Caldwell, Assistant Commissioner Department of Community affairs, Virginia Hook and Bernard Spigner. Mr. Caldwell was designated substitute for Susan Bass Levin, Commissioner, Department of Community Affairs.

Absent: Dr. Dwight Pfennig, designee of Commissioner William Librera, Department of Education.

Also Present: Deputy Attorney General Barbara Conklin, Acting Executive Director Marc Pfeiffer, and GRC Staff Marc Leavitt and Joseph Greer

Mr. Maltese called for the election of a Chairman, Vice Chairman and Secretary for the Government Records Council for 2003.

Mr. Spigner made a motion nominating Mr. Maltese, Chairman, with a second by Ms. Hook. There were no other nominations. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Ms. Hook, Mr. Spigner and Mr. Maltese.

Ms. Hook made a motion nominating Mr. Spigner, Vice Chairman, with a second by Mr. Maltese. There were no other nominations. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Ms. Hook, Mr. Maltese and Mr. Spigner.

Mr. Spigner made a motion nominating Ms. Hook, Secretary, with a second by Mr. Maltese. There were no other nominations. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Mr. Spigner, Mr. Maltese and Ms. Hook.

Mr. Maltese congratulated the newly elected officers.

Mr. Pfeiffer read a copy of Resolution 02-03 establishing the 2003 GRC meeting schedule. Mr. Caldwell made a motion to adopt the schedule, with a second by Ms. Hook. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Ms. Hook, Mr. Spigner and Mr. Maltese.

Mr. Maltese opened the floor to Public Comment. No comments were made.

Mr. Maltese called for adoption of the Minutes of the December 12, 2002 regular meeting as prepared. Mr. Spigner moved to adopt the minutes, with a second by Ms. Hook. The motion was adopted by roll call:

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

Abstention: Mr. Caldwell (not present at the December 12 meeting)

Mr. Maltese called for adoption of the Minutes of the December 12, 2002 Executive Session as prepared. Mr. Spigner moved to adopt the minutes, with a second by Ms. Hook. The motion was adopted by roll call:

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

Abstention: Mr. Caldwell

The Council shall approve release the December 12, 2002 Executive Session minutes once all litigation concerning the Complaints discussed are concluded.

Mr. Pfeiffer read a copy of the Executive Director's report.

Mr. Pfeiffer stated that the GRC had received two items of correspondence, which he briefly discussed.

Mr. Pfeiffer briefly explained the GRC Record Note concerning redactions of material from government records.

Mr. Pfeiffer indicated that there were two items of unfinished business.

- **Complaint 2002-32: Fisher v. City of Clifton.**

Mr. Maltese recused himself from this discussion because his law firm represents the City of Clifton, the custodian in this case, in other legal matters. Mr. Spigner temporarily assumed the duties of Chairman.

Mr. Pfeiffer reviewed the matter and noted that the custodian had recently notified the Council that the City had recently reviewed the matter with the County Prosecutor's office and had decided to provide access to the 911 tape. The requester asked the Council to consider fining the custodian for failure to provide timely access. Mr. Pfeiffer recommended that the Council conclude that the custodian in this case did not "knowingly and willfully" violate the provisions of OPRA. Mr. Spigner made a motion to adopt the Executive Director's recommendation, second by Ms. Hook. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Ms. Hook and Mr. Spigner

Following the roll call, Mr. Maltese returned and assumed the duties of Chairman.

- **Complaint 2002-33, Serrano v. South Brunswick Township.**

Mr. Pfeiffer explained that this complaint involved denial of access to a request for a copy of a telephone call to 911 made by a person since indicted for murder and now awaiting trial.

Ms. Conklin described the Middlesex County Prosecutor's arguments why the 911 tapes should not be released. Ms. Conklin noted that the defendant who made the 911 call did not object to the release of the tape. Ms. Conklin added that the Prosecutor filed a motion several days ago asking the trial judge to prohibit any party to the criminal trial, including the Township, from revealing the content of the tape. Frederick DeVesa, Presiding Judge of the Criminal Division of Middlesex County Superior Court denied the motion and placed comments on the record concerning OPRA. A transcript of the Judge's decision and comment was provided to the Council.

Mr. Pfeiffer explained that the 911 tapes sought by Mr. Serrano are not "criminal investigatory records" under OPRA and recommended that the Council grant access to the 911 tape for the reasons set forth in the Executive Director's Amended F&R of January 13, 2003 as supplemented January 17, 2003.

Mr. Maltese read into the record a statement addressing this matter and access to 911 tapes in general.

Mr. Maltese called for a motion to adopt the Executive Director's F&R dated January 13, 2003 as supplemented January 17, 2003. Ms. Hook moved to accept the F&R, with a second by Mr. Caldwell. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Ms. Hook and Mr. Maltese

Nays: Mr. Spigner

Mr. Maltese called for any New Business

- **Complaint 2002-58: Reda v. Township of West Milford**

Mr. Pfeiffer briefly described the issues presented in the request for e-mails, cost of liability settlements and copies of specific legal opinions. Mr. Maltese asked the Council to vote on each type of record sought by the requester.

1. With respect to e-mails, the Executive Director recommended that the Council require the Township to submit to the Council and requester proof within 20 business days that the e-mails were not government records accessible under OPRA.

Ms. Hook moved to adopt this recommendation as set forth in the Executive Director's F&R of January 13, 2003, with a second by Mr. Caldwell. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Ms. Hook, Mr. Spigner and Mr. Maltese

2. Cost of Liability settlements: the Executive Director recommended that the Council dismiss this portion of the complaint because the request seeks information in the possession of a Governmental Insurance Fund, and not the custodian.

Mr. Caldwell moved to adopt this recommendation as set forth in the Executive Director's F&R of January 13, 2003, with a second by Mr. Spigner. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Ms. Hook, Mr. Spigner and Mr. Maltese.

3. Copies of specific legal opinions: the Executive Director recommended that the Council dismiss this portion of complaint because no written legal advice was rendered.

Ms. Hook moved to adopt this recommendation as set forth in the Executive Director's F&R of January 13, 2003, with a second by Mr. Caldwell. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Ms. Hook, Mr. Spigner and Mr. Maltese.

- **Complaint 2002-72: Moore v. Township of Washington.**

Mr. Pfeiffer briefly described the issues presented by the requester and the custodian concerning this request for meeting minutes of the local planning board and vouchers from the planning Board attorney and engineering consultant. Mr. Pfeiffer recommended that the Council award access to the records as set forth in his F&R dated January 13, 2003; and caution the custodian and Chief Financial Officer concerning the handling of the request rather than penalize them under OPRA.

Mr. Spigner moved to adopt the F&R, with a second by Ms. Hook. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Ms. Hook, Mr. Spigner and Mr. Maltese.

- **Complaint 2002-82: Fenichel v. Ocean City Board of Education.**

Mr. Pfeiffer briefly described the issues presented by the requester and the custodian concerning this request for access to three specific research papers by teachers and/or supervisors at Ocean City High School. Mr. Pfeiffer recommended that the Council award access to the papers and the identities of the authors as set forth in his F&R dated January 13, 2003.

Mr. Spigner moved to adopt the F&R, with a second by Ms. Hook. The motion was adopted by roll call:

Ayes: Mr. Caldwell, Ms. Hook, Mr. Spigner and Mr. Maltese.

Mr. Maltese opened the floor to public comment.

Mr. William Kearns, Counsel for the New Jersey League of Municipalities, thanked the Council for providing information regarding the complaints to be adjudicated at its meetings. Mr. Kearns informed the Council that the League has provided and will continue to provide seminars to assist municipal clerks and other record custodians in implementing OPRA. Mr. Kearns indicated that the League looks forward to working with the Government Records Council.

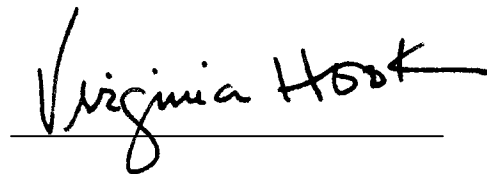
Ms. Donna Snyder, representing the State Municipal Clerk's Association, stated that Clerks have been informed of their obligations under OPRA and that the Association will continue to assist Clerks in understanding and meeting those obligations.

Mr. Caldwell moved to adjourn the meeting, with a second by Mr. Spigner. The motion was adopted by roll call:

Mr. Caldwell, Ms. Hook, and Mr. Spigner and Mr. Maltese.

Mr. Maltese adjourned the meeting at 11:30 a.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Virginia Hook". The signature is written in a cursive style and is positioned above a horizontal line.

Virginia Hook, Secretary