

**Minutes of the Government Records Council  
February 17, 2006 Public Meeting – Open Session**

The meeting was called to order at 9:50 a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Davies called the roll:

Present: Mr. Maltese, Charles Richman (designee of Commissioner Susan Bass Levin, Department of Community of Affairs), Ms. Robin Berg-Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Dara Lownie, Jennifer Arozamena, Colleen McGann and Marion Davies.

Not in Attendance: Ms. Schonyers (designee of Commissioner Lucille Davy, Department of Education)

Mr. Maltese called for a motion to go into closed session for legal advice. A motion was made by Mr. Richman and seconded by Ms. Tabakin. The motion was adopted by a unanimous vote.

The Council met in closed session from 9:55 a.m. to 10:50 a.m.

Open Session reconvened at 10:50 a.m.

Mr. Maltese called for a motion to go into open session. A motion was made by Ms. Tabakin and seconded by Mr. Richman. The motion was adopted by a unanimous vote.

Ms. Davies called the roll:

In attendance:

Mr. Maltese, Ms. Tabakin, Mr. Richman

Not In Attendance:

Ms. Schonyers

The pledge of allegiance was recited.

Mr. Dice stated that the following cases would not be heard at this meeting:

Jeffrey Sauter v. Township of Colts Neck 2005-7

John Paff v. Bergen County 2005-115

Cathy Cardillo v. City of Hoboken 2005-185

**Robert Tombs v. Brick Township Municipal Authorities 2003-123**

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director.

Mr. Malloy presented the following recommendation to the Council:

The Executive Director respectfully recommended that the Council modify Judge Masin's initial decision only to include references to the applicable provisions of OPRA (N.J.S.A. 47:1A-1, N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-9.a.) and find that the Council should not order the disclosure of the requested records.

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

### **John Brennan v. Monmouth County Prosecutors Office 2005-119**

Ms. Starghill stated that the Council previously decided and issued a Final Decision in the matter ordering disclosure of the requested record. Upon legal advice and Council discussion the Council would like to have an opportunity to review the requested record *in camera* to solidify its decision or have an opportunity to reverse its decision if necessary.

Mr. Maltese made a motion to motion the Court to remand the case to the Council to consider an *in camera* inspection to review the document in question. The motion was seconded by Mr. Richman. The motion passed unanimously.

### **Phillip Boggia v. Borough of Oakland 2005-36**

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in the *In Camera* Findings and Recommendations of the Executive Director. Mr. Malloy presented the following recommendations to the Council:

The Executive Director respectfully recommended that the Council find that:

1. The Custodian should disclose the requested "Oakland Reports" prepared by Morris Land Conservancy regarding the status of negotiations between Morris Land and the third party property owners, except; Page 1 Section 2, Page 1 Section 4 second sentence, Page 2 sections two (2) through four (4), and Page three (3) sections two (2) and three (3).
2. The Custodian shall comply with "1" within ten (10) business days from receipt of this order on the basis of the Council's above determination and provide confirmation to the Executive Director that the Custodian has complied with the Council's order.

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

**John Paff v. Borough of Montvale 2005-54**

Ms. Lownie reviewed the parties' respective positions and 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 recommendation to the Council:

The Executive Director respectfully recommended the Council find that the Custodian has complied with the Council's Interim Decision by releasing the Borough's Closed Session minutes dated March 9, 2004, April 27, 2004, July 13, 2004, and September 28, 2004, however she failed to do so within the ten (10) business days prescribed by the Council's October 28, 2005 decision.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

**Peter Runfolo v. Township of Summit (2005-87)**

Ms. Lownie reviewed the parties' respective positions and 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 recommendation to the Council:

The Executive Director respectfully recommended the Council find that the Custodian did not unlawfully deny access because under OPRA agencies are required to disclose only "identifiable" government records not otherwise exempt pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534 (March 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (October 2005).

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

**Henry Fisher III v. New Jersey Department of Correction (2005-171)**

Ms. Gardner reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gardner presented the following recommendation to the Council:

The Executive Director respectfully recommended the Council find that the records contain building security information and are exempt from disclosure pursuant to N.J.S.A. 47:1A1.1.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

**Gilda Gill v. Salem County 2005-185**

Ms. Lownie reviewed the parties' respective positions and 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 recommended that the Council find:

1. The Custodian has complied with the November 10, 2005 Interim Decision by providing the Complainant with the requested records and certifying that the records not provided currently do not exist.
2. Although the Custodian certifies that some of the requested information was stored in a database at the time of the request, she did not unlawfully deny access to the requested payroll list as the specific document requested does not exist and OPRA does not require Custodians to create documents in response to requests.

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

**Amy Vasques v. Burlington County 2005-193**

Ms. Lownie reviewed the parties' respective positions and 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 recommendation to the Council:

The Executive Director respectfully recommended that the Council find that pursuant to Executive Order 21, paragraph 1.a., the requested record is exempt from disclosure because the release of the Emergency Management Plan would create a risk to the security of the State against acts of sabotage or terrorism, hence the Custodian did not unlawfully deny access to the requested record.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as written. A motion was made by Mr. Richman and seconded by Ms. Tabakin. Motion passed unanimously.

**David Lyons v. Irvington Board of Education 2005-196**

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Malloy presented the following recommendation to the Council:

The Executive Director respectfully recommends that in accordance with OPRA, the Council should order the Custodian to disclose the records responsive to the request, or submit a legal certification with a legal justification as to why the records should not be disclosed to the Executive Director within ten (10) business days of receipt of the Council's decision.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Mr. Richman and seconded by Ms. Tabakin. Motion passed unanimously.

### **Brian Pincus (Joy DeSanctis) v. Newark Police Department 2005-219**

Ms. Lownie reviewed the parties' respective positions and 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 recommended the Council find that:

1. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne his burden of proving that the denial of access to the requested photographs is authorized by law. The Custodian should have outsourced the duplication of the requested records and charged the Complainant the actual cost associated with doing so pursuant to N.J.S.A. 47:1A-5.d. and N.J.S.A. 47:1A-5.b. Therefore, the Custodian unlawfully denied access to the requested records by not appropriately responding within the statutorily mandated seven (7) business day timeframe pursuant to N.J.S.A. 47:1A-5.i.
2. The Custodian should disclose the requested photographs, subject to the actual cost that may be involved in converting the medium pursuant to N.J.S.A. 47:1A-5.d. and N.J.S.A. 47:1A-5.b. The Custodian shall comply with this determination within fifteen (15) calendar days after receipt of the Council's decision providing confirmation to the Executive Director.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

### **Administrative – Case Dispositions:**

Hing Lum v. Mount Olive Township (2005-52)  
Carl Varriale v. Borough of Montvale (2005-148)  
Carl Varriale v. Borough of Montvale (2005-149)  
Carl Varriale v. Borough of Montvale (2005-150)  
Walter Vella v. Bayshore Regional Sewerage Authority (2005-174)  
Margie Semler v. City of Passaic (2005-198)  
Reinaldo Aviles v. Perth Amboy Urban Enterprise Zone (2005-214)  
Askiaa Nash v. Middlesex County (2005-217)

Vesslin Dittrich v. City of Hoboken (2005-222)  
Daniel Gudauskas v. City of Somers Point (2006-5)  
Herman Gomez v. Carlestadt-East Rutherford-Regional Board of Education (2006-8)  
Herman Gomez v. South Bergen Jointure Commission (2006-9)  
Askia Nash v. Essex County Courts (2006-16)

Mr. Maltese called for a motion to accept the Executive Director's administrative case dispositions as written. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

### **Executive Director's Report**

None

### **New Business**

Mr. Dice stated that the GRC Proposed New Rules have a tentative publication date in the New Jersey Register of March 9, 2006. There will also be a link on the GRC website for the public's convenience.

### **Election of Officers - 2006**

Mr. Maltese called for nominations for Chairperson. Mr. Richman nominated Mr. Maltese as Chairperson for 2006 year. Ms. Tabakin seconded the nomination. The nomination passed unanimously.

Mr. Maltese nominated Ms. Tabakin for Vice-Chair and Mr. Richman seconded the nomination. The nomination passed unanimously.

Mr. Maltese nominated Ms. Tabakin for Secretary and Mr. Richman seconded the nomination. The nomination passed unanimously.

### **Advisory Opinion:**

Mr. Dice presented the GRC's Advisory Opinion 2006-01 to the Council. Mr. Maltese asked Ms. Starghill to explain the Advisory Opinion to the Council.

Mr. Maltese called for a motion to adopt Advisory Opinion 2006-01 as amended. A motion was made by Mr. Richman and seconded Ms. Tabakin. The motion passed unanimously.

Mr. Dice tendered his resignation to the Council effective February 17, 2006. Mr. Dice thanked the Council and staff for all of their hard work.

Mr. Maltese called for a motion to accept Mr. Dices resignation. A motion was made by Ms.Tabakin and seconded by Mr. Richman. The motion passed unanimously.

Mr. Maltese called for a motion to accept Catherine Starghill in the position of Executive Director of the Government Records Council. A motion was made by Ms. Tabakin and seconded by Mr. Richman. The motion passed unanimously.

Ms. Starghill presented the meeting dates for 2006 to the Council and also stated the meeting date for April will be changed.

**Public Comment:**

Elizabeth Mason – President – New Jersey Foundation for Open Government (NJFOG)

Mr. Maltese called for a motion to adjourn. A motion was made by Ms. Tabakin and seconded by Mr. Richman. The motion passed unanimously.

Meeting adjourned at 12:47pm.

Respectfully submitted,

A handwritten signature in cursive script that reads "Robin Berg Tabakin".

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Robin Berg Tabakin, Secretary

Dated Approved: April 11, 2006

