

**Minutes of the Government Records Council
April 14, 2005 Public Meeting - Open Session**

The meeting was called to order at 9:00 a.m. at the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Luzzatto called roll call:

Present: Chairman Vincent Maltese, DeAnna Minus-Vincent (designee of Commissioner Susan Bass Levin, Department of Community of Affairs), Diane Schonyers (designee of Commissioner Librera, Department of Education), Robin 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, Erin Knoedler, Jennifer Arozamena and Colleen McGann;

Mr. Maltese welcomes newest member Robin Tabakin to the Council.

The Council met in closed session from 9:10 a.m. to 10:30 a.m.

The Council reconvened in open session at 10:55 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. The Open Public Meetings Act statement was read and attendees recited the Pledge of Allegiance.

Mr. Maltese asked Mr. Dice to review personnel matters.

Mr. Dice presented the new staff member - Ms. Jennifer Arozamena assisting with the GRC Resource Center.

The Council voted unanimously to appoint Ms. DeAnna Minus-Vincent as secretary of the Council.

Approval of Open & Closed session minutes for November-2004 and December 2004.
Mr. Maltese called for a roll call vote to accept the minutes.

Roll Call: Ms. Schonyers, Ms. Minus- Vincent, Mrs. Tabakin, Mr. Maltese.

Administrative Action Taken by Executive Director:

1. Ronald Miles vs. Township of Barnegat (2004-211)
2. Ronald Miles vs. Township of Barnegat (2004-213)
3. Kathleen Fallstick vs. Haddon Township Business Partnership (2004-218)
4. Kathleen Fallstick vs. Haddon Township Business Partnership (2004-21)
5. Maryann Cottrell vs. Borough of Glassboro (2005-27)
6. Joan McGee vs. Township of East Amwell (2004-89)
7. Cundiff vs. NJ Dept. of Law & Public Safety (2003-34)
8. Gary Whyte vs. Mountainside School District (2004-203)
9. Courtlist Marketing vs. NJ Division of State Police (2004-204)
10. Jeannie Smith vs. NJSEA (2004-142)
11. David Weiner vs. Passaic County Board of Social Services (2004-189)

12. Rich Bernstein vs. Borough of Woodridge (2004-220)
13. John Paff vs. Borough of Woodcliff Lake (2005-3)
14. Mark Green vs. West NY Housing Authority (2005-11)
15. Greg Volpe vs. Barnegat Township School District (2005-23)
16. John Paff vs. Somerset County Prosecutor's Office (2005-40)
17. John Paff vs. Borough of Milltown (2005-51)
18. Ronald Miles vs. Township of Barnegat (2004-36)
19. Bernstein vs. Borough of North Vale (2005-41)

Mr. Maltese requests a motion to accept the recommendations of the Executive Director as written. A motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: None

Martin O'Shea vs. Township of West Milford (2004-17)

This case is a continuation from the February meeting. Including Staff and Council the following people in attendance were:

1. Martin O'Shea – Complainant
2. Kevin Burns – Township Clerk West Milford
3. Ms. Tonia Cubby – Township Clerk West Milford
4. William J. DeMarco – Attorney for Mr. Burns

Since this was a hearing questions occurred between the following people:

Mr. O'Shea questions Ms. Cubby and Mr. Burns.
Mr. DeMarco questions Mr. Burns.

After hearing closing arguments by Mr. DeMarco and Mr. O'Shea the Council will render a decision by the next Council Meeting.

*Details of this case can be heard on the cassette recording.

Howard Avin vs. Borough of Fairlawn (2004-177)

Howard Avin vs. Borough of Oakland (2004-180)

Ms. McGann stated that in these case Mr. Avin requested a list of homeowners who applied for a home alarm or fire alarm in the past three years. This information contains name and address of residents that could jeopardize the security for those who applied for such permits. The release of the requested name and address information has the potential for harm to both those citizens who have applied for a burglar or fire alarms in the past three years as well as those who have not. Permitting access to such records allows any recipient of the record to ascertain which homes are and are not secured with these devices.

The Executive Director respectfully recommended that the council find that the requested record should not be disclosed.

Mr. Maltese called for a motion to accept the Executive Director's recommendations as written. A motion was made by Ms. Schonyers and second by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: None

John Pusterhofer vs. Shrewsbury Borough Board of Education (2004-188)

Ms. Luzzatto stated that the Complainant was seeking the "written criteria" for the Gifted and Talented program. The Complainant was given "policy" instead of "criteria". However, the Custodian has certified in a supplemental correspondence to the GRC staff, that "at the times in question...no specific written criteria existed." While the Custodian did respond to the request, they did not give records responsive to the request. The Custodian should have notified the Complainant that the records requested did not exist when the request was made.

Mr. Maltese requests a motion to go into close session to discuss legal matters pertaining to this case. The motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: None

Returning from closed session the Council continued with this case and the Executive Director's recommendation for the case.

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

1. Pursuant to N.J.S.A. 47:1A-1.1 the Custodian did release government records. However, they were not responsive to the request and the Custodian has certified that the specific records requested do not exist.
2. Pursuant to N.J.S.A. 47:1A-7(b) the Council does not have jurisdiction to determine what constitutes a violation of FERPA.

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: None

Tina Renna vs. County of Union (2004-191)

Ms. McGann stated that this case involved a request for all bills and or invoices, payments from the firm of Garrubbo, Romankow, Rinaldo & Capece, of Westfield, New Jersey, in regards to the numerous legal battles that involve the County of Union and former Employee Joseph A. Renna.

The custodian verbally informed the Complainant that the records were either in storage or archived and they would be released as soon as possible. The Custodian released the all documents responsive to the request as they became available.

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

1. The Complainant received the requested records and the Complainant's confirmation of the same.
2. The Custodian responded to the request in writing but did not explain that additional time needed to provide the requested documents.
3. The Custodian has violated N.J.S.A. 47:1A-5(g) by not notifying the Complainant of the delay in access and reason therefore in writing and should be placed on the "Matrix" for a second time.
4. The actions of the Custodian do not rise to a level of knowing and willful pursuant to OPRA under the totality of the circumstances.

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: None

Catherine Urbanski vs. West Amwell Township (2004-205)

Mr. Malloy stated that the Complainant's Denial of Access Complaint to the Government Records Council was accompanied by a letter stating that she made the request on November 4, 2004 and received a November 19, 2004 phone call from the Custodian stating that the tapes were ready but would cost \$38.40. It is also stated that a large part of the 10/19/04 meeting was missing, specifically "tape labeled #2 was blank." According to the Complainant, there are "seven tapes with some audible discourse, lots of noise, and one missing tape."

The Custodian has certified that the requested audiotapes do not exist.

Pursuant to the definition of a "government record", specifically that it "...has been made. Maintained or kept on file..." the denial was lawful.

The Executive Director respectfully recommends that the Council dismiss the case on the basis that the Custodian has certified that she has released all records responsive that are made, maintained, and kept on file.

Mr. Maltese called for a motion to accept the Executive Director recommendations as

written. A motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motion was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: None

Ronald Miles vs. Township of Barnegat (2004-208)

Ms. Luzzatto stated that the Complainant requested tax records from 1952-2004 on block 92 lot 9.01, 9.02, 9.03, 9.04, 9.05 and 9.06. Complainant states that records supplied were incomplete and font was too small to read.

Custodian has certified that all records that were available and in existence were copied and provided to Ronald Miles

The Executive Director respectfully recommended that the Council dismiss the case that the Custodian has certified that all records responsive to the request have been released to the complainant.

Mr. Maltese requests a motion to accept the recommendations. A motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: None

Ronald Miles vs. Township of Barnegat (2004-212)

Ms. Luzzatto stated that the Complainant stated in his Denial Of Access Complaint that the records received were not complete. However the Custodian has certified that, "all records that were available and in existence were copied and provided to Ronald Miles." Since the Custodian has certified that all records responsive were given to the Complainant, he (the Complainant) was not denied access to the requested records pursuant to N.J.S.A. 47:1A-1.1

The Executive Director respectfully recommended that the Council dismiss this case on the bases that the Custodian provided to Complainant with all documents available.

Mr. Maltese requests a motion to accept the Executive Director's recommendations as written. A motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: None

Ronald Miles vs. Township of Barnegat (2004-214)

Ms. Luzzatto stated that the Complainant is asking a question of the Custodian, therefore the Complainant is not requesting a government record pursuant to N.J.S.A. 47:1A-1 et. seq.

Pursuant to N.J.S.A. 47:1A-7(b), which delineates the Council's powers and duties, the GRC does not have jurisdiction over requests for information.

The Complainant states that the Custodian never provided access to the public records.

Barnegat Township does not maintain records of individual well permits.

The Executive Director respectfully recommended that the Council dismiss this case based on:

1. The Complainant's request is not for a government record pursuant to N.J.S.A. 47:1a-1et. seq
2. The GRC lacks jurisdiction to adjudicate in matters not involving request for government records. N.J.S.A. 47:1a-1(b).

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: None

Joseph Sooy vs. Department of Corrections (2004-215)

Ms. McGann stated that the Complainant requested emails from Gail Reed (DOC) to Natalie Jaroni (DOC). Between 11/01-04 to 11/18-04

The custodian asserts that the email was not release to the Complainant because the content was consultative and deliverable in nature and does not fit the definition of a Public record.

The Executive Director respectfully recommended that the Council find that the requested document be released to the Complainant with redaction of materials that are consultative and deliverable in content.

Mr. Maltese call for a motion to adopt said findings and recommendations, however, amended same that the requested document is released with appropriate redactions within ten (10) calendar days from receipt of the Council's decision unless the Custodian declares that the entire document contains advisory, consultative or deliberative material; in which case, the document is to be presented to the Council in a sealed envelope at the May 12, 2005 meeting for an "in-camera" review.

The motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: None

Rich Bernstein vs. Borough of Wallington (2005-1)

Ms. Luzzatto stated that the Complainant requested a list of names and address of dog license owners.

The Custodian stating that the request cannot be fulfilled. Specifically the letter stated, “The copying of information from records in the health department for the purpose of providing a list of names and addresses having an immediate or foreseeable commercial use, thereby invading the privacy of individuals, or families named on such record is prohibited and protected under the New Jersey Department of Health and Senior Services Inspection of Public Records...”

The Executive Director respectfully recommends that the Council dismiss this case on the basis that pursuant to N.J.S.A. 47:1A-1 the records should not be disclosed.

Mr. Maltese: It is my view that the member of the public have a right to know that pet in their community have been properly registered and inoculated as required by law. The information contained in a dog license application is a permissible and not unwarranted invasion of privacy.

Mr. Maltese calls for a motion to either “accept” the Executives Director’s recommendation or “reject” the Executive Directors. Ms. Minus-Vincent enters a motion to “reject” the Executives Director’s recommendation this motion was seconded by Mrs. Tabakin. The motions was passed on roll call:

Ayes: Ms. Minus-Vincent, Mrs. Tabakin, Mr. Maltese

Nays: Ms. Schonyers

Mr. Maltese rescued himself from the remaining cases.

Fred Burnett vs. Camden County (2004-6)

Mr. Malloy stated that based on submissions from Complainant’s counsel, it is not clear whether the Custodian acted reasonably and in a timely and responsible manner in responding to the OPRA request. This matter should be referred to the OAL to determine if the Custodian knowingly and willfully violated N.J.S.A. 47:1A-5(i).

The Executive Director respectfully recommends that the Council refer the case to the Office of Administrative Law to determine if the Custodian knowingly and willfully violated N.J.S.A. 47:1a-5(I).

Ms. Schonyers called for a motion to accept the Executive Director’s recommendations as written. The motion was made by Ms. Minus-Vincent and seconded by Mrs. Tabakin. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin

Nays: None

Richard Rivera vs., Town of West New York (2004-201)

Ms. McGann reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. She presented the following recommendations.

1. That the Custodian has not proven any exemption to disclosure for Records Requested in "1" of the Complainant's request. Thus, documents responsive to said request should be released in accordance with N.J.S.A. 47:1A-1 et. seq. unless the Custodian can explain in a certification why the release of the documents requested is inimical to the public interest.
2. That the Custodian has not proven any exemption to disclosure for documents responsive to Records Requested "2" and "3" and has not certified as to the existence of the requested documents. Therefore, the documents responsive to said request should be released in accordance with N.J.S.A. 47:1A-1 et. seq. unless the Custodian submits a legal certification relative to the existence of said documents or can explain how their release is inimical to the public interest.
3. The Custodian should provide a response to the Executive Director in "1" and "2" above within ten (10) business days from receipt of the Council's decision.

The Council voted unanimously to adopt said findings and recommendations with the amendment that the requested documents are to be released within ten (10) calendar days from receipt of the Council's decision.

Ms. Schonyers called for a motion to accept the Executive Director's recommendations with amendments. A motion was made by Mrs. Tabakin and seconded by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin

Nays: None

Albert Poreda vs. Hudson County (2004-14)

Ms. Luzzatto stated that in the Council's April 8, 2004 Interim Decision, the Council found that the Custodian's lack of response was considered a denial of access and ordered disclosure of all requested information pursuant to the Open Public Records Act ("OPRA"). Once the Custodian complied with the Council's orders in the interim decision on access, the Council issued a Final Decision to dismiss the case, albeit to close the case. Therefore, the Council should find that the Complainant was a prevailing party in this case based on the Council's April 8, 2004 Interim Decision in this case pursuant to N.J.S.A. 47:1A-7(f) and N.J.S.A. 47:1A-6.

There is no dispute on the fee sought by the Complainant's counsel as stated in the March 4, 2005 letter to the GRC staff that he [Mark Morchel] felt the "amount being sought was "Reasonable," and that if ordered to pay attorney's fees by the Council, the amount would not be challenged." Therefore, the Council does not need to address whether the \$1618.42 attorney's fee is reasonable.

The Executive Director respectfully recommended that the Council find that:

1. The Complainant was a prevailing party in this case based on the Council's April 8, 2004 Interim Decision ordering the disclosure of documents and pursuant to N.J.S.A. 47:1A-7(f) and N.J.S.A. 47:1A-6.
2. Since the attorney's fee of \$1618.42 is not at issue in the case, the County of Hudson should pay the same.
3. The County of Hudson should pay Olender Feldman LLP the amount in #2 above within five (5) business days after receipt of the Council's decision and inform the Executive Director when payment is completed.
4. Upon completion of #2 and #3 above the case will be summarily closed.

Ms. Schonyers requests a motion to accept the Executive Director's recommendations as written. A motion was made by Ms. Minus-Vincent and seconded by Mrs. Tabakin. The motion was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin

Nays: None

Jose Falto vs. Union City Parking Authority (2004-144)

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

The Executive Director respectfully recommended that the Council dismiss the case on the basis that the Custodian has complied with the Council's January 13, 2005 decision.

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin

Nays: None

Kenneth Serrano vs. New Brunswick Police Department (2004-151)

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

The Executive Director respectfully recommended that the Council dismiss the Complaint on the basis that the requested records are exempt from disclosure as criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1.

Ms. Schonyers called for a motion to accept the Executive Director's recommendations as

written. A motion was made by Mrs. Tabakin and seconded by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin

Nays: None

Beth Burns vs. Borough of Collingswood (2004-190)

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

The Executive Director respectfully recommended that the Council dismiss the case because the Custodian has certified that she has released all records responsive that are made, maintained, and kept on file.

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin

Nays: None

Beth Burns vs. Borough of Collingswood (2004-217)

Ms. Knoedler stated that the Complainant requested hard copies and electronic copies of Ordinances 1357, 1358 and 1359.

The Custodian did provide the Complainant with hard copies of the ordinances as requested; however, it appears that no attempt was made to reach an agreement on another meaningful medium.

The Executive Director respectfully recommended that:

1. The Custodian should have responded to the Complainant's request in writing pursuant to N.J.S.A. 47:1A-5(g).
2. The Custodian should disclose the records responsive to the request in the format requested in accordance with N.J.S.A. 47:1-5(d) subject to fees, if any, that may be directly associated to converting the documents to the medium requested. The Custodian should inform the Complainant of the costs involved in converting the documents to the requested medium prior to fulfilling the request.
3. The Custodian should notify the Executive Director within 10 business days of the completion of item #2, at which time, the Executive Director would summarily dismiss the case.

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

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin

Nays: None

Michael Halpern vs. Borough of Collingswood (2004-221)

Ms. Luzzatto stated the Complainant requested any and all solicited and unsolicited proposals to the Borough development or redevelopment of Peter Lumber lot. These are records that are from a Public Town Meeting.

Custodian's letter to the Complainant stating that the requested records do not exist. The Mayor who spoke at the meeting states and certifies what was discussed in that meet was not a result of and record.

We recommend that the council dismiss the case on the bases there are no records.

Ms. Schonyers requests a motion to accept the recommendations. The motion was made by Ms. Starghill and second by Ms. Minus-Vincent. The motions was passed on roll call:

Ayes: Ms. Schonyers, Ms. Minus-Vincent, Mrs. Tabakin

Nays: None

Communications: None

New Business: None

Open the floor to the public comment:

John Pusterhofer addressing the Council:

1. I would like to put on record there are no inadvertent disclosures by the GRC.
2. Conflicting statement by the Custodian.
 - a. December 3rd, statement information where she certifies that the policies that were presented – were the Gifted and Talented education criteria
 - b. February 22nd, statement from the Custodian. Now she saying we don't have those documents, they don't exist.

How does that write up come about?

We don't have anything to say go to file cabinet A and pull and pull this out. They are saying they don't have the records.

The Council continued it discussion with Mr. Pusterhofer.

Ms. Schonyers called for a motion to adjourn. A motion was made by Ms. Minus-Vincent and seconded by Mrs. Tabakin. The Council voted unanimously to adjourn.

Meeting adjourned 3:30PM.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "De Anna Minus-Vincent". The signature is fluid and cursive, with a large initial "D" and "A".

De Anna Minus-Vincent
Secretary

Dated: August 11, 2005