



DRAFT

**Minutes of the Government Records Council
May 11, 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. Luzzatto called the roll:

Present: Chairman Vincent Maltese, Kathryn Forsyth (Designee of Acting Commissioner Lucille Davy, Department of Education) Secretary Robin Berg Tabakin, GRC Staff: Executive Director Catherine Starghill, Operations Manager Gloria Luzzatto, Kimberly Gardner, Dara Lownie, Christopher Malloy, Jennifer Arozamena, Colleen McGann, Marion Davies and Deputy Attorney General Debra Allen.

Also present: Sergeant Robert Wilkins

Absent: Michelle Richardson (Designee of Commissioner Susan Bass Levin, Department of Community of Affairs).

The Council accepted delivery of an *in camera* document in a sealed envelope from a representative of the Monmouth County Prosecutor's Office for the case John Brennan v. Monmouth County Prosecutor's Office (2005-119).

Mr. Maltese read the Resolution for Closed Session, Resolution Number 2006-05-11 and called for a motion to go into closed session to conduct an *in camera* inspection in John Brennan v. Monmouth County Prosecutor's Office, GRC Case No. 2005-119, and to discuss attorney-client privileged matters and anticipated and pending litigation in the following cases:

1. Robert Gorman v. Gloucester City (2004-108)
2. John McCormack v. NJ Department of Treasury (2005-58)
3. David Herron v. Montclair Community Pre-K Center (2005-130)
4. John Windish v. Mount Arlington Public Schools (2005-216)

A motion was made by Ms. Forsyth and seconded by Ms. Tabakin to go into closed session. 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 10:55 a.m. Ms. Luzzatto called the roll:

In attendance:

Mr. Maltese, Ms. Tabakin and Ms. Forsyth.

The pledge of allegiance was recited.

Mr. Maltese called for a motion to approve the open and closed session minutes of April 6, 2006 and April 11, 2006.

The motion was made by Ms. Tabakin and seconded by Ms. Forsyth. The minutes were approved by a unanimous vote.

Mr. Maltese stated that he was recusing himself from the following cases.

- Robert Gorman v. Gloucester City (2004-108)
- Leonard Lucente v. City of Union City (2005-213)
- John Windish v. Mount Arlington Public Schools (2005-216)
- John Paff v. City of Plainfield (2006-54)

Therefore, the aforementioned cases were not heard because there was not a quorum.

Ms. Starghill informed the Council that the following cases would also not be heard due to procedural issues:

- Amelia Spaulding v. Passaic County (2004-199)
- Cynthia McBride v. Township of Hamilton (2005-86)

John McCormack v. New Jersey Department of Treasury (2005-58)

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

The Executive Director respectfully recommended the Council find that:

1. The Treasury Human Resources Transmittal dated 12/10/2004 with attached justification memo, **Page 1, “Treasury Human Resources Transmittal”**: The entire document is exempt from disclosure as “advisory, consultative and deliberative material” pursuant to N.J.S.A. 47:1A-1.1 and “personnel information” pursuant to N.J.S.A. 47:1A-10.
2. The Treasury Human Resources Transmittal dated 12/10/2004 with attached justification memo, **Page 2, Justification memo from Karen Wood to Mark Winternute entitled “Temporary Upgrade for Matthew Suto”**: The entire document is exempt from disclosure as “advisory, consultative and deliberative material” pursuant to N.J.S.A. 47:1A-1.1 and “personnel information” pursuant to N.J.S.A. 47:1A-10.
3. The e-mail from Keith Vansickle to the Complainant and Kathleen Crawley entitled “FYI” dated 12/27/2004 with attachments, **Page 1, e-mail**: This document is disclosable because the record does not fall within the exemption for “personnel” pursuant to N.J.S.A. 47:1A-10 as asserted by the Custodian.
4. The e-mail from Keith Vansickle to the Complainant and Kathleen Crawley entitled “FYI” dated 12/27/2004 with attachments, **Page 2, attachment**: The entire document is exempt from disclosure as a “personnel record” pursuant to N.J.S.A. 47:1A-10 and as “information generated by or on behalf of... public

- employees in connection... with any grievance filed by or against an individual” pursuant to N.J.S.A. 47:1A-1.1.
5. The e-mail from Keith Vansickle to the Complainant and Kathleen Crawley entitled “FYI” dated 12/27/2004 with attachments, **Page 3, attachment (continued)**: The entire document is exempt from disclosure as a “personnel record” pursuant to N.J.S.A. 47:1A-10 and as “information generated by or on behalf of... public employees in connection... with any grievance filed by or against an individual” pursuant to N.J.S.A. 47:1A-1.1.
 6. The e-mail from Keith Vansickle to the Complainant and Kathleen Crawley entitled “FYI” dated 12/27/2004 with attachments, **Page 4 attachment (continued)**: The entire document is exempt from disclosure as a “personnel record” pursuant to N.J.S.A. 47:1A-10 and as “information generated by or on behalf of... public employees in connection... with any grievance filed by or against an individual” pursuant to N.J.S.A. 47:1A-1.1.
 7. The letter from D. Ianni to M. Suto dated 12/27/2004, **Page 1**: This document is disclosable with the redaction of the letterhead, address of the employee, paragraphs 2 and 3 and the signature line which are exempt from disclosure as “personnel information” pursuant to N.J.S.A. 47:1A-10.
 8. The letter from the DOP to D. Ianni dated 1/14/2005, **Page 1**: The entire document is exempt from disclosure as a “personnel record” pursuant to N.J.S.A. 47:1A-10 and as “information generated by or on behalf of... public employees in connection... with any grievance filed by or against an individual” pursuant to N.J.S.A. 47:1A-1.1.
 9. The fax from D. Ianni to DOP dated 1/28/2005, **Page 1, Fax transmittal**: This document is disclosable because the record does not fall within the exemption for “personnel” pursuant to N.J.S.A. 47:1A-10 as asserted by the Custodian.
 10. The fax from D. Ianni to DOP dated 1/28/2005, **Page 2, “Application for Promotional Examination”**: The entire document is exempt from disclosure as a “personnel record” pursuant to N.J.S.A. 47:1A-10.
 11. The fax from D. Ianni to DOP dated 1/28/2005, **Page 3, “Application for Promotional Examination (continued)”**: The entire document is exempt from disclosure as a “personnel record” pursuant to N.J.S.A. 47:1A-10.
 12. The fax from D. Ianni to DOP dated 1/28/2005, **Page 4, “Application for Promotional Examination (continued)”**: The entire document is exempt from disclosure as a “personnel record” pursuant to N.J.S.A. 47:1A-10.
 13. The fax from D. Ianni to DOP dated 1/28/2005, **Page 5, “Application for Promotional Examination (continued)”**: The entire document is exempt from disclosure as a “personnel record” pursuant to N.J.S.A. 47:1A-10.
 14. The fax from D. Ianni to DOP dated 1/28/2005, **Page 6, Resume**: This document is disclosable per Executive Order 26.
 15. The fax from D. Ianni to DOP dated 1/28/2005, **Page 7, Resume (continued)** is disclosable per Executive Order 26.
 16. The fax from D. Ianni to DOP dated 1/28/2005, **Page 8, Resume (continued)** is disclosable per Executive Order 26.
 17. The memorandum from DOP to J. Bando entitled “Request for Evaluation” dated 1/31/2005, **Page 1, memorandum from DOP to J. Bando**: The entire document is exempt from disclosure as a “personnel record” pursuant to N.J.S.A. 47:1A-10 and as “information generated by or on behalf of... public employees in

- connection... with any grievance filed by or against an individual" pursuant to N.J.S.A. 47:1A-1.1.
18. The DOP letter entitled "Matthew Suto's eligibility for temporary appointment" dated 2/14/2005, **Page 1:** The entire document is exempt from disclosure as a "personnel record" pursuant to N.J.S.A. 47:1A-10 and as "information generated by or on behalf of... public employees in connection... with any grievance filed by or against an individual" pursuant to N.J.S.A. 47:1A-1.1.
 19. The e-mail from D. Ianni to DOP entitled "Your letter dated 2/14/2005..." dated 2/23/2005, **Page 1:** The entire document is exempt from disclosure as a "personnel record" pursuant to N.J.S.A. 47:1A-10, as "information generated by or on behalf of... public employees in connection... with any grievance filed by or against an individual" pursuant to N.J.S.A. 47:1A-1.1. and as "advisory, consultative and deliberative material" pursuant to N.J.S.A. 47:1A-1.1.
 20. The Custodian shall comply with these Conclusions and Recommendations within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.

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

Donal Meyers v. Borough of Fair Lawn (2005-127)

Ms. Gardner reviewed the GRC's analysis and issues in the case as set forth in the Supplemental 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 case has been settled in the Appellate Division of the Superior Court of New Jersey and therefore, the case is closed without further action.

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

David Herron v. Montclair Community Pre-K Center (2005-130)

Ms. Gardner reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. The Council took no action on this case and sought additional legal advice.

John Bart v. City of Paterson Housing Authority (2005-145)

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

The Executive director respectfully recommended that Council find that:

1. Regardless of whether the Complainant was already in possession of the cover letter or that the Complainant had seen the sign and knew it "verbatim," the requested sign and cover letter that requests that individuals to please bring their own interpreter should have been provided to the Complainant in response to his request provided there was no lawful exemption to same because there is no provision under OPRA that states a requestor may not request copies of documents already in their possession.
2. Although the Custodian responded in writing within the statutory time period under OPRA, the Custodian's response to the request for the Spanish language sign that references the PHA's desire for Spanish-speaking tenants to bring their own interpreter was so vague that it could not be determined if the requested sign did not exist, or if it was being denied. Therefore, the request is deemed denied and the Custodian has violated N.J.S.A. 47:1A-5.i.
3. The cover letter that requests that individuals to please bring their own interpreter does, in fact, reference the PHA's requirement or preference that individuals bring an interpreter, which would include those that speak Spanish. Therefore, this document is responsive to the Complainant's request.
4. The Custodian has not provided a lawful basis for denying access to the cover letter that requests individuals to please bring their own interpreter pursuant to N.J.S.A. 47:1A-5.g. Therefore, the Custodian shall disclose the cover letter with appropriate redactions as necessary. The legal basis for any redactions must be explained pursuant to N.J.S.A. 47:1A-5.g.
5. Due to the contested facts surrounding this case, the case shall be referred to the Office of Administrative Law for determination of a knowing and willful violation of the Act and unreasonable denial of access under the totality of the circumstances.
6. The Custodian shall comply with "4." above within ten (10) business days from receipt of this Interim Order and simultaneously provide confirmation of compliance to the Executive Director.

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

Henry A. Fischer v. New Jersey Department of Corrections (2005-170)

Ms. Gardner reviewed 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 Custodian has not unlawfully denied access to the requested records because the requested record is a grievance decision and exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

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 Ms. Forsyth. The motion passed unanimously.

Larry Angel v. Township of Mullica (2005-207)

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 recommendation to the Council:

The Executive Director respectfully recommended the Council find that based on the Custodian's submissions to the GRC dated April 14, 2006 and April 24, 2006, the Custodian provided the Complainant with the requested 2005 executive session minutes on December 20, 2005. Therefore, the Custodian had already released the requested records before the Council's April 11, 2006 Interim Order. The Custodian's actions were consistent with the Council's April 11, 2006 Interim Order. The Council should close this case with no further action.

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 Ms. Forsyth. The motion passed unanimously.

Maryann Cottrell v. Township of Washington (2005-248)

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 recommendation to the Council:

The Executive Director respectfully recommended the Council find that as the Custodian certifies that no records responsive to the Complainant's November 4, 2005 request exist, the Custodian would not have unlawfully denied access to the requested records pursuant to N.J.S.A. 47:1A-1.1, except that the Custodian's failure to provide the Complainant with a written response to each individual request within the statutorily mandated seven (7) business days resulted in a "deemed" denial, thus violating N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

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 Ms. Forsyth. The motion passed unanimously.

Virginia Ellen Jeffries v. East Orange Board of Education (2005-259)

Mr. Malloy reviewed 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 the Council find 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 explaining why the

records should not be disclosed to the Complainant and 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 written and added that the Council will address the matter of timeliness in the case upon receipt of the Custodian's response to the Interim Order. A motion was made by Ms. Tabakin and seconded by Ms. Forsyth. The motion passed unanimously.

A.J. Nash v. Children's Hospital of New Jersey (2006-13)

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

The Executive Director respectfully recommended the Council find that considering the meaning of a public agency as explained by the court in the The Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 368 N.J.Super. 425, 846 A.2d 659 (April 2004) and all the document submissions of the Custodian, the Hospital, owned and operated by NBI, is not a public agency pursuant to N.J.S.A. 47:1A-1.1. Therefore, the Hospital is not subject to the provisions of OPRA and is not required to respond to OPRA requests for records.

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 Ms. Forsyth. The motion passed unanimously.

Brian D. Asarnow v. Department of Labor and Workforce Development (2006-24)

Mr. Malloy reviewed 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 find that the Custodian provided a lawful reason for the denial of access of three of the records requested pursuant to the Custodian's burden of proof obligation established and mandated under N.J.S.A. 47:1A-6., and released the one document that was not legally exempt from disclosure within the time frame mandated under OPRA. Thus, there was no unlawful denial of access to the requested records pursuant to the provisions of OPRA.

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 Ms. Forsyth. The motion passed unanimously.

Michael Deluca v. Town of Guttenberg (2006-25)

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. McGann presented the following recommendations to the Council:

The Executive Director respectfully recommended the Council find that:

1. As the Custodian certifies that no records responsive to the Complainant's request exist, there would not have been an unlawful denial of access. However the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide the Complainant with a written response to his November 28, 2005 request within the statutorily mandated seven (7) business days therefore creating a "deemed" denial.
2. The Custodian's response that the Complainant had already been advised that the requested documents do not exist is not a lawful reason for a denial of access pursuant to the Custodian's burden of proof obligation established and mandated under N.J.S.A. 47:1A-6.

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 Ms. Forsyth. The motion passed unanimously.

Thomas Caggiano v. Borough of Stanhope (2006-27, 2006-28, 2006-29, 2006-30, 2006-31, 2006-32, 2006-33, 2006-34, 2006-35, 2006-36, 2006-37, 2006-38, 2006-39, 2006-40, 2006-41, 2006-42, 2006-43, and 2006-47)

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

The Executive Director respectfully recommended the Council find that:

1. The Custodian has not borne the burden of proving that there was a lawful basis to deny the Complainant access to inspect the requested records in the February 14, 2006 response to the Complainant's OPRA requests and therefore, the Custodian unlawfully denied the Complainant access to inspect the requested records pursuant to N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-6.
2. It was reasonable for the Custodian to require a scheduled appointment for the Complainant to inspect records pursuant to N.J.S.A. 47:1A-5.a., to avoid interfering with the Custodian's daily operations.
3. The Custodian did make copies available to the Complainant in a timely manner pursuant to the Custodian's February 14, 2006 written response. Therefore, the Custodian did not unlawfully deny the Complainant access to the records for which he sought copies.

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

Dina Parave-Fogg v. Lower Alloways Creek Township (2006-51)

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. The Council took no action on this case and sought additional legal advice regarding unapproved meeting minutes.

John Brennan v. Monmouth County Prosecutor's Office (2005-119)

Mr. Malloy reviewed the procedural history of the case noting that the Council issued a Final Decision in the matter and that the case was on appeal. He stated further that upon legal advice and Council discussion of the matter, the Council voted to motion the court to remand the case to the Council to conduct an *in camera* inspection of the requested record. On May 1, 2006, the court ordered a remand of the case for an *in camera* inspection.

During closed session, the Council conducted the *in camera* inspection of the unredacted June 27, 2003 letter from Robert Linton to the Monmouth County Prosecutor's Office sought in the OPRA request. After completing the *in camera* inspection of Robert Linton's June 27, 2003 letter to the Monmouth County Prosecutor's Office, the Council voted unanimously to revise its Final Decision finding that the requested record was a "criminal investigatory record" and exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

Administrative – Adjudication:

1. Fred Burnett v. Bergen County (2004-6)
2. David Mann v. Borough of Montvale (2005-135)
3. Vesselin Dittrich v. City of Hoboken (2005-218)
4. James Donato v. Township of Union - Department of Public Safety (2006-3)
5. Joseph Truland v. Town of Dover (2006-68)
6. Porete Avenue Property Association (Michael DiCicco) v. Borough of North Arlington (2006-71)
7. Janet Pizzar v. Millburn Township (2006-74)
8. John J. D'Anton v. Dover Township, Municipal Court (2006-78)

Mr. Maltese called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Case Dispositions. A motion was made by Ms. Tabakin and seconded by Ms. Forsyth. The motion passed unanimously.

Executive Directors Report:

Ms. Starghill stated that the public comment period to respond to the GRC's Proposed Rules concluded May 6, 2006. She stated that the GRC received four letters regarding the GRC's Proposed Rules and these letters are currently under legal review.

Ms. Starghill noted that the GRC received the following correspondence:

- John Paff letter dated April 27, 2006 concerning the GRC's guidelines for certification.

Ms. Starghill informed the Council that the GRC will conform with the certification requirements of the *N.J. Court Rules, 1969 R. 1:4-4* (2005).

Ms. Starghill announced the resignation of the GRC staff member, Jennifer Arozamena.

Public Comment:

Mr. Maltese opened the public comment period stating that comments would be limited to five minutes for each speaker. Further, he stated that the Council and its Chairperson has the discretion under the Open Public Meetings Act in permitting, regulating or prohibiting public comment at a meeting and that in its discretion was permitting public comment to five minutes for each speaker at this meeting.

Thomas Caggiano – Stanhope, NJ

Mr. Caggiano discussed the conduct of the GRC's public meeting and his cases. He submitted several documents.

There were no other public comments and Mr. Maltese called for a motion to adjourn the meeting. The motion was made by Ms. Tabakin and seconded by Ms. Forsyth. The Council voted unanimously to adjourn the meeting.

Meeting adjourned at 12:05 p.m.

Respectfully submitted,

Robin Berg Tabakin, Secretary

Dated Approved: