

MINUTES OF THE GOVERNMENT RECORDS COUNCIL
Closed Session at the July 14, 2005 Meeting

The Council convened at 9:25 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey.

In attendance were: Chairman Vincent Maltese, Ms. Robin Tabakin, Mr. Mitchell Fishman, Secretary DeAnna Minus-Vincent, Diane Schonyers (designee of Commissioner William Librera, Department of Education), DeAnna Minus-Vincent, (designee of Acting Commissioner Charles A. Richman, Department of Community Affairs) Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, Case Managers Chris Malloy, Kimberly Gardner, and Colleen McGann, In-House Counsel, Catherine Starghill, Deputy Attorney General Debra Allen.

The Council sought legal advice with respect to the following cases:

Beth Burns v. Borough of Collingswood (2004-169)

Ms. Allen and Catherine Starghill advised that based on the Paff v. NJ Department of Labor (2003-128) Superior Court, Appellate Division decision an *in camera* inspection of the document should be conducted before considering the Executive Director's recommendations and reaching their determination.

Richard Bernstein v. Borough of Allendale (2004-195)

Richard Bernstein v. Borough of Woodcliff Lake (2005-2)

Richard Bernstein v. Borough of Harrington Park (2005-6) – Mr. Maltese recused himself during discussions of this case and left the meeting room.

Richard Bernstein v. Borough of Ho Ho Kus (2005-13)

Richard Bernstein v. Borough of Park Ridge (2005-99)

Ms. Allen discussed the legal advice of DOL concerning the Council's authority to apply all 7 factors of the balancing test in the Bernstein cases, including the factor "degree for need of access." She advised that in applying the balancing test, the Council has the discretion to ask the complainant for his/her "degree for need of access" to the documents sought and the Council has the authority to consider the complainant's response in rendering a decision.

Martin O'Shea v. Township of West Milford (2004-207)

Martin O'Shea v. Township of West Milford (2005-31)

Ms. Tabakin recused herself from discussion of the cases O'Shea v. Township of West Milford (2004-207 and 2005-31) and left the meeting room. Present during the discussion and the *in camera* inspection of documents in said cases were: Mr. Maltese, Ms. Schonyers, Mr. Fishman, Ms. Minus-Vincent, Mr. Dice, Ms. Luzzatto, Ms. Allen and Ms. Starghill. Mr. Dice opened the sealed envelope containing the un-redacted invoice dated 9/3/04 for legal services rendered in Paff v. Byrnes, that was the subject of the OPRA request in this case. The Council reviewed each unredacted item in the invoice and the Custodian and the Custodian counsel's assertions that the redacted information concerned litigation and fell under the attorney-client privilege exemption. The Council was informed of the specific OPRA provisions applicable to the asserted exemptions and given legal advice by Ms. Allen and Ms. Starghill regarding the legal standards to be considered in applying the attorney-client privilege. The Council concluded that the Custodian and their counsel's did not provide a sufficient basis for the attorney-client privilege exemption to meet the burden of proof for non-disclosure pursuant to OPRA.

Ms. Tabakin re-entered the meeting.

Mr. Maltese asked for a motion to adjourn the closed session at 10:30 a.m. Ms. Tabakin offered the motion, which was seconded by Mr. Fishman. The motion was passed unanimously.

The Executive Session concluded at 10:30 a.m.

Respectfully submitted,



DeAnna Minus-Vincent
Secretary

Dated: