

Minutes of the Government Records Council October 10, 2002

Chairman Vincent Maltese called the meeting to order at 9:30 a.m.

Acting Executive Director Marc Pfeiffer read the Open Public Meetings Statement.

Chairman Maltese welcomed those persons in attendance, and led the Council and audience in the Pledge of Allegiance.

Chairman Maltese noted that a communication has been received from Commissioner Bass Levin about her appointment of Matthew U. Watkins as her designee for this meeting.

Mr. Pfeiffer **called the roll** as follows:

Present: Chairman Maltese, Mr. Watkins (Director of the Division of Local Government Services and Commissioner Bass Levin's designee), Secretary Virginia Hook, Dr. Dwight Pfennig, Deputy Commissioner of the Department of Education and designee of the Commissioner of the Department of Education and Vice Chairman Bernard Spigner.

Also Present: Barbara Conklin, Deputy Attorney General; Mr. Pfeiffer, Acting Executive Director; Joseph Greer and Marc Leavitt, GRC Staff, and Lori Buckelew, Division of Local Government Services.

Chairman Maltese called for **adoption of the minutes** of the July 30, 2002 meeting as prepared. Mr. Spigner moved to adopt the minutes, with a second by Ms. Hook.

Roll Call: Ayes: Mr. Watkins, Dr. Pfennig, Ms. Hook, Mr. Spigner and Chairman Maltese.

Chairman Maltese called for the **Executive Director's report**. Mr. Pfeiffer read a copy of the report.

Chairman Maltese requested a report on **Council Communications**. Mr. Pfeiffer indicated that the Council received a letter from Thomas Cafferty, attorney for the New Jersey Press Association, indicating that there was no legal authority for records custodians to require prepayment and deposits for duplicating records sought in an OPRA request, except for anonymous requests for copies that would cost more than \$5 to fulfill. Mr. Pfeiffer indicated that the Attorney General's Office is expected to issue legal advice shortly on the issue in conjunction with a response to public comment on proposed state agency regulations pertaining to OPRA.

The Council also received a communication from Richard Gutman, Esq. regarding the need for records custodians to disclose the reasons for redactions made to government records and the preferred method of accomplishing the redaction. Mr. Pfeiffer stated that the Council has drafted a Records Note on the issues, which would be available shortly.

Chairman Maltese thanked Mr. Gutman, who was in the audience, for his letter.

Chairman Maltese asked Mr. Pfeiffer for any **unfinished business**. Mr. Pfeiffer stated there was none.

Chairman Maltese asked Mr. Pfeiffer for any **new business**. Mr. Pfeiffer stated there was none.

Chairman Maltese asked Mr. Pfeiffer for any **other business**. Mr. Pfeiffer indicated there were two matters: adoption of Bylaws and amendments to the Council's Inquiry and Complaint Policy. Mr. Pfeiffer noted that the proposed Bylaws have been provided to the Council for review and approval.

Ms. Conklin explained the Bylaws. Chairman Maltese requested that Section II of the Bylaws be amended to include the statutory provision of OPRA that grants the Council authority to hire an Executive Director and such professional and clerical staff as it deems necessary, and that Section III, Subsection 3(b) be amended to add the Secretary to those positions that are elected by the Council.

Dr. Pfennig requested that Section III of the Bylaws be amended to include a provision permitting public comment prior to the Council taking action on certain agenda items. Ms. Conklin requested clarification that public comment would not be taken on pending GRC Complaints but would be permitted on matters such as proposed advisory opinions or requests for opinions. Dr. Pfennig concurred. Chairman Maltese confirmed with Ms. Conklin that the Council could impose reasonable time limits on all public comment.

Chairman Maltese called for a motion to approve the Bylaws with the proposed amendments. Ms. Hook moved to approve the Bylaws and the proposed amendments with a second by Mr. Spigner.

Roll Call: Ayes: Mr. Watkins, Dr. Pfennig, Ms. Hook, Mr. Spigner and Chairman Maltese.

Mr. Pfeiffer discussed the revisions to the Council's Inquiry and Complaint Policy. Mr. Pfeiffer explained that there are approximately (12) complaints pending before the Council and that the staff could not proceed to investigate them until the Council had approved a revised procedure for handling the Complaints. The revisions were prompted by a review by the Division of Law to ensure that the procedure would provide appropriate due process for the parties involved and not jeopardize the confidentiality of documents.

Chairman Maltese asked whether the Inquiry and Complaint policy and Bylaws could be revised if the Council deemed it necessary. Mr. Pfeiffer indicated that they could be amended as needed. Ms. Conklin advised the Council that the amended Inquiry and Complaint policy must be approved prior to the staff distributing the staff-prepared Statement of Information. Custodians would use this form to respond to Complaints. It would become the basis on which staff would

make recommendations for the disposition of a complaint. Ms. Conklin noted that the draft Statement of Information had been reviewed and approved by the Attorney General's Office.

Dr. Pfennig requested that Mr. Pfeiffer review the process for determining whether a matter would be heard before the Council or Office of Administrative Law. Mr. Pfeiffer indicated that the Council would make that decision on a case-by-case basis, but that generally speaking, he anticipated that the Council might want to refer those cases to OAL that required extensive testimony or examination of voluminous amounts of records.

Chairman Maltese called for a motion to approve the revisions to the Inquiry and Complaint Process. Dr. Pfennig moved to approve with a second by Mr. Spigner.

Roll Call: Ayes: Mr. Watkins, Dr. Pfennig, Ms. Hook, Mr. Spigner and Chairman Maltese.

Chairman Maltese opened the meeting for **public comment**.

Richard Gutman, Esq. addressed the Council concerning complaints filed with the GRC on behalf of his client Cynthia Teeters. Ms. Conklin suggested that Mr. Gutman not discuss specifics about those cases. Mr. Gutman agreed and indicated that his client is frustrated with the delay in processing her GRC complaints and questioned when the Council anticipated that his client would be interviewed and Ms. Teeters' cases adjudicated. Mr. Pfeiffer indicated that no interview would take place and that once the government records custodian completes the new Statement of Information form GRC staff could commence the investigation of the Complaint and refer the matter to the Council for determination.

Mr. Gutman also raised a concern about the public's right to comment prior to the Council adopting agenda items. Mr. Gutman noted that the policy does not afford the requester an opportunity to explain his or her position why the denial of access was without factual or legal basis. Mr. Gutman added that under the original policy, the Executive Director makes a preliminary decision on the statement supplied by the custodian but not by the requester. Mr. Gutman argued that this process places the requester at a disadvantage. **Cynthia Teeters** indicated that she agreed with Mr. Gutman's comments.

Mr. Pfeiffer noted that Mr. Gutman's concern had been anticipated by changes to the complaint form to include space for the complainant/requester to provide the Council with a detailed summary of the basis for the Complaint and instructs the requester to provide the Council with all materials the requester wanted the Council to consider in support of the Complaint. A letter will be forwarded to all complainants allowing them to amend their original complaints to include the additional information.

Mr. Gutman asked if complaints would be heard during the Council's November meeting. Mr. Pfeiffer indicated that it might be logistically difficult to have items on the Council's November agenda due to the time it takes to process them. It will take 10 days for custodians to submit Statements of Information, staff review, preparation of recommendations, and review by the

parties prior to going to the Council: however, some Complaints should be before the Council for adjudication by December.

Chairman Maltese thanked Mr. Gutman and Ms. Teeters for their comments.

Deborah Jacobs, appearing on behalf of the New Jersey Foundation for Open Government raised several issues and made a number of suggestions as follows:

1. How many of the 59 complaints filed to date are unique?
2. What is the length of time it takes to resolve complaints?
3. The Council should keep the inquiry and complaint procedure simple.
4. The Council should issue a list of records that are disclosable to the public.
5. The Council should encourage custodians to respond promptly without waiting the full seven business days.
6. The Council's legal advisor should operate independently from the Attorney General's Office and use outside staff instead of in-house DCA personnel.

Chairman Maltese thanked Ms. Jacobs for her comments and indicated that Mr. Pfeiffer would get back to her with answers on her specific questions.

Glen Blue, Director of the Investigation Division for Labor Management Concepts, Inc. addressed the Council concerning private investigators being denied access to police records. Mr. Blue submitted a written copy of his comments that is on file with the Council.

Chairman Maltese asked Mr. Pfeiffer and Ms. Conklin to meet with Mr. Blue to discuss his concerns.

Chairman Maltese thanked Mr. Blue for his comments.

Elaine Hinkle, representing the Municipal Clerks Association of New Jersey, stated that many of the clerks and residents object to disclosing citizen phone numbers that appeared on public records. She also noted that clerks were receiving conflicting information being provided by the County Prosecutors Offices statewide relating to the disclosure of accident reports. Some clerks are being told that accident reports should be disclosed in their entirety while other clerks are being advised not to disclose the entire report. Also, some clerks are being advised to charge anywhere from \$10 and up for copies of accident reports, while others are being advised to charge OPRA fees.

Chairman Maltese thanked Ms. Hinkle for her comments.

Cindy McBride, of Current Status, Inc. stated that companies such as hers received more cooperation from municipal governments and local authorities prior to OPRA; that there is now a lot of confusion, and that some municipal clerks are delaying release of records to property search companies. The delays are having an adverse impact on her business and delaying property closings. Chairman Maltese asked whether this is general interference by municipalities or confined to a few municipalities. Ms. McBride indicated that the problem stems primarily from some municipalities and several municipal utility authorities and that some

MUA and municipal attorneys are not returning phone calls. She added that some MUAs are holding property tax organizations hostage by providing the information requested in an expedited fashion, but at a higher fee.

Mr. Watkins indicated that he wants the names of those public agencies engaging in the practices noted by Ms. McBride. Mr. Watkins stated that this is not appropriate and the problem must be dealt with.

Mr. Pfeiffer noted that Ms. McBride is a former employee of the Division of Local Government Service and former tax collector.

Mr. Pfeiffer stated that there appears to be a problem with matters involving property tax payment status and motor vehicle accident reports and how some local organizations interpret their responsibilities under OPRA.

Mr. Spigner indicated that some people hide behind the words of the law in order to avoid complying with it. Mr. Spigner commented that he is embarrassed as a New Jersey resident to hear of the problems encountered by the commenter in securing access to government records.

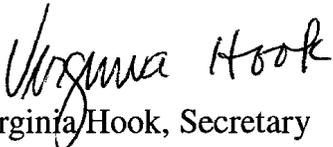
Ms. Hook stated that she was shocked by the behavior of custodians described by Ms. McBride.

Chairman Maltese thanked Ms. McBride for her comments.

Ms. Hook moved to adjourn, with a second by Mr. Spigner.

Chairman Maltese adjourned the meeting at 11:20 a.m.

Respectfully Submitted,


Virginia Hook, Secretary
Government Records Council