

MINUTES
Government Records Council
Closed Session Meeting
October 13, 2005 Government Records Council Meeting

The Council convened in closed session at 9:30 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Chairman Vincent Maltese, DeAnna Minus-Vincent (designee of Acting Commissioner Charles Richman, Department of Community of Affairs), Diane Schonyers (designee of Acting Commissioner Davy, Department of Education), Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Dan Reynolds, GRC Staff: Chris Malloy, Kimberly Gardner, Jennifer Arozamena and Colleen McGann.

Absent: Mitchell Fishman, Robin Berg Tabakin

Martin O'Shea vs. Township of West Milford (2004-87)
Martin O'Shea vs. Township of West Milford (2004-207 & 2005-31)
Ross Kushner vs. Township of West Milford (2004-111)

The Assistant Executive Director reviewed correspondence received from Mr. O'Shea concerning the referenced cases. The Council discussed the issues raised in the correspondence and stated that the GRC staff is given the authority to act in the Council's behalf in responding to such matters. The Council sought legal advice from In-House Counsel and DAG Reynolds in responding to Mr. O'Shea's correspondence and counsel concurred that the Council was appropriate in authorizing the Executive Director and his staff to act in the Council's behalf in the types of matters raised in the referenced correspondence. Counsel advised that a general public statement should be given stating that we received the correspondence and responded.

The Council proceeded to conduct the *in camera* inspections.

John Paff v. NJ Department of Labor (2003-128)

In Attendance: Council Members: Vincent Maltese, Diane Schonyers, DeAnna Minus-Vincent, Executive Director - Paul Dice, Assistant Executive Director - Gloria Luzzatto, Case Manager - Chris Malloy, Catherine Starghill – In-House Counsel

Distributed case summary to Council Members and attendees; reviewed events bringing case before the Council for in camera review of documents; read applicable laws and regulations cited by the Custodian; noted letter received from complainant's counsel and Starghill advised Council that his arguments need not be considered for the in camera proceedings. Maltese asked that the Council receive such submissions prior to the meeting. Starghill reviewed the legal relevance of the cited regulations in light of the Council's review of the documents.

Review of documents contained in the sealed envelope presented to the Council during the open session: six (6) unredacted documents, one page in length, were contained in the envelope with custodian's certification. The certification stated that the documents were those responsive to the request. The document index submitted by the Custodian prior to the in camera inspection was numbered 1 through 6 to correspond directly with the documents. Reviewed each document and the Council's comments are noted below in 1 through 6:

1. Document: Undated computer screen showing assessed employer contribution rates for unemployment and disability insurance per U&D Tax Act
 - a. Disclose name, address and SIC pursuant N.J.S.C. 12:15-2.1 and 2.2(a) 3 and N.J.S.A. 43:21-11.g; all other information exempt from disclosure pursuant to N.J.S.A. 43:21-11.g.
2. Document: Undated computer screen showing date judgment was docketed
 - a. Disclose name – see above for citations and reasons
3. Document: Undated computer screen showing that parties were notified of filing of judgment
 - a. Disclose name and address – see above citations and reasons
4. Document: Undated computer screen print-out showing judgment filed on 10/30/97
 - a. Disclose name – see above citations and reasons
5. Document: Undated computer screen of collection summary
 - a. Disclose name – see above citations and reasons
6. Document: Undated copy of computer screen detailing conversation with employer
 - a. Disclose name entry and name (2times) - see above citations and reasons

John Paff v. Borough of Somerville (2005-55)

In Attendance: Council Members: Vincent Maltese, Diane Schonyers, DeAnna Minus-Vincent, Executive Director - Paul Dice, Assistant Executive Director - Gloria Luzzatto, Case Manager - Chris Malloy, Catherine Starghill – In-House Counsel, and Dan Reynolds – Deputy Attorney General

Distributed case summary to Council Members and attendees; reviewed events bringing case before the Council for in camera review of documents; read applicable laws and regulations cited by the Custodian; noted that the case was carried from previous month's meeting because the Custodian had not provided all documents responsive to the request; noted further that Chris Malloy held the envelope with the December 20, 2004 unredacted executive workshop minutes and document index presented at the September 8, 2005 meeting for the October 13, 2005 in camera review. Mr. Malloy opened the sealed envelope presented at the October 13, 2005 meeting by a messenger service, which contained the March 1 and June 7, 2004 unredacted executive workshop minutes, a document index and Custodian certification.

Review of documents:

March 1, 2004 Executive Session Workshop Minutes:

Total number of pages: 8 (2 pages of minutes identified as Exhibit G21 and G22 plus 9 e-mails: The e-mails were numbered 1 through 9 for purposes of the in camera review)

Asserted exemptions: Attorney-client privileges (ACP); potential litigation/strategy; privacy of personnel issues

G22 (redacted portion consisted of 3 paragraphs with a total of 5 sentences and identified “a” through “e”)

- G22.a.: Disclose – not ACP or otherwise exempt as asserted
- G22.b.: Exempt from disclosure under ACP legal strategy
- G22.c.: Exempt from disclosure ACP legal strategy
- G22.d.: Disclose – not ACP or otherwise exempt as asserted
- G22.e.: Disclose – not exempt under the personnel exemptions of N.J.S.A. 47:1A-10
- E-mail 1. (2-20-04 1:32 p.m.): Disclose all except personal phone numbers and cell phone number
- E-mail 2. (2-20-04 1:25 p.m.): Redact the text of the e-mail only as the information is exempt under ACP legal strategy; disclose all other information in the e-mail
- E-mail 3. (2-19-04 4:03 p.m.): Redact the text of the e-mail only as the information is exempt under ACP legal strategy; disclose all other information in the e-mail
- E-mail 4. (2-19-04 3:48 p.m.): Redact the text of the e-mail only as the information is exempt under ACP legal strategy; disclose all other information in the e-mail
- E-mail 5. (2-19-04 3:53 p.m.): Disclose all
- E-mail 6. (2-19-04 1:03 p.m.): Disclose 1st sentence, the header and signature information; the balance of text of the e-mail is exempt from disclosure under ACP legal strategy
- E-mail 7. (2-19-04 3:31 p.m.): 2nd sentence of the e-mail text is exempt from disclosure under ACP legal strategy and the home phone and cell phone number; all other information contained in the e-mail is to be disclosed.
- E-mail 8. (2-19-04 1:03 p.m.): Duplicate of “E-mail 6.” Same action.
- E-mail 9. (2-19-04 1:03 p.m.): Duplicate of “E-mail 6.” Same action.

June 7, 2004 Executive Session Workshop Minutes:

Total number of pages: 4 (4 pages of minutes identified as Exhibit G24, G25, G26 in the Custodian’s Statement of Information and Pg. 4)

Asserted exemptions: Attorney-client privileges (ACP); potential litigation/strategy; privacy of personnel issues

G25 (redacted portions consist of 5 paragraphs bracketed as #1; 2 paragraphs bracketed as #2)

- #1: Disclose all 5 paragraphs as the custodian has not met the burden of proving the asserted exemptions
- #2: Both paragraphs found to be exempt from disclosure as ACP and anticipated litigation

G26 (redacted portions consist of 6 paragraphs bracketed as #3; 2 paragraphs bracketed as #4)

- #3: Disclose all except paragraph 3 which was found to be exempt from disclosure as ACP and anticipated litigation
- #4: Disclose in its entirety as the custodian has not met the burden of proving the asserted exemptions

Pg. 4 (entire page not disclosed and unexplained defense on index)

- Disclose this page in its entirety.

December 20, 2004 Executive Session Workshop Minutes

Total number of pages: 10 (10 pages of minutes identified as Exhibit G27 through G35 in the Statement of Information – redactions appeared on G34 (Pg. 8 and 9) which are 5 paragraphs bracketed as #1, 7 paragraphs bracketed as #2 and 4 paragraphs bracketed as #3)

Asserted Exemptions: ACP; contract negotiations; contract-redevelopment negotiations; potential litigation/strategy

G34 (Pg. 8) #1:

- Disclose all paragraphs in this section with the exception of the 1st sentence in paragraph 2 which is exempt from disclosure as ACP anticipated litigation

G34 (Pg.8 and 9) #2:

- Disclose all paragraphs in this section, as the custodian has not met the burden of proving the asserted exemptions.

G34 (Pg. 9) #3:

- Not disclosable: 1st sentence in paragraph 1 and all of paragraph 2 and 3 as the information would be exempt from disclosure under 1.1 of OPRA – advantage to bidders
- Disclose the balance of the text contained in #3 as the custodian has not met the burden of proving the asserted exemptions.

Martin O'Shea v. West Milford Board of Education (2004-93)

In Attendance: Council Members: Vincent Maltese, Diane Schonyers, DeAnna Minus-Vincent, Executive Director - Paul Dice, Assistant Executive Director - Gloria Luzzatto, Catherine Starghill – In-House Counsel, and Dan Reynolds – Deputy Attorney General

Distributed case summary to Council Members and attendees; reviewed events bringing case before the Council for in camera review of documents. Read the applicable laws reasons cited by the Custodian for non-disclosure of the handwritten notes. Asserted exemptions: Advisory, consultative and deliberative material and common law

Review of the unredacted document contained in the sealed envelope presented to the Council during the open session:

- Handwritten notes of the Secretary, Steve Cea taken at the June 22, 2004 executive session – 1 page
- The Council wants to review the draft executive session minutes of this meeting that the Custodian made available to the Complainant in responding to the OPRA request before making a determination. Given the additional information needed and the time constraints attached to the remand, the Council indicated that more time was needed before they could make a determination on the handwritten notes.

Reference was made to the 10/6/05 letter from O'Shea to the GRC regarding how the Council executed the remand of this case from the Appellate Court.

Maltese: What is our response to the 10/6/05 letter from Mr. O'Shea regarding how we executed the remand of this case from the Appellate Court? He commented that pursuant to OPRA we are a quasi adjudicatory body and as such feel that the Chairman can discuss with the Executive Director strategies issues of cases that are before the Court when there are time constraints and that the Chair person can authorize the Executive Director to take action in behalf of the Council.

Reynolds: Executive Director has the right to deal with litigation issues that have time constraints and authorize the application of a motion before the Court before the case is submitted to the appellate division for adjudication.

Maltese: Can we ask the Court for an extension so that we can get a copy of the draft executive session minutes, which the Custodian made available to the Complainant?

Reynolds: This would not be unreasonable to ask for an extension.

Closed Session for the in camera inspections commenced at 9:50 a.m. and concluded at 1:25 pm

Respectfully submitted,



DeAnna Minus-Vincent, Secretary

Dated: November 10, 2005