

DRAFT MINUTES OF THE GOVERNMENT RECORDS COUNCIL
November 13, 2003

The meeting was called to order at 9:30 a.m. at the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Mr. Dice called the roll:

Present: Chairman Vincent Maltese, Joe Monzo (designee of Commissioner Susan Bass Levin, Department of Community Affairs), Virginia Hook, Bernard Spigner, and Diane Schonyers, (designee of Commissioner William Librera, Department of Education)

Mr. Maltese read a resolution to convene in closed session to receive legal advice concerning the complaints to be adjudicated that day. Ms. Hook moved to adopt the resolution that was seconded by Mr. Spigner. All members present approved the motion. The Council met in closed session from 9:35 to 10:50 a.m.

The Council reconvened in open session at 10:45 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. The Open Public Meeting Act statement was read and attendees recited the Pledge of Allegiance.

Mr. Dice called the roll:

Present: Chairman Vincent Maltese, Joe Monzo (designee of Commissioner Susan Bass Levin, Department of Community Affairs), Virginia Hook, Bernard Spigner, and Diane Schonyers, (designee of Commissioner William Librera, Department of Education)

Also Present: Deputy Attorney General Barbara Conklin, Juliet Wyne, Acting Executive Director Paul Dice and Staff Associates Chris Malloy, Donna Siminski, Anthony Carbabelli, Gloria Luzzatto, and Brigitte Lillie.

Mr. Maltese asked Mr. Dice to review personnel matters. Mr. Dice reviewed the staff changes including the addition of Anthony Carbabelli and Gloria Luzzatto as new case managers and Brigitte Lillie as an administrative assistant.

Mr. Maltese called for the adoption of minutes from the public meeting of October 9, 2003. A motion to accept the minutes was made by Mr. Monzo and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Monzo, Ms. Schonyers, Mr. Spigner and Mr. Maltese.
Nays: None

Mr. Maltese called for the adoption and release to the public of the closed session minutes from October 9, 2003. A motion to accept the minutes was made by Mr. Spigner and seconded by Ms. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Monzo, Ms Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Mr. Maltese asked for the Executive Director's Report. Mr. Dice distributed a copy of the report to the Council and stated that copies are available for public inspection.

Mr. Dice gave an overview of the number of inquiries, web-site hits and cases that were handled by the GRC.

Mr. Dice reviewed communications received by the GRC.

Mr. Maltese asked Deputy Attorney General Barbara Conklin to explain a request for the council to reconsider the action taken in the Lakewood case. Ms. Conklin explained the motion for reconsideration and the penalty imposed on the Lakewood clerk. Mr. Maltese asked that the motion for reconsideration to be placed on the December 2003 agenda. Roll call was taken to confirm that the issue of reconsideration would be heard at the December meeting.

Ayes: Ms. Hook, Mr. Monzo, Ms Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Minuskin vs. Department of Law and Public Safety, Division of Law (2202-88)

Mr. Dice reviewed the complaint and recommended that the Council find that:

1. The custodian provided access to the appraisal done for Aftab on October 3, 2003, citing DOT regulations permitting access to this record at the conclusion of the litigation (in this case, on July 12, 2003)
2. DOT's appraisal report is confidential pursuant to N.J.A.C. 16:1A-3.2(a)2 as made applicable to OPRA pursuant to Executive Order #21 (July 8, 2002) and is, therefore, confidential pursuant to OPRA until such time as all acquisitions for the road project in question are complete.
3. Neither facts nor case law support the requester's claim that confidentiality has been waived and, therefore, no hearing is appropriate.
4. Although the portion of the Complaint seeking access to the records can be dismissed, the Executive Director recommends that the Council reserve decision on custodian penalty and ask the custodian to fully explain all efforts made to locate the documents sought by the requestor and explain why the Aftab appraisal

was not discussed in the custodian's October 15, 2002 reply to the OPRA request, the custodian's SOI or any subsequent Division correspondence, until March 2003.

A discussion ensued regarding existing regulations.

Mr. Maltese asked for a motion to request additional information and certification from the custodian to be received by the Government Records Council no later than December 1, 2003. The custodian was asked to supply the following:

1. Why was the appraisal not located until March 4, 2003?
2. What gave rise to the custodian finding it on March 4, 2003?
3. Why did the custodian not release the appraisal following conclusion of the condemnation litigation on July 12, 2003?
4. How was the custodian notified that the condemnation litigation ended on July 12, 2003?

In addition, the custodian shall submit a certification explaining why the Council should not consider his actions as having knowingly and willfully violated the Open Public Records Act in the totality of the circumstances.

No action was taken on any of the points of the complaint at the November 13, 2003 meeting. The entire case will be addressed at the December meeting.

The above was adopted by roll call:

Ayes: Ms. Hook, Mr. Monzo, Ms Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Jackson vs. Kean University (2002-98)

Mr. Dice outlined the issues in the complaint and recommended that the Council find that:

1. Kean University should disclose existing documentation that is responsive to the request with appropriate redactions pursuant to OPRA provisions. Such disclosure should be made within ten business days following receipt of the Council's Order.
2. The remaining portions of the complaint should be dismissed. In dismissing these portions of the complaint, the Council should find that:
 - a. The University is not responsible for developing a list of government documents maintained by the organization.

- b. There is no indication that the form lacks compliance with OPRA. Further, there is neither legislative intent nor statutory obligation for the university to prepare a list of government documents.
 - c. The custodian responded to the request in a timely manner given that the response was made within the extension of time granted by the requester.
3. The custodian's alleged statement that the University did not have an obligation to create a document was apparently in response to a different OPRA request and is not before the GRC for adjudication.
 4. A documents physical location should not be a determining factor to decide whether or not a record should be disclosed.
 5. Leave of absence information should be disclosed.

Mr. Maltese asked Deputy Attorney General Juliet Wynne to make any additional comments pertaining to this complaint.

A motion to accept the Acting Executive Director's recommendations was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Monzo, Ms Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Loigman vs. Monmouth County Prosecutor's Office (2003-44)

Mr. Dice provided an overview of the issues in the complaint and recommended that the council find:

1. The timeliness of the custodian's response regarding access to the documentation that was not in dispute must be addressed in two sections:
 - a. The requester received the 2003 name and -salary information seven-business days following the request.
 - b. The requester received the 2002 name and salary information 26 days following the request. The custodian stated that this was an error that her office found after receiving the requester's Denial of Access Complaint. The custodian released the 2002 name and salary information three days following receipt of the Denial of Access Complaint.

The Executive Director finds that the custodian violated N.J.S.A. 47:1A-5(i) by not providing the 2002 salary and name information to the requester within the prescribed seven business days. However, the custodian's actions do not rise to the level of a knowing and willful violation given the custodian's explanation regarding her confusion

surrounding the salary negotiations. She corrected her mistake within three days of being notified of same.

2. The custodian has provided the requested list of all detectives in the Office of the Monmouth County Prosecutor showing as to each their names and salaries for calendar years 2002 and 2003.
3. While the custodian is not required to disclose the unredacted employment application, pursuant to N.J.S.A. 47:1A-10, she must disclose the requested “law enforcement experience (employer and length of service) prior to employment by the Monmouth County Prosecutor” to the extent it discloses conformity with specific experiential, educational or medical qualifications required for the position of detective.
4. The custodian has ten business days from the date of receipt of the Council’s Order to comply with #3 above. The custodian or counsel of record shall also provide the Acting Executive Director with written notice of compliance within said timeframe.
5. The complaint should be dismissed upon the custodian’s compliance with “3” and “4” above.

Mr. Maltese recommended that the custodian address the two areas of violation with certification as to her actions to be provided to the Government Records Council no later than December 1, 2003.

Mr. Maltese asked for two motions to be made:

1. Require the custodian to disclose the “law enforcement experience (employer and length of service) prior to employment by the Monmouth County Prosecutor” to the extent it represents conformity with specific experiential, educational or medical qualifications required for the position of detective. Such disclosure should be made pursuant to the provisions of N.J.S.A. 47:1A-10.
2. Order the custodian to submit a certification to the Council detailing why the 2002 name and salary information was not disclosed in a timely manner and why the delay should not be considered by the Council as a knowing and willful violation of the Open Public Records Act in the totality of the circumstances. Said certification shall be submitted to the Government Record Council’s Acting Executive Director Dice no later than December 1, 2003.

Ms. Schoyners made the motions. Mr. Monzo seconded the motions and they were adopted on roll call:

Ayes: Ms. Hook, Mr. Monzo, Ms Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Katinsky vs. Township of River Vale (2003-68)

Mr. Dice reviewed the details of the complaint and recommended that the Council find:

1. Find that the custodian provided the requested documents to the requester and certified they were complete, correct and contained no redactions.
2. Find that the integrity of public records under these circumstances is outside the jurisdiction of the Open Public Records Act.
3. Dismiss the complaint.

A motion to accept the Acting Executive Director's recommendation was made by Ms. Hook. The motion was seconded by Ms. Schoyners and adopted on roll call:

Ayes: Ms. Hook, Mr. Monzo, Ms Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Blau vs. Union County, Office of the County Clerk (2003-75)

Mr. Dice reviewed the details of the complaint and identified the issue as the cost of the records requested. Mr. Dice recommended that the Council find:

1. Find that the per page charge for **paper** copies of records on file with the county clerk is \$2.00 per page pursuant to N.J.S.A. 22A:2-29. N.J.S.A. 47:1A-9(b) indicates that OPRA will not abrogate other statutes.
2. Find that the fee for digital copies of records on file with the county clerk is dictated by N.J.S.A. 47:1A-5.
3. Order the custodian to advise the Acting Executive Director and the requester by a date certain the cost of providing requestor digital copies, along with a detailed explanation of the basis for the cost. If the requestor agrees to the charge in writing, the Acting Executive shall provide the custodian 10 business days within which to provide requestor the records. If the requester advises in writing that he is challenging the lawfulness of the charge under OPRA, the Acting Executive Director will afford the custodian the opportunity to reply and shall prepare the issue for adjudication by the Council.
4. Find that the request for copies "on a continuing basis" is not valid under OPRA and that the requestor must submit a new OPRA request to the custodian for each new batch of documents sought.
5. Find that the custodian did not provide a timely response to the request for digital copies of the clerk's records. A verbal denial of access was provided 10 business days after the request. The deputy custodian made written inquiry to requestor as to format 15 business days later; the custodian made an offer to provide copies at \$2 per page, 17 business days after the request. The custodian's initial response should have been in writing as soon as possible but no later than seven business days following the request. N.J.S.A. 47:1A-5i.

6. Find that the custodian's actions, however, do not constitute a knowing and willful violation of OPRA.

A discussion ensued regarding the charges for electronic copies and. Ms. Conklin reviewed that OPRA provides for the cost of electronic copies.

Mr. Maltese asked for a motion for the following:

1. The per page charge for **paper** copies of records on file with the county clerk is \$2.00 per page pursuant to N.J.S.A. 22A: 2-29.
2. The fees for **digital** copies of records on file with the county clerk is dictated by N.J.S.A. 47:1A-5.
3. The custodian is to advise the Acting Executive Director and the requester by December 1, 2003 the cost of providing the requestor digital copies, along with a detailed explanation of the basis for the cost.
4. The request for copies "on a continuing basis" is not valid under OPRA and that the requestor must submit a new OPRA request to the custodian for each new batch of documents sought.
5. Submit a certification to the Council detailing why the denial of access response was not provided in a timely manner and why the delay should not be considered by the Council as a knowing and willful violation of the Open Public Records Act in the totality of the circumstances. Said certification shall be submitted to the Government Record Council's Acting Executive Director Dice no later than December 1, 2003.

A motion was made by Ms. Schonyers and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Monzo, Ms Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Blau vs. Somerset County (2003-86)

Mr. Dice reviewed the issues of the complaint and recommended that the Council:

1. Find that the per page charge for **paper** copies of records on file with the county clerk is \$2.00 per page pursuant to N.J.S.A. 22A:2-29. N.J.S.A. 47:1A-9(b) indicates that OPRA will not abrogate other statutes.
2. Find that the fee for digital copies of records on file with the county clerk is dictated by N.J.S.A. 47:1A-5.
3. Order the custodian to advise the Acting Executive Director and the requester by a date certain the cost of providing requestor digital copies, along with a detailed explanation of the basis for the cost. If the requestor agrees to the charge in

writing, the Acting Executive shall provide the custodian 10 business days within which to provide requestor the records. If the requester advises in writing that he is challenging the lawfulness of the charge under OPRA, the Acting Executive Director will afford the custodian the opportunity to reply and shall prepare the issue for adjudication by the Council.

4. Find that the requestor's letter of June 17, 2003 was a valid written request pursuant to OPRA.
5. Find that the custodian's response of June 27, 2003 was one business day late but that this delay does not rise to the level of a knowing and willful violation of OPRA.
6. Find that the request for copies "on a regular monthly basis" is not valid under OPRA and that the requestor must submit a new OPRA request to the custodian for each new batch of documents sought.

Mr. Maltese asked for a motion to accept the amended Acting Executive Director's recommendation to find:

1. The per page charge for **paper** copies of records on file with the county clerk is \$2.00 per page pursuant to N.J.S.A. 22A: 2-29.
2. The fees for **digital** copies of records on file with the county clerk is dictated by N.J.S.A. 47:1A-5.
3. The custodian is to advise the Acting Executive Director and the requester by December 1, 2003 the cost of providing the requestor digital copies, along with a detailed explanation of the basis for the cost.
4. The request for copies "on a continuing basis" is not valid under OPRA and that the requestor must submit a new OPRA request to the custodian for each new batch of documents sought.
5. The requester's letter of June 17, 2003 was a valid written request pursuant to OPRA.
6. The custodian's response was one business day late but the delay did not rise to the level of a knowing and willful violation of OPRA.

The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Monzo, Ms Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Mr. Maltese asked for a status report on pending cases. Mr. Dice provided an update of on the progress of several complaints.

Mr. Maltese asked if there was any new business. No new business was presented.

Mr. Maltese opened the floor to public comment.

William Check addressed the Council regarding the “Matrix System” for Homeland Security. Mr. Maltese advised that Mr. Dice would speak to him in more depth outside of the meeting.

Andrew Glasgow addressed the Council about the delay in prolonged requests and the negative impact it has on businesses. He also stated that the Council set the standard for knowing and willful too high.

Mr. Glasgow objected to the determination on standing OPRA requests and noted that he believed that the GRC staff presentations indicated that such requests were provided for under the Act.

Mr. Maltese invited Mr. Glasgow to submit his recommendations to the Council for their review.

Hearing no more public comment, Mr. Maltese called for a motion to close the public portion, and a motion to adjourn at 12:20 p.m. The motion was offered by Mr. Spigner and seconded by Mr. Monzo. The motion was approved by roll call:

Ayes: Ms. Hook, Mr. Monzo, Ms. Schoyner, Mr. Spigner and Mr. Maltese

Nays: None

Respectfully submitted,

/s/ Virginia Hook, Secretary