

DRAFT
Minutes of the Government Records Council
Closed Session of October 28, 2005

First Session

The Council convened in closed session at 10:10 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Vice Chair Diane Schonyers (designee of Acting Commissioner Davy, Department of Education) DeAnna Minus-Vincent (designee of Acting Commissioner Charles Richman, Department of Community of Affairs), Robin Berg Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Case Managers: Chris Malloy, Kimberly Gardner, Jennifer Arozamena, Colleen McGann, Dara Lownie and Marion Davies.

Absent: Vincent Maltese and Mitchell Fishman

The Council sought legal advice on the following items listed in the Closed Session Resolution:

1. Division of Law's Opinion 03-0095 – "Government Records Council Award of Attorney's Fees to a Requestor Who Prevails in a Proceeding Under OPRA": Discussion of opinion and possible release of opinion to the public

The Council received legal advice on the possible public release of the Division of Law's Opinion 03-0095. The Council decided not to waive its attorney-client privilege by releasing the legal advice to the public.

2. Executive Director's response on Martin O'Shea v. Township of West Milford (2004-87, 2004-207/2005-31) and Ross Kushner v. West Milford (2004-111)

Legal advice provided to the Council on the Council's discretion to authorize the Executive Director and the GRC staff to act on its behalf as was done in responding to the aforementioned cases.

3. Joseph Haelig v. Seaside Heights Business Improvement District (2005-50)

Legal advice provided to the Council on the Business Improvement District as a public agency pursuant to OPRA.

Ms. Schonyers asked for a motion to adjourn the closed session. Ms. Tabakin offered the motion, which was seconded by Ms. Minus-Vincent. All members present approved the motion.

The closed session concluded at 10:35 a.m.

Respectfully Submitted:

DeAnna Minus-Vincent, Secretary

Dated: _____

DRAFT
Minutes of the Government Records Council
Closed Session Meeting of October 28, 2005

Second Closed Session – In Camera Proceedings

The Council convened in closed session at 11:20 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey.

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

John Paff v. Township of Plainsboro (2005-29)

In Attendance: Council Members: Vice-Chair Diane Schonyers, Secretary DeAnna Minus-Vincent, Robin Berg Tabakin; GRC Staff: Executive Director - Paul Dice, Assistant Executive Director - Gloria Luzzatto, Colleen McGann - Case Manager, Catherine Starghill – In-House Counsel; Deputy Attorney General - Debra Allen

Distributed case summary to Council Members and staff; reviewed events bringing case before the Council for *in camera* review of documents; read applicable laws and regulations cited by the Custodian.

Reviewed the one page unredacted minutes of the Executive Session for October 27, 2005 with the redacted minutes provided to the Complainant. The Council concluded that while the Custodian had not presented the correct lawful basis for non-disclosure, the Council had an obligation and duty to apply the provisions of the OPRA. The Council concluded that the provisions of N.J.S.A. 10:4-12.b.(8) of the Open Public Meetings Act and N.J.S.A. 47:1A-9 were applicable in this case and the redacted portions of the minutes were not disclosable.

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

In Attendance: Council Members: Vice-Chair Diane Schonyers, Secretary DeAnna Minus-Vincent, Robin Berg Tabakin; GRC Staff: Executive Director - Paul Dice, Assistant Executive Director - Gloria Luzzatto, Catherine Starghill – In-House Counsel; Deputy Attorney General - Debra Allen

Distributed case summary to Council Members and staff and copy of the draft executive session minutes of June 22, 2004; reviewed events bringing case before the Council for *in camera* review of documents. Read the applicable laws/reasons cited by the Custodian for denial of access to 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 at the October 13, 2005 meeting and the draft executive session minutes of June 22, 2004 provided to the Complainant:

- Handwritten notes of the Secretary, Steve Cea taken at the June 22, 2004 executive session – 1 page
- Draft executive session minutes of June 22, 2004

The Council concluded that the handwritten notes were ACD as the notes represented opinions of the author and did not reflect the Board’s opinion as set forth in the draft minutes.

The Council noted that its determination a revision of the Council’s previous decision and sought legal advice on the procedure for implementing a revised decision.

Closed Session for the *in camera* inspections commenced at 11:20 a.m. and concluded at 12:15 p.m.

Respectfully submitted,

DeAnna Minus-Vincent, Secretary

Dated:

DRAFT Minutes of the Government Records Council

November 10, 2005 Public Meeting - Open Session

The meeting was called to order at 9:12 a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Davies called the roll:

Present: Mr. Maltese, Ms. DeAnna Minus-Vincent (designee of Acting Commissioner Charles Richman, Department of Community of Affairs), Ms. Robin Berg-Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Dara Lownie, Jennifer Arozamena, Colleen McGann and Marion Davies.

Not In Attendance: Ms. Schonyers (designee of Acting Commissioner, Lucille Davy, Department of Education)

Mr. Maltese called for a motion to go into closed session to discuss *in camera* decisions and other legal advise. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by a unanimous vote.

The Council met in closed session from 9:16 a.m. to 10:45 a.m.

Open Session reconvened at 10:50a.m.

The pledge of allegiance was recited.

Ms. Luzzatto called the roll:

Present Council Members: Mr. Maltese, Ms. Minus-Vincent, Ms. Tabakin.

Not In Attendance: Ms Schonyers

Executive Director's Report:

Mr. Dice stated that the GRC will be attending the New Jersey League of Municipalities Convention in Atlantic City. The OPRA outreaches for custodians have begun to be scheduled for 2006 and we will close 2005 with a total of 28 outreaches.

Mr. Dice discussed correspondence regarding closed session minutes which are now posted for the public's consumption on our website.

Minutes:

Mr. Maltese called for a motion to accept the Open and Closed session minutes for September and October 2005. A motion was made by Ms. Tabakin and seconded by Ms.

Minus-Vincent. The motion passed unanimously.

Administrative Dispositions – Council Consent:

Mr. Maltese presented the following Administrative Case Dispositions:

1. Claudine Scozzari v. NJ Department of Transportation 2005-152 Israel Rodriques v. NJ State Parole Board - 2005-153
2. Nick Sunday v. NJ Council on Arts - 2005-155
3. Steven Biss v. Passaic County Sheriff's Office 2005-157
4. Martin O'Shea v. Township of West Milford 2005-187
5. Paul Graupe v. City of Clifton - 2005-189
6. Joy DeSanctis v. Township of Ocean – 2005-194
7. John Paff v. Borough of Metuchen 2005-201

Mr. Maltese called for a motion to accept the Executive Director's Administrative Case Dispositions. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

Mr. Dice stated that the Council will be re-opening the Libertarian Party v. the Division of Youth and Family Services 2004-114 for reconsideration.

Mr. Maltese discussed the *in camera* cases that would be heard at the meeting. He stated that the process time is consuming however, each case requires proper consideration. Mr. Dice stated that a new *in camera* process is being considered which would expedite the *in camera* process.

John Paff v. Borough of Somerville 2005-55

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director at the October 13, 2005 meeting.

At the November 10, 2005 public meeting, the Government Records Council ("Council") considered the November 4, 2005 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian has complied with the Council's October 13, 2005 decision.

James Colby v. Pittsgrove Township (Board of Fire Commissioners) 2005-88

Mr. Malloy reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended the Council find that:

1. Pursuant to the fact that the record requested did not exist at the time of the request, there would not have been an unlawful denial of access except that the Custodian's delay in responding to the Complainant's request resulted in a "deemed" denial of access pursuant to N.J.S.A. 47:1A-5.i.
2. The Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances on the basis that the Custodian responded to the request on the eighth business day, one day later than the OPRA allows.
3. The Council has ruled that a form is not necessary to make a request for records. Therefore, a lack of form did not create a Denial of Access to other records, giving the Government Records Council the authority to act.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. Motion passed unanimously.

John McCormack v. NJ Department of Treasury 2005-102

Ms. McGann reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in 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. Based on the fact that, while Custodian's reasons for denying access to the requested monthly reports are compelling there is insufficient evidence to determine if the documents are exempt from access. Therefore, the Council should perform an *in camera* inspection of the requested reports.
2. In view of the facts that the Custodian in this case did inform the Complainant as to the reasons for the Denial of Access and there is no evidence that the Custodian's actions "had a positive element of conscious wrongdoing" or were, "intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional" it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of the OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Starghill added an amendment to the findings and recommendations stating that the issue of knowing and willful should read an unreasonable denial of access according to the statutory language of OPRA not unlawful, which is a different legal standard.

Mr. Maltese called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. Motion passed unanimously.

John Brennan v. Monmouth County Prosecutor 2005-119

Mr. Malloy reviewed the parties' respective positions and 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:

Based on the Custodian's certification, as well as Janeczko there was no unlawful denial of access to the June 27, 2003 letter from Robert Linton to Prosecutor Kaye as the Custodian has met their burden of proving that the letter is a "criminal investigatory record" and therefore not required to be made, maintained or kept on file pursuant to the OPRA.

A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin not to adopt the Executive Director's Findings and Recommendations, but instead concluded that the requested letter from Mr. Linton be disclosed with necessary redactions pursuant to the Open Public Records Act ("OPRA") because the letter preceded the investigation and was determined not to be part of the investigation. Therefore, the Custodian is to disclose the requested letter with necessary redactions pursuant to the OPRA and simultaneously provide written notice to the Executive Director of compliance. The motion passed unanimously.

Eric Wiggins v. Atlantic County Justice Facility 2005-142

Ms. Lownie reviewed the parties' respective positions and 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 that the Council find:

Pursuant to N.J.S.A. 47:1A-5.g., an unlawful denial of access cannot be substantiated without proof of the OPRA request that is subject in this complaint therefore this case should be dismissed.

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. Minus-Vincent. Motion passed unanimously.

Brian McCrone v. Burlington County Prosecutor's Office 2005-146

Ms. Lownie reviewed the parties' respective positions and 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:

The Custodian has borne the burden of proving that the denial of access was authorized by law due to the criminal investigatory records exemption pursuant to N.J.S.A. 47:1A-1.1 and released all other records responsive to the request.

Mr Maltese called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The Motion passed unanimously.

Tina Renna v. County of Union 2005-178 and 2005-180

Ms. Lownie reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended the Council find that:

1. The Custodian has born the burden of proving that the denial of access was lawful pursuant to N.J.S.A. 47:1A-6.
2. The Custodian has provided immediate access to bills as prescribed under N.J.S.A. 47:1A-5.e.
3. The Custodian has properly responded to the September 6, 2005 and September 20, 2005 requests within the statutorily required seven (7) business days pursuant to N.J.S.A. 47:1A-5.i.
4. The Custodian's actions to not rise to a knowing and willful violation of OPRA and unreasonable denial of access under the totality of circumstances pursuant to N.J.S.A. 47:1A-7.e.

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

Gilda Gill v. Salem County Clerk's Office 2005-185

Ms. Lownie reviewed the parties' respective positions and 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:

In accordance with N.J.S.A. 47:1A-1 et seq., the Custodian should disclose the document(s) responsive to the request, with appropriate redactions and a legal justification for same, or submit a legal certification stating that the document does not exist to the Executive Director within ten (10) calendar days of receipt of the Council's decision.

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. Minus-Vincent. Motion passed unanimously.

Robert Ross v. Atlantic County Prosecutors Office 2005-191

Mr. Malloy reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended that the Council find that:

1. The Complainant has a Superior Court case pending which also addresses the subject matter of this Denial of Access Complaint.
2. The Council does not have jurisdiction to make a determination in this Complaint pursuant to Mosee v. Atlantic City Police Department, GRC Complaint No. 2005-33 as well as N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7(g).

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

Mr. Dice stated that at the next meeting the Council will have for its review and vote an Advisory Opinion on Prevailing Party and Subsequent Attorneys Fee. Mr. Dice also stated that he would also give the Council a report on a similar Advisory Opinion on Knowing and Willful violations.

Mr. Dice also addressed the discontinuing of the use of the Matrix.

Anne Rademacher v. Borough of Eatontown – 2004-18

During the Closed Session, the Council conducted the *in camera* inspection of the unredacted report prepared for the Borough of Eatontown by the New Jersey Professional Management Company sought in the OPRA request.

A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin to order that the Custodian disclose the requested Management Study for the Borough of Eatontown – Task I Organizational Structure, except the information as specifically set forth below which is exempt from disclosure as “inter-agency or intra-agency advisory, consultative or deliberative material” pursuant to N.J.S.A. 47:1A-1.1.

The motion passed unanimously.

Management Study For the Borough of Eatontown (Study) – Task I Organizational Structure:

The Study, Task I consists of twenty-seven (27) total pages: 4 pages include the cover page, table of contents and Task II table of contents, the written report with numbered pages 1 through 16, and 7 pages identified as Appendix A through Appendix G.

1. **Page 2:** Redact all sentences after the first sentence in paragraph one, the third sentence in paragraph two, the second and third sentences in paragraph three.
2. **Page 3:** Redact the third and fourth sentences in paragraph one and all of paragraph three.
3. **Page 4:** Redact paragraph one, the first, second and fourth sentences in paragraph two, and paragraph five.
4. **Page 5:** Redact paragraph two, the third and fourth sentences in paragraph three, the second sentence in paragraph five, and the second sentence in paragraph six.
5. **Page 6:** Redact the last sentence in paragraph one after “ADP” and the last sentence in paragraph four.
6. **Page 7:** Redact paragraph one, the fifth sentence in paragraph two and the second sentence in paragraph three.
7. **Page 8:** Redact the second, fifth, sixth, seventh and eighth sentences in paragraph two, the second sentence after “such” and the first four words in the fourth sentence in paragraph three.
8. **Page 9:** Redact the paragraph on this page.
9. **Page 10:** Redact paragraph five and the first sentence in paragraph six.

10. **Page 11 and 12:** Redact the third sentence in paragraph one, the second sentence in paragraph three, all of paragraph four, the sixth sentence in paragraph five on page 11 and ending on page 12.
11. **Page 13:** Redact paragraph three.
12. **Page 14:** Redact the two paragraphs on this page.
13. **Page 15:** Redact the second sentence in paragraph two, the second sentence in paragraph three and the last sentence in paragraph four.
14. **Page 16:** Redact the last sentence in paragraph two.
15. **Appendices A through G:** The Council concluded that it was unclear which charts are proposed or current tables of the organization referenced in Task I and therefore, the Custodian is to provide access to the current tables of the organization contained in Appendices A through G with redactions of proposed organization changes.

Public Comments:

Michael Rizzo – Fairfield, NJ.

Mr. Rizzo – Title Search Industry. Discussed his concerns with OPRA and the title search industry.

Martin O’Shea – West Milford, NJ.

Mr. O’Shea distributed eight (8) copies of two (2) letters referencing his denial of access complaints.

John Paff – Somerville, NJ

Mr. Paff discussed the custodian consequence policy. Mr. Paff also spoke on a letter from Senator Martin to the Government Records Council.

Mr. Maltese called for motion to go into closed session for the purpose of discussing two *in camera* cases. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. Motion passed unanimously.

The Council met in closed session from 12:00 noon until 12:55.

Mr. Maltese called for a motion to go back into open session. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

Resume Open Session 1:05 pm

Mr. Maltese stated that there would be discussion on the following cases:

1. John Paff v. Department of Labor 2003-128
2. Ann Glasser v. Stockton College 2004-194

Ann Glasser v. Stockton College 2004-194

During closed session the Council conducted the *in camera* inspection of the unredacted consultant's report performed by Victor Augustia on July 20 and 21, 2004 pertaining to the media center at the Richard Stockton College of New Jersey October 27, 2004 sought in the OPRA request.

After completing the *in camera* review of the unredacted record in closed session, the Council concluded that, all the redacted information in the document was properly withheld pursuant to N.J.S.A. 47:1A-10 as the information related to employee evaluations, managerial recommendations for disciplinary action and terminations with the exception of the redaction on Page 1 of the report in the upper right hand corner for which there was no lawful basis for not disclosing same. The Council noted further that the redacted document was stamped "confidential" on each page of said report however; the unredacted document did not contain a "confidential" stamp on all pages.

A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent to accept the Council's *in camera* conclusions.

Therefore by a unanimous vote, the Council finds that pursuant to N.J.S.A. 47:1A-10 there was a lawful basis for the denial of access to all the redacted information contained in the requested document with the exception of the information appearing in the upper right hand corner of Page 1 of said document and that the Custodian is to provide the Executive Director with an explanation of why the redacted document was stamped "confidential" on each page of said report, but the unredacted document did not contain a "confidential" stamp on all pages.

John Paff v. Department of Labor 2003-128

During the closed session the Council conducted the *in camera* inspection of the two unredacted records dated August 17, 2000 and September 1, 1999.

After completing the *in camera* review of the unredacted records in closed session, the Council concluded the following:

1. **Document - Letter Dated August 17, 2000**: Disclose the name and address, to which the letter is written, the date of the letter, and the salutation including the sender's name pursuant to N.J.A.C. 12:15-2.1 and 2.2(a) 3; all other information

in the document is exempt from disclosure pursuant to N.J.S.A. 43:21-11.g. and N.J.A.C. 12:15-2.1 thru 2.4.

2. **Document – Letter Dated September 1, 1999:** Disclose the name and address in the letterhead, the date, the method of delivery, and the signature including the sender’s name under the signature pursuant to N.J.A.C. 12:15-2.1 and 2.2(a) 3; all other information in the document is exempt from disclosure pursuant to N.J.S.A. 43:21-11.g. and N.J.A.C. 12:15-2.1 thru 2.4.

The Custodian is to provide the Complainant access to the requested records as set forth herein within ten (10) business days from receipt of the decision and provide confirmation to the Executive Director that the Custodian has complied with the Council’s decision.

Mr. Maltese called for a motion to accept the Councils conclusion from the *in camera* inspection. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin the motion passed unanimously.

Mr. Maltese called for a motion to adjourn. Motion passed unanimously.

Meeting adjourned 1:15 pm

Respectfully submitted,

Dated: _____

DRAFT
Minutes of the Government Records Council
Closed Session of November 10, 2005

First Closed Session

The Council convened in the first closed session at 9:16 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 Commissioner Susan Bass Levin, Department of Community of Affairs), Robin Berg Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Jennifer Arozamena, Colleen McGann, Dara Lownie and Marion Davies.

Absent: Diane Schonyers (designee of Acting Commissioner Davy, Department of Education) and Mitchell Fishman.

The Council sought legal advice regarding the following matters, and conduct an *in camera* inspection listed in the Resolution for Closed Session:

1. **Legal advice in response to correspondence from John Paff dated October 4, 2005 on closed session minutes**
Legal advice provided to the Council regarding the preparation of closed session minutes pursuant to the Open Public Meetings Act (“OPMA”). Council was informed that the GRC staff is meeting with the Division of Law on OPMA to ensure the Council is in compliance.
2. **Legal advice on the “Matrix”**
Legal advice provided to the Council regarding the “Matrix” and its application under OPRA.
3. **James Colby v. Pittsgrove Township (2005-88)**
Legal advice provided to the Council on the provision of N.J.S.A. 47:1A-5.f. in this case.

In Camera Proceedings

Anne Rademacher v. Borough of Eatontown (2004-18)

In Attendance: Council Members: Chairman Vincent Maltese, Secretary DeAnna Minus-Vincent, Robin Berg Tabakin; GRC Staff: Executive Director - Paul Dice, Assistant Executive Director - Gloria Luzzatto, Chris Malloy - Case Manager, Catherine Starghill – In-House Counsel; Deputy Attorney General - Debra Allen.

Distributed case summary to Council Members and staff; reviewed events bringing case before the Council for *in camera* review of documents; read applicable section of OPRA cited by the Custodian. It was noted that Task 3 was released to the Complainant and Task 1 and 2 were not disclosed and these documents are the subject of the *in camera* review by the Council. The Council concluded that portions of the documents were exempt from disclosure as “inter-agency or intra-agency advisory, consultative or deliberative material” pursuant to N.J.S.A. 47:1A-1.1 as specifically noted below:

Management Study For the Borough of Eatontown (Study) – Task I

Organizational Structure:

The Study, Task I consists of twenty-seven (27) total pages: 4 pages include the cover page, table of contents and Task II table of contents, the written report with numbered pages 1 through 16, and 7 pages identified as Appendix A through Appendix G.

1. **Page 2:** Redact all sentences after the first sentence in paragraph one, the third sentence in paragraph two, the second and third sentences in paragraph three.
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14. **Page 16:** Redact the last sentence in paragraph two.
15. **Appendices A through G:** The Council concluded that it was unclear which charts are proposed or current tables of the organization referenced in Task I and the Custodian is to provide access to the current tables of the organization contained in Appendices A through G with redactions of proposed organization changes.

Chairman Maltese asked for a motion to adjourn the closed session. Ms. Tabakin offered the motion, which was seconded by Ms. Minus-Vincent. All members present approved the motion.

The closed session concluded at 10:40 a.m.

Respectfully Submitted:

DeAnna Minus-Vincent, Secretary

Dated:

DRAFT
Minutes of the Government Records Council
Closed Session of November 10, 2005

Second Closed Session – In Camera Proceedings

The Council convened in the second closed session at 12:30 p.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey.

The Council sought legal advice and conducted *in camera* inspections regarding cases listed in the Resolution for Closed Session:

Ann Glasser v. Stockton College (2004-194)

In Attendance: Council Members: Chairman Vincent Maltese, Secretary DeAnna Minus-Vincent, Robin Berg Tabakin; GRC Staff: Executive Director - Paul Dice, Assistant Executive Director - Gloria Luzzatto, Chris Malloy - Case Manager, Catherine Starghill – In-House Counsel; Deputy Attorney General - Debra Allen

Distributed case summary to Council Members and staff; reviewed events bringing the case before the Council for *in camera* review of documents; read applicable sections of OPRA and N.J.R. Evid. 500 cited by the Custodian. It was noted that the seven (7) page consultant report was disclosed to the Complainant with redactions. After reviewing the document *in camera*, the Council concluded that all the redacted information in the document was properly withheld pursuant to N.J.S.A. 47:1A-10 as the information related to employee evaluations, managerial recommendations for disciplinary action and terminations with the exception of the redaction on Page 1 of the report in the upper right hand corner for which there was no lawful basis for denial of access. The Council noted further that the redacted document was stamped “confidential” on each page of said report, however, the un-redacted document did not contain a “confidential” stamp on all pages.

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

In Attendance: Council Members: Chairman Vincent Maltese, Secretary DeAnna Minus-Vincent, Robin Berg Tabakin; GRC Staff: Executive Director - Paul Dice, Assistant Executive Director - Gloria Luzzatto, Chris Malloy - Case Manager, Catherine Starghill – In-House Counsel.

Distributed case summary to Council Members and staff; reviewed events bringing the case before the Council for *in camera* review of documents; read applicable sections of OPRA, other laws and regulations cited by the Custodian. The Council conducted the *in camera* inspection of the two un-redacted records dated August 17, 2000 and September 1, 1999 and concluded that portions of the requested documents were not exempt from disclosure as specifically set forth below:

1. **Document - Letter Dated August 17, 2000**: Disclose the name and address, to which the letter is written, the date of the letter, and the salutation including the sender's name pursuant to N.J.A.C. 12:15-2.1 and 2.2(a) 3; all other information in the document is exempt from disclosure pursuant to N.J.S.A. 43:21-11.g. and N.J.A.C. 12:15-2.1 thru 2.4.
2. **Document – Letter Dated September 1, 1999**: Disclose the name and address in the letterhead, the date, the method of delivery, and the signature including the sender's name under the signature pursuant to N.J.A.C. 12:15-2.1 and 2.2(a) 3; all other information in the document is exempt from disclosure pursuant to N.J.S.A. 43:21-11.g. and N.J.A.C. 12:15-2.1 thru 2.4.

Chairman Maltese asked for a motion to adjourn the closed session. Ms. Tabakin offered the motion, which was seconded by Ms. Minus-Vincent. All members present approved the motion.

The closed session concluded at 1:05 p.m.

Respectfully Submitted:

DeAnna Minus-Vincent, Secretary

Dated:

**Draft Minutes of the Government Records Council
December 8, 2005 Public Meeting – Open Session**

The meeting was called to order at 9:35a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Davies called the roll:

Present: Ms. Diane Schonyers (designee of Acting Commissioner Lucille Davy Department of Education), Ms. DeAnna Minus-Vincent (designee of Acting Commissioner Charles Richman, Department of Community of Affairs), Ms. Robin Berg-Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Dara Lownie, Jennifer Arozamena, Colleen McGann and Marion Davies.

Not In Attendance: Mr. Maltese, Chairman

Ms. Schonyers called for a motion to go into closed session to discuss *in camera* decisions and other legal advice. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by a unanimous vote.

The Council met in closed session from 9:40 a.m. to 9:55 a.m.

Open Session reconvened at 10:00 a.m.

The pledge of allegiance was recited.

Ms. Davies called the roll:

Present: Ms. Schonyers, Ms. Minus-Vincent, Ms. Tabakin.

Not In Attendance: Mr. Maltese

Minutes – October 13, 2005

Ms. Schonyers reviewed the minutes of the October 13, 2005 Open and Closed Sessions meeting. Ms. Schonyers called for a motion to accept the Open and Closed Session minutes as amended.

A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent to adopt the minutes with the amendments. The motion passed by a unanimous vote.

Louise Andreaci v. Port Republic School (2004-202)

Ms. Gardner reviewed the parties' respective positions and 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 that the Council accept the Initial Decision Settlement of the Office of Administrative Law and close this case without further action.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. Motion passed unanimously.

James Cody v. Middletown Township Public School (2005-98)

Ms. McGann reviewed the parties' respective positions and 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. In the case of the records that needed clarification, there is no denial of access to records because the Custodian did properly respond to those requests in writing within the statutorily required seven (7) business days, indicating to the Complainant that clarification was necessary but did not receive a response in return from the Complainant.
2. The Custodian did violate N.J.S.A. 47:1A-5.i. and -5.g. and N.J.S.A. 47:1A-6 by not providing a specific lawful basis for the denial of access to Records Requested "9," "29," "31," "34," and "36" within the statutorily prescribed seven (7) business days
3. The Custodian violated N.J.S.A. 47:1A-5.e. and N.J.S.A. 47:1A-5.g. in not providing immediate access or an immediate response to the request for contracts and bills.
4. Pursuant to N.J.S.A. 47:A-5.c. and given that the Complainant was allowed time to review and object to the special service charge, but instead agreed to and paid the full amount of the charge, this portion of the Complaint should be dismissed.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. The motion passed unanimously.

John McCormack v. NJ Department of Treasury (2005-103)

Ms. McGann reviewed the parties' respective positions and 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 an *in camera* inspection of the requested records is necessary to determine if they are disclosable because there is insufficient evidence to conclude whether the documents are exempt from access because of the advisory, consultative or deliberative exemption under OPRA.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

John McCormack v. NJ Department of Treasury (2005-104)

Ms. McGann reviewed the parties' respective positions and 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. The two (2) memoranda from April 15, 2005 should be released to the Complainant as the "individual in interest" of the personnel record pursuant to N.J.S.A. 47:1A-10.
2. The Council should conduct and *in camera* review of the requested handwritten notes to determine if the ACD exemption set forth in N.J.S.A. 47:1A-1.1 applies.
3. In view of the facts that the Custodian in this case did inform the Complainant as to the reason for the Denial of Access in a timely manner and there is no evidence that the Custodian's actions "had a positive element of conscious wrongdoing" or were, "intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional" it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of the OPRA and unreasonable denial of access under the totality of the circumstances.
4. The Custodian shall comply with "1" within ten (10) business days from receipt of this decision on the basis of the Council's above determination and provide confirmation to the Executive Director that the Custodian has complied with the Council's decision.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation with amendments. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

John Fox v. Township of Parsippany (2005-109)

Ms. McGann reviewed the parties' respective positions and 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:

Pursuant to N.J.S.A. 47:1A-9.a. and HIPAA, and further supported by the decision of the Superior Court of NJ in Michelson v. Wyatt and City of Plainfield, the Custodian lawfully denied access to the requested cost of healthcare benefits supplied to each individual Council member.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

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

Ms. Gardner reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended that the Council find that:

1. The Custodian may have unlawfully denied access to a government records.
2. The Custodian has not borne her burden of proving that the records responsive to the request are not government records.
3. The Custodian should obtain the government records that are responsive to the request and release them pursuant to the OPRA within ten (10) business days of receipt of the decision and inform the Executive Director of same.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. The motion passed unanimously.

Tina Renna v. County of Union (2005-137)

Ms. Gardner reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Custodian has certified that all records responsive to the request have been disclosed to the Complainant.
2. The Council's authority includes decision on access, not on the content of the records released pursuant to N.J.S.A. 47:1A-7.b.
3. The Custodian did lawfully respond to the records request. The Custodian did release records in a timely manner and has not violated N.J.S.A. 47:1A-5.i.
4. The Custodian did not knowingly and willfully violate the OPRA and unreasonably deny access under the totality of the circumstances.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

Jean Varga v. Township Middletown (2005-140)

Ms. Gardner reviewed the parties' respective positions and 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 that the Council find the requested records are criminal investigatory and not disclosable pursuant to N.J.S.A.47:1A-1.1

Ms. Schonyers called for a motion to accept the Executive Director's recommendation with amendments. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. The motion passed unanimously.

Tina Renna v. County of Union (2005-172)

Mr. Malloy reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Custodian violated N.J.S.A. 47:1A-5.i. by not properly responding to the August 25, 2005 request within the statutorily required seven (7) business days, therefore causing an unlawful denial of access.
2. The Custodian's actions to not rise to a knowing and willful violation of OPRA and unreasonable denial of access under the totality of circumstances pursuant to N.J.S.A. 47:1A-7.e.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. The motion passed unanimously.

John Windish v. Mount Arlington Board of Education (2005-176)

Ms. Gardner reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Complainant has provided written correspondence to GRC staff that confirms that he was able to view the records. Therefore, access is no longer at issue in this Complaint and that portion of the Complaint requires no further action of the Council.
2. The Custodian did violate N.J.S.A. 47:1A-5.e. Contracts are considered immediate access records and the Custodian did delay the release of those records.
3. The Custodian did supply a written response to the Complainant within seven business days; therefore the Custodian did not violate N.J.S.A. 47:1A-5.i.
4. The Custodian did violate N.J.S.A. 47:1A-6 by not providing a lawful basis for the delay in access, however the Custodian's actions do not rise to the level of a knowing and willful violation of the OPRA under the totality of the circumstances.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as written. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

Mr. Dice stated that a request for stay was submitted to the GRC in GRC case No. 2005-119. Ms. Schonyers stated that the Council will be seeking advice from counsel on litigation strategy.

Administrative Case Disposition – Council Consent:

1. Virginia Jeffries v. East Orange Board of Education (2005-112)
2. Marcia Ibrahim v. Department of Law & Public Safety, Div. of Consumer Affairs (2005-117)
3. John Paff v. Borough of Jamesburg (2005-120)
4. Tucker Kelley v. Rockaway Township (2005-139)
5. David Mann v. Legal Services of NJ (2005-143)
6. Stephen Biss v. City of Paterson (2005-156)
7. David Mann v. Bergen County Family Division (2005-195)
8. Leroy T. Moore v. Department of Corrections (2005-199)

9. John Paff v. Borough of Metuchen (2005-201)
10. Philip Stephen Fuoco v. Camden County (2005-223)

Ms. Schonyers called for a motion to accept the Executive Director's administrative case dispositions as written. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. The motion passed unanimously.

Cases Referred to Mediation (Agreements to Mediate)

1. John Paff v. Elizabeth Board of Education (2005-210)
2. Nick Sunday v. Paterson Free Public Library (2005-206)
3. Vesselin Dittrich v. City of Hoboken (2005-218)
4. Vesselin Dittrich v. City of Hoboken (2005-222)

No vote needed on above cases this is for information purposes only.

Executive Director Report and New Business:

Mr. Dice discussed with the Council the letters received from Mr. Paff and letters in response sent to Mr. Paff from the Government Records Council. Mr. Paff's letters reference GRC case No. 2005-197.

Mr. Dice presented Mr. Mitchell Fishman's letter of resignation from the Council. Ms. Schonyers called for a motion to accept Mr. Fishman's resignation as Council member. A motion was made by Ms. Tabakin and seconded by Ms. Minus-Vincent. The motion was adopted unanimously.

Mr. Dice discussed the outreach at the League of Municipalities conference. He also stated that he met with NJFOG and ACLU and discussed the outreach in Boston on OPRA and the Freedom of Information Law. He also discussed the outreaches that are planned for 2006.

Public Comment:

Mr. John Paff – Somerville, NJ

Martin O'Shea – West Milford, NJ

Mr. O'Shea distributed letters to the Council for their consideration.

Elizabeth Mason – NJFOG

John McCormack – Trenton, NJ

Hearing no other discussion, Ms. Schonyers called for a motion to adjourn.

A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion passed unanimously.

Meeting adjourned 11:30 am.

Respectfully submitted,

Dated: _____

DRAFT
Minutes of the Government Records Council
Closed Session of December 8, 2005

The Council convened in closed session at 9:45 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Vice Chair Diane Schonyers (designee of Acting Commissioner Davy, Department of Education) DeAnna Minus-Vincent (designee of Acting Commissioner Charles Richman, Department of Community of Affairs), Robin Berg Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Case Managers: Chris Malloy, Kimberly Gardner, Jennifer Arozamena, Colleen McGann, Dara Lownie.

Absent: Vincent Maltese

The Council sought legal advice and strategy for anticipated litigation on the following item listed in the Resolution for Closed Session:

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

Council was informed that the case was on appeal. Legal advice provided to Council on the issue of criminal investigatory records as it pertained to this case. Discussion of legal strategy regarding anticipated litigation.

Ms. Schonyers asked for a motion to adjourn the closed session. Ms. Tabakin offered the motion, which was seconded by Ms. Minus-Vincent. All members present approved the motion.

The closed session concluded at 10:00 a.m.

Respectfully Submitted:

DeAnna Minus-Vincent, Secretary

Dated: _____

**Draft Minutes of the Government Records Council
January 27, 2006 Public Meeting – Open Session**

The meeting was called to order at 9:40 a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read. Ms. Davies called the roll:

Present: Ms Diane Schonyers (designee of Acting Commissioner Lucille Davy Department of Education), Charles Richman (designee of Commissioner Susan Bass Levin, Department of Community of Affairs), Ms. Robin Berg-Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Dara Lownie, Jennifer Arozamena, Colleen McGann and Marion Davies.

Not in Attendance: Mr. Maltese - Chairman

Ms. Schonyers called for a motion to go into closed session for legal advice. A motion was made by Ms. Tabakin and seconded by Mr. Richman. The motion was adopted by a unanimous vote.

The Council met in closed session from 9:45 a.m. to 10:05 a.m.

Open Session reconvened at 10:10 a.m.

Ms. Schonyers called for a motion to go into open session. A motion was made by Ms. Tabakin and seconded by Mr. Richman. The motion was adopted by a unanimous vote.

Ms. Davies called the roll:

In attendance:

Ms. Schonyers, Ms. Tabakin, Mr. Richman

Not In Attendance:

Mr. Maltese

The pledge of allegiance was recited.

Ms. Schonyers stated that the Government Records Council needs to appoint a secretary. Ms. Tabakin volunteered for the position of secretary.

Ms. Schonyers and Ms. Tabakin made changes to the closed session minutes of October 28, 2005. These minutes were not adopted at this meeting.

Robert Tombs v. Brick Township Municipal Authorities (2003-123)

Mr. Dice stated that there were two (2) documents not listed in the Supplemental Findings and Recommendations:

1. December 23, 2005 exceptions from Mr. Tombs which had been distributed and discussed with the Council.
2. January 4, 2006 late submission from the Custodian.

Mr. Dice stated that since all submissions have not been reviewed by the Council he suggested that this case be postponed until the next meeting so that all information could be considered.

Mr. Richman made a motion to postpone the decision on Robert Tombs v. Brick Township Municipal Authorities to request a 45-day extension of time from the Office of Administrative Law for issuing the final decision in order to give thorough and complete consideration to the parties' submissions (exceptions and replies) subsequent to the issuing of the initial decision. Ms. Tabakin seconded the motion. The motion passed unanimously.

William Osterman v. City of Trenton/Trenton Police Department (2004-96) and (2004-107)

Ms. Gardner reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in the Second Supplemental Findings and Recommendations of the Executive Director. Ms. Gardner presented the following recommendation to the Council:

The Executive Director respectfully recommended that the Council adopt the Initial Decision of the Office of Administrative Law and conclude that the Custodian did not knowingly and willfully violate OPRA and unreasonably deny access under the totality of the circumstances.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation with the administrative changes as amended. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

Bert Wailoo v. Kean University of New Jersey (2004-196)

Mr. Malloy reviewed the parties' respective positions and 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 because the document requested was not made, maintained or kept on file...or received at the time of the request, as well as the ruling in Mag, the Custodian did not unlawfully deny access to the records requested.

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

Frances O'Loughlin v. Ocean Gate Board of Education (2005-43)

Ms. Lownie reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Custodian should redact the exempt information contained in the October 20, 2004 BOE meeting minutes, providing a detailed and lawful basis for each redacted part thereof and provide access to those redacted minutes within ten (10) business days from receipt of the Council's decision and provide confirmation to the Executive Director.
2. The Custodian has not borne the burden of proving that the denial of access to Board minutes was authorized by law pursuant to N.J.S.A. 47:1A-6.
3. The Custodian is in violation of N.J.S.A. 47:1A-5.i. for failing to respond to the December 16, 2004, January 7, 2005, January 20, 2005, and January 30, 2005 OPRA requests within the statutorily mandated seven (7) business days.
4. The Custodian is in violation of N.J.S.A. 47:1A-5.g. for failing to provide a written response to the January 7, 2005 and January 20, 2005 OPRA requests as well as failing to provide a specific and lawful basis for the denial of access in the January 21, 2005 and March 8, 2005 responses.
5. The Custodian is in violation of N.J.S.A. 47:1A-5.e. for failing to provide immediate access to bills.
6. The Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of circumstances due to her certification that any delay in access was caused by the high turnover in office, and the fact that the Complainant has been provided with all requested records except the October 20, 2004 meeting minutes.

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

Akbar Na'im v. Union County Prosecutor's Office (2005-66)

Ms. Lownie reviewed the parties' respective positions and 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 there was no unlawful denial of access as the requested records are criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1 and are exempt from disclosure.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as amended to include citation. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

Michael DeLuca v. Town of Guttenberg (2005-76)

Mr. Malloy reviewed the parties' respective positions and 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 based on the fact that the Custodian has certified that all documents in question have either been provided, or do not exist, she has borne her burden of proving that there was no unlawful denial of access to any of the records requested on April 15, 2005.

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

John McCormack v. New Jersey Department of Treasury (2005-104)

Ms. McGann reviewed the parties' respective positions and 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 Custodian has complied with the Council's December 8, 2005 Interim Decision in providing access to the requested memoranda and supplying the Council with the requested "handwritten notes taken of meeting between Edward Scheingold, John McCormack and Linda B. Hickey; notes taken by Linda Hickey" within ten (10) business days of receiving the Council's decision.
2. The Custodian should disclose the requested "handwritten notes taken of meeting between Edward Scheingold, John McCormack and Linda B. Hickey; notes taken by Linda Hickey," except Section 2, Portion "D" and "E" as indicated by the GRC staff, which are exempt from disclosure as "personnel" pursuant to N.J.S.A. 47:1A-10 and should be redacted.
3. The Custodian shall comply with "2" of the Conclusions and Recommendations within ten (10) business days from receipt of this decision on the basis of the Council's above determination and provide confirmation to the Executive Director that the Custodian has complied with the Council's decision.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

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

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in the Supplemental Findings and Recommendations of the Executive Director. Mr. Malloy presented the following recommendation to the Council:

The Executive Director respectfully recommended that the Council vote to approve the Monmouth County Prosecutors Office's request for a stay.

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

David Allen v. New Jersey Department of Corrections (2005-126)

Ms. McGann reviewed the parties' respective positions and 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 while Custodian's reasons for denying access to the requested protective custody documents are compelling there is insufficient evidence to determine if the documents are exempt from access and so the Council should perform an *in camera* inspection of the requested documents.

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

David Mann v. New Jersey Department of Environmental Protection (2005-129)

Ms. McGann reviewed the parties' respective positions and 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 pursuant to N.J.S.A. 47:1A-9.a and based on *N.J.A.C. 7:1D-3.4* and the unpublished decision in Newark Morning Ledger Co., Publisher of the Star-Ledger the proposed rule disallowing facsimile transmittal of OPRA requests does apply. Therefore, the facsimile request for records submitted by the Complainant is not a valid OPRA request and there is no denial of access.

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

Akil Hayward v. ARC – Union County (2005-136)

Ms. Luzzatto reviewed the parties' respective positions and 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 recommendation to the Council:

The Executive Director respectfully recommended the Council find that in considering the meaning of a public agency as explained by the court in the Lafayette Yard cases and all the document submissions of the Custodian, the ARC-Union is not a public agency pursuant to N.J.S.A. 47:1A-1.1. Therefore, ARC-Union is not subject to the provisions of OPRA and is not required to respond to OPRA requests for records.

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

John Paff v. Cumberland County Sheriff's Office (2005-159)

Mr. Malloy reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended the Council find that:

1. While the Custodian did ultimately grant access to all records requested, the response to the request came after the seven (7) business days allowed for a response pursuant to the OPRA; violating N.J.S.A. 47:1A-5.i., and resulting in an unlawful denial of access.
2. Based on the fact that the Complainant was ultimately given access to the records requested, and there is no evidence that the Custodian's actions were consistent with the legal standards established for knowing and willful conduct by the New Jersey judiciary, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.a.
3. The Custodian should not be placed on the time matrix based on the Council's decision in Renna, as well as the fact that the time matrix is now defunct.

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

Asjlynn Loder v. County of Passaic (2005-161)

Ms. Lownie reviewed the parties' respective positions and 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 that the Council find that while a reasonable special service charge of \$799.32 is warranted pursuant to OPRA and Lenape, the Custodian may only charge the \$400.00 special service charge that the Complainant agreed to pay in August 2004 because the Custodian violated N.J.S.A. 47:1A-5.c. by not providing the Complainant the opportunity to review and object to the charge prior to it being incurred.

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

William Hart, Jr. v. Hillside Township Tax Assessor (2005-168)

Ms. Lownie reviewed the parties' respective positions and 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 that the Council find the Council does not have jurisdiction to make a determination in this complaint pursuant to Mosee v. Atlantic City Police Department, GRC Case No. 2005-33 (September, 2005) as well as N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7.g.

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

Louis Toscano v. New Jersey Department of Law & Public Safety, Division on Civil Rights (2005-188)

Ms. Luzzatto reviewed the parties' respective positions and 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 recommendation to the Council:

The Executive Director respectfully recommended the Council find that:

1. No records responsive to the request exist except for the computer screens that were provided to the Complaint on September 9, 2005 as certified by the Custodian. Therefore, there is no unlawful denial of access.
2. Pursuant to N.J.S.A. 47:1A-7.b. the Council does not have the authority to determine whether the Complainant withdrew a complaint filed with the Division.

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

John Paff v. Office of the Governor (2005-197)

Ms. Luzzatto reviewed the parties' respective positions and 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 recommendation to the Council:

The Executive Director respectfully recommended the Council find that:

1. The Custodian certifies there are no records responsive to the request and the Complainant does not dispute same.
2. While the Custodian provided a written response to the OPRA request stating that there were no records responsive to the request, the response was not provided within the statutorily required time period. Pursuant to N.J.S.A. 47:1A-5.i. a failure to respond to a request within the seven business days, whether or not there are records responsive to the request, is a "deemed" denial of access. Therefore, the Custodian violated N.J.S.A. 47:1A-5.i. by not responding to the request within the statutorily required time period.
3. Since the Complainant has retracted the portion of his complaint regarding the "Matrix," there is no action required by the Council.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

Danielle DeMaio v. Township of Jackson (2005-204)

Ms. Lownie reviewed the parties' respective positions and 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 that the Council find:

1. Pursuant to the fact that the plans requested did not exist at the time of the request, there would not have been an unlawful denial of access except that the Custodian's delay in properly responding to the Complainant's request resulted in a "deemed" denial of access pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
2. The Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

Aaron Back v. Township of River Vale (2005-209)

Ms. Lownie reviewed the parties' respective positions and 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 that the Council find:

1. The Custodian has borne the burden of proving that the denial of access was lawful pursuant to N.J.S.A. 47:1A-6 by certifying to the best of her knowledge that the documents not provided do not exist.
2. The Custodian has provided immediate access to contracts pursuant to N.J.S.A. 47:1A-5.e. as she made the requested contract available the day it was discovered.
3. The Council does not have jurisdiction over the accuracy of the documents pursuant to N.J.S.A. 47:1A-7.b.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

Thomas Caggiano v. Borough of Stanhope (2005-211, 2005-226, 2005-227, 2005-228, 2005-229, 2005-230, 2005-231, 2005-232, 2005-233, 2005-234, 2005-235, 2005-250 and 2005-252)

Ms. Luzzatto reviewed the parties' respective positions and 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 that the Council find that:

1. The Custodian's response that the records were previously provided to the Complainant on several occasions is not a lawful basis to deny access to the November 1, 2005, November 14, 2005 and December 8, 2005 records requests pursuant to N.J.S.A. 47:1A-6.
2. The November 1, 2005, November 14, 2005, December 8, 2005 and December 9, 2005 records requests were broad and unclear requests for information that sought "any" and "all" documents without identifying the record or records with sufficient specificity and which would necessitate some form of research or searching on the part of the Custodian. Therefore, on the basis of Mag and the

GRC decision and the Court ruling in Bent, there was no unlawful denial of access pursuant to OPRA.

Ms. Schonyers called for a motion to accept the Executive Director's recommendation as amended. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

Administrative Adjudication:

1. Jeffrey Sauter v. Township of Colts Neck (2004-68)
2. Kathleen Fazzari v. Plainfield Board of Education (2005-111)
3. David Gerkens v. Borough of Riverside (2005-121)
4. Maria Fornaro v. Morristown Police (2005-151)
5. Duncan Warner v. Monmouth Beach (2005-177)
6. George Goros v. Hillside Township (2005-190)
7. DeSanctis v. Township of Ocean (2005-194)
8. John Paff v. Elizabeth Board of Education (2005-210)
9. John Paff v. Westfield Police Department (2005-221)
10. Askia Nash v. Essex County Courts (2005-224)
11. Elise Young v. New Jersey Department of Health & Senior Services (2005-236)
12. John Paff v. New Jersey Department of Treasury (2005-239)
13. Beverly Warde v. New Jersey Department of Corrections (2005-245)
14. Beverly Warde v. New Jersey Department of Corrections (2005-246)
15. Janet Pizar v. Millburn Township (2005-253)

Ms. Schonyers called for a motion to accept the Executive Director's administrative case dispositions. A motion was made by Mr. Richman and seconded by Ms. Tabakin. Motion passed unanimously.

Executive Director Report and New Business:

None

Public Comment:

Mr. Robert Tombs – Point Pleasant, NJ

Elizabeth Mason – President for the NJFOG

Mr. Bernard Lufgas – Barnegat, NJ

Bruce Solomon – Department of Law and Public Safety.

Ms. Schonyers called for a motion to go into closed session at 12:05 p.m. to discuss legal issues. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

The Council returned from closed session at 12:10 p.m.

Ms. Schonyers called for a motion to adjourn. There was a unanimous vote to adjourn.
The meeting adjourned at 12:15 p.m.

Respectfully submitted,

Robin Berg Tabakin, Secretary

Dated: _____

DRAFT
Minutes of the Government Records Council
Closed Session of January 27, 2006

First Closed Session

The Council convened in closed session at 9:47 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Vice Chair Diane Schonyers (designee of Acting Commissioner Davy, Department of Education) Chuck Richman (designee of Commissioner Susan Bass Levin, Department of Community of Affairs), Robin Berg Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Jennifer Arozamena, Colleen McGann, Dara Lownie and Marion Davies.

Absent: Vincent Maltese.

The Council sought legal advice and discussed strategy for anticipated litigation regarding the following item listed in the Resolution for Closed Session:

Robert Tombs v. Brick Township Municipal Utilities Authority (2003-123)

Legal advice provided to Council regarding the modification of the Office of Administrative Law's ("OAL") Initial Decision, the Council's authority to amend the OAL's decision and the OAL's application of the Protected Critical Infrastructure Information status in its determination. Legal advice provided to Council on parties' submissions after receipt of the OAL's decision.

Ms. Schonyers asked for a motion to adjourn the closed session. Ms. Tabakin offered the motion, which was seconded by Ms. Minus-Vincent. All members present approved the motion.

The closed session concluded at 10:00 a.m.

Second Closed Session

The Council convened in a second closed session at 12:05 p.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Vice Chair Diane Schonyers (designee of Acting Commissioner Davy, Department of Education) Chuck Richman (designee of Commissioner Susan Bass Levin, Department of Community of Affairs), Robin Berg Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Jennifer Arozamena, Colleen McGann, Dara Lownie and Marion Davies.

Absent: Vincent Maltese.

The Council sought legal advice on strategy for anticipated litigation on the following item listed in the Resolution for Closed Session:

Robert Tombs v. Brick Township Municipal Utilities Authority (2003-123)

Legal advice and strategy provided to the Council regarding anticipated litigation in this matter.

The Council voted unanimously to conclude the closed session. The Council returned from closed session at 12:10pm.

Respectfully Submitted:

Robin Berg Tabakin, Secretary

Dated:

**Draft Minutes of the Government Records Council
February 17, 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. Davies called the roll:

Present: Mr. Maltese, Charles Richman (designee of Commissioner Susan Bass Levin, Department of Community of Affairs), Ms. Robin Berg-Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Dara Lownie, Jennifer Arozamena, Colleen McGann and Marion Davies.

Not in Attendance: Ms. Schonyers (designee of Commissioner Lucille Davy, Department of Education)

Mr. Maltese called for a motion to go into closed session for legal advice. A motion was made by Mr. Richman and seconded by Ms. Tabakin. 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 10:50 a.m.

Mr. Maltese called for a motion to go into open session. A motion was made by Ms. Tabakin and seconded by Mr. Richman. The motion was adopted by a unanimous vote.

Ms. Davies called the roll:

In attendance:

Mr. Maltese, Ms. Tabakin, Mr. Richman

Not In Attendance:

Ms. Schonyers

The pledge of allegiance was recited.

Mr. Dice stated that the following cases would not be heard at this meeting:

Jeffrey Sauter v. Township of Colts Neck 2005-7

John Paff v. Bergen County 2005-115

Cathy Cardillo v. City of Hoboken 2005-185

Robert Tombs v. Brick Township Municipal Authorities 2003-123

Mr. Malloy reviewed the parties' respective positions and 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 modify Judge Masin's initial decision only to include references to the applicable provisions of OPRA (N.J.S.A. 47:1A-1, N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-9.a.) and find that the Council should not order the disclosure of the requested records.

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

John Brennan v. Monmouth County Prosecutors Office 2005-119

Ms. Starghill stated that the Council previously decided and issued a Final Decision in the matter ordering disclosure of the requested record. Upon legal advice and Council discussion the Council would like to have an opportunity to review the requested record *in camera* to solidify its decision or have an opportunity to reverse its decision if necessary.

Mr. Maltese made a motion to motion the Court to remand the case to the Council to consider an *in camera* inspection to review the document in question. The motion was seconded by Mr. Richman. The motion passed unanimously.

Phillip Boggia v. Borough of Oakland 2005-36

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

The Executive Director respectfully recommended that the Council find that:

1. The Custodian should disclose the requested "Oakland Reports" prepared by Morris Land Conservancy regarding the status of negotiations between Morris Land and the third party property owners, except; Page 1 Section 2, Page 1 Section 4 second sentence, Page 2 sections two (2) through four (4), and Page three (3) sections two (2) and three (3).
2. The Custodian shall comply with "1" within ten (10) business days from receipt of this order on the basis of the Council's above determination and provide confirmation to the Executive Director that the Custodian has complied with the Council's order.

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 Mr. Richman. Motion passed unanimously.

John Paff v. Borough of Montvale 2005-54

Ms. Lownie reviewed the parties' respective positions and 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 the Custodian has complied with the Council's Interim Decision by releasing the Borough's Closed Session minutes dated March 9, 2004, April 27, 2004, July 13, 2004, and September 28, 2004, however she failed to do so within the ten (10) business days prescribed by the Council's October 28, 2005 decision.

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 Mr. Richman. Motion passed unanimously.

Peter Runfolo v. Township of Summit (2005-87)

Ms. Lownie reviewed the parties' respective positions and 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 the Custodian did not unlawfully deny access because under OPRA agencies are required to disclose only "identifiable" government records not otherwise exempt pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534 (March 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (October 2005).

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 Mr. Richman. Motion passed unanimously.

Henry Fisher III v. New Jersey Department of Correction (2005-171)

Ms. Gardner reviewed the parties' respective positions and 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 records contain building security information and are exempt from disclosure pursuant to N.J.S.A. 47:1A1.1.

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 Mr. Richman. Motion passed unanimously.

Gilda Gill v. Salem County 2005-185

Ms. Lownie reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Custodian has complied with the November 10, 2005 Interim Decision by providing the Complainant with the requested records and certifying that the records not provided currently do not exist.
2. Although the Custodian certifies that some of the requested information was stored in a database at the time of the request, she did not unlawfully deny access to the requested payroll list as the specific document requested does not exist and OPRA does not require Custodians to create documents in response to requests.

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

Amy Vasques v. Burlington County 2005-193

Ms. Lownie reviewed the parties' respective positions and 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 that the Council find that pursuant to Executive Order 21, paragraph 1.a., the requested record is exempt from disclosure because the release of the Emergency Management Plan would create a risk to the security of the State against acts of sabotage or terrorism, hence the Custodian did not unlawfully deny access to the requested record.

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

David Lyons v. Irvington Board of Education 2005-196

Mr. Malloy reviewed the parties' respective positions and 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 recommends 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 as to why the records should not be disclosed to the 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 amended. A motion was made by Mr. Richman and seconded by Ms. Tabakin. Motion passed unanimously.

Brian Pincus (Joy DeSanctis) v. Newark Police Department 2005-219

Ms. Lownie reviewed the parties' respective positions and 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 recommendations to the Council:

The Executive Director respectfully recommended the Council find that:

1. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne his burden of proving that the denial of access to the requested photographs is authorized by law. The Custodian should have outsourced the duplication of the requested records and charged the Complainant the actual cost associated with doing so pursuant to N.J.S.A. 47:1A-5.d. and N.J.S.A. 47:1A-5.b. Therefore, the Custodian unlawfully denied access to the requested records by not appropriately responding within the statutorily mandated seven (7) business day timeframe pursuant to N.J.S.A. 47:1A-5.i.
2. The Custodian should disclose the requested photographs, subject to the actual cost that may be involved in converting the medium pursuant to N.J.S.A. 47:1A-5.d. and N.J.S.A. 47:1A-5.b. The Custodian shall comply with this determination within fifteen (15) calendar days after receipt of the Council's decision providing confirmation to the Executive Director.

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

Administrative – Case Dispositions:

Hing Lum v. Mount Olive Township (2005-52)
Carl Varriale v. Borough of Montvale (2005-148)
Carl Varriale v. Borough of Montvale (2005-149)
Carl Varriale v. Borough of Montvale (2005-150)
Walter Vella v. Bayshore Regional Sewerage Authority (2005-174)
Margie Semler v. City of Passaic (2005-198)
Reinaldo Aviles v. Perth Amboy Urban Enterprise Zone (2005-214)
Askiaa Nash v. Middlesex County (2005-217)

Vesslin Dittrich v. City of Hoboken (2005-222)
Daniel Gudauskas v. City of Somers Point (2006-5)
Herman Gomez v. Carlestadt-East Rutherford-Regional Board of Education (2006-8)
Herman Gomez v. South Bergen Jointure Commission (2006-9)
Askia Nash v. Essex County Courts (2006-16)

Mr. Maltese called for a motion to accept the Executive Director's administrative case dispositions as written. A motion was made by Ms. Tabakin and seconded by Mr. Richman. Motion passed unanimously.

Executive Director's Report

None

New Business

Mr. Dice stated that the GRC Proposed New Rules have a tentative publication date in the New Jersey Register of March 9, 2006. There will also be a link on the GRC website for the public's convenience.

Election of Officers - 2006

Mr. Maltese called for nominations for Chairperson. Mr. Richman nominated Mr. Maltese as Chairperson for 2006 year. Ms. Tabakin seconded the nomination. The nomination passed unanimously.

Mr. Maltese nominated Ms. Tabakin for Vice-Chair and Mr. Richman seconded the nomination. The nomination passed unanimously.

Mr. Maltese nominated Ms. Tabakin for Secretary and Mr. Richman seconded the nomination. The nomination passed unanimously.

Advisory Opinion:

Mr. Dice presented the GRC's Advisory Opinion 2006-01 to the Council. Mr. Maltese asked Ms. Starghill to explain the Advisory Opinion to the Council.

Mr. Maltese called for a motion to adopt Advisory Opinion 2006-01 as amended. A motion was made by Mr. Richman and seconded Ms. Tabakin. The motion passed unanimously.

Mr. Dice tendered his resignation to the Council effective February 17, 2006. Mr. Dice thanked the Council and staff for all of their hard work.

Mr. Maltese called for a motion to accept Mr. Dices resignation. A motion was made by Ms.Tabakin and seconded by Mr. Richman. The motion passed unanimously.

Mr. Maltese called for a motion to accept Catherine Starghill in the position of Executive Director of the Government Records Council. A motion was made by Ms. Tabakin and seconded by Mr. Richman. The motion passed unanimously.

Ms. Starghill presented the meeting dates for 2006 to the Council and also stated the meeting date for April will be changed.

Public Comment:

Elizabeth Mason – President – New Jersey Foundation for Open Government (NJFOG)

Mr. Maltese called for a motion to adjourn. A motion was made by Ms. Tabakin and seconded by Mr. Richman. The motion passed unanimously.

Meeting adjourned at 12:47pm.

Respectfully submitted,

Secretary

Dated: _____

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Minutes of the Government Records Council
Closed Session of February 17, 2006

The Council convened in closed session at 9:55 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Chairman Vincent Maltese, Chuck Richman (designee of Commissioner Susan Bass Levin, Department of Community of Affairs), Robin Berg Tabakin, Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, In-House Counsel Catherine Starghill, Deputy Attorney General Debra Allen, GRC Staff: Chris Malloy, Kimberly Gardner, Jennifer Arozamena, Colleen McGann, Dara Lownie, Marion Davies and Brigitte Hairston.

Absent: Diane Schonyers (designee of Acting Commissioner Davy, Department of Education).

The Council sought legal advice and discussed strategy for litigation regarding the following items listed in the Resolution for Closed Session:

Division of Law advice on the GRC Advisory Opinion on Use of Form

Legal advice provided to Council for approval and amendment of the Advisory Opinion. Council sought legal advice in applying the Advisory Opinion to current complaints.

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

It was noted that the case was on appeal. Legal advice provided to Council on the issue of criminal investigatory records as it pertained to this case. Discussion of legal strategy regarding litigation.

Election of Officers

Legal advice provided to Council regarding Council members holding two officer positions on the Council.

Tombs v. Brick Township Municipal Authorities (2003-123)

Legal advice provided to Council on Findings and Recommendations of the Executive Director regarding modification of the Office of Administrative Law's initial decision and consideration of the party's additional submissions after the receipt of the initial decision.

Chairman Maltese asked for a motion to adjourn the closed session. Ms. Tabakin offered the motion, which was seconded by Mr. Richman. All members present approved the motion.

The closed session concluded at 10:50 a.m.

Respectfully Submitted:

Robin Berg Tabakin, Secretary

Dated: