



**Minutes of the Government Records Council  
January 30, 2018 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:35 p.m. by Ms. Robin Berg Tabakin at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Ms. Berg Tabakin read the following Open Public Meetings Act statement:

“This meeting was called pursuant to the provisions of the Open Public Meeting Act. Notices of this meeting were faxed to the Newark Star Ledger, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on January 25, 2018.”

Ms. Berg Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Christopher Huber, Esq. (designee of Department of Education Acting Commissioner Dr. Richard Lamont Repollet), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq. (Public Member).

GRC Staff in Attendance: Frank F. Caruso (Communications Specialist/Resource Manager), Rosemond Bordzoe (Secretary), John Stewart (Mediator), Samuel Rosado (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Berg Tabakin advised that copies of the agenda are available by the conference room door.

## **II. 2018 Officer Elections**

- Mr. Ritardi made a motion to re-elect Ms. Berg Tabakin as Chairwoman. Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
- Mr. Huber made a motion to re-elect Mr. Ritardi as Vice Chair/Secretary. Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

## **III. Resolution Regarding Designation of Staff to Accept In-Cameras/Certified Confirmation of Compliance**

- Ms. Berg Tabakin called for a motion to designate the Communications Specialist/Resource Manager to accept In-Cameras/Certified Confirmation of Compliance until that time which a new Executive Director is installed. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by unanimous vote.

## **IV. Communications Specialist/Resource Manager's Report:**

### **OPRA Trainings**

- Based on current staffing levels, the GRC has decided to suspend the scheduling of 2018 OPRA trainings until further notice. The GRC has received five (5) requests to date and have alerted those potential hosts to this fact. However, the GRC is still hoping to hold its 12<sup>th</sup> Annual OPRA Seminar in August and hopes to be a full participant at the NJ League of Municipalities Conference in November.

### **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 4,781 Denial of Access Complaints. That averages about 308 annual complaints per 15½ program years. So far in the current program year, the GRC has received 118 Denial of Access Complaints.
- 480 of the 4,781 complaints remain open and active (10%). Of those open cases:
  - 21 complaints are on appeal with the Appellate Division (4.4%);
  - 17 complaints are currently in mediation (3.5%);
  - 35 complaints await adjudication by the Office of Administrative Law (7.3%);
  - 68 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (14.2%); and,
  - 332 complaints are work in progress (69.2%).
  - 3 complaints are proposed for the Office of Administrative Law (.6%) and 4 complaints are being held in abeyance (.8%).
- Since Program Year 2004, the GRC has received 28,110 total inquiries, averaging about 1,939 annual inquiries per 14½ tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year, the GRC has received 1,015 inquiries.

- From January 1, 2015, until present:
  - The GRC has received 1,006 Denial of Access Complaints, which equals 21% of all complaints filed in the agency's history. That means that the GRC has received somewhat less than 1.3 complaints on average for every business day (allowing for public holidays) during that period.
  - The GRC has adjudicated 1,249 cases (some cases require multiple adjudications). That number does not include today's adjudications.
  - The GRC has received and addressed 6,046 inquiries, which equals 21.5% of all inquiries received in the agency's history. That averages approximately 8 inquiries per every business day during that period.
  - The GRC has been successfully able to mediate 92 of 194 referred cases (47.4%), with 8 of those 194 cases currently in active mediation.

#### **V. Closed Session:**

- Michael Feaster v. Buena Borough (Atlantic) (2015-308)
- Luis Rodriguez v. Kean University (2016-40)
- Conley v. NJ Dep't of Corr., 2018 N.J. Super. LEXIS 6 (App. Div. 2018) (Approved for Publication)

Ms. Berg Tabakin called for a motion to go into closed session. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The Council adopted the motion by a unanimous vote.

The Council met in closed session from 1:46 p.m. until 2:44 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Ritardi made a motion, which was seconded by Mr. Huber. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:52 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Mr. Huber, Mr. Martucci, and Mr. Ritardi.

#### **VI. Approval of Minutes of Previous Meetings:**

- **December 19, 2017 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the December 19, 2017 meeting. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

- **December 19, 2017 Closed Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the December 19, 2017 meeting. Mr. Ritardi made a motion, which was seconded by Mr. Martucci.

The motion passed by a unanimous vote.

## **VII. New Business – Cases Scheduled for Adjudication**

Ms. Berg Tabakin stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Council Staff’s recommendation of dismissal based on jurisdictional, procedural, or other defects of the complaint. The reason for the Administrative Disposition is under each complaint below:

### **A. Administrative Disposition Adjudications with Recusals (Consent Agenda): None**

### **B. Administrative Disposition Adjudications with no Recusals (Consent Agenda):**

1. **Rachel White v. Camden City School District (Camden) (2016-213)**
  - Not a Valid OPRA Request
2. **Demetrius Minor v. NJ Department of Corrections (2017-49)**
  - No Correspondence Received

Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Mr. Ritardi made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

### **C. Administrative Disposition of Uncontested, Voluntary Withdrawals by Complainant (No Adjudication of the Council is Required):**

1. **James Capone v. Kean University (2017-62)**
  - Settled in Mediation
2. **James Capone v. Kean University (2017-63)**
  - Settled in Mediation
3. **Peter Chen v. NJ Department of Health, Division of Family Health Services (2017-194)**
  - Settled in Mediation
4. **Susan E. DiMaria, Esq. v. Township of Toms River (Ocean) (2017-223)**
  - Complaint Voluntarily Withdrawn
5. **Doreen Frega v. Township of Middletown (Monmouth) (2017-229)**
  - Complaint Voluntarily Withdrawn
6. **Louann Wonski, Esq. v. Middlesex County Medical Examiner’s Office (2018-2)**
  - Complaint Voluntarily Withdrawn

## **VI. New Business – Cases Scheduled for Individual Complaint Adjudication**

### **A. Individual Complaint Adjudications with Recusals:**

A brief summary of the Council Staff’s recommended action is under each complaint:

1. **Steven Hyman v. City of Jersey City (Hudson) (2007-118) (SR Recusal)**
  - The Council should accept the ALJ's Initial Decision as modified.
  - Because the ALJ dispensed of all issues, no further adjudication is required.
  - Ms. Berg Tabakin called for any discussion on Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
  
2. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-57) (SR Recusal)**
3. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-60) (SR Recusal)**
4. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-70) (SR Recusal) Consolidated**
  - The Council should accept the ALJ's Initial Decision dismissing GRC 2015-57.
  - The Complainant is a prevailing party in GRC 2015-60 and GRC 2015-70. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
  - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
  
5. **Robert A. Verry v. Township of Greenwich (Warren) (2015-126) (SR Recusal)**
  - The Custodian failed to comply with the Council's December 15, 2015 Interim Order.
  - This complaint should be referred to the OAL to: 1) perform an *in camera* review; 2) determine whether the Custodian knowingly and willfully denied access; and 3) determine whether the Complainant is a prevailing party and, if so, the appropriate amount of fees.
  - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
  
6. **Michael Feaster v. Buena Borough (Atlantic) (2015-308) (JM Recusal)**
  - The Custodian complied with the Council's June 27, 2017 Interim Order.
  - The Custodian lawfully denied access to the body of the e-mail and the draft report. However, the Custodian must disclose all other portions of the e-mail for which access was unlawfully denied.
  - The knowing and willful analysis is deferred pending compliance.

- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Martucci recused.

**B. Individual Complaint Adjudications with no Recusals:**

1. **Shawn G. Hopkins v. Colts Neck Township (Monmouth) (2014-21)**

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby obviating the need for any further adjudication.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

2. **Shawn G. Hopkins v. Borough of Englishtown (Monmouth) (2014-23)**

- The Custodian did not fully comply with the Council’s October 31, 2017 Order.
- Neither Mr. Fitzpatrick or the Custodian knowingly and willfully violated OPRA.
- The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant’s Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Ritardi made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

3. **Christina Moreira v. Elizabeth Board of Education (Union) (2015-313)**

- This complaint should be tabled based on advice of Counsel.
- Ms. Berg Tabakin called for a motion to have the above matter tabled. Mr. Huber made and motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

4. **Luis F. Rodriguez v. Kean University (2015-338)**

- The GRC must conduct an *in camera* review on the responsive records to validate the Custodian’s claim that they were properly redacted under the ACD and attorney-client privilege exemptions.
- The extension and knowing and willful analyses are deferred pending the conclusion of the *in camera* review.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr.

Ritardi made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

5. **Luis F. Rodriguez v. Kean University (2016-40)**

- The Custodian complied with the Council's March 28, 2017 Interim Order.
- The Custodian shall comply with the *In Camera* Examination findings.
- The knowing and willful analysis is deferred pending compliance.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

6. **Luis F. Rodriguez v. Kean University (2016-41)**

- The Custodian borne her burden of proving that the extensions sought were warranted and reasonable..
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

7. **Talbot B. Kramer, Jr., Esq. (o/b/o William Juliana) v. Township of Washington (Gloucester) (2016-113)**

- The Custodian's failure to timely respond resulted in a "deemed" denial.
- The Custodian's response was insufficient because she failed to respond to each individual OPRA request item.
- The Custodian may have unlawfully denied access to responsive records and shall respond to each item: 1) identifying which disclosed records are responsive; 2) disclosing any outstanding items; and/or 3) certifying if records for a particular item do not exist.
- The knowing and willful and prevailing party analyses are deferred pending compliance.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

8. **Marwin McKoy v. Atlantic County Justice Facility (2016-120)**

- The Custodian did not unlawfully deny access to any records because she timely responded.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr.

Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

9. **Jason Harry Komis v. Camden County (2016-143)**

- This complaint should be tabled based on advice of Counsel.
- Ms. Berg Tabakin called for a motion to have the above matter tabled. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

10. **Harold G. Paine v. Barrington Police Department (2016-197)**

- The Custodian's failure to timely respond resulted in a "deemed" denial.
- The Custodian did not unlawfully deny access to the responsive records.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

11. **Boris Boretsky v. Middlesex County Examiner's Office (2016-219)**

- The Custodian lawfully denied access to OPRA request item No. 1 under N.J.S.A. 47:1A-2.2(a) and item No. 3 under the criminal investigatory exemption, N.J.S.A. 47:1A-1.1.
- The Complainant's request item No. 2 was invalid because it sought information.
- The Custodian lawfully denied access to OPRA request item Nos. 4 and 5 under N.J.S.A. 47:1A-1.1.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Mr. Rosado stated that the findings and recommendations were amended to in regard to the proposed analysis of item No. 3. Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as amended. Mr. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

12. **Carey Italiano v. County of Salem (2017-110)**

- The Custodian's failure to timely respond resulted in a "deemed" denial.
- The Custodian disclosed records responsive to item Nos. 1 through 4 and 8 through 13; thus, the GRC declines to order disclosure.
- The Custodian lawfully denied access to item Nos. 5 and 7 because he certified twice that no recordings could be located and the meetings were presumed not recorded.
- There is no knowing and willful violation.
- The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.

- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Mr. Stewart stated that the findings and recommendations were amended to highlight the Custodian's reasoning as to why no records responsive to OPRA request item Nos. 5 and 7 existed. Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as amended. Mr. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

13. **Daniel Damigo v. Borough of Totowa (Passaic) (2017-124)**

- The Custodian's response was insufficient because it failed to provide a specific lawful basis for denying access to the requested records.
- This complaint should be referred to the OAL to: 1) determine which records were requested; 2) determine if those records were subject to disclosure; and 3) determine whether the Custodian knowingly and willfully denied access.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

14. **Judy Faulkner v. Hillsborough Township (Somerset) (2017-215)**

- The Custodian's response was insufficient because she failed to respond to each individual OPRA request item.
- The Custodian did not unlawfully deny access to the requested record, which did not include certain information sought by the Complainant.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

15. **Megan McNally v. City of Bayonne (Hudson) (2017-230)**

- This complaint is unripe for adjudication because the Complainant filed it before the expiration of the seven (7) business day time frame.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

**VII. Court Decisions of GRC Complaints on Appeal:**

- Conley v. NJ Dep't of Corr., 2018 N.J. Super. LEXIS 6 (App. Div. 2018) (Approved for Publication): The complainant sought monthly statistical reports and remedy logs from the custodian. Such records were required to be maintained pursuant to 28 CFR 40.10 and N.J.A.C. 10A:1-4.8(a)(4). The custodian responded to the complainant stating that the

data required to be maintained under 28 CFR 40.10 and N.J.A.C. 10A:1-4.8(a)(4) has been transferred into a new database system, and therefore the reports as previously provided were no longer available. The custodian instead offered the same data in a different format, comprising 114 pages. The complainant filed a complaint with the GRC, arguing that the 28 CFR 40.10 and N.J.A.C. 10A:1-4.8(a)(4) required that the data be compiled and maintained in the reports previously provided. The GRC disagreed, holding that based upon the custodian's certification that the reports containing the data could no longer be generated, there were no responsive records to the request, and thus no unlawful denial of access.

The Appellate Division reversed. The Court held that the Custodian should have considered the public-access ramifications prior to moving the data required to be maintained under 28 CFR 40.10 and N.J.A.C. 10A:1-4.8(a)(4) to a new database or method of storage.

The Court also noted that this decision steps away from the usual deferential standard of review towards GRC rulings. The Court noted that the GRC "did not conduct an evidentiary hearing or make factual findings based on witnesses' testimony." Id. at \*9. The Court found that, notwithstanding the legislature's creation of two (2) avenues to challenge a denial of access, the GRC and the Superior Court "do not have equal legal significance" in deciding issues of law. Id. at 10 Accordingly, the Court reviewed this matter *de novo*, and held that the Custodian did not provide a "legally recognized basis" under OPRA to deny access to the Complainant's request. Id. at 11.

#### **VIII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:**

- Scheeler v. State Dep't of Children & Families, 2017 N.J. Super. Unpub. LEXIS 3154 (App. Div. 2017): Plaintiff challenged the redactions made to employee resumes, including addresses, phone numbers, community involvement, clubs and hobbies, and volunteer experience. Plaintiff argued that Executive Order 26, (Aug. 13, 2002), 34 N.J.R. 3043(b) ("EO 26"), mandated that the resumes of "successful candidates shall be disclosed once the successful candidate has been hired." Plaintiff contended that EO 26 qualifies as an "another law" as stated under N.J.S.A. 47:1A-10, which states that "personnel or pension records of any individual shall be accessible when required to be disclosed by another law." Thus, the Plaintiff interpreted EO 26 to mean that the resumes should be provided without redactions.

The trial court disagreed, and the Appellate Division affirmed. The Court found that executive orders cannot constitute "another law" under N.J.S.A. 47:1A-10 when it means to abrogate an entire section of OPRA that would otherwise withhold a record from disclosure. The Court held that while N.J.S.A. 47:1A-9 allowed executive orders to create an addition exemption from OPRA, it can't be interpreted to also allow executive orders to strip away protections for personnel record explicitly granted by the Legislature. Therefore, the Defendant sufficiently responded to the Plaintiff's OPRA request by providing the redacted resumes.

- Libertarians for Transparent Gov't v. Ocean Cnty. Prosecutor's Office, 2018 N.J. Super. Unpub. LEXIS 25 (App. Div. 2018): Plaintiff sought, among other information, the basis as to why John Doe was separated from the Ocean County Prosecutor's Office ("OCPO") under N.J.S.A. 47:1A-10. Defendant provided a memorandum which noted the date Doe's resignation became effective. In a second OPRA request, Plaintiff asserted that it was entitled to a more detailed explanation for Doe's separation from employment beyond the effective date and that he resigned. Defendant responded by stating there were no documents in John Doe's personnel file that indicating the reason for Doe's separation, and the agency was under no obligation to generate new documents or provide information other than what is provided in already existing records.

The trial court disagreed with Plaintiff, finding that Defendant satisfied its obligations under OPRA and provided responsive records to the Plaintiff's OPRA requests. Further, the trial judge held that Defendant was not obligated to generate a new record explaining the basis for John Doe's separation beyond what is available in the existing record.

The Appellate Division affirmed the trial court's ruling that Plaintiff was not entitled to a more detailed explanation as to why John Doe resigned from OCPO, and that Defendant was not required to create new records containing the explanation. The Court interpreted the first exception of N.J.S.A. 47:1A-10 narrowly, holding that the "reason therefor" of Doe's separation is satisfied with the statement that Doe resigned, and that the Defendant is not required to explain why Doe resigned or the circumstances that lead to the resignation.

However, the Court agreed with Plaintiff in that Defendant improperly limited its search for responsive records to John Doe's personnel file. The Court remanded for the trial court to order Defendant to conduct a reasonable and thorough search of all of its files for responsive records to Plaintiff's OPRA requests. Affirmed in part, vacated in part, remanded for further proceedings.

- N. Jersey Media Grp., Inc. v. City of Clifton, 2018 N.J. Super. Unpub. LEXIS 70 (App. Div. 2018): Plaintiff sought access to an audit report conducted by a third party, commissioned by the Defendant, in order to analyze and provide recommendations regarding the Defendant's biweekly payroll system and the consequences of switching to a bimonthly system. Defendant denied access to the report, stating that even if it were finalized, it would be used in connection with actual or potential litigation regarding payroll grievances and arbitration proceedings. Moreover, Defendant stated that the report was subject to the deliberative process privilege.

After *in camera* review, the trial court found for Defendant, holding that although the reports contained mostly statistical data, and did not contain "advice," the statistical information was still used by Defendant to formulate its decisions and policies.

The Appellate Division agreed with the trial court, finding that all five (5) variations of the report were predecisional and protected under the deliberative process privilege notwithstanding the reports' contents being statistical information. Furthermore, the Court held that the report created by the third-party on Defendant's behalf would be

highly relevant to potential grievances and arbitration proceedings filed in the wake of transitioning the payroll process. The Court noted that many of the revisions made to the report were to address issues expected to be raised by employee unions in proceedings against Defendant. Therefore, the Court held that the reports were protected under the work-product privilege in addition to the deliberative process privilege. Affirmed in full.

**IX. Public Comment:**

- Mr. Thomas Seeley, Esq., solicitor for Commercial Township, and Mr. Mike Vizzard, Deputy Mayor of Commercial Township: Mr. Seeley stated that a prior member of the Township submitted multiple requests seeking information on four (4) employees. Mr. Seeley noted that the employees had been in litigation with the requestor and believed that the conclusion of said litigation would protect them from contact with him. Mr. Seeley argued that the requests were repetitive, continuous, and harassing. Both Mr. Seeley and Mr. Vizzard sought guidance from the Council regarding how to protect their employees from the requestor. The Council provided limited guidance and noted that any inquiry requests should be directed to the GRC's Inquiry Hotline and Inbox.

**X. Adjournment:**

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed unanimously.

The meeting adjourned at 3.38 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: February 27, 2018