



**Minutes of the Government Records Council
June 28, 2011, 2011 Public Meeting – Open Session**

The meeting was called to order at 1:09 p.m. at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read by Ms. Tabakin.

The pledge of allegiance was recited while all stood in salute to the American flag.

The meeting notice and fire emergency procedure were read by Ms. Tabakin.

Ms. Hairston called the roll:

Present: Robin Berg Tabakin (Chairwoman), Charles Richman (designee of Department of Community Affairs Commissioner Lori Grifa), Stacy Spera (designee of Department of Community Affairs Commissioner Lori Grifa for the sole purpose of adjudicating Thomas Caggiano v. Borough of Stanhope (Sussex), 2011-19) and Denise Parkinson Vetti (designee of Department of Education Acting Commissioner Christopher D. Cerf).

GRC Staff In Attendance: Catherine Starghill (Executive Director), Karyn Gordon (In-House Counsel), Brigitte Hairston (Secretary), Dara Lownie (Communications Manager), Case Managers: Frank Caruso, Harlynn Lack and Darryl Rhone and Joseph Maddaloni, Jr. (Designated Outside Counsel).

The following complaint requiring individual adjudication was put to a vote:

Thomas Caggiano v. Borough of Stanhope (Sussex) (2011-19)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Spera and seconded by Ms. Vetti. The motion passed unanimously.

Ms. Spera exited the meeting.

The following meeting minutes requiring Council approval were put to a vote:

Open Session Minutes (March 29, 2011)

Ms. Starghill stated that although Ms. Vetti was not in attendance at the March 29, 2011 meeting, she consulted with the designee of Department of Education Acting Commissioner Christopher D. Cerf who was present at said meeting to confirm that the minutes were an accurate portrayal of the meeting.

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the open session minutes of the March 29, 2011 meeting. The motion passed by a unanimous vote.

Open Session Minutes (May 24, 2011)

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the open session minutes of the May 24, 2011 meeting. The motion passed by a unanimous vote.

Closed Session Minutes (May 24, 2011)

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the closed session minutes of the May 24, 2011 meeting. The motion passed by a unanimous vote.

Ms. Tabakin read the Closed Session Resolution to go into closed session pursuant to N.J.S.A. 10:4-12.b(7) to receive legal advice and discuss anticipated litigation in which the public body may become a party in the following matter:

1. Marilou Halvorsen v. NJ Department of Law & Public Safety, Division of Consumer Affairs (2010-114) *In-Camera Review*

A motion was made by Ms. Vetti to go into closed session and seconded by Mr. Richman. The motion was adopted by a unanimous vote. A motion was made by Mr. Richman to end the closed session and seconded by Ms. Vetti. The motion was adopted by a unanimous vote. The Council met in closed session from 1:14 p.m. until 1:24 p.m.

Open Session reconvened at 1:25 p.m. and Ms. Hairston called roll.

Present: Ms. Tabakin, Mr. Richman and Ms. Vetti.

Council Adjudications:

The following complaints requiring individual adjudication were not put to a vote due to the lack of quorum:

1. James D'Andrea v. NJ Department of Community Affairs, Division of Local Government Services (2007-64)
2. David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306)
3. J.C. v. NJ Department of Education, Deputy Commissioner's Office (2008-91)
4. Gertrude Casselle v. NJ Department of Community Affairs, Division on Community Resources (2008-248)
5. Ursula Cargill v. NJ Department of Education (2009-9)
6. Ursula Cargill v. State Ethics Commission (2009-10)
7. Jason Todd Alt (on behalf of The Daily Journal) v. NJ Department of Education (2009-114)
8. William Cimochofski v. NJ Department of Community Affairs, Div. of Codes & Standards, Office of Code Enforcement

9. Michael Pushko v. NJ Department of Community Affairs, Division of Housing & Community Resources (2009-269)

The following complaints were presented to the Council for summary administrative adjudication:

1. Kyle S. Wiswall v. NJ Department of Transportation (2010-177)
2. Jesse Wolosky v. Sparta Township Board of Education (Morris) (2010-224)
3. Quddoos Farra'd v. NJ Department of Corrections (2011-07)
4. Maria Melton v. City of Camden (Camden) (2011-10)
5. John P. Schmidt v. Borough of Pine Hill (Camden) (2011-43)
6. Fred U. Andes v. NJ City University (2011-138)
7. Keith A. Werner v. NJ Department of Treasury (2011-149)
8. Keith A Werner v. NJ Department of Treasury (2011-150)
9. Darlene R. Esposito v. NJ Department of Banking & Insurance (2011-208)
10. Baruch B. Blaustein v. Lakewood Board of Education (Ocean) (2011-210)
11. Rickey Pridgeon v. Asbury Park Municipal Court (Monmouth) (2011-223)
12. Rickey Pridgeon v. Monmouth County Superior Court (2011-224)
13. Logan M. Terry v. Delran Municipal Court (Burlington) (2011-225)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. A motion was made by Ms. Vetti and seconded by Mr. Richman. The motion passed unanimously.

The following complaints requiring individual adjudication were put to a vote:

John Bentz v. Borough Paramus (Bergen) (2008-89)

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

Tina Renna (on behalf of Union County Watchdog Association) v. Union County Improvement Authority (2009-28)

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

Larry Kohn v. Township of Livingston (Essex) (2009-313)

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

Gregory Byrnes v. Morris County Prosecutor's Office (2009-323)

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

Mark Bond v. Borough of Washington (Warren) (2009-324)

Mr. Caruso informed the Council that the Findings and Recommendations of the Executive Director have been edited to insert a footnote on the bottom of page 2 of said findings.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. A motion was made by Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

Robert Edwards v. City of Plainfield, Planning Board (Union) (2010-17)

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

Louis Paul Toscano v. NJ Department of Labor, Division of Vocational Rehabilitation Services (2010-58)

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

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2010-86)

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

Rory Moore v. Township of Nutley (Essex) (2010-110)

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

Marilou Halvorsen v. NJ Department of Law & Public Safety, Division of Consumer Affairs (2010-114)

Ms. Lack amended the Findings and Recommendations of the Executive Director to include a discussion in the analysis section regarding a supervisor's duty to report harassment allegations under the State's Policy Prohibiting Discrimination in the Workplace.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. A motion was made by Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

Jesse Wolosky v. Township of Montville (Morris) (2010-160)

Mr. Richman raised concerns regarding the release of executive session minutes. Mr. Richman questioned who is responsible and authorized to make the final determination on what information contained in executive session minutes is disclosed pursuant to an OPRA request. Mr. Richman stated that a governing body's approval process makes the minutes public record, and the Council has previously held that waiting until the next meeting of the governing body to

decide what executive session discussions can be disclosed is an unlawful delay in access. Mr. Richman questions how the Council can reconcile this scenario.

Ms. Starghill suggested adding language to these Findings and Recommendations, as well as the Findings and Recommendations for GRC Complaint Nos. 2010-163, 2010-183, 2010-184 and 2010-188 as they all contain the same issue, recommending that the agency's attorney assist the Custodian with making the determination as to what executive session discussions are and are not public information. Ms. Starghill clarified that once the governing body approves the minutes, they are public records, but certain unresolved matters may be redacted because they are exempt from public access under the Open Public Meetings Act.

Ms. Vetti also suggested adding language to indicate that as an alternative to the agency's attorney, another designated person could also assist the Custodian with making the determination as to what executive session discussions are and are not public information.

Ms. Starghill confirmed that this complaint along with GRC Complaint Nos. 2010-163, 2010-183, 2010-184 and 2010-188 will be edited to include language recommending, not requiring, that the Custodian consult the township attorney or some other designated person to determine the resolution of issues discussed in executive session minutes to identify those issues still requiring confidentiality and for which redactions are allowed.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. A motion was made by Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

Jesse Wolosky v. Township of Jefferson (Morris) (2010-163)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. A motion was made by Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

Jesse Wolosky v. Township of Roxbury (Morris) (2010-183)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. A motion was made by Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

Jesse Wolosky v. Township of Chester (Morris) (2010-184)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. A motion was made by Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

Jesse Wolosky v. Township of Rockaway (Morris) (2010-188)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. A motion was made by Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

Rashaun Barkley v. County of Essex (2011-179)

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

GRC Complaints on Appeal: None.

Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: Vasil Kovalcik v. Somerset County Prosecutor's Office, Docket No. A-43-10. Supreme Court of New Jersey (Decided June 21, 2011).

Ms. Gordon informed the Council that this NJ Supreme Court case has some good language regarding experiential and educational information contained in personnel records. Ms. Gordon quoted the decision, in that:

“[A] document otherwise classified as a personnel record becomes subject to disclosure if, and only if, it fits within one of the three exceptions to the general exemption for personnel records. Only the last of the three exceptions that are included within the broad exempting language is in issue in this appeal. That exception does not authorize disclosure of any and all documents that evidence an employee's educational background or even that evidence an employee's participation in educational pursuits generally. Rather, the Legislature chose to use the words "specific" and "required" in a manner that sharply limits the exception's scope. Those words effectively narrow the mandate of disclosure because they make it plain that only if there is a specific, or particular, educational qualification that is a prerequisite for the job and only if the record demonstrates compliance with that specific requirement is it subject to being disclosed pursuant to OPRA.”

Executive Director's Report and New Business: Ms. Starghill noted for the Council the Administrative Disposition category for GRC Complaint No. 2010-224 “No Denial of Access at Issue.” Ms. Starghill stated that the Complainant asserted the space on the OPRA request form is too small for a request to adequately describe requested records. Ms. Starghill stated that forms are no longer required and requestors may submit other written requests so long as they mention OPRA, so the small size of the space for describing requested records is not a violation of OPRA. Also, Ms. Starghill stated that the Council does address form issues when there is nonconformance with the form requirements contained in N.J.S.A. 47:1A-5.f.

Ms. Starghill reminded the Council that the date is set for our 5th Annual OPRA Seminar for the Public – Thursday August 11, 2011. Ms. Starghill stated that this is a full day seminar with the Division of Archives and Records Management – same format as last year. Continuing Education Units and Continuing Legal Education Credits are available. Registration is underway and soaring – we already have over 230 registrants!

Public Comment: None.

A motion to end the Council's meeting was made by Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

Meeting adjourned at 1:40 p.m.

Respectfully submitted,

Denise Parkinson-Vetti, Secretary

Date Approved: July 26, 2011