



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**August 27, 2013 Government Records Council Meeting**

Jesse Wolosky  
Complainant

Complaint No. 2010-311

v.

Township of Vernon  
Custodian of Record

At the August 27, 2013 public meeting, the Government Records Council (“Council”) considered the August 20, 2013 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 this complaint be dismissed because the Complainant’s Counsel withdrew his complaint from the Office of Administrative Law via letter to the Honorable Imre Karaszegi, A.L.J., dated July 15, 2013, because the parties have reached settlement in this matter. Therefore, no further adjudication is required.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 27th Day of August, 2013

Robin Berg Tabakin, Esq., Chair  
Government Records Council



I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: August 29, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
August 27, 2013 Council Meeting**

**Jesse Wolosky<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-311**

v.

**Township of Vernon (Sussex)  
Custodial Agency**

**Records Relevant to Complaint:** Copies of the governing body's approved executive session minutes from January 1, 2010 through the present.

**Custodian of Record:** Susan S. Nelson<sup>2</sup>  
**Request Received by Custodian:** September 21, 2010  
**Response Made by Custodian:** September 23, 2010  
**GRC Complaint Received:** November 23, 2010

**Background**

**Procedural History:**

At its September 25, 2012 public meeting, the Council considered the September 18, 2012 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, found that:

1. The Custodian timely complied with the Council's July 31, 2012 Interim Order by providing the requested executive session minutes to the Complainant as required by the Council's *in camera* review and providing certified confirmation to the GRC within the extended prescribed time frame to comply.
2. The former Custodian violated N.J.S.A. 47:1A-5.g. by failing to state the specific legal citations, which formed the basis for the redactions made to the executive session minutes responsive to the OPRA request. The former Custodian also violated N.J.S.A. 47:1A-6, by failing to bear her burden of proof that the denial of access to the portions of the

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<sup>1</sup> Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

<sup>2</sup> The Custodian at the time of the Complainant's OPRA request and the Statement of Information was Andrea Bates. Susan Connelly was appointed Township Clerk on January 24, 2012. The Custodian was represented by Kevin D. Kelly, Esq., of Kelly & Ward, LLC (Newton, NJ).

executive session minutes were lawful. However, the present Custodian timely provided the GRC with nine (9) copies of the legal certification, the unredacted executive session minutes for the *in camera* inspection. The present Custodian also timely complied with the Council's July 31, 2012 by providing the requested executive session minutes to the Complainant as required by the Council's *in camera* review and providing certified confirmation to the GRC within the extended prescribed time frame to comply. Additionally, the evidence of record does not indicate that the former Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the former 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.

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian provided the Complainant with copies of the executive session minutes responsive to the OPRA request consistent with the Council's *in camera* review. Further, the relief ultimately achieved had a basis in law because the Custodian unlawfully redacted the requested executive session minutes from April 22, 2010, May 13, 2010, June 10, 2010 and June 24, 2010. Therefore, the Complainant is a prevailing party and entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277 (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this case do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

#### Settlement:

On, April 25, 2011, the Council distributed its Interim Order to all parties. On July 15, 2013, Complaint's counsel advised the Hon. Imre Karazegi, A.L.J., and the GRC that the parties had reached a settlement and requested that the complaint be withdrawn with prejudice.

#### Analysis

No analysis is required.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that this complaint be dismissed because the Complainant's Counsel withdrew his complaint from the Office of Administrative Law via letter to the Honorable Imre Karaszegi, A.L.J., dated July 15, 2013, because the parties have reached settlement in this matter. Therefore, no further adjudication is required.

Prepared By: Dawn R. SanFilippo, Esq.  
Senior Counsel

Approved By: Brandon D. Minde, Esq.  
Executive Director

August 20, 2013