



**Minutes of the Government Records Council
November 30, 2010 Public Meeting – Open Session**

The meeting was called to order at 1:07 p.m. at the Department of Community Affairs, Conference Room 126, Trenton, New Jersey. The Open Public Meetings Act statement was read.

The pledge of allegiance was recited while standing by all.

The meeting notice and fire emergency procedure was 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 the Caggiano complaint adjudications), and Denise Parkinson Vetti (designee of Department of Education Acting Commissioner Rochelle Hendricks).

GRC Staff In Attendance: Executive Director Catherine Starghill, GRC Secretary Brigitte Hairston, Communications Manager Dara Lownie, Case Managers: Harlynn Lack and Darryl Rhone, Designated Outside Counsel Joseph Maddaloni and Deputy Attorney General Debra Allen.

Ms. Tabakin read the Resolution for Closed Session 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 matters:

1. Thomas Caggiano v. NJ Government Records Council (2010-212)
2. Thomas Caggiano v. NJ Government Records Council (2010-213)

A motion was made to go into closed session by Ms. Spera and seconded by Ms. Vetti to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Ms. Spera and seconded by Ms. Vetti to end the closed session. The motion was adopted by a unanimous vote. The Council met in closed session from 1:10 p.m. until 1:26 p.m.

Open Session reconvened at 1:28 p.m. and Ms. Hairston called roll.

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

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the open session minutes of the June 29, 2010 meeting. The motion passed by a unanimous vote.

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the closed session minutes of the June 29, 2010 meeting. The motion passed by a unanimous vote.

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the open session minutes of the July 27, 2010 meeting. The motion passed by a unanimous vote.

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the closed session minutes of the July 27, 2010 meeting. The motion passed by a unanimous vote.

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the open session minutes of the August 24, 2010 meeting. The motion passed by a unanimous vote.

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the closed session minutes of the August 24, 2010 meeting. The motion passed by a unanimous vote.

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the open session minutes of the October 26, 2010 meeting. The motion passed by a unanimous vote.

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the closed session minutes of the October 26, 2010 meeting. The motion passed by a unanimous vote.

Council Adjudication:

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

1. Kathleen M. Bishop v. City of Plainfield, Tax Collector (Union) (2010-153)
2. John Paff v. City of Perth Amboy (Middlesex) (2010-154)
3. Wayne Martin Planker v. NJ Department of Corrections (2010-156)
4. Cynthia A. McBride v. Township of Pennsauken (Camden) (2010-253)
5. Anthony Singer v. West Windsor Township, Police Department (2010-301)
6. Joseph Blaetter v. City of Union City (Hudson) (2010-312)

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 Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

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. William Gettler v. Wantage Regional Schools, Board of Education (Sussex) (2007-105)
3. Joyce Blay v. Jackson Board of Education (Ocean) (2007-177)
4. John Paff v. Borough of Lavallette (Ocean) (2007-209)
5. David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306)
6. John Bentz v. Borough of Paramus (Bergen) (2008-89)
7. J.C. v. NJ Department of Education, Deputy Commissioner's Office (2008-91)
8. Robert Verry v. Borough of South Bound Brook (Somerset) (2008-161)
9. Gertrude Casselle v. NJ Department of Community Affairs, Division on Community Resources (2008-248)
10. Ursula Cargill v. NJ Department of Education (2009-9)
11. Ursula Cargill v. State Ethics Commission (2009-10)
12. Jason Alt v. NJ Department of Education (2009-114)
13. Joseph Armenti v. Robbinsville Board of Education (Mercer) (2009-154)
14. William Cimochoowski v. NJ Department of Community Affairs, Div of Codes & Standards, Office of Code Enforcement (2009-261)
15. Michael Pushko v. NJ Department of Community Affairs, Division of Housing & Community Resources (2009-269)

Thomas Caggiano v. NJ Government Records Council (2010-212)

Thomas Caggiano v. NJ Government Records Council (2010-213)

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.

Donald Baldwin v. Township of Readington (Hunterdon) (2006-165)

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.

Howard Kupferman v. Township of Long Hill, Board of Education (Morris) (2007-213)

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.

Gary S. DeMarzo v. City of Wildwood (Cape May) (2009-61)

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.

Steven Duarte v. Township of Mansfield (Warren) (2009-130)

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.

Russell Tinsley v. NJ State Parole Board (2009-195)

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.

Richard Rivera v. Town of Guttenberg, Police Department (Hudson) (2009-247)

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.

Joseph Ingemi v. Town of Hammonton (Atlantic) (2009-265)

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.

Tonia Hobbs v. Township of Hillside (Union) (2009-286)

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.

Glenn D. Kassman (On behalf of Joseph Tenaglia) v. NJ Department of Corrections (2009-297)

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 F. Edwards v. Plainfield Housing Authority (Union) (2009-318)

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.

Walter M. Luers (On behalf of Gwen Franklin) v. Township of West Orange (Essex) (2009-327)

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.

Adrian O. Mapp v. Borough of Roselle (Union) (2009-334)

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.

Kenneth Mayer v. Borough of Roselle Park (Union) (2009-336)

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.

Barbara P. Criscione v. Town of Guttenberg (Hudson) (2010-68)

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.

Steven Lemongello (On behalf of The Press of Atlantic City) v. City of Brigantine (Atlantic) (2010-88)

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.

Martin O'Boyle v. Borough of Longport (Atlantic) (2010-107)

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.

Stuart J. Alterman, Esq. (On behalf of Louis Mercurio) v. Borough of Haledon (Passaic) (2010-117)

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.

Complaints on Appeal: McGee v. Township of East Amwell (Hunterdon), A-1233-09T2 (App. Div. November 16, 2010). On appeal from GRC Complaint No. 2007-305.

Ms. Starghill informed the Council of the relevant facts regarding this complaint on appeal:

- McGee filed an OPRA request demanding the record of a Township Committee meeting in October 2007 and all e-mails sent after Dec. 31, 2006 between certain township officials.
- The GRC reviewed the e-mails and declared most of them exempt from OPRA because they included "advisory, consultative, or deliberative material" or "personnel records" according to court records.
- The appellate court judges agreed with the GRC's finding on the e-mails containing advisory, consultative or deliberative material.
- The court remanded the complaint regarding personnel records back for further review because McGee claimed she had waived her right to keep her personnel records private.
- "Unfortunately, this argument was not raised by McGee before the GRC. We deem it appropriate to remand to afford East Amwell the opportunity to present arguments against waiver before the GRC," the judges wrote, "On remand, the GRC shall determine whether McGee effectively waived the confidentiality accorded her by the 'personnel records' exception or whether there are countervailing concerns or policies that would preclude release of the records."

Complaints Adjudicated on NJ Superior Court & NJ Supreme Court: Spectraserv v. Middlesex County Utilities Authority, A-1080-09T2 (App. Div. November 18, 2010).

Ms. Starghill informed the Council of the relevant facts regarding this complaint adjudicated in the Appellate Division of the NJ Superior Court:

Middlesex County Utilities Authority is not liable to its general contractor for attorneys' fees under OPRA where the request for public documents was overbroad, nonspecific and encompassed both privileged and confidential (trade secret) materials. Moreover, in light of pending construction litigation between the parties in the Law Division, the government agency's proposed compromise to coordinate the production of nonexempt documents to satisfy both the contractor's OPRA request and its discovery demands in the ongoing lawsuit was a reasonable solution under N.J.S.A. 47:1A-5(g), that accommodated the interests of the requester in securing public information on a timely basis, and the agency is not having its operations substantially disrupted.

Executive Director's Report and New Business: Ms. Starghill informed the Council that she conducted an OPRA seminar for the NJ Institute for Local Government Attorneys while at the League of Municipalities Conference in Atlantic City.

Ms. Starghill also informed the Council that she held an OPRA session during the League conference with significant attendance numbers.

Lastly, Ms. Starghill informed the Council of two (2) upcoming OPRA seminars:

- December 7th for the New Jersey Association of School Administrators. Combined seminar with the Division of Archives and Records Management.
- December 14th for the Monmouth County Police Academy in Freehold, NJ

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,

Charles Richman, Secretary

Date Approved: January 25, 2011