



**Minutes of the Government Records Council
September 27, 2011 Public Meeting – Open Session**

The meeting was called to order at 1:13 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), 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), Frank Caruso (Senior Case Manager), Harlyne Lack (Case Manager), Darryl Rhone (Case Manager), Debra Allen (Deputy Attorney General) and Joseph Maddaloni, Jr. (Designated Outside Counsel).

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/or discuss anticipated litigation in which the public body may become a party in the following matters:

1. Jesse Wolosky v. Township of Sparta (Sussex) (2008-219)
2. Jesse Wolosky v. Township of Sparta (Sussex) (2008-277)

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 1:15 p.m. until 1:45 p.m.

Open Session reconvened at 1:46 p.m. and Ms. Hairston called roll.

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

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

July 26, 2011 Open Session Minutes:

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the open session minutes of the July 26, 2011 meeting. The motion passed by a unanimous vote.

July 26, 2011 Closed Session Minutes:

A motion was made by Mr. Richman and seconded by Ms. Vetti to approve the closed session minutes of the July 26, 2011, 2011 meeting. The motion passed by a unanimous vote.

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 Cimochoowski v. NJ Department of Community Affairs, Div of Codes & Standards, Office of Code Enforcement (2009-261)
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. John Paff v. Borough of Raritan (Somerset) (2010-229)
2. Rosemarie Kindon v. Borough of Ocean Gate (Ocean) (2010-296)
3. Philip Charles v. Plainfield Municipal Utilities Authority (Union) (2010-333)
4. Lisa Mulligan v. Upper Freehold Regional School District, Allentown High School (Monmouth) (2010-334)
5. Jennifer Harwood v. City of Orange (Essex) (2011-20)
6. Kristofer Surdis v. NJ Department of Corrections (2011-25)
7. Rose Ann Caputo-Lombardi v. Borough of Carteret (Middlesex) (2011-170)
8. David H. Weiner v. NJ Department of Labor & Workforce Development (2011-180)
9. Jaime K. Fraser v. Township of Old Bridge (Middlesex) (2011-204)
10. Charles Florio v. City of Linden (Union) (2011-209)
11. David H. Weiner v. County of Essex (2011-235)
12. Thomas Dello Russo v. Borough of Fair Lawn (Bergen) (2011-241)

13. Darlene R. Esposito v. New Jersey Board of Public Utility Commissioners (2011-246)
14. Elsa Mantilla v. City of Paterson (Passaic) (2011-247)
15. Jeremy Rosen (On Behalf of the Courier Post) v. Lumberton Township (Burlington) (2011-253)
16. Ali S. Morgano v. County of Essex (2011-260)
17. Richard Rivera v. Township of Nutley Police Department (Essex) (2011-278)
18. Jeannie Swint (on behalf of Construction Journal) v. Hudson County Improvement Authority (2011-282)
19. Jeannie Swint (on behalf of Construction Journal) v. West New York Board of Education (Hudson) (2011-290)

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 adjudication of the following complaints was tabled:

1. Jesse Wolosky v. Township of Sparta (Sussex) (2008-219)
2. Jesse Wolosky v. Township of Sparta (Sussex) (2008-277)
3. Richard Rivera v. Rutgers, The State University of NJ, Police Department (2009-331)

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

John Paff v. Borough of Lavallette (Ocean) (2007-209)

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.

Stephen Jung v. Borough of Roselle (Union) (2007-299)

Joseph O'Halloran v. Borough of Roselle (Union) (2007-307)

Ms. Lownie informed the Council that these two (2) complaints have been combined. 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.

Jesse Wolosky v. Township Stillwater (Sussex) (2009-22)

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.

Jesse Wolosky v. County of Sussex (2009-26)

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.

Jesse Wolosky v. Stillwater Township (Sussex) (2009-30)

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.

Laura Danis v. Garfield Board of Education (Bergen) (2009-156)

Laura Danis v. Garfield Board of Education (Bergen) (2009-157)

Laura Danis v. Garfield Board of Education (Bergen) (2009-158)

Mr. Caruso informed the Council that these three (3) complaints have been combined. 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.

Jnanendra P. Ray v. Freedom Academy Charter School (Camden) (2009-185)

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) (2009-203)

Larry Kohn v. Township of Livingston (Essex) (2009-211)

Mr. Caruso informed the Council that these two (2) complaints have been combined. 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, Esq. (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.

Costantino Colasante v. County of Bergen (2010-18)

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.

Rahim Caldwell v. City of Vineland (Cumberland) (2010-19)

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.

John Paff v. NJ Department of Law & Public Safety, New Jersey State Police (2010-126)

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.

Benjamin A. Spivack, Esq. (On behalf of Passaic County Sheriff's Department Professional Association) v. New Jersey Civil Service Commission (2010-130)

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.

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2010-135)

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.

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 written. A motion was made by Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

Jesse Wolosky v. Borough of Morris Plains (Morris) (2010-165)

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.

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2010-174)

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) (2010-175)

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.

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 written. A motion was made by Mr. Richman and seconded by Ms. Vetti. The motion passed unanimously.

Jesse Wolosky v. Borough of Victory Gardens (Morris) (2010-187)

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: Fairshare Housing, Inc. v. New Jersey State League of Municipalities, A-36-10 (August 23, 2011).

The New Jersey Supreme Court overturned both lower courts' ruling that the League of Municipalities was not a public agency for the purposes of OPRA. The Supreme Court found the league meets the legal definition of an instrumentality created by political subdivisions. "That plain language places the League squarely within the term 'public agency,'" Justice Albin wrote, adding that the League "is achieving an end and providing a function on behalf of all 566 of New Jersey's municipalities." By combining towns' resources and personnel, the league "can do for all municipalities what no one municipality can do for itself," lobbying the Legislature, filing lawsuits, conducting educational programs, the opinion said. Moreover, it is "controlled by elected or appointed officials."

The Supreme Court held that the lower courts erred by importing a definition of public body from the state's limited Open Public Meetings Act. That "Sunshine Law" applies only to bodies that perform a government function or are authorized to expend public funds.

"The language defining a 'public body' under OPMA and the language defining 'public agency' under OPRA are distinctly different," according to the ruling.

Drinker Biddle & Reath LLP v. New Jersey Dep't of Law & Pub. Safety, 421 N.J. Super. 489 (August 18, 2011).

Drinker Biddle & Reath LLP submitted an OPRA request for copies of the transcripts from the depositions of three of Exxon's experts, which private counsel representing the NJDEP took during environmental litigation with Exxon. The transcripts had not been filed with the court. The New Jersey Department of Law and Public Safety, Division of Law denied Drinker's OPRA request, stating that the records were exempt from public disclosure pursuant to N.J.S.A. 47:1A-9.b. and judicial case law which recognizes that unfiled discovery is not subject to public access.

Drinker appealed and the trial judge dismissed Drinker's OPRA claim, concluding in part, that the transcripts were not subject to access pursuant to N.J.S.A. 47:1A-9.b. "The statute incorporates the grant of confidentiality to unfiled discovery documents established or recognized by pre-OPRA case law. The judge also dismissed Drinker's common-law right-of access claim, questioning whether the transcripts fell under the common-law definition of "public records" and concluding that Drinker failed to state a personal interest in obtaining the transcripts, and its asserted general public interest in the Exxon litigation did not provide adequate basis for a directed ruling in favor of Drinker in light of the abundance of authority protecting unfiled discovery information.

The Appellate court held that N.J.S.A. 47:1A-9.b. exempts unfiled discovery from disclosure; however, it reversed the dismissal of Drinker, Biddle & Reath LLP's common-law right of access claim, and remanded for the trial court to conduct the appropriate common-law balancing test.

Executive Director's Report and New Business: Ms. Starghill informed the Council of the following upcoming OPRA Seminars:

1. Thursday September 29th – OPRA training for Burlington County Internal Affairs Association in Westampton, NJ.
2. Wednesday October 12th - OPRA training for law enforcement agencies at the John H. Stamler Police Academy in Scotch Plains, NJ.
3. Tuesday October 18th - OPRA Seminar hosted by the New Jersey State League of Municipalities at the Robert Meyner Reception Center in Holmdel, 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 2:05 p.m.

Respectfully submitted,

Denise Parkinson-Vetti, Secretary

Date Approved: October 25, 2011