



**Minutes of the Government Records Council
February 28, 2012 Public Meeting – Open Session**

The meeting was called to order at 10:35 a.m. at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey. Ms. Tabakin read the Open Public Meetings Act statement.

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

Ms. Tabakin read the meeting notice and fire emergency procedure.

Ms. Lillie called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Charles Richman (designee of Department of Community Affairs Acting Commissioner Richard E. Constable, III) and Denise Parkinson Vetti, Esq. (designee of Department of Education Acting Commissioner Christopher D. Cerf) and Steven Ritardi, Esq.

GRC Staff In Attendance: Catherine Starghill (Executive Director), Karyn Gordon (In-House Counsel), Brigitte Lillie (Secretary), Dara Lownie (Communications Manager), Frank Caruso (Senior Case Manager), Harlynn Lack (Case Manager), John Stewart (Mediator), 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. David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306) (*In-Camera*)
2. George Burdick, Jr. v. NJ Office of Administrative Law (2009-150)
3. Joan McGee v. Township of East Amwell (Hunterdon) (2009-275) (*In-Camera*)
4. Jesse Wolosky v. Township of Sparta (Sussex) (2009-325) (*In-Camera*)
5. John Paff v. Township of Teaneck (Bergen) (2010-9) (*In-Camera*)
6. Jesse Wolosky v. Township of Rockaway (Morris) (2010-242)

Ms. Starghill noted that Mr. Richman is recused from the discussion on David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306) (*In-Camera*). Ms. Starghill also noted that Mr. Ritardi is recused from the discussion on John Paff v. Township of Teaneck (Bergen) (2010-9) (*In-Camera*).

Ms. Vetti made a motion to go into closed session and Mr. Richman seconded the motion. The Council adopted the motion by a unanimous vote. Mr. Richman made a motion to end the closed session and Ms. Vetti seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 10:37 a.m. until 11:33 a.m.

Open Session reconvened at 11:45 a.m. and Ms. Lillie called roll.

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

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

January 31, 2012 Open Session Minutes

Ms. Tabakin noted an edit on page 1 regarding the spelling of Ms. Vetti's name.

Mr. Ritardi made a motion and Ms. Vetti seconded the motion to approve the open session minutes of the January 31, 2012 meeting, as edited. The motion passed by a unanimous vote.

January 31, 2012 Closed Session Minutes

Ms. Tabakin noted an edit to page 2 regarding a duplicative word.

Mr. Richman made a motion and Ms. Vetti seconded the motion to approve the closed session minutes of the January 31, 2012 meeting, as edited. The motion passed by a unanimous vote.

Council Adjudications:

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

1. Lewis Wilson (On behalf of CamCare Health Corporation) v. City of Camden (Camden) (2010-306)
2. Donna Sheets v. Winslow Township Board of Education (Camden) (2011-51)
3. Chris Hayes v. Township of Robbinsville (Mercer) (2011-135)
4. Michael I. Inzelbuch v. Passaic Board of Education (2011-283)
5. Raymond Klepar v. Little Falls Township (Passaic) (2012-8)
6. Raymond Klepar v. Little Falls Township (Passaic) (2012-9)
7. Keith A. Werner v. NJ Department of Health & Human Services (2012-18)
8. Cynthia A. McBride v. Township of Ocean (Monmouth) (2012-28)
9. Anthony Florczak v. Bergen County Probation Department (2012-31)

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

The Council put the following complaints requiring individual adjudication to a vote:

James D'Andrea v. NJ Department of Community Affairs, Division of Local Government Services (2007-64)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Richman recused.

Gertrude Casselle v. NJ Department of Community Affairs, Division of Community Resources (2008-248)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Richman recused.

William Cimochoowski v. NJ Department of Community Affairs, Division of Codes & Standards, Office of Local Code Enforcement (2009-261)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Richman recused.

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

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Richman recused.

J.C. v. NJ Department of Education, Deputy Commissioner's Office (2008-91)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Richman made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Ms. Vetti recused.

Ursula Cargill v. NJ Department of Education, Office of the Chief of Staff (2009-9)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Richman made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Ms. Vetti recused.

Ursula Cargill v. NJ Department of Law & Public Safety, State Ethics Commission (2009-10)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Richman made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Ms. Vetti recused.

Jason Todd Alt (on behalf of The Daily Journal) v. NJ Department of Education, Division of Chief of Staff (2009-114)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Richman made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Ms. Vetti recused.

George Burdick, Jr. v. NJ Office of Administrative Law (2009-150)

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

Joseph Armenti v. Robbinsville Board of Education (Mercer) (2009-154)

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

Lisa Miceli Waters (on behalf of Giordani, Halleran & Ciesla) v. NJ Office of the Inspector General (2009-257)

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

Joan McGee v. Township of East Amwell (Hunterdon) (2009-275)

Ms. Gordon informs the Council that the *in camera* table has been amended.

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

Glenn 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. Ms. Vetti made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

Jesse Wolosky v. Township of Sparta (Sussex) (2009-325)

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

John Paff v. Township of Teaneck (Bergen) (2010-9)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Richman made a motion and Ms. Vetti seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Michelle O'Callaghan v. Lower Township Police Department (Cape May) (2010-44)

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

James Sage v. Freehold Regional High School District (Monmouth) (2010-108)

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

Richard Rivera v. City of Plainfield (Union) (2010-111)

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

Jesse Wolosky v. Township of Mine Hill (Morris) (2010-161)

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

Jesse Wolosky v. Borough of Lincoln Park (Morris) (2010-164)

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

Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-196)

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

Michael Lakavitch v. Township of Toms River (Ocean) (2010-230)

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

Clifford A. Harris v. NJ Department of Corrections (2010-233)

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

Jesse Wolosky v. Township of Rockaway (Morris) (2010-242)

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

Jesse Wolosky v. Township of Boonton (Morris) (2010-243)

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

Jesse Wolosky v. Township of Randolph (Morris) (2010-244)

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

Jesse Wolosky v. Township of Rockaway (Morris) (2010-245)

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

Danny Rios v. NJ Department of Corrections (2010-255)

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

Jesse Wolosky v. Township of East Hanover (Morris) (2010-259)

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

Jesse Wolosky v. Borough of Mt. Arlington (Morris) (2010-260)

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

Shawn Smith v. NJ Department of Treasury, Office of the Chief of Staff (2010-263)

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

Jesse Wolosky v. Township of Roxbury (Morris) (2010-265)

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

Jesse Wolosky v. Borough of Mt. Arlington (Morris) (2010-270)

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

Vesselin Dittrich v. City of Hoboken (Hudson) (2010-279)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Richman made a motion and Ms. Vetti seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Derek J. Kearns v. Township of Lyndhurst (Bergen) (2010-292)

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

Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-124)

Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-125)

Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-126)

Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-127)

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written in these consolidated complaints. Mr. Richman made a motion and Ms. Vetti seconded the motion. The motion passed unanimously.

The Council tabled the adjudication of the following complaints:

David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306)

Jesse Wolosky v. Town of Morristown (Morris) (2010-225)

GRC Complaints on Appeal: None.

Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:

Jones v. Paulsboro Police Dep't, DOCKET NO. GLO-L-1360-11, 2012 N.J. Super. Unpub. LEXIS 234, (Law Div. January 12, 2012).

Ms. Starghill informed the Council that Plaintiff filed this action under the OPRA and the common law right of access, seeking disclosure of:

- (1) a surveillance video taken outside the Paulsboro Police Department on May 5, 2011 and
- (2) unredacted Use of Force reports prepared by the Police Department from January 1, 2009 through May 24, 2011.

Plaintiff contends the video contains evidence that may be relevant in a civil matter stemming from an alleged altercation that occurred between officers and two private citizens.

The court finds that the Use of Force reports are public records subject to disclosure under OPRA and the redactions made by Defendants are inappropriate. Plaintiff's request for the unredacted Use of Force reports is granted. (GRC NOTE: the Appellate Division has held similarly in another case).

The video is a "criminal investigative record" and is exempt from disclosure under OPRA. Also, it is a confidential record under the Attorney General's Guidelines on Internal Affairs Policy & Procedures due to an ongoing internal affairs investigation.

As to the common law right of access, there is a greater interest in non-disclosure of the video where there are two pending investigations which outweigh Plaintiff's or public's interest in disclosure. Defendant's motion to dismiss as to the request for the video is granted.

Renna v. County of Union, DOCKET NO. A-1811-10T3, 2012 N.J. Super. Unpub. (App. Div February 17, 2012).

Ms. Starghill informed the Council that the issue in this appeal is whether a mailing list of the names and addresses of self-identified "senior citizens" is subject to the dissemination provision of OPRA.

The list was compiled by defendant County of Union to allow for distribution of a Senior Newsletter. Plaintiff requested a copy of the mailing list, but defendant redacted the addresses of persons appearing on the mailing list, asserting that the senior citizens' privacy interests precluded disclosure of this information under OPRA. Plaintiff brought an action challenging the redaction.

The trial judge concluded that plaintiff was entitled to the addresses. In addition, the judge ordered defendant to pay enhanced fees and costs to plaintiff's attorney. Defendant appeals.

The court applied the factors from Doe v. Poritz, 147 N.J. 1 (1995) regarding privacy interests:

1. **The type of record requested** - Senior Newsletter Mailing List.
2. **The information it does or might contain** - the information contained within the record consists of names and addresses of individuals who signed up for the newsletter. When recipients signed up for the newsletter, they were not told their information would be subject to disclosure.
3. **The potential harm in any subsequent nonconsensual disclosure** – trial court found that the real potential for harm in this case was unsolicited contact via door-to-door canvassing, mailing or other contact by plaintiff's organization or any other organization to which the list might be subsequently disclosed. Defendant argues that the trial court did not consider the possibility of potential victimization of seniors if the names and addresses of senior citizens were released.

Appellate court was not convinced that the home addresses associated with the identifier as "senior citizen" creates any harm because there is no requirement that a list member actually be a senior citizen. The record is devoid of any empirical data that the signatories were all senior citizens. There were no preconditions to signing up, and although we assume that the majority of signatories were seniors, they may well have included non-seniors in their number. The names could belong to senior citizens' children, care-takers, neighbors or anyone else with an interest in issues addressed in the newsletter.

4. **The injury from disclosure to the relationship in which the record was generated** - the potential injury would be door-to-door canvassing or mailing from plaintiff's group or other groups that subsequently received the list, against the reasoning for creating the list in the first place, to notify seniors of available services, the harm seems minimal. The list members signed up to receive information about governmental services. Plaintiff intends to send out information about governmental activity. As such, the "harm" from disclosure is minimal when compared with the County's purpose in maintaining the list.
5. **The adequacy of safeguards to prevent unauthorized disclosures** - the trial court found there were no safeguards to prevent disclosure of the names and addresses on the list. This argument is premised on the assumption that "senior citizen" is a personal identifier, a position the court rejected. The "senior citizen" designation does not reveal any personal information about the individuals on the list, not even their ages.
6. **The degree of need for access** - plaintiff's Watchdog group is specifically aimed at furthering the stated goals of OPRA. The Watchdog intends to inform citizens of government activities in Union County. This is consistent with OPRA's objective to "maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." Courts have favored disclosure when the proposed recipient's purpose resonates with that of OPRA.
7. **Whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access** – the trial court noted that plaintiff has a First Amendment free speech right to contact citizens and discuss the Watchdog's activities. Defendant has failed to demonstrate that the fact that plaintiff can contact as many people as she desires has adverse policy consequences such that it weighs against disclosure of the addresses on this particular list.

Additionally, the Appellate Court did not agree that the GRC decisions cited by amicus and defendant compel a different result. In three opinions, the GRC held that OPRA requests for names and home addresses of dog license holders, Rutgers season football ticket holders, and fire/burglar alarm permit holders should not be granted. The court noted that these cases relied, in part, on the issue of unsolicited contact. The court's view is that they are not persuasive in regard to the issue before us here.

HOLDING: Appellate court affirmed disclosure of home addresses.

Ms. Starghill noted that this decision is not universally applicable. Each case must be decided on its own merits based on the Doe factors.

Regarding enhancement of counsel fees:

The trial judge determined the lodestar and then awarded a thirty-five percent contingency enhancement to plaintiff's counsel. The judge concluded that a thirty-five percent enhancement was warranted because there was no published case law on point, and the application of a balancing test is an inherently risky undertaking due to the subjectivity involved in such process.

The Appellate court held that reasoning, standing alone, cannot support this contingency enhancement. This case involved an application of Doe factors, and that exercise does not warrant a thirty-five percent contingency enhancement. Court concluded that the matter should be remanded for further consideration of whether a contingency enhancement was warranted, and if so, the quantum of such enhancement.

Ms. Tabakin and Mr. Ritardi discussed a possible federal statute that prohibits unsolicited mailings. Ms. Tabakin discussed the use of "opt out" boxes on forms on which citizens provide personal information. Ms. Allen discussed the GRC's litigation with the NJ Foundation for Open Government and a citizen's reasonable expectation of privacy in today's technological age.

Executive Director's Report and New Business: None.

Public Comment: David Roundtree from Atlantic City. Mr. Roundtree stated that he was interested in seeing how the GRC operates. Mr. Roundtree stated that he was glad to hear about the court's decision in Renna v. County of Union because it shows the two sides to an argument and disagreement on issues. Mr. Roundtree stated that requestors sometimes have no recourse when an agency denies them access to what they ask for. Additionally, Mr. Roundtree stated that the government needs an agency to help public agencies complete their paperwork because agencies are bogged down with papers.

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

Meeting adjourned at 12:25 p.m.

Respectfully submitted,

Robin Berg Tabakin, Chairwoman

Date Approved: March 27, 2012