



**Minutes of the Government Records Council
April 25, 2012 – Closed Session**

The Council convened in closed session at 10:49 a.m. in Conference Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Robin Berg Tabakin, Esq. (Chairwoman), Charles Richman (designee of Department of Community Affairs Acting Commissioner Richard E. Constable, III) Denise Parkinson Vetti, Esq. (designee of Department of Education Acting Commissioner Christopher D. Cerf), and Steven Ritardi, Esq. (public member).

Also in attendance were GRC Staff: Catherine Starghill (Executive Director), Karyn Gordon (In-House Counsel), Brigitte Lillie (Secretary), Dara Lownie Barry (Communications Manager), Frank Caruso (Senior Case Manager), Darryl Rhone (Case Manager), John Stewart (Mediator), Debra Allen (Deputy Attorney General) and Joni Noble McDonnell (Designated Outside Counsel).

Mr. Richman made a motion and Ms. Vetti seconded the motion to go into closed session. The Council adopted the motion by a unanimous vote.

The Council met in 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:

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

Note: Mr. Richman is recused from voting on this complaint and exited the conference room during the following discussion.

Mr. Stewart introduced the proposed recommendations of the Executive Director. The Council reviewed the documents submitted for an *in camera* review to determine the validity of the Custodian's assertion that the records are exempt from disclosure under OPRA as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1. Mr. Stewart discussed the court's holding in Education Law Center v. NJ Department of Education, 198 N.J. 274, 298 (2009) regarding the advisory, consultative or deliberative material exemption; specifically, that the exemption applies to entire records utilized during a deliberative process.

The Council agreed to put the recommendations to a vote during open session.

**Jesse Wolosky v. Township of Harding (Morris) (2010-221)
Jesse Wolosky v. Borough of Madison (Morris) (2010-222)**

Mr. Rhone introduced the proposed recommendations of the Executive Director. Ms. Allen discussed the privacy interests in disclosing home addresses. Ms. Allen also discussed the Financial Disclosure Statement statute and indicated that the statute specifically states that the

financial disclosure statements are public records, but nothing in the statute states that the records cannot be redacted. Ms. Allen stated that home addresses could potentially be redacted. Ms. Allen suggested that the Council determine whether it should conduct a balancing test regarding the disclosure of home addresses on the financial disclosure statements, or definitively state in its decision why the Council is not conducting such a test.

Ms. Starghill stated that the Division of Local Government Services routinely advises local government agencies that the home addresses contained on financial disclosure statements are public. Ms. Starghill stated that there is a need to release said addresses on a local level and provided the following example: residents would want to ensure that there is no conflict of interest in a zoning officer voting on matters that would positively affect his/her property.

Mr. Richman questioned the difference between the State's financial disclosure form and the local form. Ms. Starghill stated that the forms are different and that there is not the same level of a potential conflict with a State employee and real property owned than there is for a local official. Mr. Richman noted that anyone can go online and look up a person's home addresses and property tax amounts.

Ms. Tabakin stated that she believes the Council should conduct a balancing test on the financial disclosure statements. Ms. Starghill stated that she will pull these complaints from the April agenda and schedule them for adjudication in May in order to clarify the analysis.

Mr. Ritardi questioned, if the financial disclosure statements are by law public records, how would you pick and choose what to disclose, especially now that sections of the form are optional. Mr. Ritardi stated that if a person inputs optional information on the form, it could potentially be a privacy waiver issue.

Ms. Vetti asked Ms. Allen why the Division of Local Government Services amended the form so that addresses are now optional. Ms. Allen indicated that she was not aware of the reason for said decision.

Mr. Rhone asked whether disclosure of home addresses on the financial disclosure statements will affect the disclosure of same on the resume and payroll records. Ms. Starghill stated that she will address said issue in her proposed findings and recommendations to be scheduled for the May meeting.

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2010-302) (*In-Camera*)

Note: Mr. Ritardi is recused from voting on this complaint and exited the conference room during the following discussion.

Mr. Caruso introduced the proposed recommendations of the Executive Director. The Council reviewed the documents submitted for an *in camera* review to determine the validity of the Custodian's assertion that the records are exempt from disclosure under OPRA as inter-agency or intra-agency advisory, consultative or deliberative material, are attorney-client privileged and contain information "information generated by or on behalf of public employers in connection with collective negotiations" pursuant to N.J.S.A. 47:1A-1.1., N.J.S.A. 47:1A-9.b. and R. 4:10-2(c).

Mr. Caruso stated that the issue is regarding disclosure of letterhead and address blocks. Ms. Starghill stated that when some information contained on a record is exempt from public access, it does not mean that a custodian can withhold the entire record.

The Council agreed to put the recommendations to a vote during open session.

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

Mr. Caruso discussed the contract at issue with the Council. Ms. Starghill informed the Council of the terms of said contract. Mr. Caruso discussed the immediate access analysis on page six (6) of the proposed findings and recommendations.

The Council agreed to put the recommendations to a vote during open session.

Mr. Ritardi made a motion and Ms. Vetti seconded the motion to end the closed session. The Council adopted the motion by a unanimous vote.

The closed session meeting concluded at 11:30 a.m.

Respectfully Submitted:

Denise Parkinson Vetti

Date Approved: May 29, 2012