



**Minutes of the Government Records Council  
April 25, 2012 Public Meeting – Open Session**

The meeting was called to order at 10:38 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), Denise Parkinson Vetti, Esq. (designee of Department of Education Acting Commissioner Christopher D. Cerf), and Steven Ritardi, Esq. (public member).

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

The Council put the following complaints requiring individual adjudication, in which some members must recuse themselves, to a vote:

**Regina Okafor v. Township of Irvington (Essex) (2008-214)**

**Regina Okafor v. Township of Livingston (Essex) (2010-46) (combined complaints)**

Mr. Richman expressed his concern regarding the award of prevailing party attorney's fees in these complaints; however, Mr. Richman stated that he would vote in the affirmative in these matters. Mr. Richman indicated that he would like the Council to receive more guidance on the application and award of attorney's fees from the courts or the Office of Administrative Law.

Ms. Tabakin stated that the attorney in these matters submitted a bill for around \$13,000 and the Administrative Law Judge reduced the award to about \$3,600.

Ms. Starghill stated that the award is solely based on the attorney's submission of a post hearing brief to the Office of Administrative Law.

Ms. Tabakin stated that the Complainant in these matters hired an attorney, even just for post hearing submissions, and the Judge determined that fees are warranted.

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.

**Jacqueline Andrews v. Township of Irvington (Essex) (2008-232)**

**Jacqueline Andrews v. Township of Irvington (Essex) (2008-243)**

**Jacqueline Andrews v. Township of Irvington (Essex) (2009-39) (combined complaints)**

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.

**Jacqueline Andrews v. Township of Irvington (Essex) (2009-111)**

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.

**William L. Scott v. County of Essex (2010-169)**

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.

**Jacqueline Andrews v. Township of Irvington (Essex) (2009-197)**

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.

**Richard Rivera v. City of Newark (Essex) (2010-274)**

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.

**Daniel Gatson v. Morris County Prosecutor's Office (2010-276)**

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.

**Quran Goodman v. Essex County Prosecutor's Office (2010-323)**

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.

**Robert A. Verry v. Borough of South Bound Brook (Somerset) (2010-337)**

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.

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. Jesse Wolosky v. Township of Harding (Morris) (2010-221)
3. Jesse Wolosky v. Borough of Madison (Morris) (2010-222)
4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2010-302) (*In-Camera*)
5. Michael Lakavitch v. Township of Toms River (Ocean) (2010-230)

Mr. Richman made a motion to go into closed session and Ms. Vetti seconded the motion. The Council adopted the motion by a unanimous vote. Mr. Ritardi 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 10:49 a.m. until 11:30 a.m.

Open Session reconvened at 11:40 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:

**March 27, 2012 Open Session Minutes**

Mr. Richman noted that Joyce Paul (former designee of Department of Community Affairs Acting Commissioner Richard E. Constable, III) briefed him on the events of the March 27, 2012 meeting and confirmed that these minutes accurately reflect the events of said meeting so he is able to vote to approve said minutes.

Ms. Starghill asked Ms. Allen for legal advice regarding whether this is appropriate. Ms. Allen confirmed that Mr. Richman is able to vote on the minute since Ms. Paul briefed him on the contents.

Mr. Ritardi made a motion and Ms. Vetti seconded the motion to approve the open session minutes of the March 27, 2012 meeting. The motion passed by a unanimous vote.

**March 27, 2012 Closed Session Minutes**

Mr. Richman again noted that Joyce Paul (former designee of Department of Community Affairs Acting Commissioner Richard E. Constable, III) briefed him on the events of the March 27, 2012 meeting and confirmed that these minutes accurately reflect the events of said meeting so he is able to vote to approve said minutes.

Mr. Ritardi made a motion and Mr. Richman seconded the motion to approve the closed session minutes of the March 27, 2012 meeting. The motion passed by a unanimous vote.

### **Council Adjudications:**

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

1. Randy Paulenich v. Borough of Hopatcong (Sussex) (2011-97)
2. Steven Farman v. East Brunswick Board of Education (Middlesex) (2011-366)
3. Yvonne D. Ellis v. Township of Ewing (Mercer) (2012-41)
4. Brian T. Giblin, Esq. (On behalf of Elmwood Park) v. City of Paterson (Passaic) (2012-66)
5. Francisco Nunez v. City of Union City (Hudson) (2012-67)
6. Maritan L. Cibrian v. NJ Department of Banking and Insurance (2012-78)
7. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-85)
8. David Herron v. Borough of Red Bank (Monmouth) (2012-113)
9. Thomas Caggiano v. NJ Department of Community Affairs, Commissioner's Office (2012-115)
10. John Campbell v. Office of the Superior Court Clerk (2012-116)
11. Woo Jin Hwang v. Ridgewood Post Office (Passaic) (2012-117)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions.

Ms. Tabakin stated that Mr. Ritardi is recused from voting on item no. 4 (Brian T. Giblin, Esq. (On behalf of Elmwood Park) v. City of Paterson (Passaic) (2012-66)) and Mr. Richman is recused from voting on item no. 9 (Thomas Caggiano v. NJ Department of Community Affairs, Commissioner's Office (2012-115)).

Ms. Allen advised Ms. Tabakin to take an individual vote on the two (2) administrative dispositions with recusals.

Ms. Tabakin called for an amended motion to accept the Executive Director's recommendations as written in the following Administrative Complaint Dispositions: item nos. 1-3; item nos. 5-8; and item nos. 10-11. Mr. Richman made a motion and Ms. Vetti seconded the motion. The motion passed unanimously.

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in item no. 4 (Brian T. Giblin, Esq. (On behalf of Elmwood Park) v. City of Paterson (Passaic) (2012-66)). Mr. Richman made a motion and Ms. Vetti seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in item no. 9 (Thomas Caggiano v. NJ Department of Community Affairs, Commissioner's

Office (2012-115)). Ms. Vetti made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Richman recused.

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

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

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 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. Mr. Ritardi made a motion and Ms. Vetti seconded the motion. The motion passed by a majority vote; Mr. Richman recused.

**Gayle Livecchia v. Borough of Mount Arlington (Morris) (2008-80)**

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.

**Robert Edwards v. Plainfield Housing Authority (Union) (2008-183)**

**Robert Edwards v. Plainfield Housing Authority (Union) (2009-259) (combined complaints)**

Mr. Caruso informed the Council that these two (2) complaints are combined into one findings and recommendations.

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.

**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 Ms. Vetti seconded the motion. The motion passed unanimously.

**Richard Rivera v. City of Plainfield (Union) (2010-112)**

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

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

Mr. Caruso informed the Council that the findings and recommendations in this complaint have been amended to more fully develop the record regarding the contract at issue. Mr. Caruso stated that the addition appears in the second paragraph on page six (6) of the analysis under the immediate access issue. Mr. Caruso read aloud the following addition to the analysis:

“Additionally, a review of the contract form shows that the contract contains sixteen (16) provisions that parents or guardians must commit to in order for their child to participate in the Shore Riptide Hockey League. These provisions include a payment schedule, parent/guardian conduct and player conduct. The only other information the contract contains is a space for the child participant’s name and signature, parent/guardian name and signature, the Hockey Director’s signature and dates. The contract form does not contain any personally identifying information such as mailing address, e-mail address, social security number, or any descriptive information on the children participants.”

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

**Richard Rivera v. Cliffside Park Police Department (Bergen) (2010-275)**

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

**Richard Rivera v. Borough of Ho Ho Kus, Police Department (Bergen) (2010-280)**

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

**Hilary Downing v. NJ Department of Children & Family Services, Central Office (2010-295)**

Ms. Lack informed the Council that an edit has been made to page one (1) of the findings and recommendations under the records relevant to the complaint section. Ms. Lack stated that a minor child’s name has been replaced with initials.

Ms. Starghill stated that at the time of the OPRA request and complaint the child was under the age of 18.

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

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

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

Mr. Richman asked Ms. Starghill what the GRC is doing to educate custodians about redactions.

Ms. Starghill stated that she has three (3) OPRA seminars scheduled from the present date until the date of the next Council meeting, during which she provides guidance on how to properly redact records. Ms. Starghill also stated that redaction guidance is available in the Handbook for Records Custodians, as well as on the GRC's website.

**John Paff v. Neptune Township Housing Authority (Monmouth) (2010-307)**

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

**Shawn Smith v. NJ Department of Corrections (2010-310)**

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

**Jesse Wolosky v. Township of Vernon (Sussex) (2010-311)**

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

**Daniel W. Conard v. Runnemede Board of Education (Camden) (2010-318)**

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

**Andrew Babiak (On behalf of Gloria Grantham) v. Pleasantville Board of Education (Atlantic) (2010-326)**

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

**Sabino Valdes v. Union City Board of Education (Hudson) (2010-329)**

Ms. Tabakin questioned whether the Council has adjudicated previous complaints with the same requestor and agency over the exact same records.

Ms. Lack stated yes and indicated that the Complainant's presumption is that there are additional records responsive to his request that exist which have not been provided to him.

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

**Patricia Hoover v. Township of Howell (Monmouth) (2011-12)**

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

**Heidi R. Brunt v. Middletown Board of Education (Monmouth) (2011-13)**

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

**Vincenza Leonelli-Spin v. Passaic County Prosecutor's Office (2011-45)**

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

**Robert D. Dudley-Burdge v. NJ Department of Treasury, Division of Administration (2011-48)**

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

**David Herron v. NJ Department of Education, Office of the Chief of Staff (2011-56)**

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

**Ali S. Morgano v. NJ Civil Service Commission (2011-69)**

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

**Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-70)**

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

**Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-72)**

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

**Shakim Shalla El v. Township of Hillside (Union) (2011-83)**

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

**Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-142)**

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

Mr. Richman asked Ms. Starghill when the Council's decisions will be posted to the website. Ms. Starghill informed the Council that decisions are first sent simultaneously to the parties within 5-10 business days from the date of the meeting. Ms. Starghill further stated that after dissemination to the parties, the decisions are posted to the GRC's website.

**GRC Complaints on Appeal:** None.

**Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:** None.

**Executive Director's Report and New Business:** Ms. Starghill notified the Council that OPRA Seminar season is starting.

Upcoming OPRA training:

1. Friday, April 27, 2012 – all NJ Department of Community Affairs records custodians. Conference Room 129.
2. Wednesday, May 2, 2012 - Rutgers University/Governmental Purchasing Association of New Jersey Public Purchasing Education Forum at the Sheraton in Atlantic City. Two (2) one-hour sessions about OPRA's impact on electronic records. They anticipate 250 attendees representing the purchasing departments from municipalities, counties, authorities and school boards, as well as finance officers, tax collectors and clerks.
3. Friday, May 11, 2012 – OPRA seminar to South Jersey Law Enforcement. Hosted by the Burlington County Prosecutor's Office at the Emergency Services Training Center in Westampton, NJ.

Ms. Starghill reminded the Council members that the May meeting is on Tuesday May 29<sup>th</sup> – the day after the Memorial Day holiday. Ms. Starghill asked the Council members whether they would prefer to hold the meeting on Wednesday May 30<sup>th</sup>. Mr. Ritardi stated that he has something scheduled on May 30<sup>th</sup>. The remaining members indicated that the 29<sup>th</sup> is fine.

Finally, Ms. Starghill stated that it is Administrative Professionals Day and recognized the work that Ms. Lillie does for the Council and staff. Ms. Tabakin thanked Ms. Lillie for her hard work.

Mr. Richman stated that there seems to be a continuing problem with the disclosure of executive session minutes. Ms. Starghill agreed and stated that many custodians deny executive session minutes in whole when portions of said minutes should be disclosed. Ms. Starghill stated that even if every single discussion on a set of closed session minutes is exempt from public access, the records custodian is still obligated to grant access to the other portions of the minutes, such as who was in attendance, the date and time of the meeting, how long the session lasted, etc. Ms.

Starghill and Mr. Richman proposed disseminating an *OPRA Alert* regarding some of the repeated violations of the law such as redactions to executive session minutes.

**Public Comment:** William L. Scott, complainant in GRC Complaint No. 2010-169. Mr. Scott stated that his complaint was pulled from the previous month's agenda, but was adjudicated at today's meeting. However, Mr. Scott stated that he is unaware of the outcome of his complaint.

Ms. Starghill informed Mr. Scott that he will receive a copy of the Council's decision within 5-10 business days from today's meeting.

Mr. Scott questioned what the public knows about his complaint from the meeting today. Mr. Scott asked if a vote was taken on this complaint.

Ms. Starghill informed Mr. Scott of the GRC adjudication process: all submissions are in writing. The Council does not take testimony. A Case Manager prepares a written findings and recommendations of the Executive Director summarizing the facts and arguments submitted by the parties and a recommendation to the Council regarding whether access was unlawfully denied. During the public meeting the Council votes to accept, reject or modify the Director's recommended findings. Within 5-10 business days of the meeting, all parties to a complaint are notified simultaneously regarding the Council's disposition of the complaint.

Mr. Scott stated that he is pro se and that if he had a lawyer, he would expect a more detailed litigation. Mr. Scott asked about the complaint appeal process.

Ms. Starghill stated that a party can appeal the Council's decision to the Appellate Division of NJ Superior Court within 45 days from the decision date.

Matt Katz, reporter with the Philadelphia Inquirer. Mr. Katz asked how the public could discern which party prevailed in the adjudication of a complaint.

Ms. Starghill stated that the public is made aware when the decisions are posted to the GRC website, which occurs only after the parties are simultaneously notified of the Council's decision.

Mr. Katz stated that this is a public meeting, yet the public is unable to tell what occurred.

Ms. Starghill stated that the Council is a court alternative. Requestors can either challenge a denial of an *OPRA* request in court or with the GRC. Ms. Starghill stated that in a court filing, no one is aware of the Judge's decision until it is officially rendered on paper and disseminated to the parties. Similarly, Ms. Starghill stated that the GRC's decisions are rendered on paper and disseminated to the parties. Although the Council votes publicly, the content of the decision is not disclosed until the parties are notified. Ms. Starghill also stated that the Council's decisions are not yet even a record – the decisions themselves have not yet been prepared.

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

Meeting adjourned at 12:16 pm.

Respectfully submitted,

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Denise Parkinson Vetti, Secretary

Date Approved: May 29, 2012