



## **Minutes of the Government Records Council May 29, 2012 Public Meeting – Open Session**

The meeting was called to order at 10:44 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), Paul B. Macchia (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 L. Barry (Communications Manager), Frank Caruso (Senior Case Manager), Harlyne Lack (Case Manager), Darryl Rhone (Case Manager), John Stewart (Mediator), Debra Allen (Deputy Attorney General) and Joni Noble McDonnell (Designated Outside Counsel).

Ms. Tabakin welcomed Mr. Macchia to the Council as the Department of Community Affairs designee.

Ms. Tabakin stated that there is no closed session.

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

### **April 25, 2012 Open Session Minutes**

Ms. Starghill noted that Mr. Macchia conferred with Charles Richman (former designee of Department of Community Affairs Acting Commissioner Richard E. Constable, III) regarding the events of the April 25, 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 Ms. Vetti seconded the motion to approve the open session minutes of the April 25, 2012 meeting. The motion passed by a unanimous vote.

### **April 25, 2012 Closed Session Minutes**

Ms. Starghill again noted that Mr. Macchia conferred with Charles Richman (former designee of Department of Community Affairs Acting Commissioner Richard E. Constable, III) regarding the events of the April 25, 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 Ms. Vetti seconded the motion to approve the closed session minutes of the April 25, 2012 meeting. The motion passed by a unanimous vote.

### **Council Adjudications:**

The following complaint was presented to the Council for summary administrative adjudication:

1. David H. Weiner v. City of Newark (Essex) (2012-26)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in the above Administrative Complaint Disposition. Mr. Macchia made a motion and Ms. Vetti seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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

1. Jessica Morris, Esq. v. NJ Turnpike Authority (2011-86)
2. Robert L. Johnson (On behalf of the Ran Development Corporation LLC) v. Atlantic City Board of Education (Atlantic) (2011-284)
3. Ellery Karl v. Winslow Township Board of Education (Camden) (2011-375)
4. Ellery Karl v. Winslow Township Board of Education (Camden) (2011-376)
5. Ellery Karl v. Winslow Township Board of Education (Camden) (2011-377)
6. Wendie A. Kuhn v. Waterford Township (Camden) (2012-6)
7. Alfred L. Tard, Jr. (On behalf of Moorish Science Temple of America 4<sup>th</sup> & 5<sup>th</sup> Generation) v. Hamilton Township Municipal Court (Mercer) (2012-71)
8. Joyce Blay v. Lakewood Board of Education (Ocean) (2012-75)
9. Kyle Prall v. County of Ocean (2012-79)
10. Melinda J. Williams (On behalf of the Salem County Improvement Authority) v. Pittsgrove Township (Salem) (2012-107)
11. Karen Banda v. United States Senator of NJ, Frank R. Lautenberg (2012-125)
12. Jeannie Swint (On behalf of Construction Journal) v. Asbury Park Housing Authority (Monmouth) (2012-131)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. Mr. Macchia 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 (Mr. Ritardi exited the room because he is recused from voting on these complaints):

**Rashaun Barkley v. Essex County Prosecutor's Office (2011-92)**

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

**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 written. Mr. Macchia 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) (2011-114)**

**Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-115)**

**Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-116)**

**Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-117)**

**Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-118) (5 consolidated complaints)**

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

**Eric B. Levine (On behalf of the Hudson County Sheriff's Officers Policemen's Benevolent Association, Local 334) v. County of Hudson (2011-121)**

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

Mr. Ritardi re-entered the conference room.

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

**Richard Rivera v. Rutgers, The State University of NJ, Police Department (2009-311)**

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. Borough of Morris Plains (Morris) (2010-165)**

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

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

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

**Tucker Kelley v. Rockaway Township (Morris) (2010-269)**

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

**Donna Antonucci v. City of Hoboken (Hudson) (2010-284)**

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.

**Sabino Valdes v. Union City Board of Education (Hudson) (2010-285)**

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.

**Raheem Taylor v. NJ Department of Corrections (2010-319)**

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.

**Frank Boslet v. Township of Knowlton (Warren) (2010-327)**

**Frank Boslet v. Township of Knowlton (Warren) (2010-328) (consolidated)**

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

**Daniel Gatson v. NJ Department of Corrections (2011-28)**

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

**Sabino Valdes v. Union City Board of Education (Hudson) (2011-47)**

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

**Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-74)**

**Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-75) (Consolidated)**

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

**Derrick Bernard Parreott v. Asbury Park Police Department (Monmouth) (2011-78)**

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

**Dianne Rankin v. Township of Delaware (Hunterdon) (2011-81)**

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

**Dianne Rankin v. Township of Delaware (Hunterdon) (2011-82)**

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

**Keith A. Werner v. NJ Department of Corrections (2011-96)**

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

**Keith A. Werner v. NJ Department of Law & Public Safety, Office of the Attorney General (2011-108)**

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

**Bernard Reid v. NJ Department of Corrections (2011-111)**

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

**Gregory Byrnes v. Borough of Rockaway, Police Department (Morris) (2011-113)**

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

**Eugene E. Sarafin v. Borough of Hightstown (Mercer) (2011-122)**

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

**Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-140)**

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

**Dr. Alan Bell v. Paterson Public Schools (Passaic) (2012-39)**

Mr. Rhone informed the Council that the conclusion paragraph has been edited to change all references from "Custodian" to "Complainant."

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

**Richard Rivera v. City of Bayonne, Law Department (Hudson) (2012-49)**

Mr. Stewart informs the Council that the analysis has been edited on page 9.

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

**Richard Rivera v. City of Bayonne (Hudson) (2012-87)**

Mr. Stewart informs the Council that the analysis has been edited on page 7.

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

**GRC Complaints on Appeal:** None.

**Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:**

**Lebbing v. Flynn, DOCKET NO. A-2738-10T3, N.J. Super. Unpub. LEXIS 987 (App. Div. May 4, 2012).**

Ms. Starghill informed the Council that this action alleges that the Middlesex County Clerk's Office violated the common law right of access and the Open Public Records Act by charging a fee for copies of public records made on self-service photocopy machines owned by a private vendor and county-owned printers connected to the county's computer data base that exceed the actual cost for the copies.

The county appeals from the denial of its motion to dismiss plaintiff for lack of standing and of its motion for summary judgment regarding plaintiff's attorneys' fee petition.

Plaintiff cross-appeals from the amount of the attorneys' fee award and the denial of a stipend for herself.

The Appellate panel affirms all orders, finding that

(1) although the self-service copier claim was dismissed and plaintiff never made copies on the computer printers, the grounds for class certification continued after dismissal of the self-service copier claim and it is immaterial whether plaintiff or some other class member represented the class and the judge's denial of the law firm's motion to amend the complaint to add a co-lead plaintiff that had used the computer printer was a mistaken use of discretion;

(2) plaintiff was a prevailing party under OPRA since she was charged an excessive per page copying fee and while she did not achieve retroactive relief in this case, was a catalyst for change and should not be deprived of attorney's fees by the county's 11th-hour unilateral change of its copying fee policy, and the county's argument that it changed its policy pursuant to the court's holding in Smith is disingenuous; (note: Smith is the court decision that required all public agencies to charge actual cost for copying beginning July 1, 2010) and

(3) balancing the need for some compensation for the prevailing party's counsel against the reality that plaintiff did not achieve the desired result through this action alone and the lack of evidence that she suffered any personal difficulties or expended any resources or significant time, the judge properly declines to award a fee enhancement and the fee award is reasonable.

**O'Boyle v. Borough of Longport. Docket No. A-2698-10T2 (App. Div. May 21, 2012).**

Ms. Starghill informed the Council that the court finds that the common-interest doctrine applies in the context of the work-product privilege, protecting letters and CDs exchanged between counsel from disclosure under OPRA and the common-law right of access. Lawyers in New Jersey who compare notes about their clients' suits against a common adversary do not forfeit the work product privilege just because one represents a public entity. The court denied access to correspondence between an outside attorney for a borough and a lawyer for private individuals sued by the same plaintiff in separate litigation. The court stated that "Because Longport and its officials, and [David] Sufirin and his clients share a common interest, ... the letters and CDs in this case, prepared in the process of developing a litigation defense strategy against one individual, are items protected by the work product privilege."

**L.R. v. Camden Bd. of Educ. Custodian, DOCKET NO. A-4712-10T3, 2012 N.J. Super. Unpub. LEXIS 1140, (App. Div. May 23, 2012).**

Ms. Starghill informed the Council that Plaintiff appeals from an order of the Law Division denying her motion for summary judgment and dismissing with prejudice her complaint compelling defendant Camden Board of Education to provide access to requested records and pay attorney's fees under OPRA. The Appellate Court affirms.

Plaintiff, on behalf of her child J.R., filed an OPRA request with the Board, requesting "[a]ll documents (whether electronic or paper) and objects in your, your attorney's, agent's, employees' or students' possession which make reference to L.R. and/or J.R." The Board's School Business Administrator denied plaintiff's request because it was "overly broad and improper."

Plaintiff filed a verified complaint and motion for summary judgment in the Law Division, seeking a declaration that the Board violated OPRA and an order requiring defendant to produce the documents requested and to pay attorney's fees and costs as authorized by *N.J.S.A. 47:1A-6*.

The trial Judge denied plaintiff's summary judgment motion and dismissed her complaint with prejudice, finding plaintiff's OPRA request impermissibly overbroad.

The Appellate Court stated that:

Here, plaintiff's blanket request for "all documents" referencing either herself or her child was without specification or description. Instead, her "open-ended" demand required the Board to identify every single document mentioning herself or her child without any limitation. Indeed, there was no attempt to restrict the Board's search to a specific genre of record such as academic or health, or type, such as evaluations or testing. Nor was there any effort to limit the search to an identifiable timeframe. And aside from failing to particularize her request, plaintiff also sought documents outside defendant's control, such as those in possession of any of its students. Thus, given the vast number of persons and places where the requested documents could be located, as well as the requestor's lack of specificity as to types of records sought and their timeframes, we conclude, as did the motion judge and the defendant's Administrator, that plaintiff's request was overbroad and therefore rightfully rejected. Having been properly denied access to the documents sought under OPRA, plaintiff was not entitled to attorney's fees as the "prevailing party."

**Executive Director's Report and New Business:** Ms. Starghill notified the Council of the following upcoming OPRA seminars:

Upcoming OPRA Seminars:

1. **June 1, 2012** - "A Review of the Open Public Records Act" hosted by the New Jersey State League of Municipalities at The Enterprise Center at Burlington County College in Mount Laurel, NJ.
2. **June 7, 2012** - "A Review of the Open Public Records Act" hosted by the New Jersey Association of Counties at Bally's in Atlantic City, NJ.
3. **June 12, 2012** - "A Review of the Open Public Records Act" hosted by the New Jersey State League of Municipalities at the Robert Meyner Reception Center in Holmdel, NJ.

Registration information is available on our website.

Ms. Starghill stated that the GRC is in the process of planning our 6<sup>th</sup> Annual OPRA Seminar for the Public to be held in August of this year. No official date has yet been yet. We will provide more details as they become available.

Finally, Ms. Starghill stated that effective June 4, 2012 she has accepted a position at the New Jersey Department of Labor as Director of Workforce Development Field Operations. Ms. Starghill stated that Karyn Gordon, In House Counsel, will take over the GRC as Acting Executive Director.

**Public Comment:** None.

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

Meeting adjourned at 11:14 am.

Respectfully submitted,

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Denise Parkinson Vetti, Secretary

Date Approved: June 26, 2012