



**Minutes of the Government Records Council  
June 26, 2012 Public Meeting – Open Session**

The meeting was called to order at 10:40 a.m. at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey. Mr. Ritardi announced that Ms. Tabakin, Chairwoman, is unable to attend the meeting and has designated Mr. Ritardi as Acting Chair.

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

Mr. Ritardi read the following Open Public Meetings Act statement:

“This meeting was called pursuant to the provisions of the Open Public Meeting Act. Notices of this meeting were faxed to the Newark Star Ledger, Trenton Times, Courier-Post (Cherry Hill), the Secretary of State and e-mailed to the NJ Foundation for Open Government on June 21, 2012.”

Mr. Ritardi read the fire emergency procedure.

Mr. Ritardi announced that GRC staff provided 72-hour advance notification to all parties whose complaints are scheduled for adjudication at today’s meeting. Additionally, Mr. Ritardi announced that summaries of the complaints scheduled for adjudication at today’s meeting have been posted to the GRC’s website as of this morning and hard copies are available by the entrance to the conference room, along with the agenda.

Ms. Lillie called the roll:

Present: Paul B. Macchia (designee of Department of Community Affairs 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).

Ms. Lillie noted that Robin Berg Tabakin, Chairwoman, is absent.

GRC Staff In Attendance: Karyn Gordon, Esq. (Acting Executive Director), Brigitte Lillie (Secretary), Dara L. Barry (Communications Manager), Frank Caruso (Senior Case Manager), Harlyne Lack (Case Manager), Darryl Rhone (Case Manager), John Stewart (Mediator), Patricia Stern (Deputy Attorney General) and Joni Noble McDonnell (Designated Outside Counsel).

Mr. Ritardi 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 Vernon (Sussex) (2010-311) *In-Camera Review*
2. Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-197)

Mr. Macchia made a motion to go into closed session and Ms. Vetti seconded the motion. The Council adopted the motion by a unanimous vote. Mr. Macchia 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 10:43 a.m. until 11:16 a.m.

Open Session reconvened at 11:20 a.m. and Ms. Lillie called roll.

Present: Mr. Macchia, Ms. Vetti and Mr. Ritardi.

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

#### **May 29, 2012 Open Session Minutes**

Mr. Macchia made a motion and Ms. Vetti seconded the motion to approve the open session minutes of the May 29, 2012 meeting. The motion passed by a unanimous vote.

#### **Council Adjudications:**

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

1. Tom Rowan Jr. (on behalf of Express Times) v. Warren Hills Regional School District (Warren) (2011-316)
2. Joseph Blaettler v. City of Union City (Hudson) (2012-7)
3. Charles Meyers v. County of Passaic (2012-37)
4. Judith Papiez v. County of Mercer, Office of County Counsel (2012-53)
5. Judith Papiez v. County of Mercer, Office of County Counsel (2012-58)
6. Judith Papiez v. County of Mercer, Office of County Counsel (2012-62)
7. Judith Papiez v. County of Mercer, Office of County Counsel (2012-63)
8. Judith Papiez v. County of Mercer, Office of County Counsel (2012-64)
9. Francisco Nunez v. City of Union City (Hudson) (2012-68)
10. Kelly Adler (On behalf of Dr. Ann Garcia) v. NJ Department of Corrections (2012-72)
11. Ralph Curtis Kimpton v. NJ Department of Corrections (2012-89)
12. Charles B. Freyer v. City of Bayonne (Hudson) (2012-93)
13. Damiano M. Fracasso v. Township of Hackettstown (Warren) (2012-105)
14. Yusef Steele v. City of New Brunswick (Middlesex) (2012-154)
15. Yusef Steele v. Middlesex County Superior Court (2012-160)

Mr. Ritardi stated that he would normally recuse himself from voting on item no. 2 - Joseph Blaettler v. City of Union City (Hudson) (2012-7), however, he will vote in this instance because the Complainant has voluntarily withdrawn the complaint.

Mr. Ritardi 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.

Mr. Ritardi stated that he is recused from voting on the following complaints, which must be tabled until the following meeting because there is a lack of quorum:

1. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-128)
2. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-129)
3. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-130)
4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-131)
5. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-132)
6. Susan Kehoe v. NJ Department of Environmental Protection, Fish & Wildlife (2010-300)

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

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

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi stated that he has some comments on this complaint. Mr. Ritardi stated that he is not sure he agrees with the decision making process regarding the redactions being "palpably incorrect or irrational." Mr. Ritardi indicated that he believes the point made by Custodian's Counsel is that the uneven application of the redaction was "arbitrary" and therefore, the Custodian meets the standard for reconsideration. Additionally, Mr. Ritardi states he is not sure it was "obvious" that the GRC did not consider the significance of probative, competent evidence. Mr. Ritardi stated that these issues arose, rather, in connection with the reconsideration motion, which also appears relevant to the standard on reconsideration. Mr. Ritardi suggested amending the Executive Director's findings and recommendations to conclude that the reconsideration is granted because the uneven application of the redactions is "arbitrary" and not "palpably incorrect or irrational."

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

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

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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 unanimously.

**Frank R. Ciesla (On behalf of The Valley Hospital) v. NJ Department of Health & Senior Services, Division of Health Care Quality and Oversight (2010-38)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi stated that he has some comments on this complaint. Mr. Ritardi stated that regarding Correctional Medical Services, Inc. v. State, \_\_\_ N.J. Super. \_\_\_, (App. Div.

2012), he believes this case is distinguishable from the instant complaint, rather than inapplicable. Mr. Ritardi suggests the following language to include in the Executive Director's findings and recommendations:

“The present matter is distinguishable from CMS in several important respects. The issue raised on appeal in CMS was the applicability of the deliberative process privilege to government documents relevant to a private party's breach of contract lawsuit where those documents were material to the litigation.

Here, there was no underlying litigation, nor was there any consideration regarding the Rules of Evidence or Rules Governing the Courts of the State of New Jersey as those rules apply to discovery. Indeed, the Court in CMS explains that our Court's discovery rules are to be liberally construed, albeit certain privileges, including the deliberative process privilege, may still apply.

In the instant matter, the Complainant sought a copy of an inter-agency report. Inter-agency or intra agency reports containing advisory, consultative or deliberative material are protected by the deliberative process privilege. Because the report sought by the Complainant was a “draft” report, the GRC found that the deliberative process privilege applied where the document request fell exclusively within the purview of OPRA as opposed to the dynamics of litigation where our Courts will take into consideration such other factors such as relevance, evidential issues or discovery issues. In the context of OPRA, these factors do not apply. In fact, OPRA is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable governmental records readily accessible for inspection, copying or examination. NJSA 47:1A-1; MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super 534, 546 App. Div. 2005.”

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

**George Burdick, Jr. v. Township of Franklin (Hunterdon) 2010-99**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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 unanimously.

**Richard Rivera v. Passaic County Sheriff's Office (2010-181)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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 unanimously.

**Richard Rivera v. City of Camden (Camden) (2010-182)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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 unanimously.

**Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-197)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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 unanimously.

**Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-199)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Sabino Valdes v. Township of Belleville (Essex) (2010-217)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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. Township of Harding (Morris) (2010-221)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Macchia noted an edit on page 16, second full paragraph. Mr. Macchia stated the first sentence should read, "Moreover, the Custodian failed to inform the ~~Custodian~~ Complainant..."

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

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

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

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

Mr. Stewart informed the Council that the Executive Director's findings and recommendations have been amended to include additional submissions from the parties.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as amended. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's

findings and recommendations as amended. Ms. Vetti made a motion and Mr. Macchia seconded the motion. The motion passed unanimously.

**Sabino Valdes v. Union City Board of Education (Hudson) (2010-289)**

Mr. Stewart informed the Council that the Executive Director's findings and recommendations have been edited to reflect that the Union City Board of Education is in Hudson County, not Union County.

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

**John Groelly v. NJ Department of Corrections (2010-294)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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. Township of Vernon (Sussex) (2010-311)**

Mr. Ritardi stated that adjudication of this complaint is tabled until the next meeting.

**Sabino Valdes v. Union City Board of Education (Hudson) (2011-15)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Vesselin Dittrich v. Township of Weehawken (Hudson) (2011-68)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-71)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

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

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-76)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**John Paff v. Franklin Fire District #1 (Somerset) (2011-77)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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 Woodland Park (Passaic) (2011-99)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-100)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Baruch B. Blaustein v. Lakewood Police Department (Ocean) (2011-102)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Baruch B. Blaustein v. Lakewood Board of Education (Ocean) (2011-104)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Robert A. Norcia v. Borough of North Arlington (Bergen) (2011-133)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

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

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-141)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Richard Gelber v. City of Hackensack (Bergen) (2011-148)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Wilfred Selby v. Hazlet Township Police Department (Monmouth) (2011-154)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**David Goff v. NJ Department of Labor, State Board of Mediation (2011-156)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Heather Marsh v. Jefferson Township Board of Education (Morris) (2011-169)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**John Paff v. Neptune Township Housing Authority (Monmouth) (2011-174)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Debbie Schooley-Wank v. Teaneck Community Charter School (Bergen) (2011-175)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Keith A. Werner v. NJ Department of Corrections (2011-176)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Deborah Sutton v. Township of Mantua (Gloucester) (2011-177)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**Jeff Carter v. Franklin Fire District #2 (Somerset) (2012-5)**

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi 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.

**GRC Complaints on Appeal:** None.

**Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:** Elizabeth Educ. Ass'n v. Elizabeth Bd. of Educ., DOCKET NO. A-4717-10T1, 2012 N.J. Super. Unpub. LEXIS 1245, (App. Div. June 5, 2012).

Ms. Gordon informed the Council that Plaintiff Elizabeth Education Association served a request on defendant Elizabeth Board of Education pursuant to the OPRA seeking the names of teachers reemployed for the 2010-11 school year, the certifications issued by the Department of Education for each reemployed teacher, and the employment history in the district for each teacher.

The Board denied the request stating that the Board does not maintain an information report or retrievable records. Plaintiff filed a verified complaint and order to show cause seeking access to the requested public records.

On March 30, 2011, Judge William Daniel entered an order requiring the Board to comply with the June 18, 2010 OPRA request, by providing Plaintiff:

1. Names of teachers reemployed for the 2010-2011 school year.
2. Their certifications issued by the New Jersey Board of Examiners.
3. Their employment information to the extent allowable by N.J.S.A. 47:1A-10.

Defendant appeals from said order. The Board argues that the OPRA request is not for an identifiable government record. It asserts that it is not required to compile, collate or analyze information under OPRA. Furthermore, it contends that it has no obligation to research and compile the employment history of its teachers. Finally, the documents requested by Plaintiff

may be obtained from other sources and are the same documents requested in collateral litigation between Plaintiff and the Board.

The Appellate court held that “the request submitted by EEA seeks identifiable information regarding Board employees maintained in Board records...records which document teachers reemployed by the 2010-11 school year, the certifications held by each reemployed teacher, and limited details of their employment history are the base material of public information and are available in Board files. The request does not require collation, research or analysis. The Board must simply produce the documents containing the information, redact information not permitted to be disseminated to third parties, and provide access to these records by the EEA.

As to the other issues raised by the Board, including burden to staff, interference with Board operations, and availability through other sources, the Appellate Court subscribes to the March 30, 2011 opinion by Judge Daniel. The record is devoid of any evidence that providing access to Board records as provided in the March 30 order will create an undue burden to the Board, and there is no provision in OPRA sheltering access to a government record accessible through other sources.

**Executive Director’s Report and New Business:** Ms. Gordon stated that she is now the Acting Executive Director of the GRC. Ms. Gordon stated that he was the GRC’s In House Counsel for the past 5 years, and she is looking forward to this new opportunity.

Ms. Gordon also stated that the Council provided case summaries for the complaints adjudicated at this meeting. This is a work in progress and the GRC would like comments from the public regarding this document. Ms. Gordon asks the public to either make a comment today or send an email with thoughts on whether this summary is useful, or whether there are any ways to make it more useful.

**Public Comment:** None.

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

Meeting adjourned at 11:56 pm.

Respectfully submitted,

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Denise Parkinson Vetti, Secretary

Date Approved: July 31, 2012