



**Minutes of the Government Records Council
July 31, 2012 – Closed Session**

The Council convened in closed session at 10:50 a.m. in Conference Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Robin Berg Tabakin, Esq. (Chairwoman), 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).

Also in attendance were GRC Staff: Karyn Gordon (Acting Executive Director), Brigitte Lillie (Secretary), Dara L. Barry (Communications Manager), Harlynn Lack (Case Manager), Debra Allen (Deputy Attorney General) and Joni Noble McDonnell (Designated Outside Counsel).

Mr. Macchia made a motion and Mr. Ritardi 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:

Benjamin A. Spivack (On behalf of Passaic County Sheriff's Department) v. NJ Civil Service Commission (2010-130) *In-Camera Review*

Ms. Gordon introduced the proposed recommendations of the Executive Director. The Council reviewed the documents submitted for an *in camera* review: unredacted versions of the e-mails between Kenneth Connolly and Charles Meyers, Passaic County Sheriff's Department Warden, from May 20, 2008 to July 2008. The Council reviewed the *in camera* table contained in the proposed recommendations of the Executive Director. The Council agreed to put the proposed recommendations of the Executive Director to a vote during open session.

Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-200) *In-Camera Review*

Ms. Gordon introduced the proposed recommendations of the Executive Director. The Council reviewed the documents submitted for an *in camera* review: Downe Township Value Determination and Field Data Sheets from the property tax cards for various properties. The Council reviewed the *in camera* table contained in the proposed recommendations of the Executive Director.

Mr. Ritardi questioned whether the factual components contained on the property cards are exempt. Ms. Gordon discussed the court's holding in Education Law Center v. NJ Department of Education, 198 N.J. 274, 966 A.2d 1054, 1069 (2009), wherein the court held that even factual components are deliberative when used in a decision making process. Ms. Tabakin stated that the Council has relied on this court case before to hold that factual components used in a decision

making process are still exempt from public access. Mr. Ritardi questioned why the report could not just be redacted to disclose the factual components. Ms. Gordon stated that she views the records in question as worksheets containing both facts and impressions of the Assessor, and that the property record cards are the final action of the Borough. Ms. Allen agreed with Ms. Gordon, stating that an intelligent person could “back into” the calculation. Mr. Macchia stated that he has the same reservations as Mr. Ritardi. Ms. Vetti believed that the numbers on the forms are sub appraisals or work products of the Appraisers used to create the tax rate. Ms. Vetti contends that these numbers are opinions, not facts. Mr. Ritardi suggested that the analysis be amended to more clearly describe and rely on the Education Law Center case. The Council agreed to put the proposed recommendations of the Executive Director to a vote during open session.

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

Ms. Gordon introduced the proposed recommendations of the Executive Director. The Council reviewed the documents submitted for an *in camera* review: Executive session meeting minutes from April 22, 2010, May 13, 2010, June 10, 2010 and June 24, 2010. The Council reviewed the *in camera* table contained in the proposed recommendations of the Executive Director. The Council discussed the waiver of any privilege for the voluntary disclosure of information that should be exempt, such as the headings. The Council agreed to put the proposed recommendations of the Executive Director to a vote during open session.

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

The closed session meeting concluded at 11:45 a.m.

Respectfully Submitted:

Denise Parkinson Vetti

Date Approved: August 28, 2012