



**Minutes of the Government Records Council
July 31, 2012 Public Meeting – Open Session**

The meeting was called to order at 10:45 a.m. at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

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

Ms. Tabakin 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), and the Secretary of State on July 26, 2012.”

Ms. Tabakin read the fire emergency procedure.

Ms. Tabakin 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: 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).

GRC Staff In Attendance: Karyn Gordon, Esq. (Acting Executive Director), Brigitte Lillie (Secretary), Dara L. 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 meeting minutes requiring approval to a vote:

June 26, 2012 Open Session Minutes

Mr. Macchia noted an edit to paragraph 5 of the minutes – “Ms. Tabakin” should be changed to “Mr. Ritardi.”

Mr. Macchia made a motion and Mr. Ritardi seconded the motion to approve the open session minutes of the June 26, 2012 meeting. The motion passed by a majority vote; Ms. Tabakin abstained because she was not present during the June 26, 2012 meeting.

June 26, 2012 Closed Session Minutes

Mr. Macchia made a motion and Mr. Ritardi seconded the motion to approve the closed session minutes of the June 26, 2012 meeting. The motion passed by a majority vote; Ms. Tabakin abstained because she was not present during the June 26, 2012 meeting.

Council Adjudications:

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

1. Heather Marsh v. Jefferson Township Board of Education (Morris) (2011-169)
2. Joyce Blay v. Lakewood Board of Education (Ocean) (2011-201)
3. Stephen J. Bleistine v. South Harrison Township School District (Gloucester) (2012-12)
4. Donna Bahrle v. Raritan Valley Community College (Somerset) (2012-20)
5. Joseph Blaettler v. City of Union City (Hudson) (2012-21)
6. Mario Accumano v. Township of East Hanover (Morris) (2012-24)
7. Phillip Molnar (on behalf of The Express-Times) v. Pollution Control Financing Authority of Warren County (2012-124)
8. Terry Crouthamel v. County of Salem (2012-182)
9. Terry Crouthamel v. County of Hunterdon (2012-183)
10. Terry Crouthamel v. Township of Pilesgrove (Salem) (2012-184)

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 Mr. Ritardi seconded the motion. The motion passed unanimously.

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. Benjamin A. Spivack (On behalf of Passaic County Sheriff's Department) v. NJ Civil Service Commission (2010-130) *In-Camera Review*
2. Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-200) *In-Camera Review*
3. Jesse Wolosky v. Township of Vernon (Sussex) (2010-311) *In-Camera Review*

Mr. Macchia made a motion to go into closed session and Mr. Ritardi seconded the motion. The Council adopted the motion by a unanimous vote. Ms. Vetti made a motion to end the closed session and Mr. Ritardi seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 10:50 a.m. until 11:45 a.m.

Open Session reconvened at 11:46 a.m. and Ms. Lillie called roll.
Present: Ms. Tabakin, Mr. Macchia, Ms. Vetti and Mr. Ritardi.

Council Adjudications:

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

Brian J. Levine (On behalf of Natalie Stephens) v. NJ Department of Community Affairs, Division of Fire Safety (2010-339)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, 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. Macchia recused.

Larry A. Kohn v. Township of Livingston (Essex) (2010-303)

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

Larry A. Kohn v. Township of Livingston (Essex) (2010-304)

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

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) (combined)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, 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) (2011-119)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, 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) (2011-128)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-129)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-130)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-131)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-132) (combined)

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

Mikal McClain v. Essex County Prosecutor's Office (2011-202)

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

Costantino Colasante v. County of Bergen (2010-18)

Mr. Stewart introduces an amendment to page 6 of the findings and recommendations and the conclusions and recommendations on page 10.

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as amended. Hearing none, Ms. Tabakin 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.

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

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, 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 Wharton (Morris) (2010-162)

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

Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-200)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi raised a concern with the analysis on page 10 regarding facts that normally may be public are not disclosed here because they are deliberative. Mr. Ritardi suggested amending the wording in the analysis and conclusion to make this clearer.

Ms. Tabakin 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.

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

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

Vesselin Dittrich v. City of Hoboken (Hudson) (2010-279)

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

Clara Halper v. Township of Piscataway (Middlesex) (2010-281)

Ms. Lack introduced an edit to page 16 of the findings and recommendations. Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as edited. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Ms. Vetti made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

Susan Kehoe v. NJ Department of Environmental Protection, Fish & Wildlife (2010-300)

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

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

James Sage v. Monmouth County Sheriff's Department (2011-17)

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

Donna Moon v. City of Trenton, Police Department (Mercer) (2011-59)

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

Daniel Gatson v. NJ State Parole Board (2011-63)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, 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) (2011-71)

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

Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-73)

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

Elizabeth Cross v. Township of Wall (Monmouth) (2011-98)

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

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

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

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

Baruch B. Blaustein v. Lakewood Board of Education (Ocean) (2011-109)

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

Mark Lagerkvist v. NJ Department of Treasury, Division of Pensions & Benefits (2011-110)

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

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

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

Sabino Valdes v. Union City Board of Education (Hudson) (2011-139)

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

Sabino Valdes v. Union City Board of Education (Hudson) (2011-146)

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

Sabino Valdes v. Union City Board of Education (Hudson) (2011-147)

Sabino Valdes v. Union City Board of Education (Hudson) (2011-157)

Sabino Valdes v. Union City Board of Education (Hudson) (2011-172)

Sabino Valdes v. Union City Board of Education (Hudson) (2011-181) (combined)

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

Jerry W. Pecaro v. County of Union (2011-187)

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

Jerry W. Pecaro v. County of Union (2011-188)

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

Jerry W. Pecaro v. County of Union (2011-189)

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

Jerry W. Pecaro v. County of Union (2011-190)

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

Jerry W. Pecaro v. County of Union (2011-191)

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

Jerry W. Pecaro v. County of Union (2011-192)

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

Keith A. Werner v. NJ Department of Corrections (2011-206)

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

Mr. & Mrs. L. Johnston v. Montclair Board of Education (Essex) (2011-213)

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

Richard Rivera v. City of Passaic (Passaic) (2011-214)

Mr. Stewart introduces an amendment to page 17 of the findings and recommendations. Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as amended. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Macchia made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

Richard Rivera v. City of Bayonne (Hudson) (2012-49)

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

James Katz (On behalf of Camden County Counsel #10) v. NJ Civil Service Commission (2012-51)

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

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

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

GRC Complaints on Appeal: None.

Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:

Sussex Commons Associates, LLC v. Rutgers, the State University, 2012 N.J. LEXIS 765 (July 5, 2012).

Ms. Gordon informed the Council of the Court's holding in this case:

In this appeal, the NJ Supreme Court considered whether records related to clinical cases at public law school clinics are subject to OPRA, specifically, the Rutgers Environmental Litigation Clinic.

The Clinic is a legal education program at Rutgers Law School – Newark that provides pro bono legal assistance to clients on environmental matters. The Clinic represented a private group that opposed a plan to build an outlet mall. The mall's developer, Sussex Commons Associates, LLC, sought documents from the Clinic under OPRA. Rutgers denied access claiming the request was overly broad and Sussex filed suit.

The trial court concluded that the Clinic was exempt from OPRA requests. The court reasoned that the "unique hybrid nature" of Rutgers Law School clinics entitled them to an exemption. The court also observed that if clinics were subject to OPRA, clients would hesitate to use them out of a concern that their case files might be disclosed.

The Appellate Division reversed, holding that the Clinic was subject to OPRA. The Appellate court explained that Rutgers University, a publically funded state institution, was subject to OPRA, that the University included the law school, and that the Clinic was part of the law school. As a result, the panel concluded that the Clinic met OPRA's definition of a public agency.

The Supreme Court reversed the Appellate Division and concluded that:

"records related to cases at public law school clinics are not subject to OPRA. That ruling encompasses client-related documents or clinical case files, as well as requests for information about the development and management of litigation – like the requests presented in this case. The Legislature is free to act if we have misread its intent."

In its reasoning, the Supreme Court stated that:

"By its very terms, OPRA seeks to promote the public interest by granting citizens access to documents that record the workings of government in some way. That important aim helps serve as a check on government action.

Clinical legal programs, though, do not perform any government functions. They conduct no official government business and do not assist in any aspect of State or local government. Instead, they teach law students how to practice law and represent clients. In addition, not even the University, let alone any government agency, controls the manner in which clinical professors and their students practice law.”

Additionally, the court reasoned that “Applying OPRA to the [Clinic] and similar clinical programs would also lead to the following absurd result: public law school clinics would be subject to disclosure of their records, and private law school programs would not.”

Gensch v. Hunterdon County Clerks Office, 2012 N.J. Super. Unpub. LEXIS 1630 (July 9, 2012).

Ms. Gordon informed the Council of the Court’s holding in this case:

This is a consolidated appeal from three (3) separate trial court cases regarding copy fees:

1. James Gensch v. Hunterdon County Clerk’s Office;
2. Dean Smith v. Hudson County Register;
3. Andrew Gargano v. Bergen County Clerk’s Office

In all three appeals, plaintiffs, who are and have been represented by the same counsel, contend that the trial court's fee awards are inadequate, particularly because none of the awards include a fee enhancement above the "lodestar" amount. In both Smith and Gensch the governmental defendants not only oppose plaintiffs' claims for enhancement, but further maintain that the fee award in their case should be vacated or reduced.

The trial court granted Smith a fee award of \$40,127.50, utilizing a \$350 hourly rate for approved partner time and a \$175 hourly rate for approved associate time. Smith has now appealed that award as insufficient. The Hudson County defendants have cross-appealed, seeking to have the award vacated or reduced.

In addition, the trial judge in Hunterdon County who presided over the remand in Gensch, awarded Gensch \$93,265.37 in counsel fees, utilizing the same hourly rates as in Smith. The Hunterdon County defendants have now appealed that award, seeking to have it set aside or reduced, and Gensch has cross-appealed the award, seeking to have it increased.

A third trial judge in Bergen County who considered the fee application in Gargano, awarded that plaintiff \$38,299.33, inclusive of costs. The Bergen County judge adopted the same \$350/\$175 hourly rate structure. Gargano has now appealed that award as insufficient. The Bergen County defendants oppose his appeal, but they have not cross-appealed to seek a reduction of the award.

The court affirmed the fee awards in all three cases without any lodestar enhancements, although modified the fee award in Smith to correct for certain disallowed attorney time by an associate that was erroneously subtracted by the trial court at a partner's billing rate. The court's main rationale for denying the lodestar enhancement was the distinctive matter in which the cases were litigated – multiple cases in 19 of the 21 counties filed at staggered times lessened the risk by providing plaintiffs with an opportunity to “piggyback” on a favorable outcome in one of the earlier resolved cases.

North Jersey Media Group, Inc. v. Borough of Paramus, 2012 N.J. Super. Unpub. LEXIS 1685 (July 13, 2012).

Ms. Gordon informed the Council of the Court's holding in this case:

Plaintiff filed this action seeking an order directing defendant to release records pertaining to an incident in which a police officer was shot in the line of duty, including recordings of police dispatches and copies of videos recorded from police cars at the scene of the shooting.

The trial court found that because the audio recordings and video recordings are required by law to be maintained on file by the Borough in the course of its official business, they are "government records" subject to disclosure under OPRA.

The court expressly found as support for this conclusion that New Jersey law, namely, the Destruction of Public Records Law and the related regulations and schedules enacted by the New Jersey Division of Archives and Records Management require both audiotapes and videotapes be maintained for a minimum of thirty-one days. The court rejected the prosecutor's argument that DARM retention schedules are not statutes requiring a particular item to be "maintained or kept on file," because DARM is not a law-making body. The trial judge concluded the DARM requirements carry the force of law.

On appeal, the Borough challenges the court's ruling regarding disclosure of the audio recordings. On cross-appeal, The Record contends the court erred in failing to conduct an in camera review of the requested records. It further contends that EO 69 is inapplicable and the "reasonable expectation of privacy" is inapplicable to the videotapes.

The Appellate court held that “we are not persuaded by the arguments of either party. We affirm substantially for the reasons articulated by Judge Doyne in his comprehensive, fifty-two page written opinion. We are satisfied he more than amply addressed each of the issues raised by the parties.”

Hampton Farm, LLC v. The Borough of Hampton and The Highlands Water Protection and Planning Council, 2012 N.J. Super. Unpub. LEXIS 1756 (Law Div. July 17, 2012).

Ms. Gordon informed the Council of the Court's holding in this case:

Plaintiff made a request for documents from the Council under the Open Public Records Act (OPRA). The Council responded to plaintiff's request for documents, in part, with a privilege log containing 35 emails that the Council claimed were exempt from disclosure. Defendants assert that the emails are exempt from public disclosure under OPRA because the emails constitute intra and inter-agency, pre-decisional, deliberative communications between the Council and the Borough.

The request for the emails at issue here arose out of the Borough's request for financial assistance from the Council, and approved in Highlands Council Resolution #2011-19 based upon the Borough's proposed plans which detailed the scope of work to be performed. The information sought centers solely around the grants approved in this resolution.

The court held that "this type of relationship -- application for public funds from a different level of government -- is surely not one the Legislature contemplated in creating the deliberative process privilege exception to OPRA's general disclosure requirements. This is not about deliberation but about obtaining money from another branch of government."

Ultimately, the court held that under OPRA, plaintiff is entitled to access the 35 emails that defendants have withheld.

Executive Director's Report and New Business:

Ms. Gordon informs the Council that the GRC's 6th Annual OPRA Seminar for the Public will be held on Thursday August 16, 2012 at the State Museum Auditorium. The seminar is free for all attendees. Three (3) Continuing Education credits are available for various government certifications. 3.6 Continuing Legal Education credits are also available. Registration is required and ends today. We have reached full capacity with over 350 registrations.

Ms. Gordon also informs the Council that the GRC is in the process of publishing "Frequently Asked Questions for the Public" on our website. These questions should help answer some of the most common questions about OPRA and the complaint process. These questions should be published by the August Council meeting.

Additionally, Ms. Gordon states that the GRC is collaborating with the Office of Information Technology to create an online video of our PowerPoint presentation so we can reach more people with our training materials. This is currently under production and we will keep the Council posted regarding its progress.

Ms. Gordon states that the GRC staff is continuing to notify parties of complaints that their complaint has tentatively been scheduled for adjudication at an upcoming meeting. Notification is disseminated to parties 72 hours prior to the meeting date. Also, we continue to provide a case summary of all the scheduled complaints both online and at the Council meeting. These summaries provide the draft conclusions that are presented to the Council for approval. We have

incorporated public comments in this summary re: additional information (records format). We welcome any more input from public.

Finally, Ms. Gordon thanks the Council members for their time and energy reading the ever-increasing number of complaints on monthly agendas.

Public Comment: None.

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

Meeting adjourned at 12:25 pm.

Respectfully submitted,

Denise Parkinson Vetti, Secretary

Date Approved: August 28, 2012