



**Minutes of the Government Records Council
August 28, 2012 Public Meeting – Open Session**

The meeting was called to order at 10:37 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 August 23, 2012.”

Ms. Tabakin read the fire emergency procedure.

Ms. Lillie called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Dana M. Lane, Esq. (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 F. Caruso (Senior Case Manager), Harlynn A. Lack, Esq. (Case Manager), Darryl Rhone (Case Manager), John Stewart (Mediator), Patricia Stern (Deputy Attorney General) and Joni Noble McDonnell (Designated Outside Counsel).

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. Gordon noted that GRC encountered a printer error and the “Draft” watermark on the agenda and summaries is not displaying properly.

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

July 31, 2012 Open Session Minutes

Ms. Vetti made a motion and Mr. Ritardi seconded the motion to approve the open session minutes of the July 31, 2012 meeting. The motion passed unanimously.

July 31, 2012 Closed Session Minutes

Ms. Vetti made a motion and Mr. Ritardi seconded the motion to approve the closed session minutes of the July 31, 2012 meeting. The motion passed unanimously.

Council Adjudications:

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

Mildred Edith Johnson v. NJ Government Records Council (2012-217)

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

Jeff Carter v. Borough of South Bound Brook (Somerset) (2012-102)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in the above Administrative Complaint Disposition. Ms. Vetti made a motion and Ms. Lane 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. Matt Apuzzo v. New Brunswick Police Department (Middlesex) (2011-270)
2. William R. Dusenberry v. NJ City University (2012-88)
3. William R. Dusenberry v. NJ City University (2012-97)
4. William R. Dusenberry v. NJ City University (2012-98)
5. William R. Dusenberry v. NJ City University (2012-99)
6. William R. Dusenberry v. NJ City University (2012-100)
7. Frank N. D'Amore v. Borough of North Plainfield (Somerset) (2012-103)
8. Mary Roman v. Kean University (2012-106)
9. Mary Roman v. Kean University (2012-112)
10. James J. Krivacska v. NJ Department of Treasury, Div. of Risk Management Bureau (2012-145)
11. Keith A. Werner v. Monmouth County Board of Chosen Freeholders (2012-163)
12. Chris Hayes (On behalf of Asset Management Consultants) v. Township of Lyndhurst (Bergen) (2012-175)
13. Chris Hayes (On behalf of Asset Management Consultants) v. Township of Irvington (Essex) (2012-176)
14. Lawrence Simons v. Township of Lakewood (Ocean) (2012-189)
15. Kevin M. O'Brien v. Borough of Hillsdale (Bergen) (2012-194)
16. Brandon Melvin v. Elizabeth Police Department (Union) (2012-214)
17. Brandon Melvin v. Elizabeth Police Department (Union) (2012-215)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. Ms. Vetti made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

Council Adjudications:

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

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2008-161)

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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2009-204)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2009-205) (consolidated)

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 Ms. Lane 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. Ms. Vetti made a motion and Ms. Lane 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) (consolidated)

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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Jesse Wolosky v. City of Paterson (Passaic) (2011-134)

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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-161)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-162)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-163)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-164)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-165)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-166)

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-167) (consolidated)

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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-173)

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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-194)

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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Jose R. Gonzalez v. County of Hudson (2011-212)

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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Katalin Gordon v. City of Orange (Essex) (2011-256)

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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Ms. Tabakin stated that the Council will skip agenda item nos. 22 (Spivack) and 50 (Carter) because the Council must discuss these matters in closed session first. Ms. Tabakin stated that the Council will adjudicate these complaints after the completion of closed session.

Jesse Wolosky v. Township of Rockaway (Morris) (2010-188)

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.

Jesse Wolosky v. Township of Mine Hill (Morris) (2010-161)

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. Borough of Chatham (Morris) (2010-204)

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.

Harry Hersh v. Lakewood Board of Education (Ocean) (2010-291)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi noted an edit on page 2: "2012" should be "2010."

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.

Jesse Wolosky v. Township of Randolph (Morris) (2010-308)

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.

Alice Chin v. Teaneck Community Charter School (Bergen) (2010-340)

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.

Donald Winant v. Borough of Dumont (Bergen) (2011-22)

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.

Kevin Debockler v. Township of East Windsor (Mercer) (2011-29)

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.

Donald Winant v. Borough of Dumont (Bergen) (2011-31)

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.

Lorinda D. Sciara v. Borough of Woodcliff Lake (Bergen) (2011-32)

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.

Rebecca Boudwin (on behalf of Milford BOE) v. NJ Department of Treasury, Division of Administration (2011-34)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Tabakin noted an edit on page 12. Mr. Ritardi questioned whether a requestor could make a new request to renew the statute of limitations. Ms. Gordon confirmed that a requestor could make a new request to renew the statute of limitations because there are no limitations on how many requests a requestor can make.

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.

Harry James v. NJ Department of Law & Public Safety, Division of Consumer Affairs (2011-36)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi questioned whether the Complainant is a prisoner and whether the request has anything to do with a victim. Mr. Ritardi questioned how a custodian would know that a requestor had been convicted of an indictable offense if the custodian cannot ask the requestor said question. Ms. Gordon stated that there is space on the OPRA request form for a requestor to identify whether he/she has been convicted of an indictable offense. Ms. Gordon stated that here, the requestor did not check any box so the custodian asked and requestor indicated that he had not been convicted of any indictable offense. Ms. Lack stated that the Custodian also certified no records responsive exist. Ms. McDonnell noted that it is obvious the records at issue are not victim's records.

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) (2011-50)

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.

Darnell Hardwick v. NJ Department of Transportation (2011-52)

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.

Stuart L. Sumner v. Borough of Cliffside Park (Bergen) (2011-53)

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) (2011-64)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi clarified that when immediate access records are requested, an immediate response is required. Ms. Gordon confirmed stating that the custodian must immediately respond somehow, either granting access, denying access, seeking clarification or requesting an extension of time. Mr. Ritardi asked whether there is any indication on the OPRA request form that the records requested are immediate access records. Ms. Gordon stated no, the custodian must be aware of what the immediate access records are. Mr. Ritardi noted that an immediate response will vary depending on the circumstances. Ms. Gordon confirmed, noting that records in storage likely cannot be provided immediately. Ms. Vetti stated that there always has to be a measure of reasonableness to the immediate response requirement.

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.

Golda D. Harris v. NJ Department of Corrections (2011-65)

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.

Golda D. Harris v. NJ Department of Corrections (2011-66)

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. Township of Weehawken (Hudson) (2011-68)

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) (2011-76)

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 #2 (Somerset) (2011-101)

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.

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

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 #2 (Somerset) (2011-141)

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.

Colette Lucca v. Borough of Fair Lawn (Bergen) (2011-200)

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 S. Gelber v. City of Hackensack (Bergen) (2011-215)

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 #2 (Somerset) (2011-217)

Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-218)(consolidated)

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.

Robert E. Nolan v. West Milford Municipal Utilities Authority (Passaic) (2011-229)

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.

David Marc Drukaroff v. NJ Department of Law & Public Safety, Division of State Police (2011-242)

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. Borough of Rutherford, Police Department (Bergen) (2011-277)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi noted that although this was an untimely complaint, the analysis was very good and well written.

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.

William Budesheim v. Borough of Riverdale (Morris) (2012-122)

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.

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. Mildred Johnson v. NJ Government Records Council, 2012-217
2. Jeff Carter v. Franklin Fire District #2, 2011-228
3. Benjamin A. Spivack, Esq., (on behalf of Passaic County Sheriff's Department Professional Association) v. NJ Civil Service Commission, 2010-130

Ms. Vetti 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 11:15 a.m. until 11:54 a.m.

Open Session reconvened at 11:55 a.m. and Ms. Lillie called roll.

Present: Ms. Tabakin, Ms. Lane, Ms. Vetti and Mr. Ritardi.

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

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

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Gordon stated that during the pendency of this matter, the Complainant passed away. Ms. Gordon stated that the Complainant is a prevailing party, but no one from the Complainant's law firm has submitted substitute representation. As such, Ms.

Gordon is recommending to the Council that this complaint should not be sent to the Office of Administrative Law unless and until alternate Counsel enters an appearance during a 10 day reconsideration period. If so, Ms. Gordon states that she will reconsider the complaint and refer it to the Office of Administrative Law for a hearing to award reasonable attorney's fees. Additionally, Ms. Gordon states that GRC staff will send the Council's decision to the Complainant's law firm, the Sheriff's Association, the Civil Service Commission, and the Complainant's widow to ensure receipt of said decision.

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 #2 (Somerset) (2011-228)

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.

GRC Complaints on Appeal: Steven L. Hyman v. City of Jersey City, Docket No. A-0789-10T4 (App. Div. August 27, 2012, Unpub). On appeal from Hyman v. City of Jersey City (Hudson), GRC Complaint No. 2007-118 (August 2010).

Ms. Gordon presented the following case synopsis to the Council:

Steven Hyman appeals from the GRC's Final Decision upholding the City of Jersey City's denial of access.

On May 11, 2007, Hyman filed a Denial of Access Complaint with the GRC challenging a denial of access to 16 categories of records the City of Jersey City withheld. In March of 2009 the GRC ordered an in camera review of the disputed records. At the conclusion of the in camera review, the GRC ordered disclosure of three records which were neither subject to the attorney-client privilege nor the advisory, consultative or deliberative exemption. Further, the GRC determined that request items no. 2-16 were overly broad and therefore invalid under OPRA.

On appeal, Plaintiff raises six arguments:

- Point 1: The GRC erred in expanding the ACD exemption to include participants who are not government officials.
- Point 2: The GRC erred in failing to require that the requested documents be redacted.
- Point 3: The GRC erred in applying the ACD exemptions since the deliberations were not pre-decisional in nature.
- Point 4: The GRC arbitrarily extended the attorney-client privilege beyond its intended purpose.
- Point 5: The GRC erred in failing to pierce the ACD exemption and the attorney-client privilege based on the compelling and substantial need for disclosure.

- Point 6: The GRC was arbitrary, capricious and unreasonable in ruling that the requests for information were overbroad.

The court finds that the GRC took the custodian's defenses based on the ACD and attorney-client privilege exemptions without any further information in support of why the exemption applied to the disputed records. The court stated that if the custodian's response to the complaint does not justify the denial of access based upon the claimed privilege or exception, the GRC has three options, none of which include a unilateral re-classification of a document.

- Option 1: The GRC may conclude that the proffered privilege does not apply and order the release of the document.
- Option 2: The GRC may require the custodian to submit, within prescribed time limits, additional information deemed necessary for the GRC to adjudicate the complaint.
- Option 3: The GRC may "conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a state agency in contested cases under the 'Administrative Procedures Act'...insofar as they may be applicable and practicable." N.J.S.A. 47:1A-7.e.

The court affirms the denial of access to item no. 16. The court reverses the decision as to the denial of access to items no. 2-15 and remands for further proceedings related to the custodian's assertion of attorney-client privilege or the ACD exemption, consistent with this opinion.

Ms. Gordon noted that she has not yet had the opportunity to discuss this decision, and how to proceed, with Counsel since the decision was just rendered yesterday.

Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:

Karen Banda v. Bloomfield Township, 2012 N.J. Super. Unpub. LEXIS 1899 (App. Div. August 7, 2012)

Ms. Gordon presented the following case synopsis to the Council:

Plaintiff appeals the Law Division's order granting summary judgment to defendants, holding that defendants complied with OPRA, after plaintiff reported the requested audio tape the defendants provided was inaudible, by granting plaintiff access to "listen to the tapes and an opportunity to record the tapes at a speed and in a manner suitable for plaintiff's recorder."

Defendants argue that the tapes are copied at the speed they are recorded in, which is usually the slowest speed available so that the Township can save taxpayers' money by fitting as much on a tape as possible. Defendants explained that the tapes can be played on any recorder that has the same playback speed capabilities and that no other requestor has ever rejected the tapes as being inaudible.

Plaintiff alleges defendants are creating and maintaining records in a format inaccessible to the routine requestors of such records, and artificially maintaining an inflated basis for record access.

The Appellate Court noted that if this is true, the manner in which public meetings are recorded in the Township may be the functional equivalent of denial of access to public records.

Additionally, the Appellate court stated that in the initial litigation the Plaintiff was denied complete discovery and thus denied the opportunity to rest the validity of defendants claim that its copies were never rejected as inaudible. Thus, the Appellate court reverses the trial court and remands so the Plaintiff can conduct further discovery.

Ms. Gordon noted that the GRC's general position is that we do not have control or authority over *how* a public agency maintains its records. This court decision is interesting because it suggests that the manner in which the Township of Bloomfield records its meetings (at a slow speed) could represent an access barrier to the routine requestor.

Richard Rivera v. Office of the County Prosecutor of the County of Bergen, 2012 N.J. Super. Unpub. LEXIS 1921 (Law. Div. August 8, 2012)

Ms. Gordon presented the following case synopsis to the Council:

Plaintiff challenges the redaction of names contained on police Use of Force reports. Defendants redacted the names to protect the privacy of those subjected to the use of force but not arrested.

The Law Division holds:

1. The Use of Force reports are government records under OPRA.
2. Names listed on the Use of Force reports which include an indication of "suicidal," "emotionally disturbed person," "EDP," or the like cannot be released as they are not subject to disclosure under OPRA. The court cites to EO 26 which exempts "information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation" as well as OPRA's privacy provision contained in the legislative findings.
3. Names of subjects which have been arrested in the "traditional" sense cannot be redacted as there is no privacy interest where the arrest information is already a publicly available record under OPRA.
4. Plaintiff is entitled to attorney's fees.

Howard Branin v. Collingswood Borough, 2012 N.J. Super. Unpub. LEXIS 1938 (App. Div. August 9, 2012)

Ms. Gordon presented the following case synopsis to the Council:

Plaintiff appeals from a Law Division order denying his motion to have the court declare that defendant violated OPRA by denying access to a settlement agreement that resolved a federal lawsuit against the Borough of Collingswood. The trial court determined that plaintiff's OPRA request for "the settlement" of a lawsuit was too vague to be interpreted as requesting any document other than a settlement agreement, which did not exist.

The Appellate Court holds that absent a request for clarification, the records custodian was required to conduct a search for a settlement agreement or a document containing the terms of the settlement. Because the trial court did not consider what documents were contained in the Borough's files, evaluate the custodian's search for "the settlement," or consider the timeliness of the custodian's response to plaintiff rather than the post-complaint communications between the parties' attorneys, the Appellate Court reverses and remands for further proceedings.

Specifically, the Appellate court stated that:

“the trial court did not consider the adequacy of the custodian's search; the effect, if any, of the information provided by the solicitor on the custodian's failure to produce the [documents which resolved the federal lawsuit]; or the effect of the need, if any, for an explanation... in order for the custodian to understand what documents contained the terms of the settlement. Accordingly, we remand this matter for consideration of those issues and, if necessary, consideration of plaintiff's application for attorney's fees.”

Ms. Gordon noted that this decision is similar the court's decision in Burnett v. County of Gloucester (App. Div. 2010) which centered around a request for “any and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.”

M&J Comprelli Realty, LLC v. Town of Harrison, 2012 N.J. Super. Unpub. LEXIS 1964 (App. Div. August 15, 2012)

Ms. Gordon presented the following case synopsis to the Council:

Plaintiff, which owns and operates several commuter parking lots in Harrison, filed an action alleging, inter alia, violation of the Open Public Records Act arising out of defendant's refusal to produce requested records pertaining to its licensing and inspection of plaintiff's lots which resulted in an order to produce all records demanded and an award of attorney fees in favor of plaintiff.

Plaintiff appeals the amount of the fee award; defendant contends that the court erred in holding that it failed to respond to a valid OPRA request and contests the fee award.

The panel holds that the town's initial objections to many of the requests were well-grounded in law because the requests went beyond the scope of a proper OPRA request. However, the final amended OPRA request contained in large part proper requests for public records and did not warrant a blanket denial or a prolonged period to fully comply with the order requiring production. The Appellate panel therefore affirms the award of attorney fees.

Executive Director's Report and New Business:

Ms. Gordon informed the Council that the GRC held its 6th Annual OPRA Seminar for the Public on Thursday August 16th at the NJ State Museum Auditorium. We had 317 attendees, which is our largest audience to date and a 9% increase in attendance from last year.

Additionally, Ms. Gordon stated that the GRC has officially published the “Frequently Asked Questions for the Public” on our website (www.nj.gov/grc/public/faqs/). These questions should help answer some of the most common questions about OPRA and the complaint process. We are currently working on creating a similar section geared towards custodians.

Finally, Ms. Gordon stated 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. We have officially shot the video and it is now in the production/editing process. We will keep the Council informed of the video’s progress.

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 12:15 pm.

Respectfully submitted,

Denise Parkinson Vetti, Secretary

Date Approved: September 25, 2012