



## **Minutes of the Government Records Council December 18, 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 December 13, 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), Debra Allen (Deputy Attorney General) and Brian Tipton, Esq. (Designated Outside Counsel).

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. Steve Hyman v. City of Jersey City (Hudson) (2007-118)
2. Jesse Wolosky v. Township of Sparta (Sussex) (2008-219)
3. Jesse Wolosky v. Township of Sparta (Sussex) (2008-277)
4. Mark Lagerkvist v. New Jersey Department of Treasury, Division of Pensions & Benefits (2011-110)
5. David B. Popkin v. Englewood Board of Education (Bergen) (2011-261)
6. John Paff request for advisory opinion
7. Richard Rivera v. City of Newark (Essex) (2010-274)

## 8. Change in Finding & Recommendations format

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 Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 10:43 a.m. until 11:45 a.m.

Open Session reconvened at 11:46 a.m. and Ms. Lillie called roll.

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

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

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

Ms. Vetti made a motion and Ms. Lane seconded the motion to approve the open session minutes of the September 25, 2012 meeting. The motion passed unanimously.

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

Ms. Vetti made a motion and Ms. Lane seconded the motion to approve the closed session minutes of the September 25, 2012 meeting. The motion passed unanimously.

### **Council Adjudication:**

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

1. 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. Ms. Gordon discussed the procedural history of this complaint and recommended to the Council that they refer this complaint to the Office of Administrative Law for a full hearing because the Council does not have the resources to conduct such a type of hearing. Mr. Caruso read aloud the proposed amendment to the conclusions and recommendations of the Executive Director's findings and recommendations.

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

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

1. Shawn C. Huber (on behalf of William Jeffers) v. City of Atlantic City (Atlantic) (2011-248)
2. James P. Wollner v. Township of Bloomfield (Essex) (2011-286)
3. James P. Wollner v. Township of Bloomfield (Essex) (2011-287)

4. Wyatt Kraft v. County of Hudson (2011-296)
5. Gino Baldani v. City of Hackensack, Police Department (Bergen) (2011-300)
6. John Schmittberger v. NJ Department of Law & Public Safety, Division of Consumer Affairs (2012-36)
7. John P. Schmidt v. Lawnside Board of Education (Camden) (2012-119)
8. Chris Hayes v. Township of Toms River (Ocean) (2012-147)
9. Laura Harris v. Township of South Orange Village (Essex) (2012-157)
10. Darian Vitello v. Borough of Belmar, Police Department (Monmouth) (2012-272)
11. Eric Johansen, Jr. v. Lenape Regional High School District (Burlington) (2012-275)
12. James Devine v. Perth Amboy Public School District (Middlesex) (2012-277)
13. Yusef Steele v. County of Middlesex (2011-289)
14. Steven H. Mercer v. Borough of Paramus (Bergen) (2011-297)
15. David Herron v. NJ Department of Education (2011-334)
16. David Herron v. NJ Department of Education (2011-365)
17. Wilford Lee Holmes v. NJ State Parole Board (2012-260)
18. Michael Blacknall v. NJ Department of Corrections (2012-273)
19. Timothy M. Connell v. NJ Department of Corrections (2011-288)
20. Jeremy Rosen (On behalf of Courier-Post) v. Camden City School District (Camden) (2012-16)
21. Larry A. Kohn v. Township of Livingston (Essex) (2012-80)
22. Larry A. Kohn v. Township of Livingston (Essex) (2012-81)
23. Kenneth Vercammen v. City of New Brunswick (Middlesex) (2012-202)
24. David R. Oakley v. Middlesex County Prosecutor's Office (2012-271)
25. Robert McCann v. Gloucester Township (Camden) (2012-278)
26. Jordan Wiley v. NJ Department of Corrections (2012-280)
27. Phillip A. Dixon v. NJ Department of Corrections (2012-298)
28. Jordan Wiley v. NJ Department of Corrections (2012-300)
29. Kristen L. Simons v. Waterford Township (Camden) (2012-305)

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 Ms. Lane seconded the motion. The motion passed unanimously.

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

**Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-280)**

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.

**Steve Hyman v. City of Jersey City (Hudson) (2007-118)**

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.

**Wyatt Kraft v. County of Hudson (2011-267)**

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) (2011-322)**

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.

**Meir Diskind v. NJ Department of Community Affairs, Division of Housing & Community Resources (2011-279)**

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 by a majority vote; Ms. Lane recused.

**David Herron v. NJ Department of Education (2011-324)**

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

**David Herron v. NJ Department of Education (2011-363)**

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

**David Herron v. NJ Department of Education (2011-364)**

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

**Sabino Valdes v. NJ Department of Education (2011-372)**

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

**David Herron v. NJ Department of Education, Division of Chief of Staff (2011-268)**

**David Herron v. NJ Department of Education, Division of Chief of Staff (2011-269)  
(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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Vetti recused.

**Virginia Culver v. Borough of Lawnside (Camden) (2010-15)**

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 unanimously.

**Jesse Wolosky v. Borough of Lincoln Park (Morris) (2010-164)**

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 unanimously.

**Jesse Wolosky v. Township of Roxbury (Morris) (2010-183)**

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 unanimously.

**Jesse Wolosky v. Township of Denville (Morris) (2010-191)**

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 Ms. Lane seconded the motion. The motion passed unanimously.

**Jesse Wolosky v. Borough of Mount Arlington (Morris) (2010-194)**

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 unanimously.

**Jesse Wolosky v. Township of East Hanover (Morris) (2010-205)**

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 unanimously.

**Jesse Wolosky v. Borough of Mount Arlington (Morris) (2010-210)**

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 unanimously.

**Jesse Wolosky v. Township of Boonton (Morris) (2010-223)**

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 unanimously.

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

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 unanimously.

**John Paff v. Neptune Township Housing Authority (Monmouth) (2010-307)**

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 unanimously.

**Rebecca Boudwin (on behalf of Borough of Milford Board of Education) 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. 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 unanimously.

**Larry Higgins v. County of Hunterdon (2011-54)**

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 unanimously.

**Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-70)**

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 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 Ms. Lane seconded the motion. The motion passed unanimously.

**Mark A. Tabakin (on behalf of City of Englewood Board of Education) v. Shalom Academy Charter School (Bergen) (2011-144)**

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 unanimously.

**Daniel F. Rummel v. Cumberland County Board of Chosen Freeholders (2011-168)**

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 unanimously.

**Frank O'Shea (on behalf of Ellen O'Shea) v. Township of South Brunswick (Middlesex) (2011-178)**

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 unanimously.

**Jerry W. Pecaro v. Berkeley Heights Police Department (Union) (2011-182)**

**Jerry W. Pecaro v. Berkeley Heights Police Department (Union) (2011-183)**

**Jerry W. Pecaro v. Berkeley Heights Police Department (Union) (2011-184)**

**Jerry W. Pecaro v. Berkeley Heights Police Department (Union) (2011-185)**

**Jerry W. Pecaro v. Berkeley Heights Police Department (Union) (2011-186) (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 unanimously.

**Larry S. Loigman (on behalf of E.C.) v. Ocean County Prosecutor's Office (2011-197)**

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 unanimously.

**Walter G. Wargacki v. County of Bergen (2011-198)**

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 unanimously.

**Michael I. Inzelbuch v. Hamilton Township Board of Education (Mercer) (2011-220)**

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 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 Ms. Lane seconded the motion. The motion passed unanimously.

**Christopher T. Tasiopoulos v. Warren County Prosecutor's Office (2011-231)**

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 unanimously.

**Rene Bradley-Williams v. Atlantic County Jail (2011-232)**

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 unanimously.

**Reginald R. Cole v. Township of Montague (Sussex) (2011-236)**

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 unanimously.

**Paul S. Kaplan v. Winslow Township Board of Education (Camden) (2011-237)**

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 unanimously.

**Michael M. Heyman (On behalf of Lisa Richford) v. County of Mercer, Office of County Counsel (2011-249)**

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 unanimously.

**Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-259)**

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 unanimously.

**Robert Maschke v. Winslow Township Fire District #1 (Camden) (2011-261)**

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 unanimously.

**Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-262)**

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 unanimously.

**David B. Popkin v. Englewood Board of Education (Bergen) (2011-263)**

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 unanimously.

**David L. Nash v. NJ Department of Corrections (2011-264)**

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 unanimously.

**Justin D. Santagata (on behalf of Alexis Fitzsimmons) v. NJ Civil Service Commission (2011-265)**

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 unanimously.

**Peter M. Heimlich v. NJ Department of Law & Public Safety, Division of Consumer Affairs) (2011-274)**

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 unanimously.

**Anthony Florczak v. Bergen County Sheriff's Office (2012-32)**

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 Ms. Lane seconded the motion. The motion passed unanimously.

**Jesse Wolosky v. Township of Montville (Morris) (2010-160)**

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 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 Ms. Lane 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 Ms. Lane seconded the motion. The motion passed unanimously.

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

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 unanimously.

**Kathryn H. Acosta (On behalf of Atlantic City Board of Education) v. NJ Department of Treasury, Division of Pension & Benefits (2011-87)**

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 Ms. Lane seconded the motion. The motion passed unanimously.

**Ali S. Morgano v. NJ Department of Treasury, Division of Administration (2011-145)**

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 unanimously.

**Keith A. Werner v. NJ Civil Service Commission (2011-151)**

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 unanimously.

**Richard S. Gelber v. City of Hackensack (Bergen) (2011-216)**

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 unanimously.

**Fred U. Andes v. New Jersey City University (2011-219)**

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 unanimously.

**Andrew Balik v. City of Bayonne (Hudson) (2011-227)**

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 unanimously.

**Raymond Cattonar v. Township of Jackson, Police Department (Ocean) (2011-230)**

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 unanimously.

**Gregory W. Havlusch, Jr. v. Borough of Allenhurst (Monmouth) (2011-243)**

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 unanimously.

**Rita Roykovich v. West Milford Board of Education (Passaic) (2011-258)**

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 unanimously.

**Robert Brown v. Ocean City Board of Education (Cape May) (2011-271)**

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 unanimously.

**Robert Brown v. Sea Isle City Board of Education (Cape May) (2011-273)**

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 unanimously.

**Bob Thomas v. County of Camden (2011-275)**

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 unanimously.

**Mark T. Messinger v. Borough of North Plainfield (Somerset) (2011-276)**

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 unanimously.

**Nancy L. Held v. Tewksbury First Aid & Rescue Squad (Hunterdon) (2011-303)**

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. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

**David Marc Drukaroff v. Atlantic County Prosecutor's Office (2011-306)**

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 unanimously.

**Quddoos Farra'd v. NJ Department of Corrections (2011-321)**

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 unanimously.

**David Herron v. River Vale Board of Education (Bergen) (2011-351)**

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 unanimously.

**Deborah A. Tietze v. NJ Pinelands Commission (2011-379)**

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 unanimously.

**Doug Knehr v. Township of Franklin (Somerset) (2012-38)**

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 unanimously.

**Benjamin L. Moore v. Township of Commercial (Cumberland) (2011-281)**

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 unanimously.

**Joseph Krzywda v. Pinelands Regional School District (Ocean) (2011-285)**

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 unanimously.

**Joseph Krzywda v. Pinelands Regional School District (Ocean) (2011-307)**

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 unanimously.

**Matt Gerald Green v. NJ Department of Corrections (2011-309)**

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 unanimously.

**GRC Complaints on Appeal:**

1. Isasi v. New Jersey State Parole Board, Docket No. A-002972-11 (September 27, 2012). On appeal from Isasi v. New Jersey State Parole Board, GRC Complaint No. 2011-240.

Ms. Gordon provided the Council with the following case synopsis:

The Council adjudicated this complaint in October 2011 as an Administrative Disposition because the Custodian certified that no records responsive to the OPRA request existed and the Custodian timely responded to the OPRA request indicating such. The Complainant appealed the Council's decision. The Appellate Court dismissed this appeal because the Appellant failed to file a timely brief.

2. Ciesla v. N.J. Department of Health & Senior Services, 2012 N.J. Super. LEXIS 183 (App. Div. December 4, 2012). On appeal from GRC Complaint No. 2010-38 (June 2012).

Ms. Gordon provided the Council with the following case synopsis:

The Council initially adjudicated this complaint in May 2011 holding that the Custodian lawfully denied access to the requested staff report because said report was still in draft form at the time of the request and thus exempt as advisory, consultative or deliberative material. In July 2011 the Complainant appealed the Council's decision. In May 2012, the Appellate Division remanded the complaint back to the Council to consider its May 2011 Final Decision in light of a recent published opinion in Correctional Medical Services, Inc. v. State. The Appellate Division ordered the Council to render its decision no later than July 16, 2012.

On June 26, 2012, the Council issued another Final Decision holding that the Correctional Medical Services cases is not applicable and is distinguishable from this instant complaint because the Complainant sought the requested report under OPRA, not discovery, as addressed in Correctional Medical Services. The Complainant again appealed the Council's decision. The Appellate Court affirmed the Council's ruling "because the draft report is fully protected from disclosure under OPRA as 'deliberative material' excluded from the statute's definition of a potentially obtainable 'government record.'" The Court also held that "as the GRC itself maintains, its statutory authority is confined to the resolution of OPRA-based requests, and therefore the GRC lacks jurisdiction to resolve common-law claims for records access."

3. Wolosky v. Township of Sparta, Docket No. A-1974-11T1 (Unpub. App. Div. December 13, 2012). On appeal from GRC Complaint No. 2008-219 (November 2011).

Ms. Gordon provided the Council with the following case synopsis:

In November 2011, the Council accepted an Administrative Law Judge's Initial decision to award the Complainant a prevailing party attorney's fee in the lodestar amount of \$5085.00. However, the Council rejected the Judge's award of a 25% enhancement fee. The Township appealed the Council's award of a prevailing party attorney's fee. The Court found that because the Complainant secured some of the relief he sought in his denial of access Complaint, he is a prevailing party entitled to a reasonable attorney's fee. However, the court held that the Council erred by awarding an attorney's fee based on the full lodestar amount. The court stated:

"In our view, the GRC failed to reduce the lodestar to substantially reflect the limited success that Wolosky achieved on his complaint...the GRC determined that sixty-eight of the Township's seventy-one redactions were valid. Thus, Wolosky obtained very limited success in this action."

Rather than remand the complaint back to the GRC, the court exercised original jurisdiction to determine the appropriate attorney's fees in the amount of \$500. Accordingly, the Council's decision is affirmed in part and reversed in part.

4. Wolosky v. Township of Sparta, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012). On appeal from GRC Complaint No. 2008-277 (November 2011).

Ms. Gordon provided the Council with the following case synopsis:

In November 2011, the Council accepted an Administrative Law Judge's Initial decision to award the Complainant a prevailing party attorney's fee in the lodestar amount of \$6097.00. However, the Council rejected the Judge's award of a 25% enhancement fee. The Township appealed the Council's award of a prevailing party attorney's fee arguing that the Council erred by finding that the Complainant was entitled to have the Custodian convert the requested audio recordings from the FTR Gold System Format to the Windows WAV format. The Complainant cross-appealed the Council's denial of the fee enhancement.

The Appellate Court holds that the GRC erred by ordering the Township to provide the Complainant with an audio copy of the requested record in Windows WAV format. The court noted that it is undisputed that the Township did not maintain the requested record in said format and offered to convert the record for a special service charge, or provide the Complainant with a free download of the software needed to play the audio recordings in the FTR Gold System Format. Thus, the court finds this offer consistent with N.J.S.A. 47:1A-5.d. to provide the requested records in another meaningful medium. The court finds that the FTR Gold System Format is meaningful because it afforded the Complainant full access to the requested information.

Additionally, the court finds that the Complainant is a prevailing party, but that its success was limited. Rather than remand the complaint back to the GRC, the court exercised original jurisdiction to determine the appropriate attorney's fees in the amount of \$500. The court affirms the Council's denial of the fee enhancement. Thus, the Council's decision is reversed in part and affirmed in part.

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

1. Alfano v. Margate City, 2012 N.J. Super. Unpub. LEXIS 2179, (App. Div. September 25, 2012).

Ms. Gordon provided the Council with the following case synopsis:

This case pertains to a denial of access to a police report concerning an incident involving a bicyclist falling from the Margate Bridge. The Custodian denied access on the basis that the record is exempt as a criminal investigatory record. The trial Judge held that the record is not a criminal investigatory record because the Margate Police has concluded its investigation with no charges being filed against any party. However, the Judge also held that the report could not be disclosed because to do so would violate the reasonable expectation of privacy of the bicyclist and the individuals interviewed by police. On appeal, plaintiff argues that the Judge erred in dismissing his OPRA claim by refusing to provide a redacted copy of the police report with all of the parties' names and identifying information redacted.

The Appellate Court affirms that the police report is not exempt as a criminal investigatory record because there is nothing in the record to support a finding that the police were actively investigating a crime or attempted crime when the report was prepared. However, the Appellate Court holds that plaintiff should have been provided with a copy of the report with the names of the individuals, together with any personal information that could be used to identify them, redacted.

2. Dittrich v. The Port Authority of New York and New Jersey, 2012 N.J. Super. Unpub. LEXIS 2254 (App. Div. October 4, 2012).

Ms. Gordon provided the Council with the following case synopsis:

The Appellate Division affirmed the trial court's holding that the Port Authority of New York and New Jersey is not a public agency under OPRA. The Appellate Court held that "the definitions contained in OPRA do not suggest any intent on the part of the Legislature to extend its application to bi-state agencies." The court noted that the Compact between New York and New Jersey does not provide for unilateral state action, nor is there any agreement by either state that the law of one State will apply. The Port Authority has adopted its own Freedom of Information policy and procedure, which mirrors the laws of both New York and New Jersey.

3. Boikin v. Kwasniewski, 2012 N.J. Super. Unpub. LEXIS 2641, (Law Div. December 5, 2012).

Ms. Gordon provided the Council with the following case synopsis:

Plaintiff sought the names and addresses of dog and cat license owners in Fair Lawn for the purpose of sending political literature regarding candidates who support animal friendly legislation. The Custodian denied access citing to privacy concerns pursuant to N.J.S.A. 47:1A-1, Governor McGreevey's Executive Order No. 26, Doe v. Poritz, and the Council's Bernstein decisions regarding similar records. Using the balancing factors from Doe v. Poritz, the trial Judge found that the release of just the names and addresses of the dog owners with all other information contained on the license applications redacted is appropriate. Specifically, the Judge relied on the Supreme Court's decision in Burnett v. County of Bergen, 198 N.J. 408, holding that names and addresses alone, without any other identifiers, does not sufficiently implicate privacy concerns to warrant nondisclosure under OPRA.

4. Burke v. Brandes, 2012 N.J. Super. LEXIS 187, (App. Div. December 7, 2012)

Ms. Gordon provided the Council with the following case synopsis:

The requestor sought from the Office of the Governor, records in its possession regarding "EZ Pass benefits afforded to retirees of the Port Authority, including all...correspondence between the Office of Governor...and the Port Authority." The Custodian denied the request as being overly broad pursuant to MAG Entertainment, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). Nevertheless, the Custodian conducted a review of its files and provided the requestor with one record and withheld all other records claiming privilege and other recognized exemptions in OPRA.

The trial Judge dismissed Plaintiff's complaint finding that his OPRA request was overly broad. However, the Appellate Court disagrees. Specifically, the court held that:

"because plaintiff described the records sought with the requisite specificity and narrowed the scope of the inquiry to a discrete and limited subject matter, we conclude his request was neither vague nor overbroad. The request sought the records themselves, not data, information or statistics to be extracted, gleaned or otherwise derived therefrom. Involving no research or analysis, but only a search for, and production of, what proved to be readily identifiable records, plaintiff's

properly circumscribed and tailored request was wrongly invalidated as overbroad.”

The court also held that “the fact that the custodian of records in this case actually performed a search and was able to locate and identify records responsive to plaintiff’s request belies any assertion that the request was lacking in specificity or was overbroad.”

The court remanded to resolve defendant’s claims of privilege and exemption to the responsive records.

### **Executive Director’s Report and New Business:**

Ms. Gordon stated that the GRC has officially published both the “Frequently Asked Questions for the Public” and the “Frequently Asked Questions for Custodians” on our website. These FAQ are accessible right from our homepage under the header, “What’s New with the GRC?”

Ms. Gordon also stated that the GRC issued two (2) OPRA Alerts since the Council’s September meeting. The October 2012 issue contains the following articles:

- Shared Services Agreements: The Impact on OPRA (this article discusses how OPRA requests are handled between agencies that are entered into a shared services agreement)
- Redactions: A Cause for Concern (this article discusses the proper procedure for redacting records and identifying the specific legal basis for each redaction)
- Frequently Asked Questions (this article publicizes our newly created FAQ for the public and custodians).

The November 2012 *OPRA Alert* provides custodians with guidance on how to handle OPRA requests in the wake of Hurricane Sandy. Specifically, the article addresses obtaining extensions of time to respond to requests, assessing special services charges, or denying requests due to a substantial disruption of agency operations.

Ms. Gordon informed the Council that the video of our OPRA presentation is officially posted to the GRC’s website page entitled “OPRA Training Presentation & Handouts.” The GRC collaborated with the Office of Information Technology regarding the production of this video.

Finally, Ms. Gordon stated that the GRC is about to publish our first annual report hopefully sometime this week. This report provides a statistical analysis of the Government Records Council’s production during Fiscal Year 2012. Specifically, this report demonstrates:

- The number of Denial of Access Complaints filed in Fiscal Year 2012;
- The number of Denial of Access Complaints adjudicated in Fiscal Year 2012;
- The types of decisions issued by the Council;
- A breakdown of the Council’s monthly adjudications; and
- The number of inquiries resolved by the Council in Fiscal Year 2012.

The Council conducted officer elections for the 2013 calendar year.

Mr. Ritardi nominated Ms. Tabakin to be the Chairwoman. Ms. Tabakin accepted the nomination. Ms. Tabakin called for a called for a motion to accept the nomination. Mr. Ritardi made a motion to accept the nomination and Ms. Vetti seconded the motion. The motion passed unanimously.

Ms. Tabakin nominated Mr. Ritardi to be the Secretary. Mr. Ritardi accepted the nomination. Ms. Tabakin called for a called for a motion to accept the nomination. Ms. Lane made a motion to accept the nomination and Ms. Vetti seconded the motion. The motion passed unanimously.

The Council agreed to the following 2013 Council Meeting dates starting at 10:30 am:

January 29 <sup>th</sup>	(Tuesday)
February 26 <sup>th</sup>	(Tuesday)
March 27 <sup>th</sup>	(Wednesday)
April 30 <sup>th</sup>	(Tuesday)
May 28 <sup>th</sup>	(Tuesday)
June 25 <sup>th</sup>	(Tuesday)
July 30 <sup>th</sup>	(Tuesday)
August 27 <sup>th</sup>	(Tuesday)
September 24 <sup>th</sup>	(Tuesday)
October 29 <sup>th</sup>	(Tuesday)
November 26 <sup>th</sup>	(Tuesday)
December 17 <sup>th</sup>	(Tuesday)

**Public Comment:** None.

Ms. Tabakin wished everyone happy holidays and a happy New Year.

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

Meeting adjourned at 12:39 pm.

Respectfully submitted,

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Steven Ritardi, Esq., Secretary

Date Approved: January 29, 2013