



Minutes of the Government Records Council January 29, 2013 – Closed Session

The Council convened in closed session at 10:40 a.m. in Conference Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: Robin Berg Tabakin, Esq. (Chairwoman), Denise Parkinson Vetti, Esq. (designee of Department of Education Commissioner Chris Cerf), and Steven Ritardi, Esq. (public member/Secretary).

Also in attendance were GRC Staff: Karyn Gordon (Acting Executive Director), Brigitte Lillie (Secretary), Dara L. Barry (Communications Manager), Harlynn Lack (Case Manager)¹, and Debra Allen (Deputy Attorney General).

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

The Council met in closed session pursuant to N.J.S.A. 10:4-12.b(7) to receive legal advice and discuss anticipated litigation in which the public body may become a party in the following matters:

Richard Rivera v. Town of West New York (Hudson) (2010-208) (*In-Camera Review*)

Ms. Gordon introduced to the Council the records submitted for an *in camera* review. Ms. Gordon stated that the Council ordered the *in camera* review to determine the validity of the Custodian's assertion that the records are exempt from disclosure due to privacy issues pursuant to N.J.S.A. 47:1A-1.1., are criminal investigatory in nature pursuant to N.J.S.A. 47:1A-1.1. and contain medical information that is exempt pursuant to N.J.S.A. 47:1A-9(a) and Executive Order No. 26 (McGreevey 2002).

The Council reviewed the records submitted for the *in camera* review as well as the proposed Findings & Recommendations of the Executive Director. The Council agreed to put the proposed Findings & Recommendations of the Executive Director to a vote during open session. Ms. Allen suggested that the Council issue an *OPRA Alert* regarding this matter since the Council's decision is extremely fact-specific and cannot be used as guidance in all instances.

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

Ms. Lack introduced to the Council the records submitted for an *in camera* review. Ms. Lack stated that the Council ordered the *in camera* review to determine the validity of Custodian Counsel's assertion that the requested memorandum contains attorney-client privilege information pursuant to N.J.S.A. 47:1A-1.1.

¹ Ms. Lack was present only for the Wargacki and Roykovich discussions.

The Council reviewed the records submitted for the *in camera* review as well as the proposed Findings & Recommendations of the Executive Director. The Council agreed to put the proposed Findings & Recommendations of the Executive Director to a vote during open session.

Rita Roykovich v. West Milford Board of Education (2011-258) (*In-Camera Review*)

Ms. Lack introduced to the Council the records submitted for an *in camera* review. Ms. Lack stated that the Council ordered the *in camera* review to determine the validity of the Custodian's assertion that the requested bullying report contains advisory, consultative and deliberative material pursuant to N.J.S.A. 47:1A-1.1. The Council reviewed the records submitted for the *in camera* review as well as the proposed Findings & Recommendations of the Executive Director.

The Council determined that it required additional information from the parties in order to make a determination on access. The Council agreed to table the adjudication of this complaint during open session for additional fact-finding.

Criminal Investigatory Cases (*Discussion*)

1. **Alan Rogers v. Essex County Prosecutor's Office (2011-23)**
2. **Rashaun Barkley v. Essex County Prosecutor's Office (2011-221)**
3. **Richard Rivera v. Town of West New York (Hudson) (2010-208)**
4. **Melissa Ann Michalak v. Borough of Helmetta (Middlesex) (2010-220)**
5. **West Solloway v. Bergen County Prosecutor's Office (2011-39)**
6. **Anthony Reitzler v. Egg Harbor Police Department (Atlantic) (2011-85)**
7. **Ricky A Pursley v. Township of Hardyston, Police Department (Sussex) (2011-137)**
8. **Woojin Hwang v. Bergen County Prosecutor's Office (2011-348)**

Ms. Gordon informed the Council that the proposed Findings & Recommendations of the Executive Director in the eight (8) complaints listed above overturn the Council's previous decision in Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (October 2008). Ms. Gordon stated that the Council held in pertinent part that "[t]he record requested ... a police arrest report, is required to be maintained or kept on file by [Records Management Services], therefore it is a government record subject to disclosure pursuant to N.J.S.A. 47:1A-1.1."

Ms. Gordon stated that the proposed Findings & Recommendations of the Executive Director recommend that the criminal investigatory record exemption applies to records which are not required by *statute or regulation* to made, maintained or kept on file, rather than records which are not required by Records Management Services retention schedules. Ms. Gordon stated that under the latter interpretation, the criminal investigatory record exemption would be null.

The Council agreed to put the proposed Findings & Recommendations of the Executive Director to a vote during open session.

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

The closed session meeting concluded at 11:39 a.m.

Respectfully Submitted:

Robin Berg Tabakin, Esq., Chair

Date Approved: February 26, 2013