



Minutes of the Government Records Council February 26, 2013 – Closed Session

The Council convened in closed session at 10:39 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 Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III).

Also in attendance were GRC Staff: Karyn Gordon (Acting Executive Director), Brigitte Lillie (Secretary), Frank Caruso (Senior Case Manager)¹, Harlynn Lack (Case Manager), John Stewart (Mediator)², and Debra Allen (Deputy Attorney General).

Ms. Vetti made a motion and Ms. Lane 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:

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

Mr. Stewart introduced to the Council the records submitted for an *in camera* review. Mr. Stewart stated that the Council ordered the *in camera* review to determine the validity of the Custodian's assertion that the record constitutes inter-agency or intra-agency advisory, consultative, or deliberative material which is exempt from disclosure 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 discussed the applicability of the court's decision in Education Law Center v. NJ Department of Education, 198 N.J. 274, 966 A.2d 1054, 1069 (2009). The Council agreed to put the proposed Findings & Recommendations of the Executive Director to a vote during open session.

Robert G. Dooley v. City of Newark (Essex) (2011-257)

Mr. Caruso stated that the proposed Findings & Recommendations of the Executive Director may not contain enough supporting information to determine whether request item no. 8 is exempt from public access. Mr. Caruso stated that the Custodian failed to sign the Statement of Information

¹ Mr. Caruso was present only for the Dooley, Rogers, and New FR Template discussions.

² Mr. Stewart was present only for the Maschke discussion.

despite Mr. Caruso's attempts to rectify the situation. Mr. Caruso stated that he then determined the Statement of Information to be invalid due to the lack of the Custodian's signature. Mr. Caruso and Ms. Allen suggested the Council refer this complaint to the Office of Administrative Law for an *in camera* review to determine whether request item no. 8 is exempt from public access. Ms. Allen stated that sending the complaint to the Office of Administrative Law will give the Custodian an opportunity to explain why they are not complying with the GRC and for the Custodian to argue if the records are exempt.

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

Alan Rogers v. Essex County Prosecutor's Office (2011-23)

Mr. Caruso informed the Council that the Complainant provided an incorrect indictment number with his original request and that the Custodian responded said based on that indictment number, no records responsive exist. Mr. Caruso stated that the Complainant provided a different indictment number and again the Custodian said no records responsive exist. Mr. Caruso stated that after the submission of the Statement of Information, the Complainant provided a third indictment number and the Custodian found responsive records. Mr. Caruso stated that the proposed Findings & Recommendations of the Executive Director recommend that the Council find that the Custodian could not have unlawfully denied access to records because the Complainant provided the Custodian with insufficient information.

Additionally, Mr. Caruso stated that the proposed Findings & Recommendations of the Executive Director have been amended to remove the discussion of N.J.S.A. 47:1A-3(b) and add the following sentence "The Custodian also certified in the SOI that she located an arrest report and would only disclose same with redactions at the behest of the GRC."

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

New FR Template

- 1. Gregory A. Scott v. Red Bank Police Department (Monmouth) (2011-244)**
- 2. Ken Schilling v. Township of Little Egg Harbor (Ocean) (2011-294)**
- 3. Jeff Carter v. Frankin Fire District #1 (Somerset) (2011-318)**
- 4. Thomas H. Foregger v. Township of Berkeley Heights (Union) (2012-114)**

Ms. Gordon introduced to the Council the new condensed Findings & Recommendations template. Ms. Gordon stated that using this new condensed template, Case Managers can process complaints more quickly without stripping the important facts. Ms. Allen stated that this new template helps with appeals and the statement of items so that only relevant information is included.

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

The closed session meeting concluded at 11:13 a.m.

Respectfully Submitted:

Robin Berg Tabakin, Esq., Chair

Date Approved: March 22, 2013