



**Minutes of the Government Records Council
March 22, 2013 Public Meeting – Open Session**

The meeting was called to order at 10:40 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 March 19, 2013.”

Ms. Tabakin read the fire emergency procedure.

Ms. Lillie called the roll:

Present: 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).¹

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), John Stewart, Esq. (Mediator), and Debra Allen, Esq. (Deputy Attorney General).

Ms. Tabakin stated that a complaint synopsis is available with the agenda by the conference room door.

Ms. Tabakin also stated that there is no closed session today.

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

February 26, 2013 Open Session Minutes

Ms. Vetti made a motion and Ms. Lane seconded the motion to approve the open session minutes of the February 26, 2013 meeting. The motion passed unanimously.

¹ Ms. Lillie noted that Steven Ritardi, Esq. (public member) is absent.

February 26, 2013 Closed Session Minutes

Ms. Vetti made a motion and Ms. Lane seconded the motion to approve the closed session minutes of the February 26, 2013 meeting. The motion passed unanimously.

Council Adjudication:

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

1. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-22)

Ms. Tabakin noted that while Mr. Ritardi is absent, he is recused from this complaint. 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 recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

2. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-84)
3. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-132)
4. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-133)
5. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-134)
6. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-135)
7. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-144)
8. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-146)
9. Yusef Steele v. Middlesex County Public Defender's Office (2012-155)
10. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-168)
11. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-172)
12. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-173)
13. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-178)
14. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-221)
15. Ralph Curtis Kimpton v. New Jersey Department of Corrections (2012-251)
16. Ricky Stevens v. New Jersey State Parole Board (2012-306)
17. John Schmidt v. City of Bayonne (Hudson) (2012-312)
18. Thomas Caggiano v. New Jersey Department of Law & Public Safety, Division of State Police (2012-317)
19. Daryle L. Pitts v. New Jersey Department of Corrections (2012-326)
20. Jordan Fein v. New Jersey Department of Law & Public Safety, Division of New Jersey Racing Commission (2013-1)
21. Jeannie Swint v. University of Medicine & Dentistry of New Jersey (2013-22)
22. John Campbell v. New Jersey Turnpike Authority (2013-31)
23. Katharine A. Muscalino v. Township of Berkeley Heights (Union) (2013-37)
24. John Campbell v. New Jersey Turnpike Authority (2013-48)
25. Jeffrey Robinson v. County of Union (2013-54)

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 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:

Larry A. Kohn v. Township of Livingston (Essex) (2009-203)

Larry A. Kohn v. Township of Livingston (Essex) (2009-211) (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 A. Kohn v. Township of Livingston (Essex) (2011-342)

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 A. Kohn v. Township of Livingston (Essex) (2011-344)

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.

Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-234)

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.

David Roundtree v. New Jersey Department of State, Division of Elections (2011-266)

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.

Ken Schilling v. Township of Little Egg Harbor (Ocean) (2011-293)

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.

Ken Schilling v. Township of Little Egg Harbor (Ocean) (2011-294)

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.

Lynn Markarian v. New Jersey Department of Law & Public Safety, Division of Consumer Affairs (2011-312)

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.

Gerald Scarano v. City of Asbury Park (Monmouth) (2011-314)

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) (2011-319)

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.

Victor Lopez-Rodriguez v. Passaic County Prosecutor's Office (2011-325)

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.

Katalin Gordon v. City of Orange (Essex) (2011-336)

Katalin Gordon v. City of Orange (Essex) (2011-337) (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.

Michael Deutsch v. New Jersey Civil Service Commission (2011-361)

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 B. Quinlan v. Township of Hillside (Union) (2011-371)

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 P. Schmidt v. Salem City Board of Education (Salem) (2012-14)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Barry stated that item no. 2 in the Conclusions and Recommendations has been edited to clarify that the Council is ordering disclosure of the lawful basis for the redactions, not the disclosure of the redacted portions of the records.

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

Paul Serdiuk v. New Jersey Department of Military & Veteran's Affairs (2012-27)

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 Boslet v. Greenwich Township (Warren) (2012-29)

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

Rita Watson v. Washington Township Public Schools (Gloucester) (2012-33)

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.

Milton P. Durham v. New Jersey Department of Corrections (2012-35)

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.

Judith Papiez v. County of Mercer, Office of County Counsel (2012-52)

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.

Judith Papiez v. County of Mercer, Office of County Counsel (2012-54)

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.

Judith Papiez v. County of Mercer, Office of County Counsel (2012-55)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Caruso noted an edit to page 3, third full paragraph from the bottom of the page: "Complainant" has been changed to "Custodian."

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

Judith Papiez v. County of Mercer, Office of County Counsel (2012-56)

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.

Judith Papiez v. County of Mercer, Office of County Counsel (2012-57)

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.

Judith Papiez v. County of Mercer, Office of County Counsel (2012-59)

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

Judith Papiez v. County of Mercer, Office of County Counsel (2012-60)

Judith Papiez v. County of Mercer, Office of County Counsel (2012-61) (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.

Judith Papiez v. County of Mercer, Office of County Counsel (2012-65)

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

Marita L. Cibrian v. New Jersey Department of Banking & Insurance (2012-76)

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

GRC Complaints on Appeal: None.

Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:

1. Renna v. Union County Alliance, 2013 N.J. Super. Unpub. LEXIS 419 (App. Div. February 26, 2013)

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

Plaintiff, Tina Renna, appeals from a trial court order dismissing with prejudice her complaint seeking records under OPRA. Specifically, the trial court held that the Union County Alliance, a not-for-profit entity, is not a public agency under OPRA. On appeal, the Appellate Court finds that "because plaintiff did not appeal a prior administrative determination of the Government Records Council denying plaintiff access to Union County Alliance's records, she is collaterally estopped from bringing this current action."

As background, plaintiff filed a Denial of Access Complaint with the GRC on April 10, 2006 challenging a denial of access by the Union County Alliance. Ultimately, in June 2008 the Council determined that the Union County Alliance was not a public agency under OPRA. Plaintiff did not appeal the Council's decision to the Appellate Division.

In this instant appeal, the Appellate Court states that although N.J.S.A. 47:1A-7 mandates that "a decision of the GRC shall not have value as precedent for any case initiated in Superior Court," the application of collateral estoppel does not fall within this limitation. The court further finds that "collateral estoppel applies in the context of administrative tribunals only if the tribunal afforded the parties 'significant procedural and substantive safeguards,' comparable to those accorded to litigants in the courts." The court reasoned that "[w]hen complaints are filed with the GRC, formalized administrative processes have been established to ensure fairness as to both complainants and respondents...and plaintiff does not contend that the GRC's procedures are institutionally deficient."

The Appellate court affirmed the trial court's holding that the Union County Alliance is not a public agency under OPRA.

2. Ponce v. Town of West New York, 2013 N.J. Super. Unpub. LEXIS 436 (App. Div. February 27, 2013)

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

Defendants, Town of West New York and the Custodian of Records, appeal from a trial court's ruling granting plaintiff's application to review an unredacted recording of a 911 call reporting an alleged illegal parking violation. The recording reveals the identity of the caller who complained that plaintiff's car was blocking his driveway. The trial court conducted a balancing test using the seven (7) factors discussed in Burnett v. County of Bergen, 198 N.J. 408, 427, 968 A.2d 1151 (2009) and determined that the caller's ostensible expectation of privacy in this context is subordinate to the public's right to access and review a "government record," as defined under OPRA.

The Appellate Division affirms, holding that ordinarily, a citizen's identity when making a Title 39 complaint is easily accessible to the public as part of the official police record, and that the recording does not reveal any personal or private information. Further, the court held that defendants' fear concerning plaintiff's likelihood of retaliation is based on mere speculation. Defendants have not presented any evidence of past hostility between these two individuals. Absent compelling reasons, which are conspicuously absent in this record, few can argue that in a free society an accused is not entitled to know the identity of his accuser.

3. North Jersey Media Group v. Englewood Public School District, 2013 N.J. Super. Unpub. LEXIS 499 (Law. Div. March 5, 2013)

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

North Jersey Media Group filed action seeking the disclosure of invoices and e-mails, knowing and willful sanctions against the custodian, and attorney's fees. The court finds that: 1) The invoices and e-mails are government records under OPRA; 2) the privacy exemption does not apply to the names of employees redacted from the e-mails; 3) defendants have, in good faith, provided the requested invoices in PDF format despite being requested in non-PDF format; 4) a knowing and willful sanction is not warranted; and 5) Plaintiff is entitled to prevailing party attorney's fees.

Executive Director's Report and New Business: No Executive Director's report.

Ms. Tabakin stated that the newly condensed Findings & Recommendations format is excellent. Ms. Gordon agreed, stating that the new format will likely decrease the complaint adjudication time.

Public Comment: None.

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

Meeting adjourned at 11:00 am.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: April 30, 2013