



**Minutes of the Government Records Council
July 23, 2013 – Closed Session**

The Council convened in closed session at 10:45 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, Esq. (designee of Department of Education Commissioner Chris Cerf), and Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III), and Steven Ritardi, Esq. (public member).

Also in attendance were GRC Staff: Brandon D. Minde, Esq. (Executive Director), Rosemond Bordzoe (Secretary), Dawn R. SanFilippo, Esq., (Senior Staff Attorney), Frank Caruso (Senior Case Manager), John Stewart (Mediator), and Debra Allen (Deputy Attorney General).

Ms. Tabakin made a motion and Ms. Parkinson 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:

A. *In-Camera* Reviews

1. Phillip Molnar (on behalf of Express Times) v. Warren County Community College, GRC Complaint No. 2012-04 (ICFR)

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 records are exempt from disclosure and that any attorney advice contained within said minutes was properly redacted pursuant to N.J.S.A. 47:1A-1.1. The results of the *in camera* examination reveal that (1) only the executive session minutes for June 30, 2010, contain redactions referencing a building located at 445 Marshall Street; and (2) the redacted segment of said minutes contains privileged communications between a lawyer and client and is exempt from disclosure as attorney-client privileged information 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 agreed to put the proposed Findings & Recommendations of the Executive Director to a vote during open session. Ms. Tabakin rescused.

2. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic), GRC Complaint No. 2012-151 (ICFR)

Ms. SanFilippo introduced to the Council the records submitted for an *in camera* review. Mr. SanFilippo stated that the Council ordered the *in camera* review to determine the validity of the Custodian's challenges to the redactions of the legal bills provided by the Custodian. The Council reviewed the redacted, unredacted documents to determine the validity of the Custodian's assertion that the records are exempt from disclosure due to exemptions: N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-9 (attorney-client privilege); N.J.S.A. 47:1A-1.1 (information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office); N.J.S.A. 47:1A-3(a) (information or access to records regarding an on-going investigation); N.J.S.A. 47:1A-1.1 (information generated by or on behalf of a public employers or employees in connection with a grievance filed against such employee); N.J.S.A. 47:1A-10 (personnel records); and N.J.S.A. 47:1A-1 and Burnette v. County of Bergen 198 N.J. 408 (2009) (information whose disclosure would run contrary to the reasonable expectation of privacy of involved parties).

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.

3. Karen Banda v. Township of Bloomfield (Essex), 2012-191 (ICFR)

Ms. SanFilippo introduced to the Council the records submitted for an *in camera* review. Ms. SanFilippo stated that the Council ordered an *in camera* review of the following closed session minutes: March 19, 2009, April 16, 2009, June 18, 2009, August 20, 2009, September 17, 2009, January 14, 2010, February 18, 2010, June 10, 2010, September 16, 2010, December 16, 2010, June 16, 2011 and August 18, 2011, to determine the validity of the Custodian's assertion that these closed session minutes contain personnel material, ongoing litigation matters, and attorney client privilege material.

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.

4. Jerry Burgos v. Township of Hazlet (Monmouth), 2012-195 (ICFR)

Ms. SanFilippo introduced to the Council the records submitted for an *in camera* review. Ms. SanFilippo stated that the Council ordered an *in camera* review of the closed session minutes dated April 24, 2012 and May 15, 2012 to determine the validity of the Custodian's assertion that these closed session minutes contain personnel information and attorney client privilege material.

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.

B. Advisory Opinions

1. Draft of Advisory Opinion 2013-01

The Council reviewed a proposed draft of Advisory Opinion 2013-01. Ms. Tabakin opened the floor for discussion regarding proposed Advisory Opinion 2013-01. Ms. Tabakin noted that the issue is fact dependent and case specific. Council discussed when a document becomes a public record. The Council noted that record retention is the subject of Standard Operating Procedures (“SOPs”) or DARM requirements of the agency. The Council noted that it does not have authority to require any agency to retain records.

The Council determined the Executive Director would continue working on the draft opinion. The Council wanted to ensure the language limited the advisory opinion to the hypothetical factual scenario presented and clarified that the opinion does not create an obligation for any agency.

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 11:15 a.m.

Respectfully Submitted:

Robin Berg Tabakin, Esq., Chair

Date Approved: August 27, 2013