



Minutes of the Government Records Council August 28, 2012 – Closed Session

The Council convened in closed session at 11:15 a.m. in Conference Room 129 of the Department of Community Affairs, Trenton, New Jersey. In attendance were: 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).

Also in attendance were GRC Staff: Karyn Gordon (Acting Executive Director), Brigitte Lillie (Secretary), Dara L. Barry (Communications Manager), Frank Caruso (Senior Case Manager), Harlynn Lack (Case Manager), Patricia Stern (Deputy Attorney General) and Joni Noble McDonnell (Designated Outside Counsel).

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:

Mildred Johnson v. NJ Government Records Council, 2012-217

Ms. Gordon stated that although this complaint is filed against the GRC, the Council can adjudicate the complaint based on the Doctrine of Necessity. Ms. Gordon stated that if the Council did not adjudicate the complaint, the Complainant's only other option is to pay the court filing fee and is prevented from using the free adjudication option. Ms. Stern stated that the Council could consider obtaining a waiver of conflict from future complainants in these instances.

Jeff Carter v. Franklin Fire District #1, 2011-228

Ms. Gordon stated that she is recommending in this complaint that the Council take a hard line approach to making custodians bear the burden of proving a lawful denial of access. Ms. Gordon stated that the specific language of OPRA mandates that a custodian bears the burden of proving a lawful denial of access and in this complaint, the custodian failed to do so. As such, Ms. Gordon recommends the Council order disclosure of the requested records. The Council agreed to put the proposed Findings and Recommendations of the Executive Director to a vote during open session.

Benjamin A. Spivack, Esq., (on behalf of Passaic County Sheriff's Department Professional Association) v. NJ Civil Service Commission, 2010-130

Ms. Gordon stated that this would have been a routine complaint but the Complainant passed away in April and the GRC was unaware. Ms. Gordon stated that the Complainant is a prevailing party, but when staff contacted the Complainant's law firm regarding this complaint, no one was aware

of the complaint and no one has yet submitted alternate counsel for the complaint. Ms. Gordon is recommending to the Council that this complaint should not be sent to the Office of Administrative Law unless and until alternate Counsel enters an appearance during a 10 day reconsideration period. If so, Ms. Gordon stated that she will reconsider the complaint and refer it to the Office of Administrative Law for a hearing to award reasonable attorney's fees. Additionally, Ms. Gordon stated that GRC staff will send the Council's decision to the Complainant's law firm, the Sheriff's Association, the Civil Service Commission, and the Complainant's widow to ensure receipt of said decision. The Council agreed to put the proposed Findings and 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 11:54 a.m.

Respectfully Submitted:

Denise Parkinson Vetti

Date Approved: September 25, 2012