



Minutes of the Government Records Council September 25, 2012 – Closed Session

The Council convened in closed session at 10:48 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), 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 matter:

Steven Hyman v. Jersey City (Hudson) (2007-118)

Ms. Gordon informed the Council that this complaint was appealed to the Appellate Division of the New Jersey Superior Court. The Appellate Division dismissed the Council's previous finding that portions of the OPRA request were overly broad and others were exempt from public access based on exemptions raised by the Council. The Appellate Division remanded this complaint back to the Council for further proceedings. Ms. Gordon recommended ordering disclosure of records and transmitting the complaint to the Office of Administrative Law (OAL) for a hearing to resolve the merits, similar to the Council's action in the complaint filed by Senator Gill in 2007. Ms. Gordon stated that she anticipates at least one more appeal. As such, having OAL handle the complaint develops a solid record, the Judge can conduct an in camera review of the records and the record will be complete.

Ms. Allen indicated that she previously spoke to the City Attorney who claimed that he might be settling this complaint; however, no such action has yet taken place. Ms. Allen also stated that she is troubled by the court's decision regarding the Council not having the authority to raise exemptions in a complaint proceeding. The Council's responsibility is to enforce OPRA, but here the Appellate Division faults the Council.

Ms. Gordon stated that this decision flies in the face of the court's decision in Paff v. Department of Labor. Ms. Allen stated Paff v. Plainsboro.

Mr. Ritardi asked whether the Council has any enforcement authority over its decisions. Ms. Allen indicated that there is a procedure under the court rules but that the Council is not the beneficiary of the action, the Complainant is the beneficiary. Mr. Caruso stated that failure to comply with the Council's order counts towards a possible knowing and willful violation, similar to the facts of the Paff v. Borough of South Bound Brook complaint. Mr. Caruso also stated that custodians are more likely to attempt to comply with an order, rather than not comply at all.

The Council agreed to put the proposed findings and recommendations to a vote during open session.

Ms. Lane 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 11:02 a.m.

Respectfully Submitted:

Denise Parkinson Vetti

Date Approved: December 18, 2012