



**Minutes of the Government Records Council
January 31, 2017 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:45 p.m. by Ms. Robin Tabakin at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

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 (fax number out of service), Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on July 20, 2016.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Tabakin, Esq. (Chairwoman), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Christopher Huber, Esq. (designee of Department of Education Commissioner David C. Hespe)

*****Steven Ritardi, Esq. (Public Member) participated telephonically from 2:27 p.m. until 2:35 p.m. for the purposes of voting on GRC Complaint Nos. 2015-281 and 2016-78.*****

GRC Staff in Attendance: Joseph Glover (Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Communications Specialist/Resource Manager), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Husna Kazmir (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Tabakin informed the public that copies of the agenda are available by the conference room door.

II. Executive Director's Report:

- Since OPRA's inception in calendar year 2002, the GRC has received 4,540 Denial of Access Complaints. That averages about 311 complaints per a bit over 14½ program years.
- In the current program year, the GRC has so far received 170 Denial of Access Complaints.
- 512 of the 4,540 complaints remain open and active. Of those open cases,
 - 16 complaints are on appeal with the Appellate Division (3.1%);
 - 17 complaints are currently in mediation (3.3%);
 - 45 complaints await adjudication by the Office of Administrative Law (8.8%);
 - 122 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the January 2017 meeting (24%); and,
 - 307 complaints are work in progress (60%).
- Since 2004, the GRC has received 26,248 total inquiries. That is an average of about 1,932 inquiries per a bit over 13½ tracked program years. So far in the current program year, the GRC has received 1,102 inquiries.

III. Closed Session:

Ms. Tabakin called for a motion to remove closed session from the agenda. Mr. Martucci made a motion, which Mr. Huber seconded. The motion passed unanimously. The Council therefore did not meet in closed session.

IV. Approval of Minutes of Previous Meetings:

• December 13, 2016 Open Session Meeting Minutes

Ms. Tabakin called for a motion to approve the open session minutes of the December 13, 2016 meeting. Mr. Huber made a motion, which was seconded by Mr. Martucci. The motion passed by a majority vote; Ms. Tabakin abstained.

• December 13, 2016 Closed Session Meeting Minutes

Ms. Tabakin called for a motion to approve the closed session minutes of the December 13, 2016 meeting. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed by a majority vote; Ms. Tabakin abstained.

V. New Business – Cases Scheduled for Adjudication

Ms. Tabakin stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural, or other defects of the complaint. The reason for the Administrative Disposition is under each complaint below:

A. Administrative Disposition Adjudications with Recusals (Consent Agenda):

1. **Benny Cardona (o/b/o City of Newark Public Safety Department, Fire Division) v. NJ Department of Health Infrastructure Laboratories and Emergency Preparedness (2016-277) (SR Recusal)**
 - The Complaint is a duplicate of a previously filed complaint.
 - Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Disposition. Mr. Huber made a motion, which was seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi was absent.

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda):

1. **Steven J. Kolis v. Borough of Spotswood (Middlesex) (2016-212)**
 - The parties settled the matter through mediation.
2. **Robert C. Scutro v. County of Union (2016-305)**
 - The Complaint is a duplicate of a previously filed complaint.
3. **Robert C. Scutro v. County of Union (2016-306)**
 - The Complaint is a duplicate of a previously filed complaint.
4. **Robert C. Scutro v. County of Union (2016-307)**
 - The Complaint is a duplicate of a previously filed complaint.
5. **Brian Keith Bragg v. Mercer County Correctional Center (2016-310)**
 - The request was a not a valid OPRA request.

Ms. Tabakin called for a motion to accept the recommendations as written in all of the above Administrative Complaint Dispositions. Mr. Huber made a motion, which was seconded by Mr. Martucci. The motion passed by a unanimous vote.

C. Administrative Disposition of Uncontested, Voluntary Withdrawals by Complainant (No Adjudication of the Council is Required):

1. **Eric J. Warner, Esq. v. City of Newark (Essex) (2016-288)**
2. **Jorge Phillips v. NJ Schools Development Authority (2016-311)**
3. **Ralph E. Marsh v. County of Essex (2017-15)**

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

A summary of the Executive Director's recommended action is under each complaint:

1. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-218) (JM Recusal)**
2. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-219) (JM Recusal)**
Consolidated
 - The Council could not achieve a quorum.
3. **Susan Fleming v. Greenwich Township (Warren) (2015-18) (SR Recusal)**
 - The Custodian did not timely respond, thus resulting in a “deemed” denial.
 - The Custodian lawfully denied access to the requested record.
 - The Complainant must provide the GRC and the Custodian with copies of any e-mails that are purportedly responsive to her OPRA request but not produced by the Custodian, along with a legal certification, within five business days.
 - The GRC must conduct an *in camera* review of those e-mails to validate the Custodian's assertion that the records contain exempt material.
 - Because the GRC intends to conduct an *in camera* review of the records withheld from disclosure, analysis of the quality of records is deferred and will be completed during the *in camera* review.
 - The knowing and willful analysis is deferred, pending compliance with the Interim Order.
 - 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. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.
4. **Robert Verry v. Borough of South Bound Brook (Somerset) (2015-133) (SR Recusal)**
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party, who is entitled to reasonable attorney's fees, and the matter should be referred to the Office of Administrative Law for a determination of reasonable attorney's fees.
 - 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. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.
5. **Terri L. Howell v. Greenwich Township (Warren) (2015-194) (SR Recusal)**
 - The Complainant withdrew the matter at the Office of Administrative Law.
 - 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. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.

6. **Rashaun Barkley v. Essex County Prosecutor's Office (2015-200) (SR Recusal)**

- The Custodian lawfully denied access because no responsive records exist.
- 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. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.

7. **Terri Howell v. Township of Greenwich (Warren) (2015-249) (SR Recusal)**

- The Custodian did not timely respond, thus resulting in a "deemed" denial.
- The Custodian's failure to provide a completed Statement of Information, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a) and obstructed the GRC's efforts to "receive, hear, review, and adjudicate a complaint . . . concerning a denial of access . . ."
- There is no knowing and willful violation.
- 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. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.

8. **Terrence T. McDonald v. City of Jersey City (Hudson) (2015-274) (SR Recusal)**

- The Council should in part reconsider its Interim Order, consistent with N.J.A.C. 5:105-2.10 and in light of prevailing case law. Specifically, the Council should rescind Conclusion Nos. 3, 4, and 5 and find that the Custodian lawfully denied access to the requested records.
- There is no knowing and willful violation.
- 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. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.

9. **Vaughn Simmons v. City of Newark (Essex) (2015-329) (SR Recusal)**

- The Custodian did not timely respond, resulting in a "deemed" denial.
- The Custodian did not unlawfully deny access to the request for personnel records, because those records are exempt from disclosure.
- There is no knowing and willful violation.
- 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. Mr.

Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.

10. **Andre Herd v. City of Newark (Essex) (2016-50) (SR Recusal)**

- The Custodian lawfully denied access because no responsive records exist.
- 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. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.

11. **Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2015-78) (CH Recusal)**

- The Custodian did not timely respond, resulting in a "deemed" denial.
- The GRC must conduct an *in camera* review of the undisclosed records, items 11-27 from the document index, in order to validate the Custodian's assertions that the records are exempt from disclosure.
- The Custodian lawfully denied access to items 7-9 from the OPRA request because no records exist.
- There is no denial of access at issue regarding the requested schedule or the Memorandum of Understanding because the Custodian disclosed same with redactions, and the Complainant raised no concern with the redactions.
- The knowing and willful analysis is deferred, pending the Custodian's compliance.
- 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. Mr. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Huber abstained.

12. **Sacha Pouliot v. NJ Department of Education (2015-281) (CH Recusal)**

- The GRC must conduct an *in camera* review of the 155 responsive e-mails to validate the Custodian's assertion that the records are exempt from disclosure.
- The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
- 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. Mr. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Huber abstained.

B. Individual Complaint Adjudications with no Recusals:

1. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281)**
2. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-282)**
3. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-283) Consolidated**

- The original award should be adjusted upward to a total of \$11,580, which includes an increase of \$1,080.
 - 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
4. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328)**
 5. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-329)**
 6. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-330)**
 7. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-331) Consolidated**
 - The original award should be adjusted upward to a total of \$9,450, which includes an increase of \$1,740.
 - 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
 8. **Demetrios Damplias v. NJ Department of Corrections (2014-96)**
 - The GRC should table the item because legal counsel needs more to review the matter.
 - Ms. Tabakin called for a motion to table this matter. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by unanimous vote.
 9. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-137)**
 10. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-138) Consolidated**
 - The original award should be adjusted upward to a total of \$6,720, which includes an increase of \$1,080.
 - 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
 11. **Dudley Burdge v. NJ Office of Information Technology (2014-179)**
 - The GRC should table the item because legal counsel needs more time to review the matter.
 - Ms. Tabakin called for a motion to table this matter. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
 12. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)**
 13. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) (Consolidated)**
 - The original award should be adjusted upward to a total of \$7,470, which includes an increase of \$1,080.

- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

14. **Dudley Burge v. NJ Office of Information Technology (2014-338)**

- The GRC must conduct an *in camera* review of the responsive e-mails to validate the Custodian’s assertion the redactions excluded exempt material.
- The knowing and willful analysis is deferred, pending the Custodian’s compliance.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

15. **Luis F. Rodriguez v. Kean University (2015-77)**

- The GRC should table the matter because legal counsel needs more time to review the matter.
- Ms. Tabakin called for motion to table this matter. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

16. **Eric M. Aronowitz, Esq. (o/b/o Middlesex County Board of Social Services) v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-113)**

- The Intervenor failed to establish valid grounds for reconsideration.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

17. **Richard B. Henry, Esq. v. Township of Hamilton Police Department (Atlantic) (2015-155)**

- On the advice of legal counsel, the GRC should table the matter.
- Ms. Tabakin called for a motion to table this matter. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

18. **Luis F. Rodriguez v. Kean University (2015-174)**

- The Custodian’s failure to provide all responsive documents resulted in a “deemed” denial of access. However, the Council declines to order disclosure because all records were subsequently released.
- There is no knowing and willful violation.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

19. **Joseph Post v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-185)**

- The request was invalid, because it is a blanket request for a class of various documents and not a request for specifically named or identifiable records.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

20. **Aaron Lynn v. Middlesex County Prosecutor's Office (2015-186)**

- A portion of the request was invalid, because it is a blanket request for a class of various documents and not a request for specifically named or identifiable records.
- The Custodian lawfully denied access to the requested photographs, because those records are exempt from disclosure pursuant to Executive Order No. 69 (Gov. Whitman, 1997) and N.J.S.A. 47:1A-9(a).
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

21. **Gary Keyser v. Morris School District (Morris) (2015-189)**

- The Custodian lawfully denied access because the requested records contain information generated by or on behalf of public employees in connection with a grievance.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

22. **Glenn Jones v. Rutgers, The State University of New Jersey (2015-202)**

- The Custodian must disclose the originally approved public minutes of the September 18, 2007 meeting, as requested by the Complainant.
- The GRC must conduct an *in camera* review of the undisclosed records in order to validate the Custodian's assertions that the records are exempt.
- The Custodian has lawfully denied access to certain requested minutes because no responsive records exist.
- The knowing and willful analysis is deferred, pending the Custodian's compliance.

- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

23. **Luis F. Rodriguez v. Kean University (2015-203)**

- The Custodian failed to establish valid grounds for reconsideration.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

24. **Joan E. Cegelka v. Borough of Victory Gardens (Morris) (2015-210)**

- The Custodian lawfully denied access, because the requested minutes were unapproved, were therefore in draft form, and were not subject to disclosure under OPRA.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

25. **Robert Kovacs v. Town of Kearny Police Department (Hudson) (2015-218)**

- Based on the Custodian's subsequent clarification, the record shows that the Custodian lawfully denied access to juvenile records. Therefore no *in camera* review is necessary.
- There is no knowing and willful violation.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

26. **Walter Hastings v. NJ Department of Corrections (2015-220)**

- The Custodian lawfully denied access because the requested record was generated on behalf of a public employer in connection with a grievance.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

27. **Gavin C. Rozzi v. Lacey Township Board of Education (2015-224)**

- The special service charge is unreasonable and unwarranted. The custodian must therefore refund the Complainant's \$85.19 payment and provide certified confirmation of compliance to the GRC.
- The knowing and willful analysis is deferred, pending the Custodian's compliance.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

28. **Luis F. Rodriguez v. Kean University (2015-227)**

29. **Luis F. Rodriguez v. Kean University (2015-228) (Consolidated)**

- The Custodian did not timely respond, thus resulting in a "deemed" denial.
- The GRC declines to order disclosure, because no responsive records exist.
- There is no knowing and willful violation.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

30. **Cheryl Link v. Pennsauken Township Board of Education (Camden) (2015-259)**

- There is no unlawful denial of access because no responsive records exist.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

31. **Karen Murray, Esq. v. Elizabeth Board of Education (Union) (2015-271)**

- The Custodian unlawfully denied access to the responsive bills, even if redactions might be required.
- The Custodian must therefore either: (a) disclose responsive records, redacted as might be appropriate, and provide a detailed document index explaining the lawful basis for each redaction, or (b) should a special service charge be warranted, complete a 14-point analysis and provide the Complainant with the estimated cost to provide the responsive records.
- The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

32. **Annette L. Steinhardt v. Bernardsville Police Department (Somerset) (2015-291)**

- The Custodian did not timely respond, thus resulting in a “deemed” denial.
- There is no unlawful denial of access because the requested records constitute criminal investigatory records.
- There is no knowing and willful violation.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

33. **Luis F. Rodriguez v. Kean University (2015-298)**

- The Custodian’s failure to respond immediately to immediate access documents results in a “deemed” denial. However, the GRC declines to order disclosure because the Custodian provided responsive records.
- There is no knowing and willful violation.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

34. **Luis F. Rodriguez v. Kean University (2015-330)**

- The Custodian’s failure to respond immediately to immediate access documents results in a “deemed” denial. However, the GRC declines to order disclosure because the Custodian provided responsive records.
- There is no knowing and willful violation.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

35. **Jason Marshall Litowitz v. NJ Department of Transportation (2015-332)**

- The Custodian complied with the Interim Order.
- There is no denial of access because the Custodian disclosed responsive records in part, and no responsive records exist in part.
- There is no knowing and willful violation.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

36. **Peter Gartner v. Borough of Middlesex (Middlesex) (2015-336)**

- The Custodian timely responded by seeking clarification, and the Complainant failed to respond to the Custodian. There is therefore neither a “deemed” denial nor an unlawful denial of access.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

37. **Edward L. Robinson v. NJ Office of the Public Defender (2015-341)**

- The denial of access was lawful because the plain language of N.J.S.A. 47:1A-5(k) exempts access to client records of the Office of the Public Defender with certain exceptions, and the Complainant’s situation does not satisfy any of the exceptions.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

38. **Luis F. Rodriguez v. Kean University (2015-345)**

- The Custodian failed to respond immediately to a request for immediate access documents, thus resulting in a “deemed” denial.
- The GRC need not order disclosure because the Custodian released responsive records.
- There is no knowing and willful violation.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

39. **John Paff v. Port Authority of New York and New Jersey (2015-365)**

- The agency’s response was insufficient because it failed to provide a date certain upon which the Custodian would respond.
- The agency’s failure to adopt an official OPRA request form resulted in a violation of N.J.S.A. 47:1A-5(f) and a denial of access.
- The agency must either adopt an appropriate request form or certify that the agency adopted one during the pendency of the Complaint and provide supporting documentation to the GRC.
- The Custodian unlawfully denied access to the requested settlement agreement, but the GRC need not order disclosure because the Custodian provided the record to the Complainant along with the Statement of Information.

- The Custodian lawfully denied access to requested items No. 2 and 3 because no responsive records exist.
- The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Tabakin called for discussion on the Executive Director's findings and recommendations. Mr. Huber asked how the Authority became subject to OPRA. Mr. Glover responded advising that both New Jersey and New York passed legislation that required the Authority to adhere to public records laws in both states effective as of June 2016. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

40. **Darryl Davis v. NJ Department of Corrections (2015-366)**

- The Custodian did not timely respond, thus resulting in a "deemed" denial of access.
- There is no unlawful denial of access because no responsive records exist.
- There is no knowing and willful violation.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

41. **David H. Lande, Esq. v. Middlesex County Municipal Joint Insurance Fund (2015-377)**

- The Custodian did not timely respond, thus resulting in a "deemed" denial.
- There is no denial of access because no responsive records exist.
- There is no knowing and willful violation.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

42. **Salvatore J. Moretti v. Bergen County Prosecutor's Office (2015-390)**

- The OPRA request is invalid because it seeks unspecified documents rather than specifically named or identifiable records.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

43. **Annette L. Steinhardt v. Somerset County Prosecutor's Office (2015-414)**

- The Complainant failed to establish valid grounds for reconsideration.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

44. **Nelson Deleon v. Camden County (2015-420)**

- There is no denial of access because the requested records were destroyed pursuant to the agency's retention schedule, and no responsive records therefore exist.
- 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. Mr. Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

45. **John Paff (o/b/o Libertarians for Transparent Government) v. Town of Kearney (Hudson) (2016-94)**

- The Custodian's response was insufficient because she failed to respond in writing to each individually requested item and failed to address the Complainant's preferred method of delivery.
- The Custodian failed to respond timely, thus resulting in a "deemed" denial.
- The Custodian violated N.J.S.A. 47:1A-5(b) by imposing a fee to provide records when the Complainant asked that the records be delivered by e-mail.
- The Custodian failed to disclose the records in the medium requested in violation of N.J.S.A. 47:1A-5(d). The Custodian must therefore provide records to the Complainant in the requested electronic format.
- The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
- 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. Mr. Martucci made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

46. **Debra Anne Leporino v. South Plainfield Public Schools (Middlesex) (2016-98)**

- The Custodian did not timely respond, thus resulting in a "deemed" denial.
- The Custodian lawfully denied access because no responsive records exist.
- The Custodian's response was insufficient because he failed to cite a specific lawful basis for each redaction, but the GRC need not order disclosure because the Complainant now has the unredacted documents.
- There is no knowing and willful violation.
- 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. Mr.

Huber made motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

47. **Eric Warner, Esq. (o/b/o David Trotman) v. City of Trenton (Mercer) (2016-163)**

- The GRC should table the item because legal counsel needs more time to review the matter.
- Ms. Tabakin called for a motion to table this matter. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

48. **James L. Baxter v. NJ Department of Law and Public Safety (2016-171)**

- The GRC should table the item because legal counsel needs more time to review the matter.
- Ms. Tabakin called for a motion to table this matter. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal:

- Scheeler v. NJ Dep't of Educ., 2017 N.J. Super. Unpub. LEXIS 119 (App. Div. 2017): Here, the Appellate Division affirmed the Council's decision in Scheeler v. NJ Dep't of Educ., GRC Complaint No. 2014-125 (January 2015), holding that the appellant was not entitled to the full home address of a school board member. Specifically, the Court held that:

Giving the appropriate deference to the GRC, we conclude its decision that the DOE lawfully redacted home street addresses of school board members was not contrary to the law; the decision was not arbitrary, capricious, or unreasonable; and the decision was supported by substantial evidence.

Id. at 12.

This decision, another in the growing line of successful results, even included a block quotation directly from the Council's Final Decision. Courts infrequently quote directly from an administrative agency's decision.

VIII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:

- Stern v. Lakewood Volunteer Fire Dep't, 2016 N.J. Super. Unpub. LEXIS 2612 (App. Div. 2016): Here, the Appellate Division affirmed the trial court's holding that defendants fell within the definition of "public agency" based on the "creation and control" test. In affirming the trial court's 2015 decision (reported to the Council at its February 2015 meeting), the Court has provided additional validation of the Council's decision in Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2013-196 (Interim Order dated February 24, 2015), which is currently being considered at the Supreme Court.

Additionally, plaintiffs cross-appealed the trial court's decision reducing fees from \$25,002.58 to \$6,300.00 (or a 75% reduction). In its decision to reduce the total lodestar, the trial court detailed its reasons to include the following:

The public service and taxpayer savings realized by the service of the Fire Companies are a factor that the court believes it may properly consider under the circumstances at hand. The Fire Companies have no full-time clerical personnel and their finances are based essentially upon donations and mail solicitations that bring in a net profit of \$18,000 per year.

Id. at 15.

The Court was not persuaded by plaintiff's assertion that reductions based on performance of public service and interference with fundraising would undermine OPRA's fee-shifting provision. To this end, the Court noted that:

While it is true that "financial hardship is not a special circumstance justifying denial of a fee," it may be a relevant consideration in determining the amount of the fee to the extent that if proof of hardship can be adduced.

Id.

- Merck Sharp & Dohme Corp. v. Twp. of Readington, 2016 N.J. Tax Unpub. LEXIS 63, (December 22, 2016): This case mostly deals with tax law. However, it is included because the Tax Court looked to OPRA's "trade secrets and proprietary commercial or financial information" exemption to guide its decision that a Protective Order limiting disclosure to a sales agreement and its terms under discovery was reasonable.
- Wolosky v. Alvarez, 2017 N.J. Super. Unpub. LEXIS 79 (App. Div. 2017): Here, the Appellate Division affirmed the trial court's decision that defendants properly redacted student initials from invoices. Plaintiff contended that the initials were enough to protect the identifies of students contained in the attorney bills. The Court disagreed, noting that prior case law supported that initials "'may be properly redacted' in order to prevent the use of such information to identify a student." Id. at 5-6 (*citing* C.G. v. Winslow Twp. Bd. of Educ., 443 N.J. Super. 415, 427 (Law Div. 2015)). The Court noted that the trial court properly applied the balancing test to conclude that the students' privacy interest outweighed plaintiff's asserted need for the redacted information:

Where it could not flatly reject the request, the Board redacted as little as possible before fulfilling plaintiff's request. The primary reason plaintiff argues against redaction is to compare the entries to determine how much work was spent on each legal matter comparatively. Without the identifying initials, it is still clear from the records provided that plaintiff is able to determine what work was done, how much time was spent on each task, the amount charged, and the amount of entries entered by counsel. Such a course eliminates plaintiff's need for student initials

altogether, while preserving defendants' interest in maintaining the confidentiality of the students' identities.

Id. at 9-10.

IX. Public Comment: Ms. Tabakin opened the floor for public comment, but no one chose to speak.

X. Adjournment:

Ms. Tabakin called for a motion to end the Council meeting. Mr. Huber made a motion, which was seconded by Mr. Martucci. The motion passed unanimously.

The meeting adjourned at 2:30 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: January 31, 2017