



**Minutes of the Government Records Council
July 25, 2017 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:39 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, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on July 20, 2017.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Tabakin, Esq. (Chairwoman), Christopher Huber, Esq. (designee of Department of Education Acting Commissioner Kimberley Harrington), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member).

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), and Deputy Attorney General Debra Allen.

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

II. Executive Director's Report:

Happy Birthday!

- July 2017 marks the 15th anniversary of both the OPRA law and the GRC!

Annual OPRA Seminar

- The GRC will host its 11th annual OPRA seminar on Thursday, August 10. As usual, the GRC will charge no fee to participate, but registration is required. The registration period is open now and will close on July 31.

Current Statistics

- Since OPRA's inception in calendar year 2002, the GRC has received 4,674 Denial of Access Complaints. That averages about 310 annual complaints per a bit over 15 program years.
- In the current program year, the GRC has so far received 11 Denial of Access Complaints.
- 484 of the 4,674 complaints remain open and active. Of those open cases,
 - 17 complaints are on appeal with the Appellate Division (3.5%);
 - 26 complaints are currently in mediation (5.4%);
 - 34 complaints await adjudication by the Office of Administrative Law (7.0%);
 - 74 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (15%); and,
 - 325 complaints are work in progress (67%).
- Since 2004, the GRC has received 27,173 total inquiries. That is an average of about 1,929 annual inquiries per approximately 14 tracked program years. So far in the current program year, the GRC has received 78 inquiries.

III. Closed Session:

Ms. Tabakin read the Closed Session Resolution to go into closed session pursuant to N.J.S.A. 10:4-12(b)(7) to receive legal advice in the following matters:

- Susan Fleming v. Greenwich Township (Warren) (2015-18)
- Regina Discenza v. Lacey Township Board of Education (2015-223)
- Luis F. Rodriguez v. Kean University (2016-129)

Ms. Tabakin called for a motion to go into closed session. Mr. Ritardi made a motion, and Mr. Huber seconded the motion. The Council adopted the motion by a unanimous vote.

The Council met in closed session from 1:43 p.m. until 2:39 p.m.

Ms. Tabakin called for a motion to end the closed session. Mr. Martucci made a motion, which was seconded by Mr. Ritardi. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:41 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Tabakin, Mr. Huber, Mr. Martucci, and Mr. Ritardi

IV. Approval of Minutes of Previous Meetings:

- **June 27, 2017 Open Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the open session minutes of the June 27, 2017 meeting. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

- **June 27, 2017 Closed Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the closed session minutes of the June 27, 2017 meeting. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

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): None.

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

1. **Talbot B. Kramer, Jr., Esq. (o/b/o William Juliana) v. Township of Washington (Gloucester) (2016-109)**
 - No responsive records exist.
2. **Talbot B. Kramer, Jr., Esq. (o/b/o William Juliana) v. Township of Washington (Gloucester) (2016-110)**
 - No denial of access is at issue.
3. **James A. McCall v. City of East Orange (Essex) (2016-126)**
 - No responsive records exist.
4. **Abdiel Avila v. Essex County Prosecutor’s Office (2016-188)**
 - No responsive records exist.

5. **Brian Keith Bragg v. University of Medicine and Dentistry of NJ (2017-143)**

- The Custodian received no correspondence regarding the request.

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

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

1. **William L. Brogan v. County of Middlesex (2017-13)**

- The parties settled the matter through mediation.

2. **Robert M. Jennings v. Borough of Madison Board of Education (Morris) (2017-58)**

- The parties settled the matter through mediation.

3. **Luis F. Rodriguez v. Kean University (2017-129)**

- The Complainant voluntarily withdrew the complaint.

4. **Stephen Dodd v. City of Millville (Cumberland) (2017-139)**

- The Complainant voluntarily withdrew the complaint.

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:

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| <p>1. <u>Elie C. Jones v. Township of Teaneck (Bergen) (2014-321) (SR Recusal)</u></p> <p>2. <u>Elie C. Jones v. Township of Teaneck (Bergen) (2014-327) (SR Recusal)</u></p> <p>3. <u>Elie C. Jones v. Township of Teaneck (Bergen) (2014-328) (SR Recusal)</u>
Consolidated</p> |
|---|

- The Complainant voluntarily withdrew the complaint from 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. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was recused.

4. **Susan Fleming v. Greenwich Township (Warren) (2015-18) (SR Recusal)**

- The Custodian complied with the Council's January 31, 2017 Interim Order because she timely provided nine (9) copies of the requested records, along with a signed certification to the Executive Director.
- The Complainant complied with the Council's January 31, 2017 Interim Order because she timely responded and included a signed certification.
- The Custodian's broad claim that the withheld records contain ACD and/or attorney-client privileged communications is insufficient to allow the GRC to conduct a meaningful review. Therefore, the Custodian shall provide a more

detailed redaction index justifying her decision to withhold the responsive records, indicating the exact OPRA exemption for each record.

- Because the Complainant is unable to provide allegedly responsive yet unproduced responsive records, the Council is unable to compare them with the Custodian's production at the time of the initial response and for *in camera* review. Thus, the Council cannot determine whether the Custodian located and produced all responsive records on that basis.
- With respect to the e-mails provided for *in camera* review, the Custodian might have unlawfully denied access by failing to produce legible copies of the e-mails. Therefore, the Custodian shall conduct a search for more legible copies of the remaining January 26, 2015 production, or re-certify that more legible copies do not 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. Mr. Rosado explained suggested amendments for the Council. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was recused.

5. **Anthony Walker v. Newark Police Department (Essex) (2016-6) (SR Recusal)**

- Neither the Custodian nor Detective Perez responded timely to the OPRA request, thus resulting in a "deemed" denial.
- The Custodian lawfully denied access to the witness statement because it is a criminal investigatory record that is exempt from disclosure.
- The Complainant did not establish that he submitted a March 16, 2015 OPRA request to the Custodian.
- Detective Perez lawfully denied access to requested item No. 1 of the March 31, 2015 OPRA request because the record is an exempt criminal investigatory record.
- Detective Perez lawfully denied access to the 9-1-1 audio recordings responsive to requested item No. 2 of the March 31, 2015 OPRA request because no responsive records exist. However, the Custodian did provide a responsive CAD report.
- The Custodian lawfully denied access to requested item No. 1 of the October 27, 2015 OPRA request because the requested item is an exempt criminal investigatory record.
- The Custodian did not unlawfully deny access to requested item No. 3 of the October 27, 2015 OPRA request because he provided the only responsive record.
- There is no knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Stewart noted that he added to the analysis a discussion of North Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 2017 N.J. LEXIS 745 (2017). Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Huber made a motion,

and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was recused.

6. **Robert P. Vacchiano v. City of Newark (Essex) (2016-64) (SR Recusal)**

- The Custodian properly requested an extension of time to respond. Therefore there is no “deemed” denial.
- The Custodian’s search was insufficient. However, the GRC cannot conclude that the Custodian’s insufficient search resulted in an unlawful denial of access because it is unclear whether a record existed at the time of the OPRA request.
- The Custodian violated OPRA by failing to contact the Division to allow sufficient time to locate a responsive record, if any, prior to the record being destroyed. The violation resulted in a basic hindrance to the Complainant’s right of access. However, because the evidence supports that no record exists, the GRC declines to order 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 recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2011-100)**

- The Complainant voluntarily withdrew the matter from 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. Huber made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

2. **Shawn G. Hopkins v. Township of Aberdeen (Monmouth) (2014-4)**

- The Custodian unlawfully denied access to the OPRA request seeking CAMA data and shall therefore disclose to the Complainant the responsive records.
- The Custodian unlawfully denied access to the responsive photographs and shall disclose to the Complainant the responsive records by his preferred method of delivery.
- 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. Ritardi made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

3. **Shawn G. Hopkins v. Township of Allentown (Monmouth) (2014-5)**

- Although the Custodian responded timely, the response was legally insufficient because the Custodian failed to respond individually to each requested item.
- The Custodian unlawfully denied access to the responsive CAMA data and shall therefore disclose to the Complainant the responsive records.
- The Custodian might have unlawfully denied access to responsive photographs. The Custodian shall either disclose the responsive records by his preferred method of delivery or certify that 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. 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 unanimous vote.

4. **Shawn G. Hopkins v. Borough of Atlantic Highlands (Monmouth) (2014-6)**

- The Custodian unlawfully denied access to the request for CAMA data and shall therefore disclose to the Complainant the responsive records.
- The Custodian lawfully denied access to the requested photographs 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. 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. Ritardi seconded the motion. The motion passed by a unanimous vote.

5. **Shawn G. Hopkins v. Borough of Allenhurst (Monmouth) (2014-12)**

- The Custodian did not timely respond to the OPRA request, thus resulting in a "deemed" denial.
- The Custodian unlawfully denied access to the requested records because pending litigation is not a lawful basis for withholding records under OPRA. The Custodian must therefore either disclose to the Complainant the responsive records or certify that 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. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

6. **Shawn G. Hopkins v. Borough of Belmar (Monmouth) (2014-14)**

- The Custodian unlawfully denied access to the requested CAMA data. However, the GRC declines to order disclosure because the Custodian produced the responsive records subsequent to the instant complaint.
- The Custodian and Mr. Mullane lawfully denied access to the requested photographs 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. Ritardi made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

7. **Shawn G. Hopkins v. Borough of Fair Haven (Monmouth) (2014-24)**

- The Custodian and Mr. Walters unlawfully denied access to the request for CAMA data. The Custodian must therefore disclose to the Complainant 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. Ritardi made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

8. **Shawn G. Hopkins v. Borough Farmingdale (Monmouth) (2014-25)**

- The Custodian unlawfully denied access to the request for CAMA data. The Custodian must therefore disclose to the Complainant the responsive records.
- The Custodian lawfully denied access to the requested photographs 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. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

9. **Shawn G. Hopkins v. Borough of Freehold (Monmouth) (2014-26)**

- The Custodian did not timely respond to the OPRA request, thus resulting in a "deemed" denial.
- The Custodian unlawfully denied access to the request for CAMA data. The Custodian must therefore disclose to the Complainant the responsive records.
- The Custodian unlawfully denied access to the requested photographs because the Custodian identified a number of responsive records, consented to disclosing

those records, but has not disclosed the records to date. In the absence of any further arguments against disclosure, the Custodian shall disclose 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 a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. Shawn G. Hopkins v. Loch Arbor Village (Monmouth) (2014-48)

- The Custodian did not timely respond to the OPRA request, thus resulting in a "deemed" denial.
- The Custodian might have unlawfully denied access to the requests for CAMA data and responsive photographs. The Custodian must therefore either disclose to the Complainant the responsive records or certify that 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 a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

11. Shawn G. Hopkins v. Borough of Spring Lake Heights (Monmouth) (2014-51)

- The Custodian did not timely respond to the OPRA request, thus resulting in a "deemed" denial.
- The Custodian might have unlawfully denied access to the requests for CAMA data and responsive photographs. The Custodian must therefore either disclose to the Complainant the responsive records or certify that 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. Ritardi made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

12. Dudley Burdge v. NJ Office of Information Technology (2014-179)

- The Council should close the matter because the Complainant and Complainant's Counsel failed to comply with the Interim Order by failing to submit an application for attorney's fees within the prescribed deadline.
- 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 unanimous vote.

13. **Klarida Papajani v. NJ Turnpike Authority (2015-9)**

- The Council should accept the Initial Decision of the Administrative Law Judge, which ordered that the complaint be dismissed because “there has been no evidence presented to establish that the [Custodian] failed to fully comply”
- 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. Ritardi seconded the motion. The motion passed by a unanimous vote.

14. **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)**

- Based on the atypical procedural circumstances of the complaint, the Council should stay its Interim Order for disclosure of the responsive invoices and vouchers, pending any appeal to the Appellate Division by the parties. The Council does not retain jurisdiction.
- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for the Complainant to submit a fee application. No further adjudication is therefore required.
- 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. Ritardi made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

15. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2015-166)**

- The case remains a contested matter, which should be referred to the Office of Administrative Law for a hearing to determine the facts.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Caruso noted that the findings and recommendations was amended. Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Mr. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

16. **Regina Discenza v. Lacey Township Board of Education (2015-223)**

- The current Custodian complied with the Interim Order.
- The Custodian shall comply with the findings of the *in camera* review.
- The Custodian unlawfully denied access to all other portions of the 23 requested e-mails (*i.e.*, sender, recipients, date, time, subject, and salutations, where applicable) and must disclose those portions to the Complainant.

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

17. Luis F. Rodriguez v. Kean University (2015-290)

- The Council should lift the abeyance order and proceed with adjudication.
- The Custodian unlawfully denied access to the requested report. The record is not a draft document, and producing the report does not constitute creating a new record.
- The Custodian must disclose the responsive report with updated data for "13/FA to 15/FA" to the Complainant.
- 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 a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

18. Kevin S. Reagan v. Camden County Prosecutor's Office (2016-28)

- The Custodian lawfully denied access because the records are exempt from disclosure under the Attorney General's Internal Affairs Policy and Procedure.
- The Custodian lawfully denied access to the responsive grand jury records because those records are excluded from public access.
- The Custodian lawfully denied access to the case initiation sheet, summary, memorandum, and closure form because those records meet the definition of a criminal investigatory record.
- The handwritten memorandum and Post-It® notes are exempt from disclosure as inter-agency advisory, consultative, or deliberative ("ACD") material.
- The Custodian did not unlawfully deny access to the requested video tapes 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. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

19. Luis F. Rodriguez v. Kean University (2016-129)

- The Custodian complied with the Interim Order.

- The *in camera* examination reveals that the Custodian unlawfully denied access to the responsive record because the record does not constitute either ACD material or attorney-client privileged material that is exempt from disclosure.
- The Custodian must disclose the responsive record in unredacted format.
- 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. Mr. Stewart noted that a minor edit was made to this findings and recommendations. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Mr. Ritardi made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

20. Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-133)

- The Custodian failed to respond timely, thus resulting in a "deemed" denial.
- The Complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian, the Township Administrator, or any other Township official unlawfully denied access to the records and, if so, to order disclosure of the responsive 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. Ritardi made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

21. Judy DeHaven v. Red Bank Charter School (Monmouth) (2017-81)

- The Custodian did not bear the burden of proving that he timely responded to the OPRA request, thus resulting in a "deemed" denial.
- The Custodian's failure to provide a completed Statement of Information, despite the GRC's accommodations based on the instant facts, results in a violation of N.J.A.C. 5:105-2.4(a).
- The Custodian might have unlawfully denied access to the responsive records and must either disclose the responsive submissions or certify that the records do not 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. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal:

- Gordon v. City of Orange, 2017 N.J. Super. Unpub. LEXIS 1552 (App. Div. 2017): Here, the Appellate Division affirmed in part and reversed and remanded in part.

This case was comprised of a consolidated complaint where the Council found that the complainant's OPRA request in one complaint was invalid and that no knowing and willful violation occurred in the other complaint. Complainant appealed the Council's decision, arguing that her OPRA request in complaint was valid and that the GRC erred by not finding a knowing and willful violation in the other complaint. The Court affirmed that Council's decision regarding the validity of the complainant's OPRA request in the one complaint. However, the Court reversed the Council's knowing and willful decision. In reaching this decision, the Court reasoned that:

Although we generally defer to the GRC's findings, we conclude there was insufficient evidence in the record to support its finding that the City's denial of Gordon's OPRA request was not willful and deliberate. In denying Gordon's request, the City claimed that the records could not be released because of an "ongoing and pending litigation. The records requested involve issues regarding the ongoing litigation." However, there was no litigation. The City now contends that there was an investigation involving Mitchell, which it mistakenly mischaracterized as litigation. We find this explanation unconvincing and belies the credibility of its denial.

Yet, even if there was an investigation, there was no indication by the City how the sought-after information was inimical to the public interest. N.J.S.A. 47:1A-3(a). Salary and payroll records of a city employee are considered a government record subject to public release. N.J.S.A. 47:1A-10.

The City's willful and deliberate denial of Gordon's request is further evinced by its meritless claim that her request was broad, and that it does not electronically maintain the information. The information request was clear and specific, and we envision no time-consuming burden in obtaining the information despite the fact that it is not preserved in the City's computers.

Id. at 12-13

The Court thus remanded "for further proceedings regarding the imposition of appropriate penalties in accordance with OPRA." Id.

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

- North Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 2017 N.J. LEXIS 745 (2017): The Supreme Court took some time to reach a decision in this case. The following are the highlights from the syllabus:
 1. The Court reversed the Appellate Division on "Use of Force" reports; holding that plaintiffs were entitled to unredacted copies. This makes sense considering O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009) previously set that standard (with one minor deviation coming later down the road permitting redaction in extremely limited circumstances).

2. Mobile video recordings (“MVR”) from the incident were not subject to access under OPRA because they pertained to a criminal investigation. Further, the Court held that there was no evidence suggesting that MVRs were required to be made by the AG’s directives. As a side note: the Court did grant access to them under the common law after applying the common law balancing test.
3. The Court determined that remaining investigative reports, witness statements, and similarly detailed records were not subject to disclosure at the outset of the investigation (at the time plaintiffs requested them).

The Supreme Court’s decision is multi-layered with all kinds of little interesting statements. The Court’s handling of NJMG’s argument that disclosure of a press release would not satisfy an agency’s N.J.S.A. 47:1A-3(b) requirement is particularly interesting. See Lyndhurst, at 43.

NJ Superior Court Decisions:

- Stop & Shop Supermarket Co. v. Cnty. of Bergen, 2017 N.J. Super. LEXIS 73 (App. Div. 2017)(Approved for Publication): The annals of Stop & Shop, continue. This case was discussed as part of the April 24, 2017 OPRA alert. Thereafter, the Court saw it fit to approve this decision for publication on June 14, 2017.

IX. Public Comment: None

X. Adjournment:

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

The meeting adjourned at 3:18 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: August 29, 2017