



**Minutes of the Government Records Council
March 27, 2018 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:36 p.m. by Ms. Robin Berg 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. Berg 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 March 22, 2018.”

Ms. Berg Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Christopher Huber, Esq. (designee of Department of Education Acting Commissioner Dr. Richard Lamont Repollet), and Steven Ritardi, Esq. (Public Member).

***** Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), participated telephonically. *****

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

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

II. Communications Specialist/Resource Manager's Report:

OPRA Trainings

- As noted over the last few months, the GRC is currently holding all requests for trainings due to staffing issues.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 4,819 Denial of Access Complaints. That averages about 306 annual complaints per more than 15½ program years. So far in the current program year, the GRC has received 156 Denial of Access Complaints.
- 475 of the 4,819 complaints remain open and active (10%). Of those open cases:
 - 13 complaints are on appeal with the Appellate Division (2.7%);
 - 11 complaints are currently in mediation (2.3%);
 - 36 complaints await adjudication by the Office of Administrative Law (7.6%);
 - 64 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (13.4%);
 - 347 complaints are work in progress (73%);
 - 3 complaints are proposed for the Office of Administrative Law (.6%); and
 - 1 complaint is being held in abeyance (.2%).
- Since Program Year 2004, the GRC has received 28,446 total inquiries, averaging about 1,929 annual inquiries per more than 14½ tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year, the GRC has received 1,280 inquiries.
- From January 1, 2015, until present:
 - The GRC has received 1,044 Denial of Access Complaints, which equals 21% of all complaints filed in the agency's history. That means that the GRC has received 1.2 complaints on average for every business day (allowing for public holidays) during that period.
 - The GRC has adjudicated 1,300 cases (some cases require multiple adjudications). That number does not include today's adjudications.
 - The GRC has received and addressed 6,382 inquiries, which equals 22% of all inquiries received in the agency's history. That averages approximately 8 inquiries per every business day during that period.
 - The GRC has been successfully able to mediate 94 of 207 referred cases (45.4%), with 11 of those 207 cases currently in active mediation.

III. Closed Session: None.

IV. Approval of Minutes of Previous Meetings:

- **February 27, 2018 Open Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the draft open session minutes of the February 27, 2018 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Jennifer Simons, Esq. Mr. Ritardi made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

- **February 27, 2018 Closed Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the draft closed session minutes of the February 27, 2018 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Ms. Simons. Mr. Ritardi made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

V. New Business – Cases Scheduled for Adjudication

Ms. Berg Tabakin stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Council Staff’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. **Brian Keith Bragg v. Mercer County Correctional Center (2016-160)**
 - Unripe Cause of Action
2. **Michael Phillips v. Florence Township Police Department (Burlington) (2018-13)**
 - Not a Valid OPRA Request
3. **Harry Dunleavy v. Equal Employment Opportunity Commission (EEOC) (2018-19)**
 - Not Within the Council’s Jurisdiction to Adjudicate (Federal Agency)
4. **Bruce M. Hall v. Burlington County Superior Court (2018-37)**
 - Not Within the Council’s Jurisdiction to Adjudicate (Judiciary)

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

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

1. **John Arthur Haberbusch v. Ocean County Department of Corrections (2017-245)**
 - Settled in Mediation
2. **Scott Madlinger v. Borough of Beachwood Police Department (Ocean) (2018-36)**
 - Complaint Voluntarily Withdrawn

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

A brief summary of the Council Staff's recommended action is under each complaint:

1. **Olajuwon Herbert v. Essex County Prosecutor's Office (2016-51) (SR Recusal)**
 - The Custodian lawfully denied access to responsive records beyond those provided because same constituted criminal investigatory records.
 - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. **Mary Sadrakula v. Clifton Board of Education (Passaic) (2016-60) (SR Recusal)**
 - The Custodian's timely response providing records resulted in no unlawful denial of access.
 - The Complainant is not a prevailing party and thus not entitled to a fee award.
 - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations. Mr. Rosado noted that an edit had been made to prevailing party analysis to remove an artifact; however, the recommendations remained unchanged. Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as edited. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Shawn G. Hopkins v. Borough of Englishtown (Monmouth) (2014-23)**
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby obviating the need for any further adjudication.
 - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

2. **Shawn G. Hopkins v. Freehold Township (Monmouth) (2014-27)**

- Mr. Imbriaco unlawfully denied access to responsive CAMA data and must disclose it.
- The Custodian and/or Mr. Imbriaco may have unlawfully denied access to responsive property photographs. The Custodian must either disclose the photographs or certify if no such records exist.
- The knowing and willful and prevailing party analyses are deferred pending compliance.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

3. **Shawn G. Hopkins v. Hazlet Township (Monmouth) (2014-28)**

- The Custodian unlawfully denied access to the responsive CAMA data and property photographs. However, the GRC declines to order disclosure because the Custodian provided those records to the Complainant.
- There is no knowing and willful violation.
- The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

4. **Harry B. Scheeler, Jr. v. State of NJ Office of the Governor (2014-67)**

- The Complainant withdrew this complaint; thus, no further adjudication is required.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff'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. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2014-365)**

- The Council should lift the abeyance of this complaint and address whether the Custodian properly responded to the Complainant's OPRA request.
- The Custodian may have unlawfully denied access to the responsive records. The Custodian must: 1) disclose all records; and/or 2) provide a document index explaining the specific lawful basis for any withheld or redacted records.
- The knowing and willful and prevailing party analyses are deferred pending compliance.

- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
6. **Galloway Township News v. City of Cape May (Cape May) (2015-419)**
- The initially assessed copy cost was unlawful under OPRA. Further, the GRC declines to address the special service charge issue because the Custodian did not assess one.
 - The Custodian may have unlawfully denied access to responsive records and must either disclose them or provide evidence supporting prior disclosure.
 - The knowing and willful analysis is deferred pending compliance.
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’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. **Larry S. Loigman, Esq. v. Lakewood Fire Company No. 1 (Ocean) (2016-84)**
- The Council should lift the abeyance of this complaint and address whether Mr. Colangelo properly responded to the Complainant’s OPRA request.
 - Mr. Colangelo lawfully denied access to the Complainant’s OPRA request because Lakewood Fire Company No. 1 is not a “public agency” under OPRA. Verry v. Franklin Fire Dist. No. 1 (Somerset), 230 N.J. 285 (2017).
 - The Complainant is not a prevailing party and thus not entitled to a fee award.
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’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. **William R. Juliana v. Township of Washington (Gloucester) (2016-106)**
9. **William R. Juliana v. Township of Washington (Gloucester) (2016-111)**
10. **William R. Juliana v. Township of Washington (Gloucester) (2016-112)**
Consolidated
- The Custodian’s failure to timely respond to the September 24, 2014 OPRA request resulted in a “deemed” denial.
 - The Custodian may have unlawfully denied access to records responsive to the Complainant’s three (3) OPRA requests. The Custodian must conduct a search for additional records and certify to the results. Should the Custodian locate additional records, she must disclose them.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion

to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

11. Jamel Lewis v. Union County Prosecutor's Office (2016-131)

- The Custodian's failure to timely respond resulted in a "deemed" denial.
- The Custodian did not adequately prove that the Complainant possessed the records sought at the time of his OPRA request.
- The Custodian may have unlawfully denied access to the requested arrest reports, warrants, and judgment of convictions. The Custodian shall either: 1) disclose those records; 2) certify to whether no records exists; and/or 3) provide additional certifications supporting that the Complainant possessed these records at the time of his OPRA request.
- The Custodian lawfully denied access to any responsive pre-sentencing reports, investigative reports, and criminal rap sheets.
- The knowing and willful analysis is deferred pending compliance.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

12. Mark Demitroff v. Buena Vista Township (Atlantic) (2016-141)

- The Custodian's March 23, 2016 response was insufficient because she failed to address the Complainant's preferred method of delivery.
- The Custodian did not unlawfully deny access to any records because she certified, and the record reflects, that she provided all that existed. The GRC also declines to address whether the Township was required to maintain original copies of the records due to lack of authority.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

13. Christopher Tirado v. Rutgers University (2016-165)

- The original Custodian's failure to respond within the extended time frame resulted in a "deemed" denial.
- The original Custodian's action may have been knowing and willful; thus, this complaint shall be referred to the Office of Administrative Law for a proof hearing.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff'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. **Waymon Chester v. NJ Department of Corrections (2016-167)**

- The Custodian lawfully denied access to the responsive records based on the New Jersey Department of Corrections' regulations.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

15. **Marc Mayer v. Borough of Point Pleasant (Ocean) (2016-186)**

- The Custodian's extension request was warranted and substantiated.
- The Custodian lawfully denied access to records in connection with "complaints and concerns" raised about Office Kavanagh under the personnel exemption.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

16. **Raquel Horowitz v. City of Long Branch Housing Authority (Monmouth) (2016-189)**

- The Custodian's failure to timely respond resulted in a "deemed" denial.
- The Complainant's request item Nos. 1 through 8 were invalid because they sought information.
- The Custodian lawfully denied access to the waiting list responsive to OPRA request item No. 9 under the Privacy Act of 1974.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

17. **Libertarians for Transparent Government v. Summit Public Schools (Union) (2016-193)**

- The Custodian's extension request was warranted and substantiated.
- The Complainant is not a prevailing party and thus not entitled to a fee award.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff'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. **Boris Boretsky v. Middlesex County Prosecutor's Office (2016-220)**

- The Custodian lawfully denied access to all records sought in the Complainant's OPRA request.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

19. **Luis F. Rodriguez v. Kean University (2016-236)**

- The Custodian's failure to timely respond resulted in a "deemed" denial. However, the GRC declines to order disclosure because the Custodian disclosed the record to the Complainant.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

20. **Alonzo Lugo v. NJ Department of Corrections (2017-8)**

- The Custodian lawfully denied access to OPRA request item Nos. 1 and 2 because no records existed.
- The Custodian lawfully denied access to OPRA request item No. 3 in accordance with the New Jersey Department of Corrections' regulations.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

21. **Eric Petr v. Town of Morristown (Morris) (2017-95)**

- The Custodian's failure to timely respond resulted in a "deemed" denial.
- The Complainant's OPRA request is invalid because it failed to seek an identifiable record.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

22. **Robert McDonnell v. Hillsborough Township (Somerset) (2017-107)**

- The Custodian's failure to timely respond resulted in a "deemed" denial.

- This complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts as well as a determination of whether the Custodian knowingly and willfully violated OPRA.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal:

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

- Middlesex Cty. Prosecutor's Office v. NJ Advance Media, LLC, 2018 N.J. Super. Unpub. LEXIS 486 (App. Div. 2018): The Appellate Division affirmed the trial court’s ruling that the requestors were prevailing parties under OPRA. Notwithstanding the MCPO’s protective order motion made prior to formal litigation by the requestors, the Court agreed with the trial judge in that the litigation was the catalyst that lead to the disclosure of redacted records. The Court also held that the MCPO’s protective order motion was within the definition of “any proceeding” of N.J.S.A. 47:1A-6 in regards to prevailing party attorney’s fees.
- Rivera v. Middlesex Cnty. Prosecutor's Office, 2018 N.J. Super. Unpub. LEXIS 628 (App. Div. 2018): The Appellate Division affirmed the trial court’s ruling that the requestors were prevailing parties under OPRA. The Appellate Division agreed with the trial court in ruling that the fact that the requestors merely received redacted forms of the requested records does not diminish the success achieved when determining prevailing party status.

IX. Public Comment: None

X. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Huber made a motion, which was seconded by Ritardi. The motion passed by a majority vote

The meeting adjourned at 2:02 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: April 24, 2018