



**Minutes of the Government Records Council  
April 24, 2018 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:32 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**

Jason Martucci 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 April 19, 2018.”

Jason Martucci read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Christopher Huber, Esq. (designee of Department of Education Acting Commissioner Dr. Richard Lamont Repollet), and Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver).

**\*\*\* Robin Berg Tabakin, Esq. (Chairwoman) and Steven Ritardi (Public Member), participated telephonically. \*\*\***

GRC Staff in Attendance: Rosemond Bordzoe (Secretary), John Stewart (Mediator), Samuel Rosado (Staff Attorney), and Deputy Attorney General Debra Allen.

**\*\*\* Frank F. Caruso (Communications Specialist/Resource Manager) also participated telephonically. \*\*\***

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

## **II. Communications Specialist/Resource Manager's Report:**

### **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 4,836 Denial of Access Complaints. That averages about 307 annual complaints per 15¾ program years. So far in the current program year, the GRC has received 173 Denial of Access Complaints.
  
- 474 of the 4,836 complaints remain open and active (10%). Of those open cases:
  - 15 complaints are on appeal with the Appellate Division (3.2%);
  - 14 complaints are currently in mediation (3%);
  - 39 complaints await adjudication by the Office of Administrative Law (8.2%);
  - 51 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (10.8%);
  - 352 complaints are work in progress (74%);
  - 2 complaints are proposed for the Office of Administrative Law (.4%); and
  - 1 complaint is being held in abeyance (.2%).
  
- Since Program Year 2004, the GRC has received 28,574 total inquiries, averaging about 1,937 annual inquiries per 14¾ 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 1,408 inquiries.

## **III. Closed Session: None.**

## **IV. Approval of Minutes of Previous Meetings:**

- **March 27 2018 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the March 27, 2018 meeting. Mr. Jason 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. 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. Anatoliy Khusid v. Somerset County Board of Chosen Freeholders (2018-21)**

- No Records Responsive to the Request Exist

Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Mr. Martucci 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): None**

**VI. New Business – Cases Scheduled for Individual Complaint Adjudication**

**A. Individual Complaint Adjudications with Recusals: None**

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

**B. Individual Complaint Adjudications with no Recusals:**

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

- Mr. Imbriaco complied with the Council's March 27, 2018 Interim Order.
- 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. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

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

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

**3. Shawn G. Hopkins v. Township of Holmdel (Monmouth) (2014-32)**

- This complaint should be tabled for further adjudication.

- Ms. Berg Tabakin called for a motion to have this matter tabled for further adjudication. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
4. **Shawn G. Hopkins v. Township of Howell (Monmouth) (2014-33)**
- The Custodian’s failure to timely respond resulted in a “deemed” denial of the subject OPRA request.
  - The Custodian unlawfully denied access to the subject OPRA request on the basis that it was invalid.
  - Mr. Hutchinson unlawfully denied access to the requested CAMA data on the basis of pending litigation. Thus, the Custodian and/or Mr. Hutchinson must disclose it.
  - The Custodian and/or Mr. Hutchinson may have unlawfully denied access to the requested property photographs, if they exist. The Custodian and/or Mr. Hutchinson must either disclose the photographs or certify if no 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. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
5. **Damiano M. Fracasso, Esq. v. Township of Rockaway (Morris) (2015-310)**
- The Custodian’s response was insufficient because: 1) she failed to respond to each request item individually; and 2) she failed to provide a date certain on which she would respond after asserting additional time may be required.
  - The Custodian may have imposed an improper special service charge. The Custodian shall provide a detailed explanation of the police officer’s work performed to disclose responsive records.
  - The knowing and willful analysis is deferred.
  - 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. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
6. **Christina Moreira v. Elizabeth Board of Education (Union) (2015-313)**
- The Complainant’s September 16, 2015 request No. 1, item Nos. 1, 6, 7, and 8 are invalid.
  - The Custodian lawfully denied access to the Complainant’s April 28, 2015 OPRA request; September 16, 2015 OPRA request No. 1, item Nos. 4 and 5; and September 16, 2015 OPRA request No. 2, item Nos. 1, 2, and 3, because no records exist.
  - The Custodian unlawfully denied access to field trip records responsive to the Complainant’s September 16, 2015 OPRA request No. 1, item Nos. 2 and 3. The

Custodian must disclose responsive records with redactions, where absolutely necessary.

- The Custodian may have unlawfully denied access to the Complainant's September 16, 2015 OPRA request No. 2, item No. 4. The Custodian must either disclose the responsive records or certify that none existed at the time of the OPRA request.
- The knowing and willful analysis is deferred.
- 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. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

7. **Jesse Wolosky v. Borough of Washington (Warren) (2016-29)**

- The current Custodian did not comply fully with the Council's February 27, 2018 Interim Order.
- 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. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

8. **Jesse Wolosky v. Borough of Washington (Warren) (2016-30)**

- The Custodian's extension request was warranted and substantiated.
- The Custodian's failure to respond within the extended time frame resulted in a "deemed" denial.
- The Custodian did not unlawfully deny access to the Complainant's OPRA request item No. 1 because no record existed at the time of the request.
- The Custodian did not unlawfully deny access to OPRA request item No. 2 because she disclosed all responsive records.
- The Custodian unlawfully denied access to two (2) records responsive to OPRA request item No. 3. However, the GRC declines to order disclosure because she provided them to the Complainant during the pendency of this complaint.
- 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.

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

9. **Luis F. Rodriguez v. Kean University (2016-86)**

- The Custodian's extension request was warranted and substantiated.
- The Council must conduct an *in camera* review of those responsive records containing redactions.
- The knowing and willful analysis is deferred.
- 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. Martucci seconded the motion. The motion passed by a unanimous vote.

10. **Luis F. Rodriguez v. Kean University (2016-87)**

- The Custodian's extension request was warranted and substantiated.
- 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. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

11. **Talbot B. Kramer, Jr., Esq. (o/b/o William Juliana) v. Township of Washington (Gloucester) (2016-113)**

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

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

- The Custodian complied with the Council's March 27, 2018 Interim Order.
- 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. Martucci seconded the motion. The motion passed by a unanimous vote.

13. **Luis F. Rodriguez v. Kean University (2016-159)**

- The Custodian failed to establish that the Council's February 27, 2018 Interim Order should be reconsidered.

- The Council's Order remains in effect. The Custodian must include an explanation as to whether the contract was the only attachment to the Form, as well as when the negotiations period ended, if applicable.
- 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. Martucci seconded the motion. The motion passed by a unanimous vote.

14. **Michael Ehrenreich v. NJ Department of Transportation (2016-192)**

- The Council must conduct an *in camera* review of those responsive records withheld from disclosure and four (4) e-mail chains containing redactions.
- The knowing and willful analysis is deferred.
- 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. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

15. **Carey Italiano v. County of Salem (2017-110)**

- The Council should dismiss this matter because the Complainant failed to submit a prevailing party fee application within the time frame prescribed under 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. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

**VII. Court Decisions of GRC Complaints on Appeal: None**

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

- Evening Journal Ass'n v. City of Bayonne, 2018 N.J. Super. Unpub. LEXIS 720 (March 15, 2018): The matter involved a settlement that was sealed under a federal court order, and the Court determined that it could not override a federal court order. Upon request from the Plaintiff, the federal court clarified that the order only sealed a narrow portion of the settlement agreement, and thus the remainder could be released. Ultimately, the Court held that when a settlement with a New Jersey public entity is made in another jurisdiction, the settlement documents shall inform the parties and the court in that jurisdiction that the settlement may be subject to disclosure under OPRA.
- Libertarians for Transparent Gov't v. Coll. of New Jersey, 2018 N.J. Super. Unpub. LEXIS 851 (App. Div. 2018): The matter involved the Appellant's request for documents related to a settlement agreement and related records. The trial court dismissed the action based upon the Appellee's assertion that at the time the OPRA request was made, the

matter at issue was still under negotiation and any settlement terms were tentative. The Appellate Division reversed the trial court's decision on the basis that the trial court relied solely upon the unsworn, hearsay statements made by Appellee's counsel in its opposition brief and oral arguments, and failed to provide affidavits or certifications in support of counsel's assertions. The Court remanded for submissions of competent proofs as to the contents of the withheld records.

- Libertarians for Transparent Gov't v. William Paterson Univ., 2018 N.J. Super. Unpub. LEXIS 843 (App. Div. 2018): The trial court held that an unfiled, unexecuted, draft settlement agreement was a public record subject to disclosure under OPRA, and also awarded attorney's fees. The Appellate Division reversed, holding that "until a settlement agreement is signed, it remains a draft document subject to continued revision and negotiation." See Ciesla v. N.J. Dep't of Health & Senior Servs., 429 N.J. Super. 127, 140 (App. Div. 2012). The Court also held that even if Appellee was a prevailing party, the trial court failed to state its findings of facts and conclusions of law in awarding attorney's fees and costs.

**IX. Public Comment:**

- Michael L. Collins, Esq., attorney for Township of Holmdel. Mr. Collins stated that his clients received notification of the tentative adjudication in Shawn G. Hopkins v. Township of Holmdel (Monmouth), GRC Complaint No. 2014-32, after a long hiatus. Mr. Collins stated that the Township took steps to disclose records within 24 hours of receiving the notification. Mr. Collins asserted that he is aware of other pending complaints filed by Mr. Hopkins where public agencies have waited multiple years for an adjudication. To this end, Mr. Collins asked the Council to take into account the amount of time that has passed and how the agencies may pursue future adjudications.

**X. Adjournment:**

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

The meeting adjourned at 1:55 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: May 22, 2018