



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
May 22, 2018

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 1:30 p.m., Tuesday, May 22, 2018 at the Department of Community Affairs (“DCA”) offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 1:30 p.m. in Room 129 of the DCA.

I. Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

II. Communications Specialist/Resource Manager’s Report

III. Closed Session

- Jason Marshall Litowitz v. NJ Department of Transportation (2015-301) (ICFR)
- Luis F. Rodriguez v. Kean University (2016-159) (ICFR)
- Scheeler v. Atlantic Cnty. Mun. Joint Ins. Fund, 2018 N.J. Super. LEXIS 79 (App. Div. 2018)

IV. Approval of Minutes of Previous Meetings:

April 24, 2018 Open Session Meeting Minutes

V. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

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 Council Staff’s recommended 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): None

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

1. William Rieth v. County of Somerset (2017-238)
 - Complaint Voluntarily Withdrawn
2. William Rieth v. Township of Montgomery (Somerset) (2017-239)
 - Complaint Voluntarily Withdrawn
3. Michael M. Testa v. NJ Motor Vehicle Commission (2018-39)
 - Complaint Voluntarily Withdrawn
4. Brian Riback v. Township of Mahwah (Bergen) (2018-42)
 - Complaint Voluntarily Withdrawn
5. William Rieth v. County of Somerset (2018-50)
 - Complaint Voluntarily Withdrawn
6. David Weiner v. Township of Ocean (Monmouth) (2018-60)
 - Complaint Voluntarily Withdrawn
7. Angelo Fichera v. Brick Township (Ocean) (2018-83)
 - Complaint Voluntarily Withdrawn

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

The Council Staff's recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Nicole Dory, Esq. (o/b/o Shipyard Associates, L.P.) v. City of Hoboken (Hudson) (2014-200) **(SR Recusal)**
 - This complaint must be tabled due to lack of quorum.
2. Glenn Jones v. Rutgers, The State University of New Jersey (2015-202) **(SR Recusal)**
 - This complaint must be tabled due to lack of quorum.
3. Christopher Tirado v. Rutgers University (2016-165) **(SR Recusal)**
 - This complaint must be tabled due to lack of quorum.
4. Kenneth Duckett v. Essex County Prosecutor's Office (2016-274) **(SR Recusal)**
 - This complaint must be tabled due to lack of quorum.
5. Sacha Pouliot v. NJ Department of Education (2015-281) **(CH Recusal)**
 - This complaint must be tabled due to lack of quorum.

B. Individual Complaint Adjudications with no Recusals:

1. Shawn G. Hopkins v. Freehold Township (Monmouth) (2014-27)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.

2. Shawn G. Hopkins v. Township of Holmdel (Monmouth) (2014-32)
 - The Custodian unlawfully denied access to the subject OPRA request on the basis that it was invalid.
 - The Custodian unlawfully denied access to the requested CAMA data and property photographs; however, the GRC declines to order disclosure because the records were provided to the Complainant between April 18, and 25, 2018.
 - 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.
3. Shawn G. Hopkins v. Township of Howell (Monmouth) (2014-33)
 - The Custodian did not fully comply with the Council's April 24, 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.
4. Jason Marshall Litowitz v. NJ Department of Transportation (2015-301)
 - The Custodian complied with the Council's June 27, 2017 Interim Order.
 - The original Custodian lawfully denied access to the redacted portions of certain responsive e-mails.
 - The original Custodian lawfully denied access to the bodies of the remaining e-mails that she denied access to in whole. However, the original Custodian unlawfully denied access to basic e-mail information contained in each. Thus, the current Custodian must disclose those e-mails with redactions.
 - The knowing and willful analysis is deferred pending compliance.
5. Galloway Township News v. City of Cape May (Cape May) (2015-419)
 - The Custodian failed to fully comply with the Council's March 27, 2018 Interim Order.
 - There is no knowing and willful violation.
6. Michael Flom v. Allendale Board of Education (Bergen) (2016-25)
 - The Custodian's extension requests were warranted and substantiated.
 - The Custodian lawfully denied access to OPRA request item No. 1 because no record existed.
7. Edward J. Sakos, Jr. v. Atlantic County Board of Taxation (2016-99)
 - The Custodian's failure to timely respond resulted in a "deemed" denial.
 - The Custodian did not unlawfully deny access to the alleged "missing" records because the Complainant possessed them at the time of his OPRA requests.
 - There is no knowing and willful violation.
8. Robert Lefkowitz v. Montville Township Public Schools (Morris) (2016-138)

- The Custodian lawfully denied access to the requested quizzes, tests, and exams. N.J.S.A. 47:1A-9(a); Executive Order No. 9 (Gov. Hughes, 1963); N.J.A.C. 6A:8-3.1(c)(3)(iii).
9. Demetrius Minor v. Office of the Corrections Ombudsman (2016-152)
- The Custodian timely responded to the subject OPRA request.
 - The Complainant’s request items seeking “logs,” “letters,” “actions,” and “records” was invalid.
 - The Custodian lawfully denied access to OPRA request item No. 4 because no records existed.
10. Luis F. Rodriguez v. Kean University (2016-156)
- The Custodian’s failure to respond immediately to the Complainant’s OPRA request seeking “immediate access” records resulted in a violation of OPRA.
 - The GRC declines to order disclosure of any records because the Custodian provided same to the Complainant on June 1, 2016.
 - There is no knowing and willful violation.
11. Luis F. Rodriguez v. Kean University (2016-157)
- The Custodian’s extension requests were warranted and substantiated.
12. Luis F. Rodriguez v. Kean University (2016-158)
- The Custodian’s extension requests were warranted and substantiated.
13. Luis F. Rodriguez v. Kean University (2016-159)
- The Custodian complied with the Council’s February 27, 2018 and April 24, 2018 Interim Orders.
 - The *In Camera* Examination revealed that the Custodian lawfully denied access to the withheld record.
 - There is no knowing and willful violation.
14. Waymon Chester v. NJ Department of Corrections (2016-167)
- The Complainant failed to establish valid grounds for reconsideration based on illegality.
 - The Council should rescind its March 27, 2018 Final Decision because it mistakenly applied a NJ Department of Corrections regulation retroactively.
 - The Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3.
15. Adam M. Szura v. Bergen County Department of Health Services (2016-175)
- The Council must conduct an *in camera* review of the responsive e-mail chain.
 - The parties must submit balancing test questionnaires to the GRC.
 - The knowing and willful analysis is deferred pending compliance.
16. Michael Inzelbuch (o/b/o T.V.) v. Marlboro Township Public School District (Monmouth) (2016-243)
- The Custodian timely responded to the Complainant’s OPRA request.
 - The Complainant is not a prevailing party and thus not entitled to a fee award.

17. *Libertarians for Transparent Government v. Town of Kearny (Hudson) (2016-261)*

- The Custodian's response was insufficient because she failed to provide a date certain on which she would respond to the Complainant.
- The Custodian lawfully denied access to the responsive executive session meeting minutes because they existed as handwritten notes at the time of the Complainant's two (2) OPRA requests.
- The Custodian unlawfully denied access to two (2) sets of the most recent, available closed session minutes and must disclose them.
- The knowing and willful and prevailing party analyses are deferred pending compliance.

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

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

- *Valentin v. Borough of Penns Grove*, 2018 N.J. Super. Unpub. LEXIS 1033 (App. Div. 2018)
- *Scheeler v. Atl. Cty. Mun. Joint Ins. Fund*, 2018 N.J. Super. LEXIS 79 (App. Div. 2018)

IX. Public Comment:

The public comment period is limited to providing an opportunity for speakers to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

X. Adjournment

*Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.