



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
June 26, 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, June 26, 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

- Nicole Dory (o/b/o Shipyard Associates, L.P.) v. City of Hoboken (Hudson) (2014-200) (ICFR)
- Sacha Pouliot v. NJ Department of Education (2015-281) (ICFR)

IV. Approval of Minutes of Previous Meetings:

May 22, 2018 Open Session Meeting Minutes
May 22, 2018 Closed 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):

1. Michael Evans v. NJ Department of Corrections (2017-190)
 - No Records Responsive to the Request Exist
2. Yusuf Abdullah Muhammad v. NJ Department of Environmental Protection – Division of Water Quality (2018-67)
 - No Correspondence Received by the Custodian
3. Nicholas Curcio v. Wall Township Police Department (Monmouth) (2018-98)
 - Unripe Cause of Action

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

1. Harry B. Scheeler, Jr. v. Logan Township (Gloucester) (2015-244)
 - Complaint Voluntarily Withdrawn
2. Harry B. Scheeler, Jr. v. City of Cape May (Cape May) (2015-255)
 - Complaint Voluntarily Withdrawn
3. Harry B. Scheeler, Jr. v. City of East Orange (Middlesex) (2015-303)
 - Complaint Voluntarily Withdrawn
4. Harry B. Scheeler, Jr. v. NJ Department of Education (2015-317)
 - Complaint Voluntarily Withdrawn
5. Harry B. Scheeler, Jr. v. NJ Department of State (2015-351)
 - Complaint Voluntarily Withdrawn
6. Harry B. Scheeler, Jr. v. NJ Department of Agriculture (2015-352)
 - Complaint Voluntarily Withdrawn
7. Harry B. Scheeler, Jr. v. Gloucester Township (Camden) (2015-371)
 - Complaint Voluntarily Withdrawn
8. Harry B. Scheeler, Jr. v. NJ Office of the Attorney General, Division of Law (2015-372)
 - Complaint Voluntarily Withdrawn
9. Harry B. Scheeler, Jr. v. NJ Department of Children and Families (2015-394)
 - Complaint Voluntarily Withdrawn
10. Harry B. Scheeler, Jr. v. Atlantic County (2015-400)
 - Complaint Voluntarily Withdrawn
11. Harry B. Scheeler, Jr. v. NJ State SPCA (2015-409)
 - Complaint Voluntarily Withdrawn
12. Harry B. Scheeler, Jr. v. Galloway Township (Atlantic) (2015-417)
 - Complaint Voluntarily Withdrawn
13. Harry B. Scheeler, Jr. v. NJ Department of Education (2016-33)
 - Complaint Voluntarily Withdrawn
14. Harry B. Scheeler, Jr. v. NJ Department of Agriculture (2016-48)
 - Complaint Voluntarily Withdrawn
15. Harry B. Scheeler, Jr. v. NJ Office of the Attorney General (2016-53)
 - Complaint Voluntarily Withdrawn
16. Harry B. Scheeler, Jr. v. NJ Department of Education (2016-55)
 - Complaint Voluntarily Withdrawn

17. Anthony Esposito v. Roselle Board of Education (Union) (2017-228)
 - Complaint Settled In Mediation
18. Russell Smith v. Moorestown Township (Burlington) (2018-86)
 - Complaint Voluntarily Withdrawn
19. Anonymous v. Borough of Highland Park Police Department (Middlesex) (2018-102)
 - 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. Katalin Gordon v. City of Orange (Essex) (2013-255) **(SR Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration based on a mistake.
 - The Council, at its own discretion, should reconsider this complaint and send same to the Office of Administrative Law for a fact-finding hearing to identify any potential employee other than the Custodian that may be subject to a civil penalty.

2. Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-01)
3. Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10)
4. Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) **(SR Recusal Consolidated)**

- The Council should accept the Administrative Law Judge’s Initial Decision in which she approved a “Stipulation of Settlement.”

5. Nicole Dory, Esq. (o/b/o Shipyard Associates, L.P.) v. City of Hoboken (Hudson) (2014-200) **(SR Recusal)**
 - The Custodian did not fully comply with conclusion Nos. 4 and 6 of the Council’s November 18, 2014 Interim Order.
 - The Custodian shall comply with the Council’s Findings of the *In Camera* Examination.
 - The Council defers analysis of whether the Custodian complied with conclusion No. 8 of the Council’s Order.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.

6. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-57) **(SR Recusal)**
7. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-60) **(SR Recusal)**
8. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-70) **(SR Recusal Consolidated)**

- The Council should dismiss this consolidated complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.

9. Harry B. Scheeler, Jr. v. Greenwich Township (Warren) (2015-178) **(SR Recusal)**
 - The Complainant withdrew his complaint via e-mail to the GRC on May 24, 2018. Thus, no further adjudication is required.

10. Glenn Jones v. Rutgers, The State University of NJ (2015-202) (**SR Recusal**)
 - The Custodian complied with the Council’s September 26, 2017 Interim Order.
 - There is no knowing and willful violation.
11. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-370) (**SR Recusal**)
 - The Council should dismiss this complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
12. Christopher Tirado v. Rutgers University (2016-165) (**SR Recusal**)
 - The Custodian’s Counsel failed to establish valid grounds for reconsideration based on “new evidence.”
 - The Council’s March 27, 2018 Interim Order remains in effect.
13. Jonathan Stevens v. Rutgers University (2016-249) (**SR Recusal**)
 - The Custodian lawfully denied access to Professor Liroy’s research conducted on World Trade Center remnants pursuant to N.J.S.A. 47:1A-1.1. The Custodian thus lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.
14. Kenneth Duckett v. Essex County Prosecutor’s Office (2016-274) (**SR Recusal**)
 - The Complainant’s request seeking access to records by retention schedule “Records Series” numbers was invalid.
15. Sacha Pouliot v. NJ Department of Education (2015-281) (**CH Recusal**)
 - The Custodian complied with the Council’s January 31, 2017 Interim Order.
 - The Custodian shall comply with the Council’s Findings of the *In Camera* Examination.
 - The Custodian shall disclose certain non-exempt information from all responsive e-mails.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.
16. Thomas J. Caggiano v. NJ State Police (2016-27) (**RBT Recusal**)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial.
 - The requested recording is exempt under N.J.S.A. 47:1A-9 and N.J.A.C. 13:1E-3.2(a)(4). The Custodian thus lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.
 - There is no knowing and willful violation.

B. Individual Complaint Adjudications with no Recusals:

1. Shawn G. Hopkins v. Township of Holmdel (Monmouth) (2014-32)
 - 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 Howell (Monmouth) (2014-33)
 - 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.

3. Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2014-365)
 - The Custodian failed to comply with the Council’s March 27, 2018 Interim Order.
 - The Custodian shall have a final opportunity to: 1) disclose all responsive records not already provided; and 2) provide a detailed explanation as to supervisory relationship between Franklin Fire District No. 1 and Millstone Valley Fire Department as it relates to financial oversight, if applicable.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.
4. Harry B. Scheeler, Jr. v. NJ Office of the Attorney General (2014-417)
 - The Complainant withdrew his complaint via e-mail to the GRC on May 24, 2018. Thus, no further adjudication is required.
5. Robert Kovacs v. Union County (2015-169)
 - The Custodian applied the appropriate cost of \$2.00 per page for disclosure of a property deed in physical form pursuant to N.J.S.A. 47:1A-5(b) and N.J.S.A. 22A:2-29.
6. Matthew Drange v. City of Plainfield Police Department (Union) (2015-229)
 - The Council must conduct an *in camera* review of those responsive records withheld from disclosure or redacted.
 - The knowing and willful analysis is deferred.
7. Matthew Drange v. Camden County Office of Archives and Records Management (2015-265)
 - The Custodian’s response was insufficient because she failed to respond to each request item individually.
 - The Custodian lawfully denied access to “accuracy verification of ShotSpotter’s incident data” because no record existed.
 - The Council must conduct an *in camera* review of those responsive records withheld from disclosure or redacted.
 - The knowing and willful analysis is deferred.
8. Jason Marshall Litowitz v. NJ Department of Transportation (2015-301)
 - Ms. Ferencevych failed to comply fully with the Council’s May 22, 2018 Interim Order.
 - There is no knowing and willful violation.
9. Christina Moreira v. Elizabeth Board of Education (Union) (2015-313)
 - The Custodian complied with the Council’s April 24, 2018 Interim Order.
 - There is no knowing and willful violation.

10. William R. Juliana v. Township of Washington (Gloucester) (2016-106)
11. William R. Juliana v. Township of Washington (Gloucester) (2016-111)
12. William R. Juliana v. Township of Washington (Gloucester) (2016-112) **Consolidated**

- The current Custodian failed to comply fully 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.
13. Shiretta McKinney v. Union County Prosecutor's Office (2016-149)
- The Custodian lawfully denied access to the responsive toxicology reports as criminal investigatory records. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6.
14. Hector Luis Guillen v. New Brunswick Police Department (Middlesex) (2016-155)
- Ms. McMullan violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant's OPRA request, or directing the Complainant, to the Custodian.
 - The Custodian lawfully denied access to the OPRA request because no records existed.
 - There is no knowing and willful violation.
15. Tremayne Durham v. NJ Department of Corrections (2016-258)
- The Custodian lawfully denied access to the Internal Management Procedures that existed under N.J.S.A. 47:1A-1.1.
 - The Custodian lawfully denied access to the remainder of the Complainant's OPRA request because no records existed.
16. Libertarians for Transparent Government v. Town of Kearny (Hudson) (2016-261)
- The Custodian failed to comply fully with the Council's May 22, 2018 Interim Order.
 - The Custodian shall have a final opportunity to provide the three (3) sets of closed session minutes available for disclosure at the time the Custodian received the Complainant's June 6, 2016 OPRA request.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.
17. Daniel Damigo v. Borough of Totowa (Passaic) (2017-124)
- The Council should dismiss this complaint because the Complainant failed to appear at the Office of Administrative Law. N.J.A.C. 1:1-18.4(a).
18. John Schmidt v. Borough of Penns Grove (Salem) (2018-54)
- This complaint was tabled for further review.

VII. Court Decisions of GRC Complaints on Appeal:

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

- Brennan v. Bergen Cty. Prosecutor's Office, 2018 N.J. LEXIS 698 (2018)(Approved for Publication)
- Benedetto v. Russo, 2018 N.J. Super. Unpub. LEXIS 1287 (App. Div. 2018)
- N.J. Second Amendment v. Div. of State Police of the N.J. Dep't of Law & Public Safety, 2018 N.J. Super. Unpub. LEXIS 1438 (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.