



**Minutes of the Government Records Council
August 28, 2018 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:33 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 July 26, 2018.”

Ms. Berg Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Simons, Esq. (designee of Department of Education Commissioner Dr. Richard Lamont Repollet), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq. (Public Member).

***** Steven Ritardi participated telephonically until 2:14 p.m. *****

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

The GRC will hold its 12th Annual OPRA Seminar on September 13, 2018. The seminar will be a full-day event featuring the GRC, Records Management Services, and Marc Pfeiffer returning with an updated Cyber Hygiene session. Registration is open and currently sits at about 200 participants. The GRC notes that pre-registration will close on September 7, 2018; however, walk-in attendees will be permitted on an availability basis. As it has with the past few seminars, the GRC is currently going through the application process for CLE credit status. The GRC has already obtained CEU status (3.5/1.5).

Finally, the GRC will participate in a training session at the NJ League of Municipalities Conference on November 14, 2018 from 2:00 p.m. to 3:40 p.m.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 4,955 Denial of Access Complaints. That averages about 309 annual complaints per slightly more than 16 program years. So far in the current program year (2019), the GRC has received 65 Denial of Access Complaints.
- 484 of the 4,955 complaints remain open and active (9.8%). Of those open cases:
 - 16 complaints are on appeal with the Appellate Division (3.3%);
 - 12 complaints are currently in mediation (2.5%);
 - 2 complaints are proposed for the Office of Administrative Law (0.4%);
 - 35 complaints await adjudication by the Office of Administrative Law (7.2%);
 - 66 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (13.6%);
 - 353 complaints are work in progress (73.0%); and
 - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 29,260 total inquiries, averaging about 1,950 annual inquiries per slightly more than 15 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (2019), the GRC has received 285 inquiries (7.1 inquiries per day).

The GRC would like to note that over the last 16 meetings dating back to April 2017 (and not including this meeting), its three (3) agenda contributors have accounted for 488 adjudications, averaging over 30 monthly agenda items. This is compared to 501 total adjudications (averaging roughly 33 monthly agenda items) in the 16 meetings from January 2016 through March 2017, spread across two (2) additional agenda contributors. These numbers highlight the dedicated work of current GRC staff aimed at maintaining a level of output commensurate with prior times where the GRC comprised of more staff.

III. Closed Session:

- Jason Marshall Litowitz v. New Jersey Department of Transportation (2015-301)
- Sean Patrick Vandy v. Newfield Police Department (Gloucester) (2016-166)

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

The Council met in closed session from 1:37 p.m. until 2:12 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Martucci made a motion, which was seconded by Ms. Simons. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:13 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Ms. Simons, Mr. Martucci, and Mr. Ritardi.

IV. Approval of Minutes of Previous Meetings:

July 31, 2018 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the July 31, 2018 meeting. Mr. Martucci made a motion, which was seconded by Ms. Simons. The motion passed by a unanimous vote.

July 31, 2018 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the 31, 2018 meeting. Ms. Simons made a motion, which was seconded by Mr. Martucci. 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):

1. Mark L. Tompkins v. Newark Police Department (Essex) (2018-141) (SR Recusal)

- Unripe Cause of Action
- Ms. Berg Tabakin called for a motion to accept the recommendation as written in the above Administrative Complaint Disposition. Mr. Martucci made a motion,

which was seconded Ms. Simons. The motion passed by a majority vote; Mr. Ritardi recused.

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda): None

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

1. **Jose M. Cortes v. Camden County Prosecutor's Office (2018-87)**
 - Complaint Settled in Mediation
2. **Christopher W. Hager, Esq. (O.B.O. Letizia Pantoliano) v. Bogota Board of Education (Bergen) (2018-125)**
 - Complaint Voluntarily Withdrawn
3. **Rotimi Owoh (O.B.O. AADARI) v. Marlboro Police Department (Monmouth) (2018-143)**
 - Complaint Voluntarily Withdrawn
4. **G. Harold Christian v. City of Jersey City (Hudson) (2018-149)**
 - 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. **Jeff Carter v. New Jersey Department of Community Affairs, Division of Local Government Services (2016-262) (JM Recusal)**
 - The Complainant's request was invalid because it required research.
 - The Complainant is not a prevailing party.
 - 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. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Martucci recused.
2. **Elie C. Jones v. Township of Teaneck (Bergen) (2016-290) (SR Recusal)**
 - The Custodian did not unlawfully deny access to OPRA request Nos. 3 and 4 because he never received said requests.
 - The Custodian timely responded to OPRA request Nos. 1 and 2.
 - The Complainant's request Nos. 1 and 2 were invalid.
 - 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

3. **Duggan L. Salley v. City of Newark (Essex) (2018-158) (SR Recusal)**

- The Custodian’s failure to timely respond resulted in a “deemed” denial of access.
- Portions of the Complainant’s OPRA request item Nos. 1, 2, 4, 5, and 7 were invalid because they failed to seek specific records.
- Notes sought in the Complainant’s OPRA request item Nos. 1, 2, and 7 were exempt from disclosure. O’Shea v. West Milford Bd. Of Educ., 391 N.J. Super. 534 (App. Div. 2007).
- The Custodian unlawfully denied access to the resume of the successful candidate relevant to the Complainant’s OPRA request item No. 6 and must disclose same.
- The Complainant’s OPRA request item No. 6 seeking “salary range” was valid and the Custodian failed to bear her burden of a lawful denial. Thus, she must disclose the responsive record.
- 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 Ms. Simmons seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2014-365)**

- The current Custodian and Chief McDonnell failed to comply with the Council’s June 26, 2018 Interim Order.
- This complaint should be referred to the Office of Administrative Law for a fact-finding hearing. The Office of Administrative Law should also address the knowing willful and prevailing party attorney’s fees issues in the interest of efficacy.
- 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

2. **Robert Kovacs v. Toms River Police Department (Ocean) (2015-264)**

- The Custodian’s response was insufficient because he failed to respond to each request item individually.
- The Custodian lawfully denied access to a portion of the Complainant’s June 27, and July 19, 2015 OPRA requests because they were invalid.
- The Custodian unlawfully denied access to the remainder of the Complainant’s June 27, and July 19, 2015 OPRA requests.
- The Council shall perform an *in camera* review of responsive incident reports to determine if they are exempt as criminal investigatory records. N.J.S.A. 47:1A-1.1.
- 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
3. **Jason Marshall Litowitz v. New Jersey Department of Transportation (2015-301)**
 - This complaint was tabled for additional review.
 - Ms. Berg Tabakin called for a motion to have this matter tabled for additional review. Mr. Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.
 4. **Lisa D. Taylor, Esq. v. New Jersey Department of Treasury, Division of Purchase & Property (2015-395)**
 - The Custodian’s extension request was warranted and substantiated.
 - The Custodian may have unlawfully denied access to multiple records and must supplement the record with additional information regarding the responsive records and his response.
 - 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
 5. **Lisa D. Taylor, Esq. v. New Jersey Department of Treasury, Division of Purchase & Property (2016-62)**
 - The Custodian’s response was insufficient because he failed to provide a specific lawful basis for redactions.
 - The Custodian did not unlawfully deny access to evaluation committee deliberations, evaluation sheets, and score sheets because they were exempt from disclosure as “inter-agency or intra-agency advisory, consultative, or deliberative material.” N.J.S.A. 47:1A-1.1.
 - The Custodian lawfully denied access to the identities of the evaluation committee members because no contract had been awarded. N.J.S.A. 47:1A-9(a); N.J.S.A. 52:34-10.3(c).
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party.
 - 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 Ms. Simons seconded the motion. The motion passed by a unanimous vote.

6. **Matthew B. Tully v. Borough of Avon-By-The-Sea (Monmouth) (2016-100)**

- The Custodian timely responded to the Complainant's April 4, 2016 OPRA request.
- The Custodian's response to the Complainant's April 18, 2016 OPRA request was insufficient because he failed to provide a lawful basis for redactions.
- A portion of the Complainant's April 4, 2016 OPRA request was invalid because it sought information.
- The Custodian unlawfully denied access to excepted personnel information. N.J.S.A. 47:1A-10. However, the Council need not order disclosure because such information was provided in response to a separate OPRA request.
- The Custodian lawfully denied access to redacted personnel information not otherwise disclosable under OPRA. N.J.S.A. 47:1A-10.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations. Mr. Rosado noted that the conclusions were adjusted to delete an artifact conclusion number. Mr. Rosado also noted additional minor edits. Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as amended. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

7. **William R. Juliana v. Township of Washington (Gloucester) (2016-106)**

8. **William R. Juliana v. Township of Washington (Gloucester) (2016-111)**

9. **William R. Juliana v. Township of Washington (Gloucester) (2016-112)**

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.
- 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 Ms. Simons seconded the motion. The motion passed by a unanimous vote.

10. **Sean Patrick Vandy v. Newfield Police Department (Gloucester) (2016-166)**

- This complaint was tabled for additional review.
- Ms. Berg Tabakin called for a motion to have this matter tabled for additional review. Mr. Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.

11. **Mark Demitroff v. Buena Vista Township (Atlantic) (2016-180)**

- The Custodian lawfully denied access to the requested records because none existed.
- 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. Ms.

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

12. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-190)**

- The Custodian's response was insufficient because she failed to provide a specific lawful basis for redacting the responsive attorney invoices.
- The Council must perform an *in camera* review of the invoices to confirm whether the Custodian properly redacted them.
- 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

13. **Scott M. Halliwell & Anthony G. Pennant v. Borough of Brooklawn (Camden) (2016-201)**

- The Custodian's response to OPRA request item No. 1 was sufficient.
- The Council must conduct an *in camera* review of the responsive records to confirm whether the Custodian properly denied access to them.
- 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 Ms. Simons seconded the motion. The motion passed by a unanimous vote.

14. **Josephine V. Mella v. Passaic County Prosecutor's Office (2016-217)**

- The Custodian lawfully denied access to the responsive investigative reports under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1.
- The Custodian lawfully denied access to the request items seeking policies, procedures, and recordings because no records existed.
- The Custodian responded appropriately to OPRA request item No. 3 disclosing only those training certificates required to maintain government employment. N.J.S.A. 47:1A-10.
- 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

15. **Charles R. Cohen v. City of Englewood (Bergen) (2016-253)**

- The Custodian complied with the Council's November 14, 2017 Interim Order.
- Because of inadequate evidence, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. The Office of Administrative Law should also address any knowing and willful issues.

- The Office of Administrative Law need not address the prevailing party fee issue. The Complainant, an attorney representing himself, is not entitled to such fees. Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006).
- 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

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

- The Custodian complied with the Council’s June 26, 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 Ms. Simons seconded the motion. The motion passed by a unanimous vote.

17. Doreen Janes v. Ramapo College (2016-295)

- The Custodian lawfully denied access to the draft report and redacted final report under the “inter-agency or intra-agency advisory, consultative, or deliberative material” exemption. N.J.S.A. 47:1A-1.1.
- 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

18. Anthony Franklin v. Passaic County Prosecutor’s Office (2016-308)

- The portion of the request seeking “Promis Gavel” is invalid because it failed to seek identifiable records.
- The Custodian lawfully denied access to the requested “rap sheets.” N.J.S.A. 47:1A-9(a); Executive Order No. 9 (Gov. Hughes, 1963).
- 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

19. Robert Kovacs v. Union County Department of Corrections (2016-321)

- The Custodian did not unlawfully deny access to the Complainant’s OPRA request because he never received it.

- The Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:31-6.10(b).
- 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

20. **Joyce Blay v. Township of Lakewood (Ocean) (2017-2)**

- The Custodian's failure to timely respond resulted in a "deemed" denial of access.
- 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

21. **Raquel Horowitz v. City of Long Branch Housing Authority (Monmouth) (2017-4)**

- The Custodian's failure to timely respond resulted in a "deemed" denial of access.
- The Complainant's request was invalid because it sought information and not an identifiable government 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

22. **Stacie Percella v. City of Bayonne (Hudson) (2017-70)**

- The Council should accept the Honorable Michael Antoniewicz's, Administrative Law Judge, June 15, 2018 Initial Decision finding that no knowing and willful violation occurred, and that the complaint should be dismissed.
- 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 Ms. Simons 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:

- Paff v. Ocean Cnty. Prosecutor's Office, Nos. A-17, 078040, 2018 N.J. LEXIS 1002 (Aug. 13, 2018): The New Jersey Supreme Court held that the requested Motor Vehicle Recorder ("MVR") recordings were criminal investigatory records and not subject to disclosure under the Open Public Records Act ("OPRA"). The Court found that, unlike

the Attorney General's Use of Force Policy, the Barnegat Township Police Chief's General Order does not have the force of law supported by statute. Additionally, the Court held that the content contained in the MVR recordings pertained to a criminal investigation, thus satisfying the requirements to qualify as a criminal investigatory record. However, the Court held that the MVR recordings did not satisfy the requirements to qualify as an investigation in progress under N.J.S.A. 47:1A-3(a). Lastly, the Court held that while privacy concerns were not implicated in this instance, other courts should give serious consideration to parties who raise such issues, but they must provide more than 'generic' privacy objections. The matter was remanded back to the trial court to consider the plaintiff's common-law right of access claim.

- N. Jersey Media Grp. Inc. v. Passaic Cnty. Prosecutor's Office, No. A-2016-16T1, 2018 N.J. Super. Unpub. LEXIS 1949 (App. Div. 2018): In a request for various records, the Appellate Division held that, in utilizing the privacy balancing test set forth in Burnett v. Cnty. of Bergen, 198 N.J. 408, 427 (2009), the defendant should have released the 911 recording with redactions. As to the Domestic Violence Offense Report, the court held that the record was protected from disclosure via the Domestic Violence Act. As to counsel fees, while both records were ordered disclosed by the trial judge, the rulings were made under the common law, and not through OPRA. Therefore, plaintiff was only entitled to fees relating to the redacted 911 call, which the court decided via OPRA, and not to the entirety of the matter. The matter was remanded to the trial court to determine the reasonable counsel fees to that violation.

IX. Complaints Adjudicated in Federal Court:

- Golden v. N.J. Inst. of Tech., Civil Action No. 15-8559, 2018 U.S. Dist. LEXIS 129699 (D.N.J. Aug. 2, 2018): A District Judge adopted the Magistrate Judge's Report and Recommendation, holding that plaintiffs were not entitled to an award of attorney's fees. The court held that NJIT's decision to adhere to the FBI's demand that NJIT not release the requested records without their approval was reasonable and consistent. Additionally, the FBI's own review and release of responsive records thereafter did not provide the change in conduct on the part of the custodian, an element required to be shown determining whether the plaintiffs are prevailing parties under OPRA.

X. Public Comment: None

XI. Adjournment:

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

The meeting adjourned at 2:43 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: September 25, 2018