



**Minutes of the Government Records Council
September 25, 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 September 20, 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 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).

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 held its 12th Annual OPRA Seminar on September 13, 2018. Presentations were conducted by the GRC, Records Management Services, and Marc Pfeiffer returning with an updated Cyber Hygiene session. The total attendance for the day seminar reached 207. The GRC offered those attendees seeking credits 5 CEUs and 5.2 CLEs. In dissecting the event at its conclusion, the GRC has identified some possible changes for next year. The GRC thanks all that attended, and is especially appreciative of the hard work put into holding this seminar

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 4,977 Denial of Access Complaints. That averages about 306 annual complaints per 16 ¼ program years. So far in the current program year (2019), the GRC has received 87 Denial of Access Complaints.
- 486 of the 4,977 complaints remain open and active (9.8%). Of those open cases:
 - 16 complaints are on appeal with the Appellate Division (3.3%);
 - 10 complaints are currently in mediation (2.1%);
 - 2 complaints are proposed for the Office of Administrative Law (0.4%);
 - 32 complaints await adjudication by the Office of Administrative Law (6.6%);
 - 65 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (13.4%);
 - 361 complaints are work in progress (74.3%); and
 - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 29,383 total inquiries, averaging about 1,926 annual inquiries per 15 ¼ 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 408 inquiries (7 inquiries per workday).

III. Closed Session:

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

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

The Council met in closed session from 1:46 p.m. until 1:50 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Martucci made a motion, which was seconded by Mr. Ritardi. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:51 p.m., and Ms. Bordzoe called roll.

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

IV. Approval of Minutes of Previous Meetings:

August 28, 2018 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the August 28, 2018 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Jennifer Simons, Esq. Mr. Martucci made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

August 28, 2018 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the August 28, 2018 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Jennifer Simons, Esq. Mr. Martucci made a motion, which was seconded by Mr. Ritardi. 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. **Eric Deleon v. Bio-Reference Laboratories, Inc. (2018-169)**
 - Request Made to a Non-Public Agency
2. **Kim E. Davis v. Township of Deptford (Gloucester) (2018-207)**
 - Duplicate Complaint Filed with the GRC

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

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

1. **Steven J. Kossup, Esq. v. NJ State Police (2018-28)**
 - Complaint Voluntarily Withdrawn
2. **Cynthia A. McBride (o/b/o Signature Information Solutions) v. Ewing Township (Mercer) (2018-32)**
 - Complaint Settled in Mediation
3. **Keith A. Smith v. Fredon Township Board of Education (Sussex) (2018-81)**
 - Complaint Settled in Mediation
4. **Charles V. Sinesi v. City of Linwood (Atlantic) (2018-113)**
 - Complaint Settled in Mediation
5. **David Weiner v. County of Essex (2018-117)**
 - Complaint Settled in Mediation
6. **Luis Rodriguez v. Kean University (2018-156)**
 - Complaint Voluntarily Withdrawn
7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute (AADARI)) v. Keansburg Police Department (Monmouth) (2018-168)**
 - Complaint Voluntarily Withdrawn
8. **Anonymous v. Lakewood Township Fire District No. 1 (Ocean) (2018-170)**
 - Complaint Voluntarily Withdrawn
9. **Anonymous v. Lakewood Township Fire District No. 1 (Ocean) (2018-171)**
 - Complaint Voluntarily Withdrawn
10. **Anonymous v. Lakewood Township Fire District No. 1 (Ocean) (2018-172)**
 - Complaint Voluntarily Withdrawn
11. **Helen Weinberger v. Township of Belleville (Essex) (2018-173)**
 - Complaint Voluntarily Withdrawn
12. **Lewis Cohn, Esq. v. Township of Union Police Department (Union) (2018-195)**
 - 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. **Thomas Caggiano v. Township of Wantage (Sussex) (2016-115) (RBT Recusal)**
 - The Complainant's request for reconsideration should be denied.
 - Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi 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 majority vote; Ms. Berg Tabakin recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Glenn Katon (o/b/o Muslim Advocates) v. NJ Department of Law & Public Safety, Office of the Attorney General (2012-267)**
 - This complaint should be dismissed based on the executed Stipulation of Settlement. 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. Martucci seconded the motion. The motion passed by a unanimous vote.

2. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2014-187)**
 - The Custodian complied with the Council's December 16, 2014 Interim Order.
 - Based on conflicting evidence, this complaint should be referred to the Office of Administrative Law for 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. Mr. Stewart noted that he added two (2) sentences to the first paragraph on page 3 for additional background detail. Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as amended. Mr. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

3. **Robert Kovacs v. Toms River Police Department (Ocean) (2015-264)**
 - The Custodian complied with the Council's August 28, 2018 Interim Order.
 - The *in camera* review revealed that the original Custodian unlawfully denied access to the requested police incident report. The Custodian must disclose said report with redactions where applicable.
 - 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. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

4. **Jason Marshall Litowitz v. NJ Department of Transportation (2015-301)**
 - The Acting Custodian's request for reconsideration should be granted.
 - The Council should rescind its June 26, 2018 Final Decision Conclusion No. 1 and find that the Acting Custodian complied with the May 22, 2018 Interim Order and did not violate OPRA.
 - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Mr. Caruso noted that the conclusion reflected Council's comments and suggestions from the August 2018 meeting. 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.

5. **Damiano M. Fracasso, Esq. v. Township of Rockaway (Morris) (2015-310)**

- Ms. Palmieri complied with the Council's July 31, 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. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

6. **William R. Juliana v. Township of Washington (Gloucester) (2016-114)**

- The Custodian complied with the Council's July 31, 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. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

7. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-133)**

- The Council should dismiss this complaint because Complainant withdrew same. 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.

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

- Officer Conway's May 25, 2016 response was insufficient.
- The GRC must conduct an *in camera* review of the requested body camera footage. The Custodian shall also submit a statement addressing how disclosure of the responsive footage would be inimical to the public interest.
- The Custodian lawfully denied access to a certain portion of the request because she certified, and the records shows, that no responsive records exist.
- 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. Ritardi seconded the motion. The motion passed by a unanimous vote.

9. **Charles Hughes v. Township of Logan (Gloucester) (2016-187)**

- Five (5) of the Complainant's six (6) OPRA requests were invalid because they failed to identify specific records or sought information.
- The Custodian may have unlawfully denied access to the sixth (6th) OPRA request. The Custodian must conduct a search for the requested "contract" and certify to the results of said search.
- 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. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **Caitlyn Bahrenburg v. Borough of Belmar (Monmouth) (2016-198)**

- The Custodian's response was insufficient because she failed to provide a date certain as part of her extension response.
- The Custodian lawfully denied access to the requested records because she certified, and the record shows, that no records existed.
- 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. Martucci seconded the motion. The motion passed by a unanimous vote.

11. **Darryl Derelle Parker v. NJ Department of Corrections (2016-199)**

- The Custodian lawfully denied access to the requested checks because he certified, and the record shows, that no records existed.
- The Custodian lawfully denied access to the responsive IPIN forms under OPRA and applicable 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.

12. **Ronald W. Yarbrough (o/b/o Pro-Spec Corporation) v. East Windsor Municipal Utilities Authority (Mercer) (2016-234)**

- The Custodian did not fully comply with the Council's 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.

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

13. Ernest Risha v. Logan Township (Gloucester) (2017-12)

- The Council should dismiss this complaint because the Complainant failed to state a claim.
- 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.

14. Stanley Ray v. Passaic County Prosecutor's Office (2017-31)

- The Custodian lawfully denied access to the requested criminal "rap sheets" under OPRA and 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. 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: None

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

- Brennan v. Middlesex Cnty. Prosecutor's Office, 2018 N.J. Super. Unpub. LEXIS 2001 (App. Div. 2018) No. A-1994-15T2, 2018 N.J. Super. Unpub. LEXIS 2001 (App. Div. Aug. 29, 2018): In accordance with Paff v. Ocean Cnty. Prosecutor's Office, Nos. A-17, 078040, 2018 N.J. LEXIS 1002 (Aug. 13, 2018), the Appellate Division held that Motor Vehicle Recordings ("MVRs") as requested by Plaintiff are not "required by law" within the meaning of N.J.S.A. 47:1A-1.1, are criminal investigatory records under same, and therefore not subject to disclosure under OPRA. The Court also agreed with the trial court in that Plaintiff did not provide a sufficient basis to obtain access to the MVRs under the common law right of access.

IX. Complaints Adjudicated in Federal Court: None

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 Mr. Huber. The motion passed by a unanimous vote.

The meeting adjourned at 2:11 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: October 30, 2018