



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
October 30, 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, October 30, 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

- Luis F. Rodriguez v. Kean University (2015-338)
- Adam M. Szura v. Bergen County Department of Health Services (2016-175)
- Alan Arthur De Smet v. NJ Motor Vehicle Commission (2016-267)
- Alan Arthur De Smet v. NJ Motor Vehicle Commission (2016-268) **Consolidated**

IV. Approval of Minutes of Previous Meetings:

September 25, 2018 Open Session Meeting Minutes
September 25, 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. Carol Scutro v. County of Union (2016-210)
 - Invalid OPRA Request.
2. Shamsiddin Abdur-Raheem v. NJ Office of the Public Defender (2016-292)
 - No Correspondence Received by the Custodian.
3. Kevin Jackson v. NJ Department of Corrections (2016-304)
 - No Records Responsive to the Request Exist.

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

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| <ol style="list-style-type: none">1. Anne Weismann (o/b/o Citizens for Responsibility and Ethics in Washington) v. NJ Office of the Governor (2015-37)2. Anne Weismann (o/b/o Citizens for Responsibility and Ethics in Washington) v. NJ Office of the Governor (2015-41) Consolidated<ul style="list-style-type: none">• Complaint Voluntarily Withdrawn. |
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3. David Weiner v. County of Essex (2018-96)
 - Complaint Settled in Mediation.
 4. Clifford Vreeland v. Wall Township First Aid and Rescue Squad 52-21 (Monmouth) (2018-104)
 - Complaint Settled in Mediation.
 5. Senate Minority Staff (o/b/o Thomas Kean) v. NJ Department of Treasury (2018-109)
 - Complaint Voluntarily Withdrawn.
 6. Nicholas Sodano v. Essex County Board of Elections (2018-120)
 - Complaint Settled in Mediation.
 7. Dominick Cappetti v. NJ Department of Labor and Workforce Development (2018-232)
 - 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, LP) v. City of Hoboken (2014-200) **(SR Recusal)**
 - This complaint should be dismissed because Complainant's Counsel waived her right to prevailing party attorney's fees.
2. Robert A. Verry v. Township of Greenwich (Warren) (2015-126) **(SR Recusal)**
 - This complaint should be dismissed because the Complainant withdrew it in accordance with a settlement agreement while at the Office of Administrative Law.
3. Libertarians for Transparent Government v. City of Newark (Essex) (2016-211) **(SR Recusal)**
 - The Custodian's extension was warranted and substantiated.

- The Custodian did not unlawfully deny access to the portion of OPRA request item No. 2 seeking informal or draft agreements. N.J.S.A. 47:1A-1.1.
 - The Custodian did not unlawfully deny access to the portion of OPRA request item No. 2 seeking e-mails or correspondence because same was invalid.
4. Sacha Pouliot v. NJ Department of Education (2015-281) (**JS Recusal**)
 - The Council should deny Custodian Counsel’s request for reconsideration based on a mistake and illegality.
 - The Council’s June 26, 2018 Interim Order remains in effect.
 5. Thomas Caggiano v. NJ Office of the Governor (2016-68) (**RBT Recusal**)
 - The Custodian lawfully denied access to the Complainant’s OPRA request in accordance with Caggiano v. N.J. Office of the Gov., GRC Complaint No. 2014-408 (September 2015).

B. Individual Complaint Adjudications with no Recusals:

1. Charles J. Femminella, Jr. v. City of Atlantic City (Atlantic) (2012-232)
 - This complaint should be dismissed because the Complainant withdrew it while at the Office of Administrative Law.
2. Robert Kovacs v. Toms River Police Department (Ocean) (2015-264)
 - The Custodian complied with the Council’s September 25, 2018 Interim Order.
 - There is no knowing and willful violation.
3. Luis F. Rodriguez v. Kean University (2015-338)
 - The Custodian complied with the Council’s January 30, 2018 Interim Order.
 - The Custodian did not bear the burden of proving that she timely responded to the OPRA request, based on numerous extensions of time to respond, thus resulting in a “deemed” denial.
 - The Custodian shall comply with the Council’s *In Camera* Examination findings.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.
4. John Paff v. City of Trenton (Mercer) (2016-95)
 - Sgt. Durlacher failed to comply fully with the Council’s November 14, 2017 Interim Order.
 - The Custodian/Sgt. Durlacher shall have a final opportunity to provide the Complainant the outstanding records or certify to whether “IA Pro” could produce those reports. For OPRA request item Nos. 2 and 3, the Custodian/Sgt. Durlacher must either provide the outstanding reports or certify to their non-existence and disclose reports that existed at the time of the request.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.
5. Edwin Sheppard v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2016-170)
 - The GRC must conduct an *in camera* review of the redacted e-mail chains.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.

6. Adam M. Szura v. Bergen County Department of Health Services (2016-175)
 - Both parties timely complied with the Council’s May 22, 2018 Interim Order.
 - The Custodian lawfully denied access to the complaining party’s personal information. N.J.S.A. 47:1A-1; Burnett v. Cnty. Of Bergen, 198 N.J. 408 (2009).
 - The *In Camera* Examination revealed that the Custodian lawfully denied access to the redacted portions of the responsive e-mail chain.
 - There is no need to conduct a knowing and willful analysis.

7. Edwin Sheppard v. Cape May County (2016-195)
 - The Custodian’s failure to timely respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Complainant’s request was invalid because it failed to include all necessary criteria as prescribed in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
 - There is no knowing and willful violation.

8. Libertarians for Transparent Government v. Borough of Westwood (Bergen) (2016-214)
 - The Custodian may have unlawfully denied access to records maintained by the Borough’s Joint Insurance Fund. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).
 - The Custodian did not unlawfully deny access to the portion of OPRA request item No. 3 seeking informal or draft agreements. N.J.S.A. 47:1A-1.1.
 - The Custodian did not unlawfully deny access to the portion of OPRA request item No. 3 seeking e-mails or correspondence because same was invalid.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.

9. Bryan Tomko v. City of Linden (Union) (2016-215)
 - The Custodian’s failure to timely respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian did not unlawfully deny access to the Complainant’s request item No. 3 because it was invalid.
 - There is no knowing and willful violation.

10. Tanya Wynn v. Borough of Maywood (Bergen) (2016-224)
 - The Custodian’s response to the Complainant’s August 1, 2016 OPRA request was insufficient because she failed to provide a specific lawful basis for her denial of access. N.J.S.A. 47:1A-5(g).
 - The Custodian did not unlawfully deny access to the portion of the August 1, 2016 OPRA request seeking “any record, including police reports . . .” because it was invalid.
 - The Custodian lawfully denied access to the Complainant’s August 4, 2016 OPRA request seeking “rap sheets” under OPRA and Executive Order No. 9 (Gov. Hughes 1963).
 - There is no knowing and willful violation.

11. Regino De La Cruz, Esq. v. City of Union City (Hudson) (2016-229)
- Mr. Cantatore’s response to the Complainant’s OPRA request was insufficient because he failed to provide a specific lawful basis for his denial of access. N.J.S.A. 47:1A-5(g).
 - The Custodian did not unlawfully deny access to the portion of the August 1, 2016 OPRA request seeking every police accident or incident report from the prior seven (7) days because it was invalid.
 - There was no knowing and willful violation.
12. Carol Scutro v. City of Linden (Union) (2016-256)
- The Custodian’s failure to timely respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - This complaint should be referred to the Office of Administrative Law for a hearing to develop the facts.
13. Libertarians for Transparent Government v. Town of Kearny (Hudson) (2016-261)
- 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.
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| <p>14. Alan Arthur De Smet v. NJ Motor Vehicle Commission (2016-267)</p> <p>15. Alan Arthur De Smet v. NJ Motor Vehicle Commission (2016-268) Consolidated</p> <ul style="list-style-type: none"> • This complaint should be tabled based on legal advice. |
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16. David E. Gross (o/b/o The Estate of Marcia C. Strager) v. Bergen County Prosecutor’s Office (2016-275)
- The Council should dismiss this complaint because it was abandoned by the Complainant and no updated contact information was provided.
17. Bert A. Wailoo v. Kean University (2016-301)
- The Custodian lawfully denied access to the subject request seeking a list of “disciplinary consultations” because it was invalid.
18. Michael Lasane v. NJ Department of Corrections (2016-324)
- The Custodian lawfully denied access to the subject OPRA request because no responsive records existed.
19. Robert McDonnell v. Hillsborough Township (Somerset) (2017-107)
- This complaint should be dismissed because the Complainant withdrew it while at the Office of Administrative Law.
20. Edward Stevens v. New Horizons Community Charter School (Essex) (2018-166)
- The Custodian’s response was insufficient because she failed to respond to each request item individually.
 - The Custodian’s failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).
 - The Custodian unlawfully denied access to the records responsive to OPRA request item No. 1 and must disclose them to the Complainant.

- The Complainant’s request item No. 2 seeking dates of interviews and names of interviewers was invalid because it sought information.
- The portion of the complaint alleging an unlawful denial of access to “interviewers’ notes” is without reasonable factual basis to pursue because the Complainant never sought same in the subject OPRA request. N.J.S.A. 47:1A-7(e).
- The knowing and willful and prevailing party analyses are deferred pending compliance.

VII. Court Decisions of GRC Complaints on Appeal:

- Simmons v. City of Newark, 2018 N.J. Super. Unpub. LEXIS 2313 (App. Div. 2018) (on appeal from GRC Nos. 2015-329 & 2015-343)
- Carter v. Franklin Fire Dist. No. 1 (Somerset), 2018 N.J. Super. Unpub. LEXIS 2189 (App. Div. 2018)

VIII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None

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.