



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
January 31, 2019

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, January 29, 2019, 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. Acting Executive Director’s Report

III. Closed Session

- Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-190)
- Edwin Sheppard v. Cape May County (2016-195) (**FFC Recusal**)

IV. Approval of Minutes of Previous Meetings:

November 13, 2018 Open Session Meeting Minutes
November 13, 2018 Closed Session Meeting Minutes
December 18, 2018 Open Session Meeting Minutes
December 18, 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 Executive Director’s recommendation of dismissal based on jurisdictional, procedural or other defects of the complaint. The Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.



A. Administrative Disposition Adjudications with Recusals (Consent Agenda):

1. Scott Madlinger v. Township of Toms River (Ocean) (2018-284) (**SR Recusal**)
 - All Records Provided in a Timely Manner.

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda):

1. Patrick Trainor v. NJ Office of the Attorney General (2018-273)
 - Unripe Cause of Action.
2. Lonnie Britton v. Superior Court of New Jersey (2019-11)
 - Not Within the Council’s Jurisdiction.

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

1. Michael I. Inzelbuch, Esq. v. Elizabeth Board of Education (Union) (2016-225)
 - Complaint Voluntarily Withdrawn.
2. Paul Schulstad v. Borough of Saddle River (Bergen) (2018-164)
 - Complaint Settled in Mediation.
3. Michael Mastanduno v. NJ Civil Service Commission (2018-196)
 - Complaint Settled in Mediation.
4. John Hart v. Cherry Hill Township (Camden) (2018-272)
 - Complaint Voluntarily Withdrawn.
5. Kyle Steven Kushner v. NJ State Police (2018-310)
 - Complaint Voluntarily Withdrawn.
6. Kyle Bagenstose v. NJ Department of Health (2018-316)
 - Complaint Voluntarily Withdrawn.
7. Steven J. Kossup, Esq. v. NJ State Police (2019-5)
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

The Acting Executive Director’s recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-323) (**SR Recusal**)
 - This complaint should be dismissed because Complainant’s Counsel withdrew it in a letter to the Office of Administrative Law dated December 5, 2018 (based on a settlement agreement).
2. Shawn G. Hopkins v. Borough of West Long Branch (Monmouth) (2014-40) (**SR Recusal**)
 - The Custodian’s failure to respond in a timely manner resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g), (i). However, the Council should decline to order disclosure because the Custodian did so between July 29 and August 27, 2014.
 - 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. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-133) (**SR Recusal**)
 - The Council should determine the reasonable fee amount to which the Complainant is entitled.
 - The Council should find that Complainant is entitled to a fee award of \$4,800.00 representing 16 hours at \$300.00 per hour, with no enhancement.
4. Art Rittenhouse v. Sayreville Economic Redevelopment Agency (Middlesex) (2016-276) (**SR Recusal**)
 - The Custodian failed to bear his burden of proof that he was not required to obtain responsive e-mails from a commissioner and councilman. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010). The Custodian must thus obtain and disclose responsive records.
 - The portion of the Complainant's request seeking identities of those receiving a particular e-mail was an invalid request for information.
 - The knowing and willful analysis is deferred.
5. Vesselin Dittrich v. Hudson County (2017-66) (**SR Recusal**)
 - The Custodian bore her burden of proving a lawful denial of access because no records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
6. Duggan L. Salley v. City of Newark (Essex) (2018-156) (**SR Recusal**)
 - The Custodian failed to comply with the Council's August 28, 2018 Interim Order.
 - The Council's Order is enforceable in Superior Court. N.J.A.C. 5:105-2.9(c); New Jersey Court Rules R. 4:67-6.
 - There is no knowing and willful violation.
 - The Complainant's request for reconsideration should be denied.
7. Sacha Pouliot v. NJ Department of Education (2015-281) (**CH Recusal**)
 - The current Custodian complied with the Council's October 30, 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.

B. Individual Complaint Adjudications with no Recusals:

1. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-141)
 - This complaint should be dismissed because Complainant's Counsel withdrew it in a letter to the Office of Administrative Law dated December 13, 2018 (based on a settlement agreement).

2. Shawn G. Hopkins v. Township of Manalapan (Monmouth) (2014-35)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g), (i).
 - The Custodian may have unlawfully denied to the requested CAMA data and property photographs. The Custodian must disclose the records that exist and identify if certain records do not exist.
 - The knowing and willful and prevailing party analyses are deferred.
3. Shawn G. Hopkins v. Borough of Manasquan (Monmouth) (2014-36)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g), (i).
 - Ms. Palughi unlawfully denied access to the responsive CAMA data. Thus, either her or the Custodian must disclose the responsive records to the Complainant.
 - The Custodian may have unlawfully denied access to at least a portion of the responsive photographs. The Custodian must disclose those records that exist or provide an exemption for those records she is not disclosing.
 - The knowing and willful analysis is deferred.
4. Shawn G. Hopkins v. Borough of Monmouth Beach (Monmouth) (2014-37)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g), (i). However, the Council should decline to order disclosure because the Custodian did so on March 4, 2014 via e-mail.
 - The Custodian lawfully denied access to the requested property photographs because none exist. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
 - There is no knowing and willful violation.
5. Jeff Carter v. Borough of Paramus (Bergen) (2015-104)
 - The Administrative Law Judge’s Initial Decision is “deemed” adopted because the GRC did not get unanimous consent from the parties for a second (2nd) extension of time to accept, reject, or modify same. N.J.S.A. 52:14B-10(c).
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party.
6. Matthew Drange v. Camden County Office of Archives and Records Management (2015-265)
 - The Custodian complied with the Council’s December 18, 2018 Interim Order.
 - There is no knowing and willful violation.
7. Rick Robinson v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-410)
 - The special service charge issue is moot because the Complainant paid same and was provided with responsive records.
 - The Council must conduct an *in camera* review of responsive records.
 - The knowing and willful analysis is deferred.

8. John Paff v. City of Trenton (Mercer) (2016-95)
 - Sgt. Durlacher and/or the current Custodian failed to comply with the Council's October 30, 2018 Interim Order.
 - The Council's Order is enforceable in Superior Court. N.J.A.C. 5:105-2.9(c); New Jersey Court Rules R. 4:67-6.
 - It is possible that a knowing and willful violation occurred. Thus, this complaint should be referred to the Office of Administrative Law for a determination.
 - The Complainant is a prevailing party entitled to an award of reasonable attorney's fees. N.J.S.A. 47:1A-6. For administrative ease, the OAL should determine the total amount.

9. Aakash Dalal v. NJ Office of Homeland Security and Preparedness (2016-169)
 - The Custodian's June 9, 2016 response was insufficient because he failed to address the Complainant's preferred method of delivery and each request item.
 - The Custodian may have unlawfully denied access to 2012 and 2013 press releases. The Custodian must perform a search and disclose those releases that exist.
 - The Custodian lawfully denied access to request item Nos. 2 and 3 based on a "Glomar" response.
 - The knowing and willful analysis is deferred.

10. Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-190)
 - The Custodian complied with the Council's August 28, 2018 Interim Order.
 - The Custodian unlawfully denied access to certain redacted portions of the responsive billing records and must disclose same in accordance with the Council's *In Camera* Examination.
 - The knowing and willful analysis is deferred.

11. Ronald W. Yarbrough (o/b/o Pro-Spec Corporation) v. City of Trenton (Mercer) (2016-230)
 - The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g), (i). The Custodian's eventual response was insufficient because he failed to address the Complainant's preferred method of delivery and each request item.
 - The Custodian may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The Custodian must certify to whether records were located and whether the Complainant was offered inspection of same.
 - The knowing and willful analysis is deferred.

12. Arnav Sood v. West Windsor-Plainsboro Regional School District (Mercer) (2016-241)
 - The Council must conduct an *in camera* review of the redacted e-mail chain.
 - The knowing and willful analysis is deferred.

13. Charles R. Cohen v. City of Englewood (Bergen) (2016-253)
 - This complaint should be dismissed because the Complainant withdrew it in a letter to the Office of Administrative Law dated December 26, 2018.

14. Benny Cardona (o/b/o City of Newark Public Safety Department, Fire Division) v. NJ Department of Health, Division of Public Health Infrastructure Laboratories and Emergency Preparedness (2016-265)
 - The Custodian lawfully denied access to the Complainant's OPRA request because he provided all records that existed. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
15. Frank Hubbard v. NJ State Parole Board (2016-270)
 - The Custodian lawfully denied access to the Complainant's OPRA request because no records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
16. Jackson T. Horowitz v. NJ Office of the State Comptroller (2016-280)
 - The Custodian did not unlawfully deny access to the October 12, 2016 OPRA request because he never received it. Valdes v. N.J. Dep't of Educ., GRC Complaint No. 2012-19 (April 2013).
 - A portion of the Complainant's OPRA request not identifying direct acting drugs was invalid because it required research.
 - The portion of the OPRA request seeking information relevant to Harvoni was valid because it did not require research. The Custodian thus unlawfully denied access; however, the Council should decline to order disclosure because the Complainant received the responsive records from another agency.
 - There is no knowing and willful violation.
17. William Galtieri v. County of Somerset (2016-286)
 - The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g), (i).
 - The Custodian's search was insufficient. Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the Council should decline to order disclosure because the Custodian did so on November 17, 2016.
18. William Galtieri v. County of Somerset (2016-287)
 - The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g), (i).
 - The Custodian's search was insufficient. Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008).
 - The Custodian may have unlawfully denied access to additional e-mails. The Custodian must conduct a new search and certify to the results. Should any additional records exist, the Custodian must provide them to the Complainant.
 - The knowing and willful analysis is deferred.
19. John Mandich v. NJ Department of Corrections (2016-326)
 - The Custodian lawfully denied access to a handwritten letter, but unlawfully denied access to the remaining "[p]arole [r]ecords" responsive to the Complainant's OPRA request. However, the Council should decline to order disclosure because the Custodian did so on January 15, 2019.
 - The Custodian lawfully denied access to the remaining withheld records under multiple statutes, regulations, and case law.

- There is no knowing and willful violation.

20. Mortimer Hetsberger v. NJ Department of Corrections (2017-94)

- The Council should dismiss this complaint due to a failure to locate the Complainant. Taylor v. N.J. Dep't of Corr., GRC Complaint No. 2010-319 (May 2012).

VII. Court Decisions of GRC Complaints on Appeal:

- Moretti v. Bergen Cty. Prosecutor's Office, 2019 N.J. Super. Unpub. LEXIS 64 (App. Div. 2019)

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

- Port Auth. Police Benevolent Ass'n v. Port Auth. of N.Y. & N.J., 2018 N.J. Super. Unpub. LEXIS 2785 (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.