



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**NOTICE OF MEETING**  
**Government Records Council**  
**February 26, 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, February 26, 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**

**IV. Approval of Minutes of Previous Meetings:**

December 18, 2018 Open Session Meeting Minutes  
December 18, 2018 Closed Session Meeting Minutes  
January 31, 2019 Open Session Meeting Minutes  
January 31, 2019 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):**

1. Elie C. Jones v. Township of Teaneck (Bergen) (2019-13) **(SR Recusal)**
  - Duplicate Complaint Filed With the GRC.

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

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

1. Aaron Stiefel (o/b/o Elena & Noam Lefkowitz) v. Teaneck Board of Education (Bergen) (2017-118)
  - Complaint Voluntarily Withdrawn.
2. Alberto Salazar v. NJ Department of Health (2018-288)
  - Complaint Settled in Mediation.
3. Lettuica M. Holloway v. City of Millville (Cumberland) (2018-294)
  - Complaint Voluntarily Withdrawn.
4. Randall and Lynda Burns v. Cape May County Sheriff's Office (2018-298)
  - Complaint Voluntarily Withdrawn.
5. Luis F. Rodriguez v. Kean University (2018-312)
  - Complaint Voluntarily Withdrawn.
6. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute (AADARI) & Baffis Simmons) v. Phillipsburg Police Department (Warren) (2018-315)
  - Complaint Voluntarily Withdrawn.
7. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute (AADARI)) v. City of Long Branch (Monmouth) (2019-16)
  - Complaint Voluntarily Withdrawn.
8. Tara Lynn Huff v. City of Trenton (Mercer) (2019-20)
  - 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. 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.
2. Stephen Schnitzer, Esq. (o/b/o Vito's Trattoria, Inc.) v. NJ Transit (2016-140) **(SR and RBT Recusal)**
  - This case cannot be adjudicated due to lack of quorum.

3. *Art Rittenhouse v. Sayreville Economic Redevelopment Agency (Middlesex)* (2016-276) **(SR Recusal)**
  - The Custodian complied with the Council’s January 31, 2019 Interim Order.
  - There is no knowing and willful violation.
4. *Elouise McDaniel v. Township of Irvington (Essex)* (2017-09) **(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).
5. *Charisa A. Harmon v. Morris County Prosecutor’s Office* (2017-38) **(SR Recusal)**
  - The Custodian has borne his burden of proof that he lawfully utilized the “Glomar” response. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(b); *N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office*, 447 N.J. Super. 182 (App. Div. 2016).
6. *Daran Haber v. Rutgers University* (2017-122) **(SR Recusal)**
  - The original Custodian lawfully denied access to the responsive records under the “academic research” exemption. N.J.S.A. 47:1A-1.1.

**B. Individual Complaint Adjudications with no Recusals:**

1. *Shawn G. Hopkins v. Township of Manalapan (Monmouth)* (2014-35)
  - This complaint should be dismissed because the Complainant withdrew it via e-mail to the GRC on February 12, 2019.
2. *Shawn G. Hopkins v. Borough of Oceanport (Monmouth)* (2014-42)
  - The Custodian unlawfully denied access to the Complainant’s OPRA request on the basis that same was invalid. N.J.S.A. 47:1A-6.
  - The Custodian unlawfully denied access to the responsive CAMA data that existed at the time of the request and must disclose it to the Complainant.
  - The Custodian may have unlawfully denied access to property photographs. The Custodian must either disclose the responsive records or certify if none exist.
  - The knowing and willful and prevailing party analyses are deferred.
3. *Shawn G. Hopkins v. Borough of Shrewsbury* (2014-43)
  - Mr. Walters unlawfully denied the Complainant’s OPRA request based on pending litigation. *Paff v. City of Union City (Hudson)*, GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014).
  - The Custodian and Mr. Walters may have unlawfully denied access to the responsive CAMA data and property photographs that existed at the time of the subject OPRA request. The Custodian and/or Mr. Walters must either disclose the responsive records or certify if none exist.
  - The knowing and willful analysis is deferred.
4. *Shawn G. Hopkins v. City of Long Branch (Monmouth)* (2014-44)
  - The Custodian unlawfully denied access to the Complainant’s OPRA request on the basis that same was invalid. N.J.S.A. 47:1A-6.

- Mr. Butow unlawfully denied access to the Complainant's OPRA request based on pending litigation. Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014). Further, the ACD exemption does not apply to the responsive CAMA data. Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). Thus, the Custodian and/or Mr. Butow must disclose the CAMA data that existed at the time of the OPRA request.
  - The Custodian and/or Mr. Butow may have unlawfully denied access to the responsive property photographs and must either disclose them or certify if none exist.
  - The knowing and willful analysis is deferred.
5. Shawn G. Hopkins v. Township of Neptune (Monmouth) (2014-45)
- The Custodian unlawfully denied access to the responsive CAMA data that existed at the time of the request and must disclose it to the Complainant.
  - The Custodian may have unlawfully denied access to property photographs. The Custodian must either disclose the responsive records or certify if none exist.
  - The knowing and willful and prevailing party analyses are deferred.
6. Stuart J. Moskovitz, Esq. (o/b/o KK Ventures, LLC) v. Stockton University (2015-411)
- The Custodian's response was insufficient because he failed to address each request item. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
  - The Custodian lawfully denied access to a portion of the request because no records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
  - The Custodian lawfully denied access to a portion of the request because it was invalid. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011).
  - There is no knowing and willful violation.
  - The Complainant is not a prevailing party.
7. Libertarians for Transparent Government v. Borough of Westwood (Bergen) (2016-214)
- 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.
8. William Galtieri v. County of Somerset (2016-287)
- The Custodian complied with the Council's January 31, 2019 Interim Order.
  - There is no knowing and willful violation.
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| <p>9. Robert C. Scutro v. County of Union (2016-315)</p> <p>10. Robert C. Scutro v. County of Union (2016-316) <b>Consolidated</b></p> |
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- The Custodian lawfully denied access to the requested security camera footage. Gilleran v. Bloomfield, 227 N.J. 159 (2016).
11. Robert C. Scutro v. County of Union (2016-317)
- The Custodian lawfully denied access to the Complainant's request because it was invalid.

12. *Libertarians for Transparent Government v. Cumberland Regional School District* ((2017-01)

- The Custodian unlawfully denied access to the Complainant's OPRA request on the basis that it was not on the agency's official OPRA request form. Renna v. Cnty. of Union, 407 N.J. Super. 230, 232 (App. Div. 2009). However, the GRC declines to order disclosure because the Custodian provided records on January 30, 2017.
- 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. *Darius Heimer Gittens v. NJ Department of Corrections* (2017-03)

- The Custodian lawfully denied access to the responsive records based on the New Jersey Department of Corrections' promulgated regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(9).

14. *Rory Moore v. Township of Nutley (Essex)* (2017-05)

- The Custodian lawfully denied access to the Complainant's request because it was invalid. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009).

15. *Stacie Percella v. City of Bayonne (Hudson)* (2017-112)

16. *Stacie Percella v. City of Bayonne (Hudson)* (2017-113)

17. *Stacie Percella v. City of Bayonne (Hudson)* (2017-114) **Consolidated**

- The Custodian unlawfully denied access to a portion of the Complainant's April 3, 2017 OPRA request No. 2 seeking overtime information and raises. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq* (Interim Order dated June 29, 2010); Lotito v. N.J. Dep't of Labor, Human Res., GRC Complaint No. 2013-65 (March 2014).
- The Custodian lawfully denied access to the remaining portions of the subject OPRA requests because they asked questions. Dunleavy v. Jefferson Twp. Bd. of Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015).
- There is no knowing and willful violation.

18. *Luis F. Rodriguez v. Kean University* (2017-132)

- The Custodian did not violate N.J.S.A. 47:1A-5(e) because the Complainant's OPRA request did not seek "immediate access" records.
- The Custodian's extensions were unwarranted and unsubstantiated.
- There is no knowing and willful violation.

19. *Larry Michael Welenc v. NJ State Police* (2017-134)

- The Custodian unlawfully denied access to the requested title/position and salary information sought in the Complainant's December 3, 2016 OPRA request. However, the GRC declines to order disclosure because that information was provided to the Complainant on April 28, 2017.

- The Custodian may have unlawfully denied access to the amount and type of pension received by each identified individual. The Custodian must either disclose the responsive personnel information or, alternatively, provide a detailed explanation of how he was able to locate and disclose only one individual's information.
  - The knowing and willful analysis is deferred.
20. Clinton C. Barlow, III v. NJ Motor Vehicle Commission (2017-136)
- The Custodian did not unlawfully deny access to the subject OPRA requests because he never received them. Avila v. Camden Cnty. Prosecutor's Office, GRC Complaint No. 2007-287 (July 2008).
21. Stacie Percella v. City of Bayonne (Hudson) (2017-140)
- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
  - There is no knowing and willful violation.
22. Rafael Martinez v. NJ Department of Banking and Insurance (2017-165)
- The Custodian lawfully denied access to the record identified as at issue in this complaint because none existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
23. Rebecca Anne Panico v. Elizabeth Police Department (Union) (2018-03)
- The Custodian's failure to timely respond 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 any responsive records because he provided all that existed. Burns v. Borough of Collingwood, GRC Complaint No. 2005-68 (September 2005).
  - There is no knowing and willful violation.
24. Megan McNally v. City of Bayonne (Hudson) (2018-16)
- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
  - The GRC has no authority over accuracy or content within a record. N.J.S.A. 47:1A-7(b); Gillespie v. Newark Pub. Sch., GRC Complaint No. 2004-105 (November 2004); Kwanzaa v. Dep't of Corr., GRC Complaint No. 2004-167 (March 2005).
  - The Custodian failed to bear his burden of proving a lawful denial of access to responsive vet bills. N.J.S.A. 47:1A-6. Thus, the Custodian must obtain them from the appropriate animal cruelty investigator and disclose same.
  - The knowing and willful analysis is deferred.

## **VII. Court Decisions of GRC Complaints on Appeal:**

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

- Ganzweig v. Twp. of Lakewood, 2019 N.J. Super. Unpub. LEXIS 235 (App. Div. 2019)

**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.