



**Minutes of the Government Records Council  
April 30, 2019 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:44 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 April 25, 2019.”

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).

Absent: Steven Ritardi, Esq. (Public Member)

GRC Staff in Attendance: Frank F. Caruso (Acting Executive Director), 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. Acting Executive Director's Report:**

### **OPRA Trainings**

The GRC's next training will be on May 13, 2019 in Millville, NJ for the Cumberland Cnty. Clerk's Association.

### **GRC Staffing**

The GRC was previously given approval to hire for the "Case Manager" vacancy previously held by former Staff Attorney Husna Kazmir. The GRC is awaiting word on a potential start date.

### **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 5,172 Denial of Access Complaints. That averages about 309 annual complaints per 16 3/4 program years. So far in the current program year (FY2019), the GRC has received 282 Denial of Access Complaints, which surpassed all of FY2018 filings by 55 complaints. The GRC is quickly approaching its FY2017 total filings of 293 and anticipates surpassing that number by the May 2019 meeting.
- 494 of the 5,172 complaints remain open and active (9.6%). Of those open cases:
  - 3 complaints are on appeal with the Appellate Division (0.6%);
  - 23 complaints are currently in mediation (4.7%);
  - 2 complaints are proposed for the Office of Administrative Law (0.4%);
  - 29 complaints await adjudication by the Office of Administrative Law (5.9%);
  - 82 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (16.6%);
  - 355 complaints are work in progress (72.0%); and
  - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 30,434 total inquiries, averaging about 1,932 annual inquiries per 15 3/4 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2019), the GRC has received 1,475 inquiries (7 inquiries per workday).
- Regarding adjudications, which the GRC tracks in six-month and yearly increments, it should be noted that at the conclusion of today's meeting, staff will have successfully committed 165 agenda items to 2019 agendas to date. That represents an increase of 69 agenda items over the same four-month period last year. Further, staff are on pace to commit 200 or more agenda items over a six-month period for the first time since FY2017.

### III. Closed Session:

- Jeff Carter v. Franklin Fire District No. 1, 2019, N.J. Super. Unpub. LEXIS 590 (App Div. 2019)
- Scott M. Halliwell and Anthony G. Pennant v. Borough of Brooklawn (Camden) (2016-201)
- Micaela P. Bennett v. West Orange Board of Education (2018-209)
- Edwin Gregory Sheppard v. County of Cape May (2019-3) (**FFC Recusal**)

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 1:51 p.m. until 2:26 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Ms. Simons made a motion, which was seconded by Mr. Martucci. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:28 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Ms. Simons, Mr. Martucci; Mr. Ritardi was absent.

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

#### **March 26, 2019 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the March 26, 2019 meeting. Mr. Martucci noted that he confirmed the accuracy of the draft minutes with Donald Palombi, Esq. Ms. Simons made a motion, which was seconded by Mr. Martucci. The motion passed by a unanimous vote.

#### **March 26, 2019 Closed Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the March 26, 2019 meeting. Mr. Martucci noted that he confirmed the accuracy of the draft minutes with Donald Palombi, Esq. 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): None**

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

1. **Aaron I. Lightner v. NJ Department of Treasury, Division of Lottery (2019-28)**
  - No Records Responsive to the Request Exist.
2. **Aaron I. Lightner v. NJ Department of Treasury, Unclaimed Property Administration (2019-29)**
  - No Correspondence Received by the Custodian.
3. **Michael Rinderle v. NJ Department of Corrections (2019-59)**
  - Not a Valid OPRA Request.
4. **Kory S. McClary v. Atlantic County Court Reporter's Office (2019-69)**
  - Not Within the Council's Jurisdiction.

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

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

1. **David Weiner v. Newark Parking Authority (Essex) (2018-189)**
  - Complaint Settled in Mediation.
2. **Scott Brelinsky v. Scotch Plains-Fanwood Public Schools (Union) (2018-254)**
  - Complaint Settled in Mediation.
3. **Elizabeth Perez v. Borough of Tinton Falls (Monmouth) (2018-271)**
  - Complaint Settled in Mediation.
4. **Scott Brelinsky v. Scotch Plains-Fanwood Public Schools (Union) (2018-295)**
  - Complaint Settled in Mediation.
5. **Sharon Racioppi v. Township of Mahwah (Bergen) (2018-307)**
  - Complaint Settled in Mediation.
6. **Rahgeam Jenkins v. NJ Department of Corrections (2019-12)**
  - Complaint Settled in Mediation.
7. **Victor Manuel Luna v. City of Trenton Police Department (Mercer) (2019-46)**
  - Complaint Voluntarily Withdrawn.
8. **Luis F. Rodriguez v. Kean University (2017-54)**
  - Complaint Voluntarily Withdrawn.
9. **Michael Doherty v. Edison Board of Education (Middlesex) (2019-60)**
  - Complaint Voluntarily Withdrawn.
10. **John Zurlo v. Borough of North Caldwell (Essex) (2019-66)**
  - Complaint Voluntarily Withdrawn.
11. **Dustin Racioppi v. NJ Schools Development Authority (2019-67)**
  - Complaint Voluntarily Withdrawn.
12. **Arthur H. Lang v. Lakewood Board of Education (Ocean) (2019-72)**
  - 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. **Michael Doss v. Borough of Bogota (Bergen) (2013-315) (SR Recusal)**
2. **Michael Doss v. Borough of Bogota (Bergen) (2014-152) (SR Recusal) Consolidated**
  - The Custodian, or her designee, failed to comply with the Council's June 27, 2017 Interim Order.
  - These complaints should be remanded back to the OAL for a hearing in accordance with N.J.S.A. 52:14B-9.
  - 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 majority vote; Mr. Ritardi recused.
3. **Matthew Drange v. Paterson Police Department (Passaic) (2015-252) (SR Recusal)**
  - The Custodian complied with the Council's March 26, 2019 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
4. **Jameel Mikal Rollins v. Essex County Prosecutor's Office (2017-42) (SR Recusal)**
  - The portion of the Complainant's request seeking "promis gavel" is invalid. Franklin v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-308 (August 2008).
  - The Custodian lawfully denied access to "rap sheets." Franklin, GRC 2016-308.
  - 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.
5. **Charlene Barth v. Rutgers University (2017-121) (SR Recusal)**
  - The original Custodian unlawfully denied access to the responsive bids and must disclose same to the Complainant, 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. Ms.

Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

6. **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.

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

1. **Shawn G. Hopkins v. City of Long Branch (Monmouth) (2014-44)**
  - The Custodian did not fully comply with the Council's February 26, 2019 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
2. **Shawn G. Hopkins v. Borough of Red Bank (Monmouth) (2014-46)**
  - The Custodian complied with the Council's March 26, 2019 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.
3. **Shawn G. Hopkins v. Borough of Sea Girt (Monmouth) (2014-47)**
  - The Custodian complied with the Council's March 26, 2019 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. Ms.

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

4. **Shawn G. Hopkins v. Borough of Spring Lake (Monmouth) (2014-50)**

- The Custodian's failure to timely respond resulted in a "deemed" denial. N.J.S.A. 47:1A-5(g); (i).
- 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 and photographs in accordance with the OAL's decision in 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 must disclose the CAMA data and photographs that existed at the time of the OPRA request. If no photographs exist, the Custodian must certify to this fact.
- The knowing and willful and prevailing party analyses are 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.

5. **Shawn G. Hopkins v. Township of Upper Freehold (Monmouth) (2014-65)**

- 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 unlawfully denied access to the responsive CAMA data and may have unlawfully denied access to the property photographs that existed at the time of the subject OPRA request. The Custodian must either disclose the responsive records or certify if none 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

6. **Shawn G. Hopkins v. Rockaway Township (Morris) (2014-146)**

- The current Custodian complied with the Council's March 26, 2019 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.

7. **Matthew Drange v. City of Plainfield Police Department (Union) (2015-229)**

- The Custodian complied with the Council's March 26, 2019 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

8. **William Mark Scott v. NJ Health Care Facilities Financing Authority (2015-256)**

- The Custodian's response was sufficient. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
- The Council should grant Deborah's motion to intervene. N.J.A.C. 1:1-16.3(a).
- The Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6; 26 U.S.C. § 6103.
- 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 writing. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

9. **Richard E. Wenger, Esq. (o/b/o David Pereira) v. Voorhees Fire District No. 3 (Camden) (2016-80)**

- The Council should dismiss this complaint because Complainant's Counsel withdrew same from the OAL.
- 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. **Scott M. Halliwell and Anthony Pennant v. Borough of Brooklawn (Camden) (2016-201)**

- The Custodian failed to comply fully with the Council's August 28, 2018 Interim Order.
- The Custodian shall comply with the Council's *In Camera* Examination findings.
- The Custodian shall disclose the portion of all e-mails containing "sender, recipient, date, time, subject, and salutations." Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Mr. Rosado noted that the proposed *In Camera*



Examination was amended in accordance with the Council's closed session comments. Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as amended. Mr. Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.

11. **Libertarians for Transparent Government v. Cumberland Regional School District (2017-1)**

- The Council should dismiss this 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

12. **William A. Goode, Jr. v. Little Ferry Board of Education (Bergen) (2017-21)**

- The Custodian's failure to timely respond resulted in a "deemed" denial. N.J.S.A. 47:1A-5(g); (i). However, the GRC declines to order disclosure of responsive records because the Custodian provided them to the Complainant on January 27, 2017.
- 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 Ms. Simons seconded the motion. The motion passed by a unanimous vote.

13. **Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2017-22)**

- The Custodian bore his burden of proving that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6.
- 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.

14. **Betsy Cross v. Wall Township Board of Education (Monmouth) (2017-29)**

- The Custodian unlawfully denied access to the responsive record. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure because the Complainant has the requested record in her possession.
- 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.

**15. Earl Hammond v. NJ Department of Corrections (2017-32)**

- The Custodian lawfully denied access to the Complainant's OPRA request item No. 1 for a log book page. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(13).
- The Complainant's request item No. 2 was invalid. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).
- 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. Rhonda Peters v. Township of Mansfield (Warren) (2017-33)**

- The Custodian's failure to timely respond resulted in a "deemed" denial. N.J.S.A. 47:1A-5(g); (i).
- The Custodian may have unlawfully denied access to the responsive records. The Custodian must complete her search and either disclose those records located or certify if none existed.
- The knowing and willful and prevailing party analyses are 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.

**17. Libertarians for Transparent Government v. Elizabeth Board of Education (Union) (2017-34)**

- The Custodian's failure to timely respond to the Complainant's November 15, 2016 OPRA request resulted in a "deemed" denial. N.J.S.A. 47:1A-5(g); (i).
- The Custodian lawfully denied access to the subject settlement agreement because it was not finalized at the time of both OPRA requests. Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013).
- The Custodian lawfully denied access to the portion of the October 25, 2016 request item No. 2 as invalid and for seeking draft documents.
- 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.

18. **Regino De La Cruz, Esq. v. City of Union City (Hudson) (2017-35)**

- The Custodian's response was insufficient because she failed to provide a specific lawful basis for denying access. N.J.S.A. 47:1A-5(g).
- The Custodian lawfully denied access to the Complainant's request because it was invalid. Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015).
- 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.

19. **Askiaa J. Nash v. Newark Public School (Essex) (2017-37)**

- The Council should dismiss this complaint because the Complainant failed to state a claim. Loigman v. Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014).
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Mr. Stewart noted that he changed the heading on page 2 to "Deficient Complaint" and removed the second paragraph in its entirety. Mr. Stewart stated that the overall conclusion did not change, but the edits were substantial enough to identify as an amendment. 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.

20. **Hamid Abdul-Shabazz v. Passaic County Prosecutor's Office (2017-41)**

- The Custodian lawfully denied access to OPRA request item No. 1 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 the requested criminal histories. N.J.S.A. 47:1A-6; Lewis v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018).
- 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.

21. **Henry Savelli v. Borough of Clayton (Gloucester) (2017-46)**

- The Custodian unlawfully denied access to the Complainant's OPRA request on the basis that it was invalid. Paff v. Twp. of Galloway, 229 N.J. 340, 353 (2017). Thus, the Custodian must disclose the responsive records to the Complainant.
- 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.

22. **Ricky Roman v. NJ Department of Corrections (2017-47)**

- The Custodian lawfully denied access to the requested phone records pursuant to the N.J. Dep't of Corrections' regulations. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(12). The GRC also declines to address whether the Custodian was required to convert the audio recording into a transcript because same is exempt.
- 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.

23. **Carey Cornett v. Borough of North Haledon (Passaic) (2017-50)**

- 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).
- 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.

24. **Linda D. Walls v. Newark Public Schools (Essex) (2017-52)**

- The Custodian bore her burden of proving that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6.
- The requested information is exempt as a personnel record under OPRA. N.J.S.A. 47:1A-10. The Custodian thus lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.
- 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.

25. **James J. Capone v. Kean University (2017-60)**

- The Custodian lawfully denied access to the Complainant's OPRA request seeking "Supervisory Conflicts of Interest Certification" forms under the personnel exemption. N.J.S.A. 47:1A-6; 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. Mr.

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

**26. Casey D. Terry v. NJ Department of Corrections (2017-147)**

- The Custodian did not unlawfully deny access to the subject request because he never received it. Avila v. Camden Cnty. Prosecutor's Office, GRC Complaint No. 2007-287 (July 2008).
- 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.

**27. David Herron v. Paterson Board of Education (Passaic) (2018-160)**

- The Custodian complied with the Council's March 26, 2019 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. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

**28. Micaela P. Bennett v. West Orange Board of Education (Essex) (2018-209)**

- This complaint should be referred to the OAL for a determination on the Complainant's objection to representation and appropriate action as applicable. N.J.A.C. 5:105-1 et seq.; N.J.A.C. 1:1-5.3.
- The OAL should also determine the access issue, as well as the knowing and willful issue if an unlawful denial of access occurred.
- 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.

**29. Edwin Gregory Sheppard v. County of Cape May (2019-3)**

- This complaint should be referred to the OAL for a determination on the Complainant's objection to representation and appropriate action as applicable.
- The OAL should also determine the access issue, as well as the knowing and willful issue if an unlawful denial of access occurred.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Mr. Stewart stated that he amended the analysis to include additional boilerplate language regarding the objection to representation issue on page 5. Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as amended. 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:**

- Gordon v. City of Orange Twp. Essex, 2019 N.J. Super. Unpub. LEXIS 909 (App. Div. 2019): The Appellate Division affirmed the Government Records Council's determination that, although the Defendant violated N.J.S.A. 47:1A-5(i) by failing to provide the requested records within the allotted time, the Defendant's actions did not support a finding that she knowingly and willfully violated OPRA based on the totality of the circumstances.

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

- Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (App. Div. 2019): The Appellate Division affirmed the trial court's denial of an award for counsel fees against the Plaintiff (an attorney acting on his own behalf) under N.J.S.A. 47:1A-6, but on different grounds. The court held that it is well-settled that an attorney who represents himself or herself is not entitled to recover counsel fees, even in cases involving fee-shifting statutes.

**IX. Complaints Adjudicated in Federal Court: None**

**X. Public Comment:**

- Ms. Micaela Bennett (Complainant in GRC Complaint No. 2018-209):
  - Ms. Bennett thanked the Council for their service to the citizens of New Jersey.
  - Ms. Bennett suggested that the Council considering stating the specific reasons for going into closed session. The Council noted that the reasons were part of the closed session resolution. Mr. Caruso suggested that Ms. Bennett may be referring to the specific Open Public Meetings Act citations.
- Ms. Betsy Cross (Complainant in GRC Complaint No. 2017-29):
  - Ms. Cross stated that she was already in receipt of the record at issue in GRC 2017-29 at the time that she filed her complaint. Ms. Cross stated that she disagreed with the Council's decision and wanted to appeal it. The Council advised Ms. Cross that the "Public Comment" portion of the meeting did not allow for testimony. Mr. Caruso noted that the decision documents always include information on the next procedural steps for parties disagreeing with the Council's decision.
  - Ms. Cross stated that it took way too long for the Council to adjudicate her complaint. Ms. Cross noted that the GRC needs additional staff members.

**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 unanimous vote.

The meeting adjourned at 3:00 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: May 21, 2019