



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
June 25, 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, May 21, 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

- Lewis J. DeEugenio v. Borough of Glassboro (Gloucester) (2016-254) – In Camera Review ([N.J.A.C. 5:105-2.8\(g\)](#)).

IV. Approval of Minutes of Previous Meetings:

May 21, 2019 Open Session Meeting Minutes
May 21, 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): None

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

1. Kafele K. Bomani v. Atlantic County Prosecutor's Office (2017-131)
 - No Correspondence Received by the Custodian.

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

1. Cynthia A. McBride (o/b/o Charles Jones – A Data Trace Company) v. The North Hudson Sewerage Authority (Hudson) (2018-292)
 - Complaint Voluntarily Withdrawn.
2. Timothy N. Glen v. Woodbury Police Department (Gloucester) (2019-37)
 - Complaint Settled in Mediation.
3. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-40)
 - Complaint Settled in Mediation.
4. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-48)
 - Complaint Settled in Mediation.
5. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-49)
 - Complaint Settled in Mediation.
6. Clifford P. Yannone v. NJ Department of Corrections (2019-57)
 - Complaint Settled in Mediation.
7. Franklin Buday v. Township of Franklin (Somerset) (2019-61)
 - Complaint Settled in Mediation.
8. Clifford P. Yannone v. NJ Department of Corrections (2019-62)
 - Complaint Settled in Mediation.
9. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-77)
 - Complaint Settled in Mediation.
10. Joseph Iko v. Township of Old Bridge (Middlesex) (2019-101)
 - 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:

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| <ol style="list-style-type: none">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<ul style="list-style-type: none">• The Custodian's request for reconsideration should be denied.• The Council's April 30, 2019 Interim Order remains in effect. |
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3. Christa L. Hayes v. City of Newark (Essex) (2017-65) **(SR Recusal)**
 - The Custodian lawfully denied access to OPRA request item No. 1 because no records existed at the time of the OPRA request. Goeckel v. Chatham Borough Police Dep't (Morris), GRC Complaint No. 2013-356 (July 2014).

- The Custodian lawfully denied access to OPRA request item No. 2 because no records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
4. **Elouise McDaniel v. Township of Irvington (Essex) (2017-108) (SR Recusal)**
 - The Custodian violated OPRA by conducting an insufficient search for records responsive to the February 22, 2017 OPRA request. Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008).
 - The Custodian's failure to timely respond to the Complainant's March 22, 2017 OPRA request resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); (i).
 - The Complainant's March 22, 2017 OPRA request was invalid because it required research. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012).
 - There is no knowing and willful violation.
 5. **David Weiner v. County of Essex (2017-189) (SR Recusal)**
 - The original Custodian may have unlawfully denied access to a complete listing of every Division of Family Assistance and Benefits employee. N.J.S.A. 47:1A-6. The Custodian must either produce a new list or certify that the record initially provided was complete.
 - The knowing and willful analysis is deferred.
 6. **Ralph E. Marsh v. County of Essex (2017-198) (SR Recusal)**
 - The original Custodian's failure to respond to the Complainant's August 23, 2017 OPRA request resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); (i).
 - The Custodian lawfully denied access to OPRA request item No. 2 because no records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
 - There is no knowing and willful violation.
 7. **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. **Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-141)**
 - Complainant's Counsel's request for reconsideration should be denied.
 - The Custodian knowingly and willfully violated OPRA and is subject to the civil penalty. N.J.S.A. 47:1A-11. Because this is his third violation in the last ten (10) years, the Custodian must remit from his own personal funds \$5,000 made payable to the Treasurer of the State of New Jersey within twenty (20) days from receipt of the Council's Order.
2. **Shawn G. Hopkins v. Borough of Manasquan (Monmouth) (2014-36)**
 - The Custodian did not fully comply with the Council's January 31, 2019 Interim Order.

- The Council provides the Custodian a final opportunity to obtain and disclose the photographs responsive to the Complainant's OPRA request. Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-218 *et seq.* (Interim Order dated April 26, 2016).
 - The knowing and willful analysis is deferred.
3. Shawn G. Hopkins v. City of Long Branch (Monmouth) (2014-44)
 - 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.
 4. Shawn G. Hopkins v. Borough of Red Bank (Monmouth) (2014-46)
 - 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.
 5. Shawn G. Hopkins v. Borough of Sea Girt (Monmouth) (2014-47)
 - 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.
 6. Shawn G. Hopkins v. Borough of Spring Lake (Monmouth) (2014-50)
 - The current Custodian complied with the Council's April 30, 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.
 7. Shawn G. Hopkins v. Rockaway Township (Morris) (2014-146)
 - The Council should, based on a mistake, amend conclusion No. 2 to consider whether Assessor Burek knowingly and willfully violated OPRA. N.J.A.C. 5:105-2.10(a).
 - The Custodian did not knowingly and willfully violate OPRA. However, Assessor Burek may have knowingly and willfully violated OPRA. Thus, this complaint should be referred to the Office of Administrative Law for a fact-finding hearing to determine this issue.
 - The prevailing party fee analysis is deferred.
 8. Marie W. Collinson v. Unity Charter School (Morris) (2016-226)
 - The Custodian did not fully comply with the Council's May 21, 2019 Interim Order.
 - There is no knowing and willful violation.
 9. Lewis J. DeEugenio, Jr. v. Borough of Glassboro (Gloucester) (2016-254)
 - The Custodian complied with the Council's December 18, 2018 Interim Order.
 - The *In Camera* Examination revealed that the Custodian lawfully denied access to all responsive records. N.J.S.A. 47:1A-6.
 - The Council should decline to address the knowing and willful issue because of the lawful denial of access.
 - The Complainant is not a prevailing party entitled to an award of attorney's fees.

10. Christina Moreira v. Elizabeth Board of Education (Union) (2017-24)
- The Custodian complied with the Council’s May 21, 2019 Interim Order.
 - There is no knowing and willful violation.
11. Henry Savelli v. Borough of Clayton (Gloucester) (2017-46)
- This complaint should be dismissed because the Complainant withdrew it on May 14, 2019. No further adjudication is required.
12. Serges Demefack (o/b/o American Friends Service Committee Newark Office) v. Monmouth County (2017-75)
- The portion of the Complainant’s OPRA request item No. 1 seeking “all records” and “aggregate data” is invalid because it failed to identify specific records. Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
 - The portion of the Complainant’s OPRA request item No. 1 seeking immigration detainer forms is a valid request.
 - OPRA request item No. 2 seeking communications with United States Immigration and Customs Enforcement is valid; however, the Council should decline to order disclosure because responsive records were provided as part of the Statement of Information.
 - The Custodian lawfully denied access to the immigration detainer forms. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); 8 C.F.R. 236.6.
 - The Custodian did not deny access to records responsive to the Complainant’s OPRA request item No. 3 because she disclosed all records that existed. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
 - There is no knowing and willful violation.
13. Robert Bell v. Hudson County Prosecutor’s Office (2017-86)
- The Custodian complied with the Council’s May 21, 2019 Interim Order.
 - There is no knowing and willful violation.
14. Eric Petr v. Town of Morristown (Morris) (2017-99)
- The Custodian violated OPRA by failing to respond to the Complainant’s OPRA request seeking overtime information “immediately.” N.J.S.A. 47:1A-5(e).
 - There is no knowing and willful violation.
15. James Mullin v. Bergen County Sheriff’s Office (2017-102)
- The GRC must conduct an *in camera* review of the “2017 County Law Services Review Plan” to determine the validity of the Custodian’s asserted exemption.
 - The knowing and willful analysis is deferred.
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| <p>16. Charles Street v. North Arlington School District (Bergen) (2017-103)</p> <p>17. Charles Street v. North Arlington School District (Bergen) (2017-104) Consolidated</p> <ul style="list-style-type: none"> • The Custodian violated OPRA by conducting an insufficient search for records responsive to the April 13, 2017 OPRA request. <u>Schneble v. N.J. Dep’t of Env’tl. Prot.</u>, GRC Complaint No. 2007-220 (April 2008). However, the Council should decline to order disclosure because the Custodian did so on October 24, 2017. |
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- The requested lockdown footage is exempt from disclosure under OPRA’s emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Bloomfield, 227 N.J. 159 (2016).
 - There is no knowing and willful violation.
18. Stacie Percella v. City of Bayonne (Hudson) (2017-111)
- The Custodian did not unlawfully deny access to the Complainant’s April 3, 2017 OPRA request because he disclosed all responsive records. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
19. Robert McDonnell v. Hillsborough Township (Somerset) (2017-115)
- The Custodian’s failure to timely respond to the Complainant’s OPRA request resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); (i).
 - There is no knowing and willful violation.
20. Nichalos Watson v. Passaic County Prosecutor’s Office (2017-116)
- OPRA request item Nos. 1 and 2 seeking “criminal records” and “pre-trial discoveries” are blanket requests that are invalid under OPRA. Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
 - The Custodian lawfully denied access to OPRA request item No. 3 because pre-sentence reports are considered “inter-agency, or intra-agency advisory, consultative, or deliberative material.” N.J.S.A. 47:1A-1.1; Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014).
21. Misael Cordero v. New Jersey State Library (2017-117)
- The Complainant’s OPRA request sought material from the State Library’s inventory, which are not “government records” under OPRA. Schwarz v. N.J. State Library, GRC Complaint No. 2004-123 (March 2005). Thus, the original Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.
22. Charlene Barth v. Rutgers University (2017-121)
- The Custodian complied with the Council’s April 30, 2019 Interim Order.
 - There is no knowing and willful violation.
23. Larry Michael Welenc v. NJ State Police (2017-134)
- Complainant’s request for reconsideration should be denied.
24. Humberto Benitez v. NJ Department of Corrections (2017-137)
- The Complainant’s request was invalid as a blanket request for a class of various records. Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
25. Rocco Maldonado v. Ocean County Prosecutor’s Office (2017-146)
- The Custodian complied with the Council’s May 25, 2019 Interim Order.
 - There is no knowing and willful violation.

26. Pamela Macek v. Bergen County Sheriff's Office (2017-156)

27. Pamela Macek v. Bergen County Sheriff's Office (2017-157)

28. Pamela Macek v. Bergen County Sheriff's Office (2017-158) **Consolidated**

- Handwritten communications are exempt from disclosure as “inter-agency, or intra-agency advisory, consultative, or deliberative material.” N.J.S.A. 47:1A-1.1; O’Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534 (App. Div. 2007).
- The Custodian may have unlawfully denied access to e-mails responsive to the Complainant’s three (3) OPRA requests. The Custodian must conduct a new search and either 1) disclose all new e-mails located, 2) provide a lawful basis for denial of any new e-mails to which he is denying access, or 3) certify if no additional e-mails were located.
- The Custodian lawfully denied access to the portions of the OPRA requests seeking texts, faxes and/or voicemail because none existed. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
- The Custodian did not unlawfully deny access to the Complainant’s June 1, 2017 OPRA request item No. 1 because he provided the record responsive to said request. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
- The knowing and willful analysis is deferred.

29. Edwin Sheppard v. Cape May County (2017-179)

- 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 access and knowing and willful analyses are deferred.

30. Brian Keith Bragg v. Rutgers University (2017-185)

- The Complainant’s request was invalid because it failed to sufficiently identify the records sought. Boslet v. Greenwich Twp. (Warren), GRC Complaint No. 2012-29 (March 2013).

31. Stacie Percella v. City of Bayonne (Hudson) (2017-203)

32. Stacie Percella v. City of Bayonne (Hudson) (2017-204) **Consolidated**

- The portion of the Complainant’s August 14, 2017 request asking multiple questions is invalid. Dunleavy v. Jefferson Twp. Bd. of Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015).
- The Custodian unlawfully denied access to the portion of the August 14, 2017 OPRA request seeking Ms. Servodio’s “step,” because it is part of a “payroll record.” N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004).
- The Custodian unlawfully denied access to comprehensive records responsive to the Complainant’s August 23, 2017 OPRA request seeking Ms. Davis’ raise history. Lotito v. N.J. Dep’t of Labor, Human Res., GRC Complaint No. 2013-65 (March 2014). However, the Council should decline to order disclosure because the Custodian disclosed same on November 28, 2017.
- There is no knowing and willful violation.

33. Scott Madlinger v. Berkeley Township (Ocean) (2018-130)

- The Complainant's OPRA request seeking a particular type of document for a specified time period is valid. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).
- The Custodian may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The Custodian must perform a sufficient search and disclose those responsive records located. Should the Custodian believe a special service charge is warranted, she must estimate same and notify the Complainant of the amount.
- The knowing and willful analysis is deferred.

VII. Court Decisions of GRC Complaints on Appeal: None.

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

- 280 Erie St., LLC v. City of Jersey City, 2019 N.J. Super. Unpub. LEXIS 1128 (App. Div. 2019)
- Garcia v. Bergen County Prosecutor's Office, 2019 N.J. Super. Unpub. LEXIS 1139 (App. Div. 2019)
- Libertarians for Transparent Gov't v. New Jersey State Police, 2019 N.J. Super. Unpub. LEXIS 1156 (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.