



**Minutes of the Government Records Council  
November 12, 2019 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:32 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 November 6, 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), Donald Palombi (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq., Public Member

GRC Staff in Attendance: Frank F. Caruso (Executive Director), Rosemond Bordzoe (Secretary), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Brandon Garcia (Case Manager), and Deputy Attorney General Debra Allen.

Ms. Berg Tabakin advised that copies of the agenda are available by the conference room door.

## II. Executive Director's Report:

### OPRA Trainings

- The GRC's next scheduled training is November 20, 2019 at the N.J. League of Municipalities Annual Conference in Atlantic City, NJ.

### Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,312 Denial of Access Complaints. That averages about 307 annual complaints per 17 1/3 program years. So far in the current program year (FY2020), the GRC has received 107 Denial of Access Complaints.
  - The GRC is currently on pace to reduce its weekly open cases (approximately 425 should all agenda items move today) by nearly 100 complaints since the December 2018 meeting (511).
- 461 of the 5,312 complaints remain open and active (8.7%). Of those open cases:
  - 7 complaints are on appeal with the Appellate Division (1.5%);
  - 29 complaints are currently in mediation (6.3%);
  - 2 complaints are proposed for the Office of Administrative Law (0.4%);
  - 31 complaints await adjudication by the Office of Administrative Law (6.7%);
  - 106 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (23.0%);
  - 286 complaints are work in progress (62.0%); and
  - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 31,382 total inquiries, averaging about 1,925 annual inquiries per 16 1/3 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2020), the GRC has received 608 inquiries (6.6 inquiries per workday).

## III. Closed Session

- Arnav Sood v. West Windsor-Plainsboro District (Mercer) (2016-241) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- James Mullin v. Bergen County Sheriff's Office (2017-102) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Robert S. Daniel v. NJ Transit (2017-164) *In Camera* Review (N.J.A.C. 5:105-2.8(g)). **(SR Recusal)**
- Richard E. Salkin v. City of Hackensack (Bergen) (2017-191) *In Camera* Review (N.J.A.C. 5:105-2.8(g)). **(SR Recusal)**
- Edwin Sheppard – Legal Advice (N.J.S.A. 10:4-12(b)(7)) **(FC & S. Rosado Recusal)**

Ms. Berg Tabakin called for a motion to go into closed session. Ms. Simons made a motion, and Mr. Ritardi seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:38 p.m. until 2:29 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Ms. Simons made a motion, which was seconded by Mr. Palombi. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:29 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Ms. Simons, and Mr. Palombi, and Mr. Ritardi.

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

##### **September 24, 2019 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the September 24, 2019 meeting. Mr. Donald Palombi confirmed the accuracy of the draft minutes with Mr. Thurman Barnes. Ms. Simons made a motion, which was seconded by Mr. Ritardi. The motion passed by a majority vote.

##### **September 24, 2019 Closed Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the September 24, 2019 meeting. Mr. Donald Palombi confirmed the accuracy of the draft minutes with Mr. Thurman Barnes. Mr. Palombi made a motion, which was seconded by Mr. Ritardi. The motion passed by a majority 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 Executive Director’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. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-168)**
  - All Responsive Records Provided in a Timely Manner.
2. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-170)**
  - All Responsive Records Provided in a Timely Manner.
3. **Stephen J. Bleistine v. South Harrison Township (Gloucester) (2019-196)**
  - Unripe Cause of Action.
4. **Luis F. Rodriguez v. Kean University (2019-211)**
  - Duplicate Complaint Filed With the GRC.

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

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

1. **Raymond Barratt v. Borough of Watchung (Somerset) (2017-240)**
  - Complaint Voluntarily Withdrawn,
2. **Heather Fiore v. Borough of Hopatcong (Sussex) (2019-55)**
  - Complaint Settled in Mediation.
3. **Kevin J. O'Donnell, Esq. (o/b/o Taxi & Limousine, LLC d/b/a One Medical Transport) v. Township of Lakewood (Monmouth) (2019-78)**
  - Complaint Settled in Mediation.
4. **David Weiner v. County of Essex (2019-104)**
  - Complaint Settled in Mediation.
5. **Luis F. Rodriguez v. Kean University (2019-190)**
  - Complaint Voluntarily Withdrawn.
6. **Luis F. Rodriguez v. Kean University (2019-201)**
  - Complaint Voluntarily Withdrawn.

**VI. New Business – Cases Scheduled for Individual Complaint Adjudication**

**A. Individual Complaint Adjudications with Recusals:**

A brief summary of the Executive Director's recommended action is under each complaint:

1. **Robert S. Daniel v. NJ Transit (2017-164) (SR Recusal)**
  - The Custodian failed to comply with the Council's July 30, 2019 Interim Order.
  - The *In Camera* Examination reveals that the Custodian lawfully redacted the responsive records. N.J.S.A. 47:1A-6.
  - There is no knowing and willful violation.
  - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. **Richard E. Salkin v. City of Hackensack (Bergen) (2017-191) (SR Recusal)**
  - The Custodian complied with the Council's September 24, 2019 Interim Order.
  - The *In Camera* Examination reveals that the Custodian lawfully redacted the responsive e-mail. N.J.S.A. 47:1A-6.
  - The Council should decline to address the knowing and willful analysis.
  - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as

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

3. **Elana Knopp v. City of Newark (Essex) (2018-4) (SR Recusal)**

- The Custodian's failure to immediately respond to the portion of the Complainant's OPRA request seeking contracts resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(e); N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Custodian's response was insufficient because he failed to respond to each request item individually. Graumann v. Newfield Police Dep't (Gloucester), GRC Complaint No. 2014-314 (May 2015).
- The Custodian's search was insufficient. Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008).
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

4. **Tineen Howard v. NJ Transit (2018-43) (SR Recusal)**

- The Custodian lawfully denied access to the requested Trenton Transit Center camera footage under the security and surveillance exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-177 (2016).
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Palombi made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

5. **Colleen Wilson v. NJ Transit (2018-48) (SR Recusal)**

- The GRC must conduct an *in camera* review of the responsive bridge inspection reports to determine whether same are exempt under the security and surveillance exemption, as well as under Executive Order No. 21 (Gov. McGreevey, 2002).
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

6. **Robert Byrd v. Essex County Prosecutor's Office (2018-57) (SR Recusal)**

- The Custodian lawfully denied access to the requested police and lab reports under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 569 (2017);

Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009).

- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Palombi made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

7. **Anonymous v. Rutgers University (2018-101) (SR Recusal)**

- The Custodian lawfully denied access to the responsive list of individuals banned from Rutgers University property under the emergency or security information exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

8. **Gregory Gibbs v. Atlantic County Prosecutor's Office (2018-14) (JS Recusal)**

- This case cannot be adjudicated due to lack of quorum.

9. **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.

**\*\* Mr. Palombi exited the meeting at 2:38 p.m.\*\***

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

1. **Arnav Sood v. West Windsor-Plainsboro Regional School District (Mercer) (2016-241)**

- The Custodian complied with the Council's January 31, 2019 Interim Order.
- The Custodian shall comply with the Council's *In Camera* Examination Findings, including the required disclosure of e-mail header information.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

2. **Scott DiRoma v. NJ State Parole Board (2016-278)**

- The Custodian complied with the Council's September 24, 2019 Interim Order.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a

motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

3. **Jeffrey J. Gural v. Cinnaminson Township (Burlington) (2016-282)**

- The Council shall dismiss this complaint because Complainant's Counsel withdrew same in writing via e-mail on October 28, 2019.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

4. **Shamsiddin Abdur-Raheem v. NJ State Police (2016-291)**

- 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 bear her burden of proving that the responsive chain-of-custody reports were exempt from disclosure as criminal investigatory records. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc., 229 N.J. 541. Thus, the Custodian must disclose the responsive reports to the Complainant.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

5. **Jesse Wolosky v. Township of Jefferson (Morris) (2017-61)**

- The Custodian complied with the Council's September 24, 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 Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

6. **James Mullin v. Bergen County Sheriff's Office (2017-102)**

- The Custodian complied with the Council's June 25, 2019 Interim Order.
- The *In Camera* Examination reveals that the Custodian unlawfully denied access to the responsive record and must disclose same to Complainant. N.J.S.A. 47:1A-6.
- The knowing and willful analysis is deferred.

- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

7. **Mark Demitroff v. Buena Vista Township (Atlantic) (2017-169)**

- A plain reading of OPRA supports that social media records are “government records” subject to disclosure when they are “made, maintained or kept on file . . . or received in the course of . . . official business. . .” N.J.S.A. 47:1A-1.1.
- The Custodian and Mayor Chiarello may have unlawfully denied access to the requested GoFundMe records. N.J.S.A. 47:1A-1.1; Larkin v. Borough of Glen Rock, Docket No. BER-L-2573-18 (June 15, 2018). Thus, the Custodian and Mayor Chiarello must attempt to locate and 1) disclose responsive records; or 2) certify if none exist. Both the Custodian and Mayor Chiarello must also provide a detailed certification explaining their search.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Caruso noted that the proposed findings were amended to require certifications from both the Custodian and Mayor Chiarello. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

8. **Peter J. Cresci v. City of Bayonne (Hudson) (2017-173)**

- The Custodian complied with the Council’s August 27, 2019 Interim Order.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

9. **Richard B. Costigan v. Cape May County Prosecutor’s Office (2017-184)**

- The current Custodian did not fully comply with the Council’s September 24, 2019 Interim Order.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.



10. **Tara Park v. Township of Monroe (Gloucester) (2017-200)**

- The Council shall dismiss this complaint because the Complainant withdrew same in writing via e-mail on October 1, 2019.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

11. **Kevin Lee v. NJ Office of the State Comptroller (2017-206)**

- The Council should grant Health Management Services' motion to intervene. N.J.A.C. 1:1-16.3(a); Gill v. N.J. Dep't of Banking & Ins., 404 N.J. Super. 1, 10-11 (App. Div. 2008).
- The GRC must conduct an *in camera* review of unredacted project scenarios to determine whether same are exempt under the cited exemptions.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

12. **Richard A. Cielez v. NJ State SPCA (2017-218)**

- 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's failure to submit a Statement of Information resulted in a violation of the GRC's regulations. N.J.A.C. 5:105-2.4(a).
- This complaint should be referred to the Office of Administrative Law for fact-finding in order to 1) determine whether there still existed a special service charge issue; and 2) determine whether the Custodian knowingly and willfully violated OPRA.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

13. **Charles Richards v. Florence Township Police Department (Burlington) (2017-219)**

- The Custodian unlawfully denied access to arrest reports, complaints, and subpoenas contained within the responsive criminal file and must disclose same with redactions, where applicable. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008); Bell v. Hudson Cnty. Prosecutor's Office, GRC Complaint No. 2017-86 (Interim Order dated May 21, 2019); N. Jersey Media Grp., Inc., 229 N.J. 541.
- The Custodian lawfully denied access to photographs and other criminal investigatory records contained within the file. N.J.S.A. 47:1A-1.1; N. Jersey

Media Grp., Inc., 229 N.J. 541; Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

- The Custodian lawfully denied access to the Complainant's OPRA request item No. 2 because no computer-aided dispatch reports existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

14. **Megan McNally v. City of Bayonne (Hudson) (2017-221)**

- The instant complaint was not ripe for adjudication at the time of its filing. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-343 (February 2013).
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

15. **Karen Brown, Esq. (o/b/o Joyce W. Harley) v. Essex County College (2017-227)**

- 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's response was insufficient because she failed to respond to each OPRA request item individually. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
- The Custodian lawfully denied access to the Complainant's request item Nos. 3, 5, and 7 because they were invalid. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
- The Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 4 and 6 because same were valid. N.J.S.A. 47:1A-6; Elcavage, GRC 2009-07. The Custodian shall conduct a search and either disclose all 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 Executive Director's findings and recommendations as written. Mr. Ritardi noted for the record that his firm represented Essex County College over ten (10) years ago, but that he did not believe a conflict existed any longer. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

16. **Eugene Seabrooks v. City of East Orange (Essex) (2017-231)**

- The Custodian lawfully denied access to the Complainant's OPRA request because no responsive record existed. Pusterhofer, GRC 2005-49.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

17. **Nicholas Patrick DiFelice v. Monroe Township Public Schools (Gloucester) (2017-233)**

- The Custodian complied with the Council's September 24, 2019 Interim Order.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

18. **Antonne Henshaw v. NJ Department of Corrections (2017-235)**

- Request item Nos. 2, 4, 6, 7, 8, and 10 are invalid, blanket requests requiring research. MAG, 375 N.J. Super. 534.
- The Custodian unlawfully denied access to OPRA request item Nos. 1 and 5. Catrell v. N.J. Dep't of Corr., GRC Complaint No. 2006-121 (February 2007); Lewis v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2016-131 (April 2018). The Custodian must either disclose responsive records or certify if none exist.
- The Custodian lawfully denied access to records sought in OPRA request item Nos. 3 and 9. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); Executive Order No. 26 (Gov. McGreevey, 2002).
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

19. **Steven Wronko v. Township of South Brunswick (Middlesex) (2017-237)**

- The Custodian unlawfully denied access to the Complainant's OPRA request because same was valid. MAG, 375 N.J. Super. 534; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).
- The Custodian must perform a search to locate and disclose responsive records. Should disclosure result in a special service charge, the Custodian shall calculate the charge and allow the Complainant to accept or reject it.
- The knowing and willful and prevailing party analyses are deferred.

- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

20. **Luis F. Rodriguez v. Kean University (2017-241)**

- 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).
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

21. **Rafael Martinez v. Middlesex County (2017-244)**

- The Complainant’s request seeking access to “all records” was an invalid request. MAG, 375 N.J. Super. 534; Valdes v. Union Cnty. Bd. of Educ. (Hudson), GRC Complaint No. 2011-147 *et seq.* (July 2012).
- The Custodian lawfully denied access to the Complainant’s clarified OPRA request because no responsive record existed. Pusterhofer, GRC 2005-49.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

22. **Patrick Duff v. Stockton University (2017-246)**

- The GRC must conduct an *in camera* review of the redacted e-mails to determine whether same are exempt under the “inter-agency or intra-agency advisory, consultative, or deliberative material” and scholarly and academic record exemptions. N.J.S.A. 47:1A-1.1.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

23. **John Smith v. City of Atlantic City (Atlantic) (2017-247)**

- The Complainant request, which asks questions and seeks information, is invalid. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009).

- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

24. **Steven Vardakis v. Borough of Spring Lake Heights (Monmouth) (2018-7)**

- The Council should table this complaint for further review.
- Ms. Berg Tabakin called for a motion to have the above matter tabled. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

25. **Michael A. and Laila W. Collazo v. Hamilton Township Municipal Utilities Authority (Atlantic) (2018-11)**

- The Custodian lawfully denied access to the Complainant's OPRA request item Nos. 1 and 5 because no database containing responsive information existed. Paff v. Twp. of Galloway, 229 N.J. 340, 356 (2017).
- The Complainant's request item Nos. 2 through 4 are invalid because they sought information and asked questions. LaMantia, GRC 2008-140; Watt, GRC 2007-246.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

26. **Ryan Cruz v. Township of Hillside (Union) (2018-17)**

- The Custodian may have unlawfully denied access to the requested overtime information from 2014. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. Thus, the Custodian must either disclose said information or certify if none exists.
- The Custodian may have unlawfully denied access to the requested year-to-date earnings information. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. Thus, the Custodian must determine whether records containing this information exist and disclose them or certify why she was unable to produce same.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

27. **Scott Madlinger v. Berkeley Township (Ocean) (2018-18)**

- The Custodian did not unlawfully deny access to the Complainant's OPRA request because she assessed a lawful copy cost. N.J.S.A. 47:1A-5(b); Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011).

- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**28. Stacie Percella v. City of Bayonne (Hudson) (2018-20)**

- 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 unlawfully denied access to the requested e-mail logs and must disclose same. N.J.S.A. 47:1A-6; Paff, 229 N.J. 340.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**29. Harry Dunleavy v. High Point Regional High School (Sussex) (2018-22)**

- The Custodian lawfully denied access to the requested affidavit, which was submitted as part of a complaint filed with the Equal Employment Opportunity Commission. N.J.S.A. 47:1A-9(a); 29 C.F.R. 1640.4.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**30. Robert Byrd v. Atlantic City Police Department (Atlantic) (2018-23)**

- The Custodian’s failure to submit a Statement of Information resulted in a violation of the GRC’s regulations. N.J.A.C. 5:105-2.4(a).
- Notwithstanding the potential non-existent of records, the Custodian lawfully denied access to the requested records because they were exempt from disclosure under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541; Leak, GRC 2007-148.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**31. Robert Byrd v. Atlantic County Prosecutor’s Office (2018-24)**

- The Custodian lawfully denied access to the requested records because they were exempt from disclosure under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541; Leak, GRC 2007-148.

- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

32. **Stephen F. Azzollini v. NJ Department of Corrections (2018-26)**

- The Custodian lawfully denied the Complainant’s OPRA request seeking records from an inmate visitation logbook. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(13).
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

33. **Darrell T. Scott v. Mercer County Prosecutor’s Office (2018-33)**

- The Custodian lawfully denied access to the requested witness statement records. N.J.S.A. 47:1A-1.1; Parker v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2009-225 (October 2010).
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

34. **Ronald Long v. NJ Department of Corrections (2018-34)**

- The portion of the Complainant’s request seeking memoranda was invalid. Elcavage, GRC 2009-07.
- The Custodian did not unlawfully deny access to the responsive policies because he was under no obligation to disclose them until receiving payment from the Complainant. N.J.S.A. 47:1A-5(a)-(b); Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

35. **WendySu Ivanicki v. Borough of Wallington (Bergen) (2018-35)**

- The Custodian’s failure to timely respond within the statutory 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 may have unlawfully denied access to the responsive caucus meeting minutes and audio recording. The Custodian must either disclose the responsive records or, in the case of the audio recording, certify if no record existed at the time of the Complainant’s OPRA request.

- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

36. **Angeline Broomhall v. City of Millville (Cumberland) (2018-77)**

- The Custodian’s failure to timely respond to the Complainant’s April 20, 2018 OPRA request within the statutory 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 contract sought in the Complainant’s April 18, 2018 OPRA request. N.J.S.A. 47:1A-6; Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003).
- The Custodian lawfully denied access to the Complainant’s April 18, 2018 OPRA request item No. 2 because no responsive record existed. Pusterhofer, GRC 2005-49.
- The portion of the Complainant’s April 18, 2018 request seeking “vendors” is invalid. MAG, 375 N.J. Super. 534.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

37. **India Cole v. City of East Orange (Essex) (2018-78)**

- The Custodian’s failure to timely respond within the statutory 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).
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

38. **NJ Foundation for Open Government, Inc. v. Pompton Lakes Board of Education (Passaic) (2018-263)**

- 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.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.



**VI. Court Decisions of GRC Complaints on Appeal: None**

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

- Doe v. City of Trenton, 2019 N.J. Super. Unpub. LEXIS 2059 (App. Div. 2019): In a request for records pertaining to an internal affairs police investigation, the Appellate Division upheld the trial court's finding that the Defendants did not unlawfully deny access under OPRA. The Court held that although the Defendants improperly cited OPRA's personnel records exemption as an initial basis for denial, the internal affairs records are still exempt from disclosure in accordance with Blaustein v. Lakewood Police Dep't Custodian of Records, GRC Complaint No. 2011-102 (June 2012). The Court also found that the Plaintiffs' claim that the Defendants should have redacted the exempt parts of the records and disclosed the remainder under N.J.S.A. 47:1A-5(g) was misplaced, as the Defendants asserted that all internal affairs records were exempt, not just portions of them. Furthermore, the Court found that the Plaintiffs were not prevailing parties under OPRA, were not entitled to the records under the common law and upheld the trial judge's denial of Plaintiffs' motion for reconsideration.

**VIII. Public Comment: None**

**IX. Adjournment:**

Ms. Berg Tabakin called for a motion to end the Council meeting. Ms. Simons made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

The meeting adjourned at 3:02 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: January 7, 2020