



**Minutes of the Government Records Council
February 26, 2020 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:31 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 February 21, 2020.”

Ms. Berg Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Salma Chand, Esq. (designee of Department of Education Commissioner Dr. Richard Lamont Repollet), Donald Palombi, Esq. (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq., Public Member.

***** Mr. Ritardi participated telephonically. *****

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. 2020 Officer Elections

- Mr. Ritardi called for a motion to re-elect Ms. Berg Tabakin as Chairwoman. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.
- Ms. Berg Tabakin called for a motion to re-elect Mr. Ritardi as Vice Chair/Secretary. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

III. Executive Director's Report:

OPRA Trainings

- The GRC has scheduled seven (7) outreaches for 2020. The first training was recently conducted in Woodbridge, NJ on January 31, 2020. The GRC's next training for the County Archives and Records Management Association will take place in Trenton, NJ on March 5, 2020.

Current Statistics

- The GRC would like to welcome Ms. Chand to the Council. Ms. Chand will be serving as the New Jersey Department of Education's designee going forward as a replacement for Christopher Huber, Esq. The Council agreed to have Mr. Caruso compose and send a letter to Mr. Huber thanking him for his years of service.
- Since OPRA's inception in July 2002, the GRC has received 5,399 Denial of Access Complaints. That averages about 305 annual complaints per a little over 17 1/2 program years. So far in the current program year (FY2020), the GRC has received 194 Denial of Access Complaints.
 - Pending the adjudication of all agenda items at the February meeting, the GRC is already ahead of its adjudication for the same time period last year.
- 477 of the 5,399 complaints remain open and active (8.8%). Of those open cases:
 - 4 complaints are on appeal with the Appellate Division (0.8%);
 - 25 complaints are currently in mediation (5.2%);
 - 0 complaints are proposed for the Office of Administrative Law (0.0%);
 - 31 complaints await adjudication by the Office of Administrative Law (6.5%);
 - 116 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (24.3%);
 - 301 complaints are work in progress (63.1%); and
 - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 31,886 total inquiries, averaging about 1,932 annual inquiries per a little over 16 1/2 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 1,112 inquiries (6.9 inquiries per workday).

IV. Closed Session

- Gavin C. Rozzi v. Township of Lacey (Ocean) (2017-167) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Thomas S. Chichester v. Cinnaminson Township (Burlington) (2018-74) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Russell Smith v. Moorestown Township (Burlington) (2018-138) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

Ms. Berg Tabakin called for a motion to go into closed session. Ms. Chand made a motion, and Mr. Palombi seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:40 p.m. until 1:45 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Palombi made a motion, which was seconded by Ms. Chand. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:52 p.m., and Ms. Bordzoe called roll.

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

V. Approval of Minutes of Previous Meetings:

January 7, 2020 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the January 7, 2020 meeting. Mr. Donald Palombi confirmed the accuracy of the draft minutes with Mr. Thurman Barnes. Ms. Salma Chand also confirmed the accuracy of the draft minutes with Mr. Huber, Esq. Mr. Palombi made a motion, which was seconded by Ms. Chand. The motion passed by a majority vote.

January 7, 2020 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the January 7, 2020 meeting. Mr. Donald Palombi confirmed the accuracy of the draft minutes with Mr. Thurman Barnes. Ms. Salma Chand also confirmed the accuracy of the draft minutes with Mr. Huber. Mr. Palombi made a motion, which was seconded by Ms. Chand. The motion passed by a majority vote.

VI. 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): None**
- C. **Administrative Disposition of Uncontested, Voluntary Withdrawals by Complainant (No Adjudication of the Council is Required):**

January 28, 2020

1. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-152)**
 - Complaint Voluntarily Withdrawn.
2. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-161)**
 - Complaint Voluntarily Withdrawn.
3. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-162)**
 - Complaint Voluntarily Withdrawn.
4. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-181)**
 - Complaint Voluntarily Withdrawn.
5. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-182)**
 - Complaint Voluntarily Withdrawn.
6. **David Weiner v. County of Essex (2019-158)**
 - Complaint Settled in Mediation.
7. **Karen T. Baldwin v. Borough of Clementon (Camden) (2019-176)**
 - Complaint Settled in Mediation.
8. **Tasha DeGeorge v. Montague Township School District (Sussex) (2019-199)**
 - Complaint Settled in Mediation.
9. **Luis F. Rodriguez v. Kean University (2019-224)**
 - Complaint Voluntarily Withdrawn.
10. **James McGinnis v. Hainesport Township School District (Burlington) (2019-228)**
 - Complaint Voluntarily Withdrawn.
11. **James McGinnis v. Shamong Township School District (Burlington) (2019-231)**
 - Complaint Voluntarily Withdrawn.
12. **Joan Banez v. City of Garfield (Bergen) (2019-246)**
 - Complaint Voluntarily Withdrawn.
13. **Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-9)**
 - Complaint Voluntarily Withdrawn.

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1. **Samantha Richard v. Spring Lake Heights Board of Education (Monmouth) (2018-94)**
 - a. Complaint Voluntarily Withdrawn.
2. **Luis F. Rodriguez v. Kean University (2018-111)**
 - a. Complaint Voluntarily Withdrawn.
3. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-133)**
 - a. Complaint Voluntarily Withdrawn.

4. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-134)**
 - a. Complaint Voluntarily Withdrawn.
5. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-135)**
 - a. Complaint Voluntarily Withdrawn.
6. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-154)**
 - a. Complaint Voluntarily Withdrawn.
7. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-165)**
 - a. Complaint Voluntarily Withdrawn.
8. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-179)**
 - a. Complaint Voluntarily Withdrawn.
9. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-180)**
 - a. Complaint Voluntarily Withdrawn.
10. **Sidhendra Rath v. Township of Edison (Middlesex) (2018-183)**
 - a. Complaint Voluntarily Withdrawn.
11. **Deborah Murray-Breslow v. Bernards Township Board of Education (Somerset) (2018-212)**
 - a. Complaint Voluntarily Withdrawn.
12. **Karen T. Baldwin v. Rowan University (2019-178)**
 - a. Complaint Settled in Mediation.
13. **David Weiner v. Township of Ocean (Monmouth) (2019-195)**
 - a. Complaint Settled in Mediation.
14. **Rafael Tactuk v. Borough of Prospect Park (Passaic) (2019-222)**
 - a. Complaint Voluntarily Withdrawn.
15. **James McGinnis v. Rancocas Valley Regional High School (Burlington) (2019-232)**
 - a. Complaint Voluntarily Withdrawn.
16. **David Weiner v. Bergen County Sheriff's Office (2019-241)**
 - a. Complaint Settled in Mediation.
17. **Jennifer Zaff v. Middlesex County Prosecutor's Office (2019-248)**
 - a. Complaint Voluntarily Withdrawn.
18. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of North Bergen (Hudson) (2019-257)**
 - a. Complaint Voluntarily Withdrawn.
19. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Lower Township Police Department (Cape May) (2019-258)**
 - a. Complaint Voluntarily Withdrawn.
20. **Margaret V. Kramme v. Borough of Glassboro (Gloucester) (2020-27)**
 - a. 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:

Prior to addressing individual complaint adjudications with recusals, Mr. Ritardi advised the Council that his recusals extended to two (2) complaints currently not identified in the below list. Mr. Ritardi thus formally stated his recusal in Levinson, GRC 2017-154 and Percella, GRC

2018-20. The Council proceeded with its adjudication of recused complaints to include to above mentioned cases.

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1. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-58) (SR Recusal)**
 - The Council should accept the ALJ's Initial Decision finding that the Custodian performed an adequate search, that no knowing and willful violation occurred, and that the Complainant is not a prevailing party entitled to a fee award.
 - 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. Chand seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

2. **Steven Levinson v. Sussex County (2017-154) (SR Recusal)**
 - The Custodian's failure to immediately respond to the portion of the Complainant's OPRA request seeking "immediate access" items resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). Further, the Custodian's failure to respond to the non-immediate access portion of the OPRA request within seven (7) business days after receiving clarification resulted in a "deemed" denial. N.J.S.A. 47:1A-5(i). However, the GRC declines to order disclosure of item Nos. 1, 2, 3, 4, 5, 6A, 7A and 10 because the Custodian provided responsive records to the Complainant between August 4, and August 23, 2017.
 - The Custodian's failure to respond to each OPRA request item individually resulted in an insufficient response. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). Further, the Custodian may have unlawfully denied access to OPRA request item Nos. 8, 9A, and 9B. N.J.S.A. 47:1A-6. Thus, the current Custodian must perform a search and disclose any records responsive to those items or certify if none exist. Further, the current Custodian shall disclose records responsive to OPRA request item Nos. 6B, 7B, 9C, and 11 upon the Complainant's payment of the outstanding special service charge balance.
 - 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

3. **Krzysztof Golas v. Essex County Department of Corrections (2018-12) (SR Recusal)**
 - The current Custodian complied with the Council's January 7, 2020 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
4. **Stacie Percella v. City of Bayonne (Hudson) (2018-20) (SR Recusal)**
- The current Custodian complied with the Council’s November 12, 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
5. **Colleen Wilson v. NJ Transit (2018-48) (SR Recusal)**
- The Council shall dismiss this complaint because the Complainant withdrew same in writing via e-mail on January 6, 2020.
 - 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. Chand seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
6. **Abdul-Rahim Muslim v. Essex County Prosecutor’s Office (2018-59) (SR Recusal)**
- The portion of the Complainant’s request seeking “all Open Public Records” is invalid. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).
 - The portion of the Complainant’s request seeking DNA samples is invalid. Miller v. N.J. Dep’t of Corr., GRC Complaint No. 2009-226 (October 2010); Ayinde v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2018-52 (December 2019).
 - The Custodian lawfully denied access to the portions of the Complainant’s OPRA request seeking 911 emergency calls, polygraph examination reports, ballistic reports, gunshot trace evidence reports, and forensic reports under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017).
 - The Custodian unlawfully denied access to the requested arrest reports and warrants. N.J.S.A. 47:1A-6. The Custodian must disclose these records to the Complainant, with redactions where applicable.
 - The Custodian lawfully denied access to the requested autopsy report, which is of the Complainant’s victim. N.J.S.A. 47:1A-2.2; Boretsky v. Middlesex Cnty. Examiner’s Office, GRC Complaint No. 2016-219 (January 2018).
 - The Custodian lawfully denied access to the requested crime scene photo(s), photo arrays, and fingerprint cards under Executive Order No. 69 (Gov. Whitman,

1997). N.J.S.A. 47:1A-9(a); Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009); Lynn v. Middlesex Cnty. Prosecutor's Office, GRC Complaint No. 2015-186 (January 2017).

- The Custodian lawfully denied access to the requested EMT reports under EO 69. N.J.S.A. 47:1A-9(a); Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (April 2008).
- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

7. **Jerusha J. Schulze v. City of Newark (Essex) (2018-177) (SR Recusal)**

- The Council must conduct an *in camera* review of the responsive July 21, 2015 executive session recording to determine the validity of the Custodian's assertion that same was exempt under OPRA as attorney-client privileged and personnel information. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

8. **Robert Braun (dba Bob Braun's Ledger) v. NJ Department of Education (2018-210) (SC Recusal)**

- The Custodian lawfully denied access to the Complainant's four (4) OPRA request items 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 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 Mr. Ritardi seconded the motion. The motion passed by a majority vote; Ms. Chand recused.

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1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Edison (Middlesex) (2018-64) (SR Recusal)**

- The Custodian lawfully denied access to the Complainant's OPRA request because no records existed. Pusterhofer, GRC 2005-49.
- The Complainant is not a prevailing party.

- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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

- **The Council shall revoke to correct the record from the Council’s November 12, 2019 meeting to reflect that Mr. Ritardi was recused from this complaint.**
- The Council’s November 12, 2019 decision remains in effect, notwithstanding the procedural issue.
- Ms. Tabakin called for a motion to revoke to correct the Council’s November 12, 2019 meeting to reflect that Mr. Ritardi was recused from the complaint. Ms. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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B. Individual Complaint Adjudications with no Recusals:

1. **Luis F. Rodriguez v. Kean University (2016-86)**

- The Custodian complied with the Council’s March 26, 2019 Interim Order.
- The Custodian proved that a special service charge was warranted in this complaint; however, the estimated fee is not reasonable. Rivera v. Borough of Fort Lee Police Dep’t (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011). Thus, the Custodian may only charge \$1,328.46 to review, redact, and disclose the responsive payroll account statements. N.J.S.A. 47:1A-5(c).
- 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

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

- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

3. **Gavin C. Rozzi v. Township of Lacey (Ocean) (2017-167)**
 - The Custodian complied with the Council's July 30, 2019 Interim Order.
 - The *In Camera* Examination revealed that the Custodian lawfully redacted the responsive correspondence.
 - 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

4. **Mark Demitroff v. Buena Vista Township (Atlantic) (2017-169)**
 - The Custodian complied with the Council's November 12, 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

5. **Karen Brown, Esq. (o/b/o Joyce W. Harley) v. Essex County College (2017-227)**
 - The current Custodian complied with the Council's November 12, 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

6. **Steven Wronko v. Township of South Brunswick (Middlesex) (2017-237)**
 - The Custodian complied with the Council's November 12, 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

7. **Wenke Taule v. Borough of Ringwood (Passaic) (2018-9)**

- The Council shall allow the Custodian a final opportunity to submit a complete 14-point analysis, inclusive of a total charge, estimated time to review and redact potentially responsive records, and clarification on whether the charge will include time spent locating records.
- 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

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

- The current Custodian complied with the Council’s January 7, 2020 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

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

- The current Custodian failed to comply with the Council’s November 12, 2019 Interim Order.
- The Council shall provide the current Custodian a final opportunity to provide proper compliance. 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.
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- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

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

- The Complainant’s request for reconsideration should be denied.
- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

11. Joyce Blay v. Township of Lakewood (Ocean) (2018-30)

- 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); N.J.S.A. 47:1A-5(i).
- The Custodian failed to conduct a sufficient search. Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-22 (April 2008); Scheeler, Jr. v. Woodbine Bd. of Educ. (Cape May), GRC Complaint No. 2014-59 (Interim Order dated January 30, 2015).
- The Custodian lawfully denied access to OPRA request item No. 3 because no records exist. Pusterhofer, GRC 2005-49.
- 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

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

- The current Custodian did not comply fully with the Council's November 12, 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

13. Harry De La Roche v. NJ Department of Corrections (2018-45)

- The Custodian lawfully denied access to the Complainant's OPRA request under Executive Order No. 26 (Gov. McGreevey, 2002). N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); Farra'D v. N.J. Dep't of Corr., GRC Complaint No. 2010-47 (October 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

14. **David Scott Carew v. City of Woodbury (Gloucester) (2018-47)**

- The Custodian's failure to provide a specific lawful basis for denying access resulted in an insufficient response. D'Appolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009).
- The Complainant did not initially waive his confidentiality rights under N.J.S.A. 47:1A-10. Thus, the Custodian did not unlawfully deny access to the responsive personnel records. McGee v. Twp. of East Amwell (Hunterdon), GRC Complaint No. 2007-305 (March 2011). However, the Custodian shall disclose the responsive personnel records because the Complainant definitively waived said right in an April 26, 2018 e-mail.
- The Council must conduct an *in camera* review of redacted and withheld records to determine the validity of the Custodian's assertion that the withheld material was exempt from disclosure under OPRA as advisory, consultative, or deliberative material and/or attorney-client privilege information. N.J.S.A. 47:1A-1.1; Paff, 379 N.J. Super. 346.
- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

15. **Sean Patrick Vandy v. NJ Department of Law and Public Safety, Division of Criminal Justice (2018-68)**

- The Custodian bore his burden of proof that he timely responded to the Complainant. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- 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. Chand seconded the motion. The motion passed by a unanimous vote.

16. **Aakash Dalal v. Bergen County Prosecutor's Office (2018-72)**

- This complaint should be referred to the Office of Administrative Law ("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 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

17. **Scott Madlinger v. Hazlet Township (Monmouth) (2018-73)**

- The Custodian's failure to provide a specific lawful basis for the arrest report redactions resulted in an insufficient response. Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
- The Custodian lawfully denied access to OPRA request item No. 3 under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541.
- The Custodian lawfully redacted the arrest report narratives under the criminal investigatory exemption. Cheatham v. Borough of Fanwood Police Dep't, GRC Complaint No. 2013-262 (March 2014).
- The Custodian unlawfully redacted the arrestees' occupations contained on the responsive arrest reports. N.J.S.A. 47:1A-3(b). However, the GRC declines to order disclosure because the Custodian disclosed this information to the Complainant on June 4, 2018.
- The Custodian lawfully denied access to the Complainant's OPRA request item No. 2 seeking complaints because none existed. Pusterhofer, GRC 2005-49.
- 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

18. **Lyle David Nance v. NJ Department of Corrections (2018-100)**

- The Custodian lawfully denied access to the Complainant's OPRA request because no records 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

19. **Stephen Henry v. NJ Department of Corrections (2018-106)**

- The Custodian lawfully denied access to the Complainant's OPRA request under EO 26. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); Farra'D, GRC 2010-47.
- 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. Chand seconded the motion. The motion passed by a unanimous vote.

20. **Luis F. Rodriguez v. Kean University (2018-112)**

- The Custodian's extensions were warranted and substantiated. Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order, dated July 29, 2014).

- The Custodian may have unlawfully denied access to records responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian must search for responsive records and 1) disclose them; 2) provide a lawful basis for denial, or 3) certify that no records exist. The Custodian need not disclose records for 2014 and 2015 because the Complainant was in possession of them at the time of the OPRA request. Bart v. Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008).
- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

21. **Robert G. Dix v. NJ Department of Corrections (2018-132)**

- The Custodian lawfully denied access to the Complainant's OPRA request under the emergency and security exemptions. N.J.S.A. 47:1A-1.1. Reid v. N.J. Dep't of Corr., GRC Complaint No. 2013-165 (January 2014).
- 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. Chand seconded the motion. The motion passed by a unanimous vote.

22. **Russell Smith v. Moorestown Township (Burlington) (2018-138)**

- The Custodian complied with the Council's January 7, 2020 Interim Order.
- The *In Camera* Examination revealed that the text messages did not fall within the attorney-client privilege exemption, but were exempt as ACD. N.J.S.A. 47:1A-6; Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274 (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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

23. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Neptune City Police Department (Monmouth) (2018-153)**

- The Custodian's failure to complete a Statement of Information ("SOI") resulted in a violation of N.J.A.C. 5:105-2.4(a).
- The Custodian unlawfully denied access to the responsive records. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure of the responsive records because the Complainant received them on September 10, 2018.
- 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

24. **Alfred Savio v. West Cape May Board of Education (Cape May) (2018-256)**

- The Custodian violated OPRA by requiring the Complainant to submit his OPRA request on the agency's official form. N.J.S.A. 47:1A-5(g); Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009).
- The Custodian's failure to immediately respond to the Complainant's October 4, 2018 OPRA request resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e).
- The Custodian did not unlawfully deny access to any of the records responsive to the Complainant's October 4, 2018 OPRA request because he provided all that existed. N.J.S.A. 47:1A-6.
- In referring the Complainant to the Board of Education's website to obtain minutes responsive to the Complainant's October 10, 2018 OPRA request, the Custodian did not unreasonably deny access. Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014).
- The Custodian lawfully denied access to unapproved, draft executive session minutes between May 1 and October 10, 2018. N.J.S.A. 47:1A-1.1; Parave-Fogg v. Lower Alloways Creek Twp., GRC Complaint No. 2006-51 (August 2006).
- The Custodian lawfully denied access to the requested May 2018 regular session minutes because none existed. Pusterhofer, GRC 2005-49.
- The Custodian did not unlawfully deny access to responsive regular session minutes that existed wherein the Complainant disputed the content. Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003). Further, the GRC has no authority to address alleged violations of the Open Public Meetings Act. N.J.S.A. 47:1A-7(b).
- This complaint should be referred to the OAL for a determination as to 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

25. **Scott Madlinger v. Township of Toms River (Ocean) (2018-285)**

- The Complainant's request was invalid because it failed to seek identifiable records. MAG, 375 N.J. Super. 534. Thus, no unlawful denial of access occurred. 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

February 26, 2020

1. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-137)**
2. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-138) Consolidated**
 - This consolidated complaint shall be referred to the OAL for a fact-finding hearing to resolve multiple issues. Once the OAL has resolved those issues, it shall determine whether an unlawful denial of access occurred.
 - For efficacy, and if necessary, the OAL shall also address the knowing and willful and prevailing party analyses.
 - 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.
3. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)**
4. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) Consolidated**
 - This consolidated complaint shall be referred to the OAL for a fact-finding hearing to resolve multiple issues. Once the OAL has resolved those issues, it shall determine whether an unlawful denial of access occurred.
 - For efficacy, and if necessary, the OAL shall also address the knowing and willful and prevailing party analyses.
 - 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.
5. **Shamsiddin Abdur Raheem v. NJ Department of Corrections (2016-204)**
 - The Custodian unlawfully denied access to the Complainant's May 2, 2016 OPRA request item No. 1 as invalid. MAG, 375 N.J. Super. 534. However, the GRC declines to order disclosure because it is addressing the issue in Abdur-Raheem, GRC 2016-283.
 - The Custodian's delay in responding to the Complainant's April 18, 2016 OPRA request item No. 1 seeking video footage resulted in the record no longer being available. Zayas v. City of Trenton Police Dep't (Mercer), GRC Complaint No. 2008-31 (July 2008). Nonetheless, said footage would have been exempt from access. Gilleran v. Bloomfield, 227 N.J. 159 (2016).
 - The Custodian lawfully denied access to the remainder of the Complainant's OPRA requests seeking logbooks, G25 forms, and an Involuntary Protective Custody report under OPRA and DOC's regulations.
 - There is no knowing and willful violation.

- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Caruso noted that an edit was made to conclusion No. 4 so as to clarify the proposed decision. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

6. Shamsiddin Abdur-Raheem v. NJ Department of Corrections (2016-283)

- The Custodian proved that the proposed special service charge of \$7,699.56 comprising 173.65 hours of labor to address the Complainant's OPRA requests was warranted and reasonable. The Custodian shall disclose the records upon receipt of payment or advise the GRC if the Complainant declined to pay the charge.
- The GRC must conduct an *in camera* review of the barber Internal Management Procedures to determine the validity of the Custodian's assertion that same was exempt under security and surveillance exemptions present in OPRA. N.J.S.A. 47:1A-1.1; Paff, 379 N.J. Super. 346.
- 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

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

- The Complainant's request for reconsideration is denied.
- This complaint should be referred to the OAL consistent with Sheppard v. Cape May Cnty., GRC Complaint No. 2016-195 (Interim Order dated May 21, 2019), and Sheppard v. Cape May Cnty., GRC Complaint No. 2019-3 (Interim Order dated April 30, 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

8. Joyce Blay v. Township of Lakewood (Ocean) (2018-29)

- The GRC must conduct an *in camera* review of the withheld agenda attachments to determine the validity of the Custodian's assertion that same were exempt under the deliberative process privilege. N.J.S.A. 47:1A-1.1; Paff, 379 N.J. Super. 346.
- The Custodian lawfully denied access to the Complainant's OPRA request item No. 2 because no records existed. Pusterhofer, GRC 2005-49.
- 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

9. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. South Brunswick Township (Middlesex) (2018-63)

- The Custodian's failure to address the Complainant's preferred method of delivery resulted in an insufficient response. N.J.S.A. 47:1A-5(g); See Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).
- The Custodian's failure to provide responsive records to the Complainant in the medium requested was a violation of OPRA. N.J.S.A. 47:1A-5(d). However, the Council should decline to order disclosure because the Complainant received the records via U.S. mail.
- The Custodian failed to bear her burden of proof that the proposed special service charge was warranted or reasonable. N.J.S.A. 47:1A-5(c). The Custodian shall refund the Complainant \$295.84. Coulter v. Twp. of Bridgewater (Somerset), GRC Complaint No. 2008-220 (Interim Order dated November 18, 2009).
- 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

10. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Helmetta (Middlesex) (2018-65)

- 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); N.J.S.A. 47:1A-5(i). However, the Council should decline to order disclosure because the Custodian did so on April 11 and 18, 2018.
- There is no knowing and willful violation.
- The Complainant is not a prevailing party.
- 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. Chand seconded the motion. The motion passed by a unanimous vote.

11. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Highland Park (Middlesex) (2018-66)

- The Custodian did not unlawfully deny access to the Complainant's OPRA request because she did not receive it. N.J.S.A. 47:1A-6.
- The Complainant is not a prevailing party.
- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

12. Luis F. Rodriguez v. Kean University (2018-69)

- The Custodian timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- Kean University Alumni Association is not a "public agency" under OPRA; thus, the Custodian lawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-1.1; Fair Share Hous. Ctr., Inc. v. New Jersey State League of Municipalities, 207 N.J. 489 (2011); Sussex Commons Assocs., LLC v. Rutgers, the State Univ., 210 N.J. 531 (2012).
- 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. Chand seconded the motion. The motion passed by a unanimous vote.

13. Thomas S. Chichester v. Cinnaminson Township (Burlington) (2018-74)

- The Custodian did not comply fully with the Council's January 7, 2020 Interim Order.
- The Custodian must comply with the Council's *In Camera* Examination findings.
- 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

14. Dr. Darren James v. NJ Department of Health, Medicinal Marijuana Program (2018-82)

- The Custodian lawfully denied access to the Complainant's OPRA request because no records 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

15. Jason McKinnon v. NJ Department of Law & Public Safety, Division of Criminal Justice (2018-92)

- The Custodian lawfully denied access to the Complainant's OPRA request item No. 1 because no records existed. Pusterhofer, GRC 2005-49.
- The Custodian lawfully denied access to the records responsive to the Complainant's OPRA request item No. 2 under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541.

- 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. Chand seconded the motion. The motion passed by a unanimous vote.

16. Simone Edwards v. Wayne Township Public Schools (Passaic) (2018-99)

- The Custodian's failure to complete a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).
- The Custodian's extensions were warranted and substantiated. Ciccarone, GRC 2013-280.
- The Custodian shall provide to the GRC a 14-point analysis so that it may determine whether the proposed special service charge was warranted and reasonable.
- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

17. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2018-103)

- The Custodian unlawfully redacted names, addresses and dates of birth contained in the responsive summonses. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus (Bergen), GRC Complaint No. 2003-110 (Interim Order dated June 29, 2004).
- 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

18. Roger Scott Helm v. NJ Department of Corrections (2018-114)

- The Custodian lawfully denied access to the Complainant's April 9, 2018 OPRA request under DOC regulations. N.J.S.A. 47:1A-9(a); Werner v. N.J. Dep't of Corr., GRC Complaint No. 2011-153 (September 2012); Edwards v. N.J. Dep't of Corr., GRC Complaint No. 2014-08 (September 2014).
- 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. Chand seconded the motion. The motion passed by a unanimous vote.

19. Sean P. Sullivan v. NJ Department of Treasury (2018-119)

- The Custodian and Complainant complied with the Council’s January 7, 2020 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. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

20. Michael Hootstein v. NJ Institute of Technology (2018-203)

- The Custodian lawfully denied access to the responsive e-mails because they were personal communications and not “government records” as defined under OPRA. N.J.S.A. 47:1A-1.1; Carter v. Franklin Fire Dist. No. 1, 2018 N.J. Super. Unpub. LEXIS 2189 (App. Div. 2018).
- 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. Chand seconded the motion. The motion passed by a unanimous vote.

21. Patrick Trainor v. NJ Office of the Governor (2018-269)

- The Custodian lawfully denied access the Complainant records responsive to his October 30, 2018 OPRA requests because they were the same records disclosed to the Complainant hours later in response to an October 15, 2018 OPRA request.
- The Complainant’s OPRA requests seeking “all forms of communication” lacking a date or range of dates are invalid. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 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. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal: None

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

- Lawyers Comm. for 9/11 Inquiry v. N.J. State Police, 2020 N.J. Super. Unpub. LEXIS 39 (App. Div. 2020): In a request for photographs and negatives related to an incident surrounding the 9/11 WTC attacks, the Appellate Division found that the certifications provided by the Defendant sufficiently described the searches undertaken to locate responsive records but resulted in none being found. The Court also held that the logbook the Defendant provided to the Plaintiff as a “concession” was not responsive to the request and therefore did not satisfy the causal nexus requirement in a fee award analysis. Affirmed.

- Richard Rivera, LLC v. Twp. of Bloomfield, 2020 N.J. Super. Unpub. LEXIS 55 (App. Div. 2020): In a request for body-worn camera (“BWC”) footage pertaining to a police-involved shooting, the Defendant denied access on the basis that the public’s need for access did not outweigh law enforcement’s interest in maintaining confidentiality, citing Attorney General Directive 2015-1 (“AG 2015-1”). The trial court agreed, and also found that BWC footage fell under the criminal investigatory records exemption. N.J.S.A. 47:1A-1.1. The Appellate Division held that Attorney General directives have the force of law, and AG 2015-1 established standards for use and retention for BWCs. Thus, the Court held that BWCs do not fall under the exemption. Further, the Court held that the Defendants did not prevail on the interests balancing test. Reversed.
- Freeswick v. Wayne Twp. Bd. of Educ., 2020 N.J. Super. Unpub. LEXIS 79 (App. Div. 2020): Plaintiff sought several records surrounding a special counsel investigation into Defendant’s policies regarding student-athlete residency transfers and eligibility. The trial court ordered the Defendant to provide 1) unredacted copies of special counsel’s itemized legal bills, and 2) an unredacted copy of an interview summary with a school principal; the remainder of the request was denied under the deliberative process privilege. N.J.S.A. 47:1A-1.1. The Appellate Division held that under the deliberative process privilege, certain names were to be redacted from the legal bills, as well as two (2) sections from the interview summary. Affirmed in part, reversed and remanded in part.
- Frega v. Convertini, 2020 N.J. Super. Unpub. LEXIS 168 (App. Div. 2020): Defendant appeal from a trial court ruling that required disclosure of the names of hunters participating in a deer cull implemented by the municipality, as well as the addresses of public and private properties where the cull was authorized to take place. The Appellate Division agreed with the trial judge’s holding that because the hunters and property owners were voluntarily participating in a public event, they could not claim a reasonable expectation of privacy. The Court also found that a privacy balancing test analysis under Doe v. Poritz, 142 N.J. 1 (1995) favored disclosure. Affirmed.

IX. Public Comment: None

X. Adjournment:

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

The meeting adjourned at 2:44 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: April 28, 2020