



**Minutes of the Government Records Council
April 28, 2020 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:33 p.m. by Ms. Robin Berg Tabakin via Microsoft Teams.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Ms. Berg Tabakin read the following Open Public Meetings Act statement:

“This meeting was called pursuant to the provisions of the Open Public Meeting Act. Notices of this meeting were faxed to the Newark Star Ledger, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on April 23, 2020.”

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Salma Chand, Esq. (designee of Department of Education Commissioner Dr. Lamont Repollet), Thurman Barnes (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.

II. Executive Director’s Report:

Councilmembers

- The GRC would like to thank DCA designee Mr. Barnes for his contributions to the GRC during his time at DCA. The GRC also congratulates Mr. Barnes on his new opportunity outside of DCA and wishes him the best.

OPRA Trainings

- The GRC's next training event will be held remotely on May 15, 2020 for the N.J. League of Municipalities. The GRC notes that it is currently weighing its options for this year's annual seminar.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,429 Denial of Access Complaints. That averages about 307 annual complaints per a little over 17 2/3 program years. So far in the current program year (FY2020), the GRC has received 224 Denial of Access Complaints.
 - Pending the adjudication of all agenda items at this meeting, the GRC will have closed over 5,000 complaints since its inception.
- 443 of the 5,429 complaints remain open and active (8.2%). Of those open cases:
 - 4 complaints are on appeal with the Appellate Division (0.9%);
 - 28 complaints are currently in mediation (6.3%);
 - 7 complaints are proposed for the Office of Administrative Law (1.6%);
 - 30 complaints await adjudication by the Office of Administrative Law (6.8%);
 - 96 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (21.7%);
 - 278 complaints are work in progress (62.8%); and
 - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 32,121 total inquiries, averaging about 1,928 annual inquiries per a little over 16 2/3 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 1,347 inquiries (6.6 inquiries per workday).

Miscellaneous

- The Blue Angels will be conducting a fly-over throughout the region during the meeting.

III. Closed Session: None

IV. Approval of Minutes of Previous Meetings:

February 26, 2020 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the February 26, 2020 meeting. Mr. Barnes confirmed the accuracy of the draft minutes with Mr. Donald Palombi. Mr. Ritardi made a motion, which was seconded by Mr. Barnes. The motion passed by a majority vote.

February 26, 2020 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the February 26, 2020 meeting. Mr. Barnes confirmed the accuracy of the draft minutes with Mr. Donald Palombi. Ms. Salma Chand 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. **Russell Smith v. Moorestown Township (Burlington) (2018-150)**
 - Unripe Cause of Action.
2. **Kafele K. Bomani v. NJ Office of the Public Defender (2018-187)**
 - No Correspondence Received by the Custodian.
3. **Juan Mendoza v. City of Jersey City (Hudson) (2019-220)**
 - No Records Responsive to the Request Exist.
4. **Rachel Rodriguez v. Bridgewater Department of Education (Somerset) (2019-225)**
 - Not a Valid OPRA Request.
5. **Kevin Alexander v. County of Union (2019-235)**
 - All Records Responsive Provided in a Timely Manner.
6. **Yusuf Abdullah Muhammad v. NJ Office of the Public Defender (2020-35)**
 - Not a Valid OPRA Request.

Ms. Berg Tabakin called for a motion to accept the recommendations as written in all the above Administrative Complaint Disposition. Ms. Chand 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. **Anna Crivelli (o/b/o Frank M. Crivelli, Esq.) v. NJ State Police (2019-202)**
 - Complaint Voluntarily Withdrawn.
2. **Kaseem Ali-X v. NJ Department of Corrections (2019-240)**
 - Complaint Settled in Mediation.
3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Woodland Park (Passaic) (2019-255)**
 - Complaint Voluntarily Withdrawn.

4. **Gail Oxfeld Kanef, Esq. (o/b/o Elif Hatipoglu) v. Irvington Public Schools (Essex)** (2020-14)
 - Complaint Voluntarily Withdrawn.
5. **Ryan Lawrence Johnson v. NJ State Police** (2020-17)
 - Complaint Voluntarily Withdrawn.
6. **Volha Yarmolina v. M.E.T.S. Charter School (Essex)** (2020-20)
 - Complaint Voluntarily Withdrawn.
7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Florham Park Police Department (Morris)** (2020-24)
 - Complaint Voluntarily Withdrawn.
8. **Ryan Lawrence Johnson v. Newton Police Department (Sussex)** (2020-29)
 - Complaint Voluntarily Withdrawn.
9. **Luis F. Rodriguez v. Kean University** (2020-30)
 - Complaint Voluntarily Withdrawn.
10. **Ryan Lawrence Johnson v. NJ State Police** (2020-59)
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

Mr. Caruso noted that Mr. Ritardi would be muted during this portion of the meeting to ensure his non-participation in items from which he was recused. Mr. Caruso confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda items.

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

1. **Megan McNally v. City of Bayonne (Hudson)** (2018-16) (SR Recusal)
 - The Council should accept the Administrative Law Judge’s Initial Decision that no knowing and willful violation occurred and that the complaint be dismissed.
 - 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. Barnes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. **Abdul-Rahim Muslim v. Essex County Prosecutor’s Office** (2018-59) (SR Recusal)
 - The current Custodian complied with the Council’s February 26, 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. Barnes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

3. **Mark L. Tompkins v. Newark Police Department (Essex) (2018-142) (SR Recusal)**
 - The Custodian lawfully denied access to the Complainant's OPRA request 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. Barnes made a motion and Ms. Chand seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
4. **Donald G. Jackson, Jr v. City of Newark, Department of Public Safety (Essex) (2018-151) (SR Recusal)**
 - 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); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
 - The Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-10. Additionally, there is no evidence in the record supporting that the Complainant waived his confidentiality rights to his personnel records. McGee v. Twp. of East Amwell, 416 N.J. Super. 602, 615 (App. Div. 2010).
 - 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. Barnes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
5. **Dwayne L. Gillispie v. Paterson Police Department (Passaic) (2018-208) (SR Recusal)**
 - 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. Barnes made a motion and Ms. Chand seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
6. **Monica Manning v. Middletown Township (Monmouth) (2018-216) (SR Recusal)**
7. **Monica Manning v. Middletown Township (Monmouth) (2018-217) (SR Recusal)**
Consolidated
 - The requested Review was exempt from disclosure under the "inter-agency or intra-agency advisory, consultative, or deliberative material" exemption. N.J.S.A. 47:1A-1.1; Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274, 286 (2009).
 - 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. Barnes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

8. **Al-Qaadir Green v. Essex County Prosecutor’s Office (2018-218) (SR Recusal)**

- The reports sought in OPRA request item No. 1, as well as notes and e-mails sought in OPRA request item No. 2 are exempt from disclosure 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). Thus, the Custodian lawfully denied access to this portion of the OPRA request. N.J.S.A. 47:1A-6.
- Because the remaining portion of OPRA request item No. 2 sought juvenile delinquency records, same are exempt under OPRA. N.J.S.A. 47:1A-9(a); N.J.S.A. 2A:4A-60. Thus, the Custodian lawfully denied access to this portion of the OPRA request. 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. Barnes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

9. **Al Qaadir Green v. Newark Police Department (Essex) (2018-219) (SR Recusal)**

- The Custodian’s response was insufficient because he failed to definitively state that no records existed. N.J.S.A. 47:1A-5(g); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009).
- The Custodian lawfully denied access to the Complainant’s OPRA request because no records 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. Barnes made a motion and Ms. Chand seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

Mr. Caruso notified the public that Mr. Ritardi would return to the meeting by unmuting himself. Mr. Ritardi rejoined the meeting at that time.

B. Individual Complaint Adjudications with no Recusals:

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

- The Custodian complied with the Council’s February 26, 2020 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. Ritardi seconded the motion. The motion passed by a unanimous vote.

2. **Steven Levinson v. Sussex County (2017-154)**

- This complaint should be dismissed because the Complainant withdrew it via e-mail on March 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. Ms. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

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

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

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

- The Custodian complied with the Council's February 26, 2020 Interim Order.
- The Custodian bore her burden of proof the proposed special service charge was warranted, inclusive of labor counsel's reduced rate for review and redactions. N.J.S.A. 47:1A-5(c); Fisher v. Div. of Law, 400 N.J. Super. 61 (App. Div. 2008). However, the charge applied to 150 hours for production and return of requested items must be recalculated by Mr. Heck's hourly rate, which is the lowest among those capable of performing these duties and offer the Complainant the ability to pay or reject the fee. Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015).
- 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. Ritardi made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

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

- The Custodian complied with the Council's February 26, 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. Barnes seconded the motion. The motion passed by a unanimous vote.

6. **Gregory Mascera, Esq. v. Verona Board of Education (Essex) (2018-61)**

- The Custodian's failure to respond to the Complainant's clarified January 16, 2018 OPRA request item Nos. 2 and 3 in a timely manner resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 2012). However, the GRC declines to order disclosure of these items because same were provided to the Complainant.
- The Custodian's response to the Complainant's December 18, 2017 OPRA request was insufficient because she failed to provide a specific lawful basis for denying access to redactions and an individual record. Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
- The Custodian's response to the Complainant's January 16, 2018 OPRA request was insufficient because she failed to respond to each request item individually. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
- The GRC must conduct an *in camera* review of two (2) e-mails and the spreadsheet to determine the validity of the Custodian's denial of access. Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
- The Custodian may have unlawfully denied access to the requested student surveys and must either disclose them, provide a specific lawful basis for denying access, or certify if no surveys exist.
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

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

- The Custodian complied with the Council's February 26, 2020 Interim Order.
- There is no 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. Ms. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
8. **Andree Friel v. NJ Department of Children and Families (2018-93)**
- The Custodian lawfully denied access to the Complainant’s OPRA request under OPRA. N.J.S.A. 47:1A-9(a); N.J.S.A. 9:6-8.10a; Downing v. N.J. Dep’t of Children & Families, GRC Complaint No. 2010-295 (April 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. Ms. Chand made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.
9. **Simone Edwards v. Wayne Township Public Schools (Passaic) (2018-99)**
- This complaint should be dismissed because the Complainant withdrew it via e-mail on March 18, 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. Ms. Chand made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.
10. **Renford Lloyd Wilson v. NJ Office of the Public Defender (2018-105)**
- The Custodian lawfully denied access to the Complainant’s OPRA request because said records are exempt under N.J.S.A. 47:1A-5(k). See Lemon v. N.J. Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).
 - 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. Ritardi seconded the motion. The motion passed by a unanimous vote.
11. **Michael Schulze v. Monmouth County Sheriff’s Office (2018-108)**
- The Custodian lawfully denied access to the requested surveillance camera footage because same is exempt under OPRA’s emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (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. Ms. Chand made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

12. **Marquis McCray v. NJ Department of Corrections (2018-121)**

- 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's response was also insufficient because he failed to respond to each request item individually. Paff, GRC 2007-272.
- The Custodian's failure to locate responsive records until after conducting additional searches following the GRC's request for additional information resulted in an insufficient search and an unlawful denial of access. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the GRC declines to order disclosure because said records were provided to the Complainant.
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

13. **Ronald DeMeco v. NJ Department of Corrections (2018-122)**

- The Custodian lawfully denied access to the requested records under OPRA and the New Jersey Department of Corrections' ("DOC") regulations. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(12).
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

14. **Al-Qaadir Green v. NJ Department of Corrections (2018-123)**

- The Custodian lawfully denied access to the requested records under OPRA and DOC's regulations. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(10).
- 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. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

15. **Joseph M. Longo v. Camden County Municipal Utilities Authority (2018-124)**

- This complaint should be tabled for additional review.
- Ms. Berg Tabakin called for a motion to table this matter. Mr. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

16. **Ahmad I. Ali v. Hudson County Community College (2018-139)**

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

17. **Ronald DeMeco v. Bergen County Sheriff’s Office (2018-140)**

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

18. **Christopher W. Hager, Esq. (o/b/o Brian Geschwindt) v. Bernards Township (Somerset) (2018-148)**

- The Complainant’s request seeking “all documents” and “all records” is invalid. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Lagerkvist v. Office of the Governor of N.J., 443 N.J. Super. 230, 236-37 (App. Div. 2015); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012).
- 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. Barnes made a motion and Mr. Chand seconded the motion. The motion passed by a unanimous vote.

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

- This complaint should be dismissed because the Complainant withdrew it via e-mail on March 12, 2020.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi commented that it would have been interesting to adjudicate this complaint on the merits. Mr. Ritardi stated that the facts presented in the reconsideration were thought-provoking. Mr. Ritardi finally noted that it would have been interesting for the Council to apply the test found in

Segal v. Lynch, 211 N.J. 230 (2012). 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. Barnes seconded the motion. The motion passed by a unanimous vote.

20. **Michael T. Braden v. Township of Lacey (Ocean) (2018-159)**

- The Custodian lawfully assessed a fee of \$5.00 per responsive accident report because the Complainant sought same "other than in person." N.J.S.A. 47:1A-5(b); N.J.S.A. 39:4-131; Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007).
- 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. Barnes made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

21. **Tariq Elliot v. Keansburg Police Department (Monmouth) (2018-176)**

- 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. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

22. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Eagleswood Township (Ocean) (2018-192)**

- The Custodian lawfully denied access to the subject OPRA request because she was not required to obtain records not made or maintained by, or on behalf of, the Township. Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005).
- 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. Ritardi seconded the motion. The motion passed by a unanimous vote.

23. **Omar J. Ross, Sr. v. NJ Department of Corrections (2018-202)**

- There was no unlawful denial of access because the Custodian assessed a copy cost and was not required to disclose the records until receipt of said payment. N.J.S.A. 47:1A-5(b); Reid v. N.J. Dep't of Corr., GRC Complaint No. 2010-83 (May 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. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

24. **Thomas Volscho v. West Orange Board of Education (Essex) (2018-205)**

- The Custodian lawfully redacted telephone numbers present in the disclosed incoming and outgoing logs. N.J.S.A. 47:1A-1.1; Livecchia v. Borough of Mt. Arlington, 421 N.J. Super. 24 (App. Div. 2011).
- The Custodian's failure to obtain and provide detailed cell phone bills resulted in an unlawful denial of access. N.J.S.A. 47:1A-6. The Custodian must either obtain and disclose the responsive cell phone bills, with redactions, or certify if no records could be obtained and disclosed.
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

25. **Edgardo Collazo v. County of Passaic (2018-213)**

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

26. **Jessica Bishop v. County of Salem (2018-214)**

- The Custodian's failure to timely respond, immediately (where applicable) and within the statutory time frame (where applicable), resulted in a "deemed" denial. 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 Complainant's request item Nos. 1 and 2 seeking text messages and e-mails were invalid because they did not include the subject or content of the records sought. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-7 (April 2010); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010).
- The Custodian failed to disclose the requested purchase orders and invoices sought, instead opting to disclose a vendor activity report. Thus, an unlawful denial of access occurred, and the Custodian must disclose the actual records sought. N.J.S.A. 47:1A-6.
- The knowing and willful and prevailing party fee 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. Ritardi seconded the motion. The motion passed by a unanimous vote.

27. Luis F. Rodriguez v. Kean University (2018-215)

- The Custodian timely responded to the Complainant's August 23, 2018 OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Custodian timely responded to the Complainant's September 6, 2018 OPRA request based on reasonable extensions of time. Ciccarone v. N.J. Dep't of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).
- No unlawful denial of access to the September 6, 2018 OPRA request occurred because the Custodian provided all records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 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. Ritardi seconded the motion. The motion passed by a unanimous vote.

28. Rotimi Owoh, Esq. (o/b/o/ African American Data & Research Institute) v. City of Atlantic City (Atlantic) (2018-247)

- The Custodian's failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).
- The Custodian may have unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. The Custodian must either disclose the requested records or certify if no such records exist.
- 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. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

29. Dale L. Archer v. County of Gloucester (2018-270)

- The Custodian's failure to properly respond, as the subject OPRA request did not require clarification, 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 bore her burden of proof that the assessed special service charge was warranted and reasonable. N.J.S.A. 47:1A-5(c). Thus, the Custodian shall disclose the responsive records upon receipt of the applicable payment.
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

30. **Eugen Tarnow v. NJ Motor Vehicle Commission (2018-296)**

- The Complainant's request was invalid because it asked questions and failed to seek identifiable records. MAG, 375 N.J. Super. at 546; Watt v. Borough of N. 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. Mr. Barnes made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

31. **Adam C. Miller v. Township of Lawrence (Mercer) (2018-313)**

- The Custodian failed to bear her burden of proof that she lawfully withheld records on the basis that the Complainant already possessed them. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008).
- The Complainant's request item Nos. 1 through 4, 6 through 26, 28, 30 through 58, 59, 60, 61 are invalid. MAG, 375 N.J. Super. at 546.
- The Custodian lawfully denied access to the Complainant's OPRA request item No. 9 under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541.
- The Custodian failed to bear her burden of proof that she lawfully denied access to records responsive to OPRA request item Nos. 5 and 27. N.J.S.A. 47:1A-6. Thus, the Custodian shall disclose the requested records 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. Mr. Barnes made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

32. **James Babb v. NJ Department of Health (2019-27)**

- This complaint should be tabled for additional review.
- Ms. Berg Tabakin called for a motion to table this matter. Mr. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

VI. Court Decisions of GRC Complaints on Appeal: None

VII. Complaints Adjudicated in United State District Court

- Kenny v. Porrino, 2020 U.S. Dist. LEXIS 33035 (D.N.J. Feb. 26, 2020): In an action between parties residing in New Jersey, the court held that an alleged violation of OPRA did not raise a federal question. The court therefore granted Defendants' motion to dismiss for lack of subject matter jurisdiction.

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

- Dig. First Media v. Ewing Twp., 2020 N.J. Super. LEXIS 18 (App. Div. 2020): Regarding a request for a use of force report ("UFR") pertaining to the arrest of a juvenile subject, the Appellate Division reversed the trial court's decision barring access under OPRA. The court found that because the purpose of UFRs was to document information on police conduct and not the subject, redacting the juvenile's name on the UFR sufficiently balanced the public's right of access and the juvenile's right to privacy. Reversed and remanded.
- Bozzi v. Borough of Roselle Park, 2020 N.J. Super. LEXIS 21 (App. Div. 2020): Plaintiff, a contractor, sought access to the names and addresses of dog license holders. The trial court ruled that the Defendants lawfully denied access under OPRA, applying the privacy balancing test in Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009). The Appellate Division held that because OPRA did not contain a broad-based exemption for citizens' names and addresses, the governmental body must first present a colorable claim that the release of same would invade an objectively reasonable expectation of privacy. The court found that the fact that citizens provided their names and addresses to the Defendants as a condition to obtain a dog license required by law was insufficient to show they had a reasonable expectation of privacy, as well as the potential receipt of unsolicited mail stemming from disclosure. Because the Defendants failed to present a colorable claim, the court held that an analysis via the privacy balancing test was unnecessary. Reversed.
- Bozzi v. City of Jersey City, 2020 N.J. Super. Unpub. LEXIS 678 (App. Div. 2020): The Appellate Division affirmed the trial court's ruling that the names and addresses of dog license holders were not protected under OPRA's privacy provisions since the issues and arguments presented matched those in Bozzi v. Borough of Roselle Park, 2020 N.J. Super. LEXIS 21 (App. Div. Feb. 21, 2020).

IX. Public Comment:

- Mr. Ahmad I. Ali (complainant in GRC 2018-139): Mr. Ali inquired whether the GRC investigates "all matters" before it. Ms. Berg Tabakin stated that the GRC did not address "all matters." Mr. Ali attempted to clarify his question on what type of an investigation the GRC conducts. Mr. Caruso advised Ms. Berg Tabakin that he believed the question may relate to the GRC's authority to conduct investigations. Ms. Berg Tabakin answered that the GRC does conduct an

investigation, but it is limited to whether a custodian unlawfully denied access under OPRA.

Mr. Ali then asked whether additional evidence needed to be provided regarding the accessibility of records under OPRA. Mr. Caruso responded that the GRC's authority did not extend to extent situations that may have prompted an individual to submit an OPRA request. Mr. Caruso further advised Mr. Ali to contact his case manager directly if he had additional questions related to GRC 2018-139.

X. Adjournment:

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

The meeting adjourned at 2:26 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: May 19, 2020