



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
May 19, 2020

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 1:30 p.m., Tuesday, May 19, 2020, remotely. Members of the public may attend the meeting by utilizing the following call-in information:

Telephone Number: 1-856-338-7074
Conference ID: 815 013 075

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 1:30 p.m. in Room 129 of the DCA.

I. Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

II. Approval of Minutes of Previous Meetings:

April 28, 2020 Open Session Meeting Minutes

III. Executive Director's Report

IV. Closed Session

- Shamsiddin Abdur-Raheem v. NJ Department of Corrections (2016-283) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- David Weiner v. NJ Department of Human Services, Division of Medical Assistance and Health Benefits (2017-170) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

V. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

An "Administrative Complaint Disposition" means a decision by the Council as to whether to accept or reject the Executive Director's recommendation of dismissal based on

New Jersey is an Equal Opportunity Employer • Printed on Recycled paper and Recyclable



jurisdictional, procedural or other defects of the complaint. The Executive Director's recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda): None

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda): None

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

1. Jane Donoghue v. Woodland Township (Burlington) (2019-192)
 - Complaint Settled in Mediation.
2. Jane Donoghue v. Woodland Township (Burlington) (2019-204)
 - Complaint Settled in Mediation.
3. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Harding Police Department (Morris) (2020-57)
 - Complaint Voluntarily Withdrawn.
4. Joe Thomas v. Township of Winslow (Camden) (2020-70)
 - Complaint Voluntarily Withdrawn.
5. Sasha Wolf v. Paterson Board of Education (Passaic) (2020-84)
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

The Executive Director's recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Elouise McDaniel v. Township of Irvington (Essex) (2019-92) (**SR Recusal**)
 - 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 v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
 - There is no knowing and willful violation.
2. Lynn Petrovich v. Township of Ocean (Monmouth), (2019-266) (**SR Recusal**)
 - 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'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 GRC must conduct an *in camera* review of sixteen (16) e-mails 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 knowing and willful analysis is deferred.

B. Individual Complaint Adjudications with no Recusals:

1. Shamsiddin Abdur-Raheem v. NJ Department of Corrections (2016-283)
 - The Custodian partially complied with the Council’s February 26, 2020 Interim Order.
 - The *In Camera* Examination revealed that the Custodian lawfully denied access to the responsive Internal Management Procedures. N.J.S.A. 47:1A-6.
 - The GRC declines to address the knowing and willful issue based on the lawful denial of access.
2. David Weiner v. NJ Department of Human Services, Division of Medical Assistance and Health Benefits (2017-170)
 - The Custodian complied with the Council’s August 27, 2019 Interim Order.
 - The Custodian lawfully denied access to the requested records under the proprietary, trade secret, and advantage to competitors exemptions. N.J.S.A. 47:1A-1.1. The GRC thus declines to address the knowing and willful issue.
3. Wenke Taule v. Borough of Ringwood (Passaic) (2018-9)
 - The Custodian complied with the Council’s April 28, 2020 Interim Order. The GRC need not address the knowing and willful penalty because the special service charge was warranted and reasonable.
4. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Township of Washington (Gloucester) (2018-80)
 - The Custodian has borne her burden of proof that a special service charge was warranted. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 199 (October 28, 2002); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012). However, said charge was not reasonable and shall be reduced to omit 29.7 hours and copying costs.
 - The knowing and willful and prevailing party analyses are deferred.
5. Joseph M. Longo v. Camden County Municipal Utilities Authority (2018-124)
 - The GRC must conduct an *in camera* review of Section E of Emerson’s proposal to determine the validity of the Custodian’s denial of access. Paff, 379 N.J. Super. 346.
 - The knowing and willful analysis is deferred.
6. Wayne Levante v. Town of Newton (Sussex) (2018-127)
 - The GRC must conduct an *in camera* review of the e-mails identified in the “Vaughn Index” to determine the validity of the Custodian’s denial of access. Paff, 379 N.J. Super. 346.
 - The Custodian lawfully denied access to the Complainant’s June 14, 2018 OPRA request because no records existed. Pusterhofer, GRC 2005-49.
 - The knowing and willful analysis is deferred.

7. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Borough of Fair Haven (Monmouth) (2018-146)
 - The Custodian has borne her burden of proof that the proposed special service charge was reasonable and warranted. N.J.S.A. 47:1A-5(c). Thus, the Custodian shall disclose the records upon payment of the fee.
 - The Custodian's offer of an extension of time in exchange for waiving the special service charge was reasonable. N.J.S.A. 47:1A-5(g); Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (Interim Order dated August 11, 2009).
 - The knowing and willful and prevailing party analyses are deferred.

8. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Borough of Red Bank (Monmouth) (2018-175)
 - 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 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); Rivera v. Borough of Fort Lee Police Dep't (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011). Further, the Custodian failed to prove that associated copying costs were lawful. Thus, the Custodian must disclose the responsive records without the imposition of a charge.
 - The knowing and willful and prevailing party analyses are deferred.

9. David Herron v. Paterson Board of Education (Passaic) (2018-188)
 - The Complainant's request was invalid because it sought information rather than an identifiable "government record." MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-66 (August 2012); Lopez v. N.J. Dep't of Corr., GRC Complaint No. 2008-250 (November 2009).

10. Geoffrey J. Cullen v. Great Meadows Regional School District Board of Education (Warren) (2018-191)
 - The Custodian shall obtain and disclose to the Complainant full and complete copies of the responsive text messages. N.J.S.A. 47:1A-6; Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).
 - The knowing and willful analysis is deferred.

11. Thomas Volscho v. West Orange Board of Education (Essex) (2018-205)
 - The Custodian complied with the Council's April 28, 2020 Interim Order.
 - There is no knowing and willful violation.

12. Marlon E. Bradshaw, Sr. v. NJ Department of Corrections (2018-231)
 - The Custodian lawfully denied access to the requested records under the New Jersey Department of Corrections' regulations. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(4); Robinson v. N.J. Dep't of Corr., GRC Complaint No. 2012-129 (May 2013).

13. Adam C. Miller v. Township of Howell (Monmouth) (2018-234)

- No unlawful denial of access to the Complainant's 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).

14. Adam C. Miller v. Township of Howell (Monmouth) (2018-236)

15. Adam C. Miller v. Township of Howell (Monmouth) (2018-243)

16. Adam C. Miller v. Township of Howell (Monmouth) (2018-244) **Consolidated**

- The Custodian's failure to respond to the Complainant's September 27, 2018 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, through Ms. Belton, unlawfully denied the Complainant's September 18, and 24, 2018 OPRA requests by requiring him to go through discovery. N.J.S.A. 47:1A-6; Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (Interim Order dated February 27, 2008).
- The Complainant's three (3) requests were ultimately invalid. MAG, 375 N.J. Super. at 546; Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012).
- There is no knowing and willful violation.

17. Anthony Bradshaw v. NJ Department of Corrections (2018-255)

- The Complainant's request was invalid as a blanket request failing to seek identifiable government records. MAG, 375 N.J. Super. at 546; Bragg v. N.J. Dep't of Corr., GRC Complaint No. 2010-145 (March 2011).

VII. Court Decisions of GRC Complaints on Appeal:

- Carter v. N.J. Dep't of Cmty. Affairs, 2020 N.J. LEXIS 422 (2020)

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

IX. Public Comment:

The public comment period is limited to providing an opportunity for speakers to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

X. Adjournment

*Neither attorneys nor other representatives of the parties are required to attend this meeting, nor will they be permitted to make oral or written comment during the adjudication.