



**Minutes of the Government Records Council
May 19, 2020 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:38 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 May 14, 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. Lamont Repollet), Donald Palombi (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq., Public Member.

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

Ms. Berg Tabakin advised that copies of the agenda can be accessed on the GRC’s website at <https://www.state.nj.us/grc/meetings/minutes/>.

II. Approval of Minutes of Previous Meetings:

April 28, 2020 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the May 19, 2020 meeting. Mr. Ritardi made a motion, which was seconded by Ms. Chand. The motion passed unanimous; Mr. Palombi abstained.

***** Mr. Ritardi exited at 1:44 pm after voting on the Open Session Minutes. *****

III. Executive Director's Report:

OPRA Trainings

- The GRC participated in a three-hour webinar on May 15, 2020 for the N.J. League of Municipalities. The GRC notes that it gained valuable experience that could be beneficial for this year's annual seminar.
- Upcoming trainings are currently on hold pending notification of either an alternate training method or a future rescheduled date.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,444 Denial of Access Complaints. That averages about 309 annual complaints per a little over 17 2/3 program years. So far in the current program year (FY2020), the GRC has received 239 Denial of Access Complaints.
- 412 of the 5,444 complaints remain open and active (7.6%). Of those open cases:
 - 4 complaints are on appeal with the Appellate Division (0.9%);
 - 30 complaints are currently in mediation (7.3%);
 - 7 complaints are proposed for the Office of Administrative Law (1.7%);
 - 30 complaints await adjudication by the Office of Administrative Law (7.3%);
 - 65 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (15.8%);
 - 276 complaints are work in progress (67.0%); and
 - 0 complaints are being held in abeyance (0.0%).
- Since Program Year 2004, the GRC has received and responded to 32,192 total inquiries, averaging about 1,939 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 1,418 inquiries (6.4 inquiries per workday).

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)).

Ms. Berg Tabakin called for a motion to go into closed session. Mr. Palombi made a motion, and Ms. Chand seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:46 p.m. until 1:56 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 1:59 p.m., and Ms. Bordzoe called roll.

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

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): None**
- C. **Administrative Disposition of 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

A. Individual Complaint Adjudications with Recusals:

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

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.
- 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. **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.
- 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.

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.
- 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.

1. **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.
 - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as amended. Mr. Caruso noted that the findings and recommendations was amended to delete a sentence on page 4 of the analysis to make same more concise. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Ms. Chand made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

2. **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.
 - 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.

3. **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.
 - 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. **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.
- 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.

5. **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.
- 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.

6. **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.
- 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. **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.
- 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.

8. **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).
- 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. **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.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Caruso noted that a footnote was added to page 6 of the findings and recommendations to state “[f]or instance, the GRC was able to locate multiple solutions by searching ‘transferring text messages to e-mail on iPhone 7’ in Google.” Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Mr. Palombi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

10. **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.
- 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. **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).
- 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. **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).
- 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. **Adam C. Miller v. Township of Howell (Monmouth) (2018-236)**

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

15. **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.
- 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.

16. **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).
- 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.

VI. Court Decisions of GRC Complaints on Appeal: None

- Carter v. N.J. Dep't of Cmty. Affairs, 2020 N.J. LEXIS 422 (2020): The New Jersey Supreme Court denied certification to Plaintiff-Petitioner from Carter v. N.J. Dep't of Cmty. Affairs, 2019 N.J. Super. Unpub. LEXIS 2510 (App. Div. 2019), where the Appellate Division held that the Plaintiff-Petitioner's OPRA request was invalid, and the GRC did not act in bad faith regarding the delay between the complaint's filing and the Council's adjudication.

VII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None

VIII. Public Comment: None

IX. 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 2:20 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: June 30, 2020