



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**NOTICE OF MEETING**  
**Government Records Council**  
**September 29, 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, September 29, 2020 via Office Teams. 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. remotely.

**I. Public Session:**

Call to Order  
Pledge of Allegiance  
Meeting Notice  
Roll Call

**II. Executive Director's Report**

**III. Closed Session**

- Joyce Blay v. Township of Lakewood (Ocean) (2018-29) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Henry Tukes v. NJ Department of Corrections (2018-88)
- Henry Tukes v. NJ Department of Corrections (2018-89)
- Henry Tukes v. NJ Department of Corrections (2018-90) **Consolidated** *In Camera* Review (N.J.A.C. 5:105-2.8(g))
- Kaitlynn M. Giordano v. Lodi Police Department (Bergen) (2019-56) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

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

August 25, 2020 Open Session Meeting Minutes



**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 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. Edward Costello, III, Esq. (o/b/o Estate of James Bailey) v. County of Burlington (2018-311)
  - Complaint Voluntarily Withdrawn.
2. Edward Roth v. Borough of North Caldwell (Essex) (2019-91)
  - Complaint Voluntarily Withdrawn.
3. Tracy Lyons v. Lenape Valley Regional Board of Education (Sussex) (2019-243)
  - Complaint Settled in Mediation.
4. David Weiner v. County of Essex (2020-7)
  - Complaint Settled in Mediation.
5. Gary S. Shapiro (o/b/o Alyssa DeLitizia) v. Township of East Brunswick (Middlesex) (2020-77)
  - Complaint Voluntarily Withdrawn.
6. Brian Jasey v. Newark Board of Education (Essex) (2020-139)
  - Complaint Voluntarily Withdrawn.
7. Dominique Spann v. City of Trenton Police Department (Mercer) (2020-163)
  - Complaint Voluntarily Withdrawn.
8. Patrick Wall v. Newark Public Schools (Essex) (2020-164)
  - 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. Rashaun Barkley v. Essex County Prosecutor’s Office (2019-44) (**SR Recused**)
  - The Custodian lawfully denied access to the requested autopsy photographs. N.J.S.A. 47:1A-1.1; Boretsky v. Middlesex Cnty. Examiner’s Office, GRC Complaint No. 2016-219 (January 2018).

2. *Elouise McDaniel v. Township of Irvington (Essex) (2019-65) (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). However, the GRC declines to order disclosure since the Custodian did so on January 23, and April 26, 2019.
  - There is no knowing and willful violation.
  
3. *Richard M. Weinstein v. City of Hoboken (Hudson) (2019-79) (SR Recusal)*
  - Ms. Emanuelli’s response was insufficient. N.J.S.A. 47:1A-5(g); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009). However, the GRC declines to order disclosure because no records exist.
  - There is no knowing and willful violation.
  - The Complainant, an attorney representing himself, is not a prevailing party. Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006).

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

1. *Rhonda Peters v. Township of Mansfield (Warren) (2017-33)*
  - The Council should accept the Administrative Law Judge’s Initial Decision dismissing this complaint with prejudice.
  
2. *Joyce Blay v. Township of Lakewood (Ocean) (2018-29)*
  - The current Custodian complied with the Council’s February 26, 2020 Interim Order.
  - The current Custodian shall comply with the Council’s *In Camera* Examination Findings.
  - The current Custodian must disclose all portions of the responsive e-mails and correspondence not otherwise exempt. 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.
  
3. *Libertarians for Transparent Government v. Red Bank Board of Education (Monmouth) (2018-46)*
  - The Custodian lawfully denied access to the requested record, which is a “student record.” N.J.S.A. 47:1A-6; N.J.A.C. 6A:32-2.1; N.J.A.C. 6A:32-7.5(a); L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56 (App. Div. 2017) (Aff’d, 238 N.J. 547 (2019)).
  - The Complainant is not a prevailing party.
  
4. *Rotimi Owoh, Esq. (o/b/o O.O.) v. Township of Plainsboro (Middlesex) (2018-58)*
  - The Custodian has not borne her burden of proof that the assessed special service charge was warranted and reasonable. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191 (October 28, 2002). The Custodian shall refund the Complainant \$139.17.
  - The knowing and willful and prevailing party analyses are deferred.

5. Rotimo Owoh, Esq. (o/b/o O.O.) v. Township of Plainsboro (Middlesex) (2018-62)
  - The Custodian lawfully denied access to the Complainant’s OPRA request because no records exist. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
  - The Custodian was not required to allow the Complainant to physically inspect the Township’s computers for responsive metadata based on OPRA’s computer security exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6.
  - The Complainant is not a prevailing party.
  
6. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Old Bridge Township (Middlesex) (2018-79)
  - The Custodian may have unlawfully denied access to the Complainant’s OPRA request item No. 3. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). Thus, the Custodian shall search for and either disclose responsive records, assess a special service charge, if applicable, or certify if no records exist.
  - The Custodian has borne her burden of proof that the assessed special service charge of \$1,451.10 for seventy (70) hours at \$21.17 per hour to disclose records responsive to OPRA request item Nos. 2, 4, and 5 is warranted and reasonable. N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. 191. Thus, the Custodian shall disclose those records upon remittance of the charge.
  - The knowing and willful and prevailing party analyses are deferred.
  

7. Henry Tukes v. NJ Department of Corrections (2018-88)
  8. Henry Tukes v. NJ Department of Corrections (2018-89)
  9. Henry Tukes v. NJ Department of Corrections (2018-90) **Consolidated**
    - The Custodian did not fully comply with the Council’s July 28, 2020 Interim Order.
    - The *In Camera* Examination has revealed that the Custodian lawfully denied access to the responsive “Close Watch” forms.
    - The Council should decline to address the knowing and willful analysis because no denial of access occurred.

  
10. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Freehold Township Police Department (Monmouth) (2018-155)
  - The current Custodian complied with the Council’s July 28, 2020 Interim Order.
  - There is no knowing and willful violation.
  - This complaint should be referred to the Office of Administrative Law (“OAL”) for a fact-finding hearing to establish the relationship between the Complainant and AADARI, and whether said organization is legitimate. Sean Wood, LLC. v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011). Should the OAL find in the affirmative, it shall determine whether the Complainant is a prevailing party and, if so, the reasonable fee amount.
  
11. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Borough of Bradley Beach (Monmouth) (2018-157)
  - The requested complaints and summonses are “government records” under OPRA because the Borough maintained copies of them. N.J.S.A. 47:1A-1.1; Pitts v. N.J.

Dep't of Corr., GRC Complaint No. 2013-299 (September 2014); Merino, 2003-110.

- The Custodian has not borne her burden of proof that the assessed special service charge was warranted and reasonable. N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. 191. Thus, the Custodian shall disclose the responsive records without the imposition of a special service charge.
- The knowing and willful and prevailing party analyses are deferred.

12. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. City of Long Branch (Monmouth) (2018-178)

- 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 Complainant's OPRA request was valid because it sought identifiable "government records" and would not require research. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). Thus, the Custodian shall search for and either disclose responsive records or assess a special service charge, if applicable.
- The knowing and willful and prevailing party analyses are deferred.

13. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Borough of West Cape May (Cape May) (2018-197)

- The Custodian unlawfully denied access to the requested records because of a shared services agreement with the City of Cape May. N.J.S.A. 47:1A-6; Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). Thus, the Custodian shall obtain responsive records from the City and disclose them accordingly.
- The knowing and willful and prevailing party analyses are deferred.

14. Tracey Frazier v. Plainfield Board of Education (Union) (2018-252)

- The Custodian did not fully comply with the Council's June 30, 2020 Interim Order.
- There is no knowing and willful violation.

15. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute & Baffi Simmons) v. Audubon Park Borough (Camden) (2018-290)

- The Custodian unlawfully denied access to the requested records because of a shared services agreement with Haddon Township. N.J.S.A. 47:1A-6; Michalak, GRC 2010-220. Thus, the Custodian shall obtain responsive records from the Township and disclose them accordingly.
- The knowing and willful and prevailing party analyses are deferred.

16. Shirley A. Brown v. NJ Department of Treasury, Division of Lottery (2018-293)

- The GRC must conduct an *in camera* review of the 133 pages of e-mails to validate the Custodian's asserted exemptions. 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.

17. Kimberly Skorka v. Highlands Business Partnership (Monmouth) (2018-297)

- Because the Custodian timely responded to the Complainant's OPRA request, no violation of OPRA occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

18. Patrick Trainor v. NJ Office of the Governor (2018-304)
- The Complainant's requests are invalid because they do not include the "subject/content" of the correspondence sought. MAG, 375 N.J. Super. at 546; Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
19. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. City of Bridgeton Police Department (Cumberland) (2018-314)
- The Custodian did not unlawfully deny access to the subject OPRA request because it was never received. Martinez v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2014-2 (September 2014).
  - The Complainant is not a prevailing party.
20. Kelly Sherwood, Esq. (o/b/o NJ Property Liability Insurance Guaranty Association) v. NJ Department of Law and Public Safety, Division of Criminal Justice (2018-318)
- The Complainant's original request seeking "all discovery" was invalid. MAG, 375 N.J. Super. at 546; Vandy v. Newfield Police Dep't (Gloucester), GRC Complaint No. 2016-74, et seq. (May 2016).
  - The Custodian lawfully denied access to the Complainant's clarified OPRA request item Nos. 1 and 2 under the criminal investigatory and grand jury exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J. Court Rules, R. 1:38-3(c)(4); R. 3:6-7; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Reagan v. Camden Cnty. Prosecutor's Office, GRC Complaint No. 2016-28 (July 2017).
  - The Complainant is not a prevailing party.
21. James Babb v. NJ Department of Health (2019-27)
- The Complainant's February 7, 2019 letter represented an invalid, non-form request. Renna v. Cnty. of Union, 407 N.J. Super. 230, 232 (App. Div. 2009). However, the Complainant's invoking of OPRA thirty (30) minutes after receiving a response converted same into an OPRA request. Nonetheless, the GRC declines to order disclosure of the responsive list because the Custodian disclosed it on June 18, 2020.
  - Ms. Clelland's failure to forward the request to the Custodian or return same and direct the Complainant to submit it to the Custodian resulted in a violation of OPRA. N.J.S.A. 47:1A-5(h); Kossup v. City of Newark Police Dep't, GRC Complaint No. 2006-174 (February 2007).
  - Ms. Clelland's failure to provide a specific lawful basis for denying access resulted in an insufficient response. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
  - There is no knowing and willful violation.
22. Bernard S. Reid v. NJ Department of Corrections (2019-30)
- The Custodian lawfully denied access to the Complainant's OPRA request seeking Inmate Legal Association records. N.J.S.A. 47:1A-6; Hittinger v. N.J. Transit, GRC Complaint No. 2013-324 (July 2014).

23. Luis F. Rodriguez v. Kean University (2019-38)
- The Complainant’s request seeking “all advertising” for an employment position was invalid because it required research. MAG, 375 N.J. Super. at 546.
24. Kaitlynn M. Giordano v. Lodi Police Department (Bergen) (2019-56)
- The Custodian complied with the Council’s August 25, 2020 Interim Order.
  - The *In Camera* Examination has revealed that the Custodian lawfully denied access to the responsive “Drinking and Driving” report. N.J.S.A. 47:1A-6.
  - There is no knowing and willful violation.
25. Carlos Aborresco v. Cape May Correctional Facility (2019-63)
- The current Custodian did not fully comply with the Council’s August 25, 2020 Interim Order.
  - There is no knowing and willful violation.
26. Lionell Glenn Miller v. NJ Department of Corrections (2019-70)
- The Custodian lawfully denied access to the records sought, which are exempt 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)(12).
27. Doreen Frega v. Township of Lacey (Ocean) (2019-71)
- The Council should deny the Complainant’s request for reconsideration.
28. Paul Marinaccio v. North Plainfield Memorial Library (Somerset) (2019-90)
- Ms. Blue’s failure to forward the request to the Custodian or return same and direct the Complainant to submit it to the Custodian resulted in a violation of OPRA. N.J.S.A. 47:1A-5(h); Kossup, GRC 2006-174.
  - Ms. Blue’s response was insufficient because she failed to provide a specific lawful basis for her denial and failed to definitively state that no records existed. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-209; Shanker, GRC 2007-245. However, the GRC declines to order disclosure because no records exist.
  - There is no knowing and willful violation.
29. Daniel Caraballo v. NJ Department of Corrections (2019-95)
- The Custodian lawfully denied access to the Complainant’s OPRA request seeking a Pre-Sentence report. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014).

**VII. Court Decisions of GRC Complaints on Appeal:**

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

- Assad v. Absecon Bd. of Educ., 2020 N.J. Super. Unpub. LEXIS 1626 (App. Div. 2020)
- Libertarians for Transparent Gov’t v. Cumberland Cnty., 2020 N.J. Super. LEXIS 211 (App. Div. 2020) (Approved for Publication)

**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.