



**Minutes of the Government Records Council
March 30, 2021 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:37 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 March 25, 2021.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Salma Chand, Esq. (designee of Department of Education Acting Commissioner Dr. Angelica Allen-McMillan), Gina Trish (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), and Deputy Attorney General Debra Allen.

Ms. Berg Tabakin called for a motion to amend the agenda to move GRC Complaint Nos. 2021-17 and 2021-28 from Section V(C) to V(B) and to move GRC Complaint No. 2019-115 from VI(B) to VI(A) based on a recently discovered recusal. Ms. Chand made a motion, which was seconded by Ms. Trish.

II. Executive Director's Report:

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,663 Denial of Access Complaints. That averages about 302 annual complaints per 18 3/4 program years. So far in the current program year (FY2021), the GRC has received 192 Denial of Access Complaints.
- 357 of the 5,663 complaints remain open and active (6.3%). Of those open cases:
 - 2 complaints are on appeal with the Appellate Division (0.5%);
 - 24 complaints are currently in mediation (6.7%);
 - 3 complaint are proposed for the Office of Administrative Law (0.8%);
 - 31 complaints await adjudication by the Office of Administrative Law (8.7%);
 - 102 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (28.6%);
 - 195 complaints are work in progress (54.6%); and
 - 0 complaints are being held in abeyance (0.0%).
- Since Program Year 2004, the GRC has received and responded to 33,700 total inquiries, averaging about 1,899 annual inquiries per 17 3/4 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2021), the GRC has received 1,312 inquiries (7.2 inquiries per workday).

III. Closed Session:

- Judson Moore v. Commercial Township (Cumberland) (2018-309) *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. Ritardi 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 1:45 p.m. until 2:02 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Ritardi made a motion, which was seconded by Ms. Trish. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:03 p.m., and Ms. Bordzoe called roll.

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

IV. Approval of Minutes of Previous Meetings:

February 23, 2021 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the February 23, 2021 meeting. Ms. Chand confirmed the accuracy of the draft minutes with Jennifer Simons. Mr. Ritardi made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote.

February 23, 2021 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft Closed session minutes of the February 23, 2021 meeting. Ms. Chand confirmed the accuracy of the draft minutes with Ms. Simons. Mr. Ritardi made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous 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. **Yusuf Abdullah Muhammad v. Mercer County Correctional Center (2020-28)**
 - Not a Valid OPRA Request.
2. **Kevin Alexander v. Middlesex County Board of Chosen Freeholders (2021-17)**
 - No Correspondence Received by the Custodian.
3. **Raymond M. Codey, Esq. v. NJ Department of Environmental Protection (2021-28)**
 - No Denial of Access at Issue.

Ms. Berg Tabakin called for a motion to accept the recommendations as written in all the above Administrative Complaint Dispositions. Ms. Chand made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote.

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

1. **Eric Paddon v. Red Bank Police Department (Monmouth) (2020-68)**
 - Complaint Voluntarily Withdrawn.
2. **David Weiner v. County of Essex (2020-150)**
 - Complaint Settled in Mediation.

3. **Ronald T. Nagle v. Morris Township (Morris) (2020-177)**
 - Complaint Settled in Mediation.
4. **David Weiner v. County of Essex (2020-222)**
 - Complaint Settled in Mediation.
5. **Steven P. Haddad, Esq. v. Newark Police Department (Essex) (2021-9)**
 - Complaint Voluntarily Withdrawn.
6. **Kevin Alexander v. Elizabeth Police Department (Union) (2021-16)**
 - Complaint Settled in Mediation.
7. **Dino J. Colarocco v. Borough of Berlin (Camden) (2021-23)**
 - Complaint Voluntarily Withdrawn.
8. **Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-30)**
 - Complaint Voluntarily Withdrawn.
9. **D. Gayle Loftis v. Borough of Fairview (Bergen) (2021-44)**
 - Complaint Voluntarily Withdrawn.
10. **Steven J. Kossup, Esq. (o/b/o David Rullo) v. NJ State Police (2021-45)**
 - Complaint Voluntarily Withdrawn.
11. **James Baye v. NJ Board of Public Utilities (2021-47)**
 - Complaint Voluntarily Withdrawn.
12. **Richard LaBarbiera, Esq. v. Oradell Police Department (Bergen) (2021-54)**
 - Complaint Voluntarily Withdrawn.
13. **Michael Esslie v. Rowan University (2021-57)**
 - Complaint Voluntarily Withdrawn.
14. **Michael Esslie v. Rowan University (2021-58)**
 - Complaint Voluntarily Withdrawn.
15. **Michael Esslie v. Rowan University (2021-59)**
 - Complaint Voluntarily Withdrawn.
16. **Michael Esslie v. Rowan University (2021-60)**
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

Ms. Berg Tabakin noted that Mr. Ritardi would be muted for Agenda item Nos. 1 through 4 to ensure his non-participation in those items from which he was recused. Ms. Berg Tabakin 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. **Paul Liobe v. County of Sussex (2019-115) (SR Recusal)**
 - The Custodian failed to fully comply with the Council's November 10, 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

2. **Christopher A. Lombardi v. Paterson Police Department (Passaic) (2019-155) (SR Recusal)**

- The Custodian's response was insufficient because she failed to respond to each request item individually and failed to definitively state that no records responsive to OPRA request item No. 2 and No. 3, in part, did not exist. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009).
- The Complainant's request item Nos. 2, 3 (in part), 4, and 5 are invalid because they sought information. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).
- The Custodian unlawfully denied access to the responsive CAD report because it was not exempt under the criminal investigatory exemption. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure because the Custodian did so on December 18, 2019.
- The Custodian lawfully denied access to OPRA request item Nos. 2 and 3 in part 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. Ms. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

3. **Tyshammie L. Cooper v. City of Orange Township (Essex) (2019-223) (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 Complainant's original OPRA request was invalid because it did not include a date or range of dates. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). However, the subsequent inclusion of said information rendered the request a valid one. Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). Thus, the Custodian must perform a reasonable search and either: 1) provide a document index indicating a specific lawful basis for denying access to any records located, or 2) certify if no records were located including a detailed search explanation.
- 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

4. **Ali S. Morgano v. City of Newark (Essex) (2020-53) (SR Recusal)**

- This complaint should be dismissed because the Complainant failed to state a claim. Murphy, Jr. v. Borough of Atlantic Highlands (Monmouth), GRC Complaint No. 2014-76 (October 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. Ms. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

Ms. Berg Tabakin notified the public that Mr. Ritardi would rejoin the meeting by unmuting himself. Mr. Ritardi rejoined the meeting at that time.

B. Individual Complaint Adjudications with no Recusals:

1. **Jamie Epstein, Esq. (o/b/o CB) v. Hopewell Crest Board of Education (Cumberland) (2018-257)**

- The Council should dismiss this complaint because the Complainant withdrew it in writing pursuant to a “Stipulation of Settlement” on March 5, 2021.
- 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote.

2. **Judson Moore v. Commercial Township (Cumberland) (2018-309)**

- The Council should table this complaint to obtain additional legal analysis.
- Ms. Berg Tabakin called for a motion to table the above complaint. Mr. Ritardi made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

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

- The Custodian did not comply with the Council’s April 28, 2020 Interim Order.
- The Council’s Order is enforceable in the Superior Court. N.J.A.C. 5:105-2.9(c); R. 4:67-6.

- The Custodian may have knowingly and willfully violated OPRA. Thus, this complaint should be referred to the Office of Administrative Law for a knowing and willful determination.
- 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote.

4. **David Drukaroff v. Ocean County Board of Social Services (2019-100)**

- The Custodian lawfully denied access to the requested file. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 52:27D-406.
- 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. Trish seconded the motion. The motion passed by a unanimous vote.

5. **Richard Holland v. Rowan University (2019-108)**

- 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 Council should decline to order disclosure because the Custodian did so on June 11, 2019.
- 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. Ritardi made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

6. **Mary B. Colvell v. Hightstown Police Department (Mercer) (2019-134)**

- The Complainant's May 10, 2019 request item Nos. 2 and 3 were invalid because they require research. Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015).
- The Custodian unlawfully denied access to a portion of the Complainant's May 22, 2019 OPRA request and must disclose the requested investigatory information to the Complainant. N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-6.
- The Custodian unlawfully denied access to the portion of both requests seeking a complaint-arrest warrant and must either disclose those records located or certify if none exist. N.J.S.A. 47:1A-6; Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013).
- The Custodian may have unlawfully denied access to the portion of the Complainant's May 22, 2019 OPRA request seeking telephone communications. N.J.S.A. 47:1A-6. The Custodian shall search for responsive records and either disclose those located or certify if none exist.

- The Custodian lawfully denied access to the portion of the May 22, 2019 OPRA request seeking police reports and notes 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, 573 (2017).
- The Custodian lawfully denied access to the portion of the OPRA requests seeking audio/visual of officers because no records exist. 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote.

7. **Brian Kubiak v. Toms River District No. 1 Board of Fire Commissioners (Ocean) (2019-163)**

- The Custodian complied with the Council's January 26, 2021 Interim Order "in essence;" however, Jesse Sipe has refused to provide responsive records to the Custodian without compensation, which is unsupported under OPRA. Thus, Mr. Sipe shall comply with the Council's Order.
- There is no knowing and willful violation as it relates to the Custodian.
- The knowing and willful analysis is deferred as it relates to Mr. Sipe.
- The prevailing party fee 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 Ms. Chand seconded the motion. The motion passed by a unanimous vote.

8. **Kevin Alexander v. County of Union (2019-214)**

- 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 request was invalid because it asked questions. Watt v. Borough of North 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. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

9. **Jeremy Alden McMaster v. Town of Boonton (Morris) (2019-234)**

- 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 unlawfully denied access to the responsive e-mail. N.J.S.A. 47:1A-1.1. However, the Council should decline to order disclosure because the Custodian's Counsel did so on December 11, 2019.
- 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote.

10. **James McGinnis v. Evesham Township School District (Burlington) (2019-236)**

- The Custodian may have unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6; Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). The Custodian shall perform a search and either disclose the record located or certify if none exist, inclusive of a detailed search explanation.
- The knowing and willful analysis is deferred.

11. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Audubon Park Borough (Camden) (2019-239)**

- The Custodian unlawfully denied access to the requested records based on a shared services agreement. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); and 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 Haddon Township and disclose them.
- 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote.

12. **John J. Fano v. NJ Department of Human Services Police (2019-242)**

- The GRC must conduct an *in camera* review of the responsive e-mails to determine the validity of the Custodian's assertion that same are exempt under N.J.S.A. 47:1A-9(b) and 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 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 Ms. Chand seconded the motion. The motion passed by a unanimous vote.

13. **Joan Banez v. City of Garfield (Bergen) (2019-247)**

- The Custodian's failure to timely respond results in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Custodian did not unlawfully deny access to the subject OPRA request because he disclosed the only records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote.

14. **Tecumseh McElwee v. NJ Department of Law & Public Safety, Division of Gaming Enforcement (2019-249)**

- The Complainant's request was invalid because it failed to identify specific records and would have required research. MAG, 375 N.J. Super. 534; Lagerkvist, 443 N.J. Super. 230. Thus, the Custodian lawfully denied access to the subject 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote.

15. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Camden (Camden) (2019-251)**

- The Custodian did not unlawfully deny access to the subject OPRA request because he never received it. N.J.S.A. 47:1A-6. See Martinez v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2014-2 (September 2014).
- 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.

16. **Luis F. Rodriguez v. Kean University (2019-252)**

- The Custodian's extensions were unwarranted and unsubstantiated; thus, a "deemed" denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).
- The Custodian did not unlawfully deny access to the subject OPRA request because she disclosed the only records that existed. Danis, GRC 2009-156, *et seq.*

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

17. **Merrick Wilson v. City of Lambertville (Hunterdon) (2020-1)**

- The Complainant's request is invalid because it failed to contain a date or range of dates and would require research. MAG, 375 N.J. Super. 534; Lagerkvist, 443 N.J. Super. 230; Elcavage, GRC 2009-07.
- 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote.

18. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Long Branch Police Department (Monmouth) (2020-5)**

- The Custodian lawfully denied access to the Complainant's OPRA request pursuant to the Attorney General Law Enforcement Directive No. 2018-3 and N.J.S.A. 47:1A-10. N.J.S.A. 47:1A-6; O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004).
- 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. Ritardi made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

19. **Scott Madlinger v. Berkeley Township (Ocean) (2020-8)**

- The Custodian lawfully denied access to the subject OPRA request because no records exist. 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote.

20. **Thomas S. Chichester v. Cinnaminson Township (Burlington) (2020-25)**

- There is no statute of limitation barring adjudication of this complaint. Mason v. City of Hoboken, 196 N.J. 51 (2008); Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2012-288, *et seq.* (Interim Order dated October 29, 2013).

- The GRC must conduct an *in camera* review of the responsive closed session minutes (with the exception of the March 19, 2018 minutes I and II) to determine the validity of the Custodian’s assertion that same are exempt under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-10, and N.J.S.A. 10:4-12(b). 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 Ms. Trish seconded the motion. The motion passed by a unanimous vote.

21. **Charles Street v. North Arlington School District (Bergen) (2020-31)**

- The Custodian timely responded based on a warranted and substantiated extension. N.J.S.A. 47:1A-6; Ciccarone, GRC 2013-280.
- 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. **Yusuf Abdullah Muhammad v. Bordentown Regional High School (Burlington) (2020-32)**

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

23. **Marvin Mathis v. NJ Department of Corrections (2020-36)**

- The Custodian lawfully denied access to the requested Pre-Sentence report. N.J.S.A. 47:1A-1.1. See Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014) (citing State v. DeGeorge, 113 N.J. Super. 542, 544 (App. Div. 1971)).
- 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. Ritardi made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

24. **Marty Alston v. Mercer County Prosecutor's Office (2020-43)**

- The Custodian lawfully denied access to the requested Pre-Sentence report. N.J.S.A. 47:1A-1.1. See Pitts, GRC 2013-299 (citing DeGeorge, 113 N.J. Super. at 544); Baker v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2014-262 (May 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. Mr. Ritardi made a motion and Ms. Trish 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: None

X. Public Comment:

- Mr. James Baye (GRC Complaint No. 2021-47): Mr. Baye asked how to phrase his request if he is not sure which records. Ms. Berg Tabakin stated that Mr. Baye would need to submit an OPRA request that seeks a specific "government record." Mr. Baye stated that he wanted to ensure that a "public agency" disclosed all records sought similar to an experience he had with a separate "public agency." Mr. Caruso suggested that Mr. Baye contact the GRC directly if he had an inquiry question about OPRA.

XI. Adjournment:

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

The meeting adjourned at 2:36 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: April 27, 2021