



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
June 29, 2021

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, June 29, 2021 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

- Wayne Levante v. Town of Newton (Sussex) (2018-127) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Eric Jones v. Plainfield Public School District (Cape May) (2019-45) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Marcella Aylwin v. Egg Harbor City (Atlantic) (2019-191) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

May 18, 2021 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):

1. Darlene R. Esposito v. Moving and Self Storage (Bergen) (2021-106)
 - Request Made to a Non-Public Agency.
2. Linda A. Evans v. Monmouth Family Health & Dental Center (Monmouth) (2021-107)
 - Request Made to a Non-Public Agency.

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

1. David Weiner v. County of Essex (2020-194)
 - Complaint Settled in Mediation.
2. David Weiner v. County of Essex (2020-226)
 - Complaint Settled in Mediation.
3. Mary Ann Thompson v. City of Paterson (Passaic) (2021-15)
 - Complaint Settled in Mediation.
4. Jim Brennenstuhl v. NJ Division of Consumer Affairs (2021-39)
 - Complaint Voluntarily Withdrawn.
5. Jason Maxey Schupp v. NJ Department of Banking and Insurance (2021-98)
 - Complaint Voluntarily Withdrawn.
6. Brittany Suszan (o/b/o Spotcrime) v. City of Newark (Essex) (2021-111)
 - 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. Joseph Semaan v. City of Hackensack (Bergen) (2019-118) (**SR Recusal**)
 - The Council must perform an *in camera* review of the records responsive to the subject OPRA request to determine the validity of the Custodian’s assertion that they contain personal and medical information exempt from access under OPRA. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-9(a); Executive Order No. 26 (Gov. McGreevey, 2002).
 - The knowing and willful analysis is deferred.

2. Stephen Bialkowski v. Parking Authority of the City of Newark (Essex) (2019-198) **(SR Recusal)**
 - The Council shall dismiss this complaint because the Complainant withdrew it in writing on May 21, 2021.
3. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Paterson Police Department (Passaic) (2020-56) **(SR Recusal)**
 - The Custodian did not violate N.J.S.A. 47:1A-5(c) because the special service charge of \$807.52 is warranted and reasonable. Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002). Further, the Custodian provided the Complainant an opportunity to accept or reject the fee. Thus, the Custodian shall grant access to the responsive records upon payment of the special service charge. Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
 - The knowing and willful and prevailing party analyses are deferred.
4. Ery-Wikine Pryor v. Essex County Prosecutor's Office (2020-63) **(SR Recusal)**
 - The Custodian complied with the Council's May 18, 2021 Interim Order.
 - There is no knowing and willful violation.
5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Hoboken (Hudson) (2020-80) **(SR Recusal)**
 - The Custodian may have unlawfully denied access to the Complainant's OPRA request item Nos. 1 and 2. The Custodian shall confirm whether Hoboken Police Department can extract the responsive information electronically and, if so, disclose same. Paff v. Twp. of Galloway, 229 N.J. 340 (2017).
 - The Custodian may have unlawfully denied access to the Complainant's OPRA request item No. 3 and must either disclose the responsive records or certify if none exist.
 - The knowing and willful and prevailing party analyses are deferred.
6. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Paramus (Bergen) (2020-112) **(SR Recusal)**
 - The Custodian may have unlawfully denied access to the Complainant's March 16, 2020 OPRA request. N.J.S.A. 47:1A-6. The Custodian must either locate and disclose responsive records or certify if none exist.
 - The knowing and willful and prevailing party analyses are deferred.
7. Scott Madlinger v. Atlantic City Police Department (Atlantic) (2019-206) **(GT Recusal)**
 - This complaint should be tabled for additional review.

B. Individual Complaint Adjudications with no Recusals:

1. Wayne Levante v. Town of Newton (Sussex) (2018-127)
 - The Custodian failed to comply with the Council's May 19, 2020 Interim Order.
 - The Custodian shall comply with the Council's *In Camera* Examination Findings.

- The Custodian shall disclose all non-exempt portions of the responsive e-mails. See 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.
2. Alfred Savio v. West Cape May Board of Education (Cape May) (2018-256)
 - The Council should accept the Administrative Law Judge's findings and adopt the Order dismissing this complaint.
 3. Eric Jones v. Plainfield Public School District (Union) (2019-45)
 - The Custodian failed to comply with the Council's August 25, 2020 Interim Order.
 - The *In Camera* Examination reveals that the Custodian lawfully denied access to the requested records.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party.
 4. Brittany Olt v. City of Camden (Camden) (2019-88)
 - The Custodian did not fully comply with the Council's April 27, 2021 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.
 5. Thomas Banksy v. Kean University (2019-185)
 - The Custodian timely responded to the Complainant's OPRA request item Nos. 1, 3, and 4 based on warranted and substantiated extensions. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); See also Rodriguez v. Kean Univ., GRC Complaint No. 2016-196 (February 2018).
 - The Custodian did not timely respond to the Complainant's OPRA request item No. 2 seeking immediate access records. N.J.S.A. 47:1A-5(e); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007). However, the GRC declines to order disclosure because the Custodian did so on September 6, 2019.
 - There is no knowing and willful violation.
 6. Marcella Aylwin v. Egg Harbor City (Atlantic) (2019-191)
 - This complaint should be tabled for additional review.
 7. Carol Scutro v. City of Linden (Union) (2019-207)
 - The Custodian failed to comply with the Council's April 27, 2021 Interim Order.
 - There is no knowing and willful violation.
 8. James Pappas v. West Morris Regional High School District (Morris) (2019-229)
 - The Complainant's request for reconsideration should be denied.

9. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Union City (Union) (2020-19)
 - The Custodian complied with the Council’s May 18, 2021 Interim Order.
 - The Council should grant the Custodian a final opportunity to provide a full and complete 14-point analysis.
 - The knowing and willful and prevailing party analyses are deferred.

10. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Elizabeth Police Department (Union) (2020-39)
 - The Custodian did not violate N.J.S.A. 47:1A-5(c) because the special service charge of \$7,285.52 is warranted and reasonable. Courier Post, 360 N.J. Super. at 199. Further, the Custodian demonstrated the copying costs associated with electronic disclosure represented an “actual cost.” Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Thus, the Custodian shall grant access to the responsive records upon payment of the special service charge. Paff, GRC 2006-54.
 - The knowing and willful and prevailing party analyses are deferred.

11. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Lacey (Ocean) (2020-44)
 - The Custodian may have unlawfully denied access to the responsive complaints and summonses. 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 either locate and disclose responsive records, pending a special service charge if applicable, or certify if none exist.
 - The knowing and willful and prevailing party analyses are deferred.

12. Joseph Maddaloni, Jr., Esq. (o/b/o Renaissance School Services, LLC.) v. The Kingdom Charter School of Leadership (Camden) (2020-66)
 - The Complainant’s request for reconsideration should be denied. The Council’s December 15, 2020 Interim Order remains in effect.

13. Anonymous v. Borough of Haledon (Passaic) (2020-82)
 - 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 may have unlawfully denied access to two (2) summonses. Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). The Custodian shall perform a search and either disclose located records or certify if none exist.
 - The knowing and willful analysis is deferred.

14. Anonymous v. Borough of Haledon (Passaic) (2020-89)
 - The Custodian’s failure to locate additional responsive records until after the filing of the instant complaint resulted in an insufficient search. Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013). However, the GRC declines to order disclosure of the additional records because the Custodian did so as part of the Statement of Information (“SOI”).
 - There is no knowing and willful violation.

15. Anonymous v. Borough of Haledon (Passaic) (2020-93)
- 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 did not unlawfully deny access to any responsive records because he disclosed all that existed. N.J.S.A. 47:1A-6; 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.
16. Anonymous v. Borough of Haledon (Passaic) (2020-97)
- 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 because the Custodian did so on June 9, 2020.
 - There is no knowing and willful violation.
17. Anonymous v. Borough of Haledon (Passaic) (2020-98)
- 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 failed to disclose one (1) Computer-Aided Dispatch report and fourteen (14) summonses. Macek, GRC 2017-156. The Custodian shall perform a search and disclose all responsive records and/or certify if none exist.
 - The knowing and willful analysis is deferred.
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| <p>18. Anonymous v. Passaic County Sheriff’s Office (2020-99)</p> <p>19. Anonymous v. Passaic County Sheriff’s Office (2020-101) Consolidated</p> <ul style="list-style-type: none"> • Although requesting that the Complainant complete the County’s official form may have been a violation of OPRA, the Custodian mooted the issue by responding to the subject OPRA requests based on their original submission. <u>Renna v. Cnty. of Union</u>, 407 <u>N.J. Super.</u> 230, 232 (App. Div. 2009). Further, the County’s available methods of transmission do not present an unreasonable obstacle for anonymous requestors. <u>Paff v. Bordentown Fire Dist. No. 2 (Burlington)</u>, GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013). Thus, no violation of OPRA occurred. • The Custodian borne her burden of proof that she timely responded to the subject OPRA requests. <u>N.J.S.A. 47:1A-6</u>. |
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20. Anonymous v. Passaic County Sheriff’s Office (2020-106)
- The Custodian’s failure to timely respond (due to an e-mail typo) resulted in “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 because the Custodian resent her response to the Complainant as part of the SOI on July 14, 2020.
 - There is no knowing and willful violation.
21. Jonathan Meyers, Esq. (o/b/o Brenda Sanchez) v. NJ Office of the State Long-Term Care Ombudsman (2020-127)
- The New Jersey Long-Term Ombudsman is a “public agency” for purposes of OPRA. N.J.S.A. 47:1A-1.1.

- The Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 52:27G-13(a).

VII. Court Decisions of GRC Complaints on Appeal:

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

- In re AG Law Enf't Directive Nos. 2020-5 & 2020-6, 2021 N.J. LEXIS 486 (2021)
- Simmons v. Mercado, 2021 N.J. LEXIS 557 (2021)

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.