



**Minutes of the Government Records Council
December 14, 2021 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:33 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 December 9, 2021.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Simons, 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), Samuel Rosado (Staff Attorney), John Stewart (Mediator), and Deputy Attorney General Debra Allen.

II. 2022 Officer Elections

- Mr. Caruso called for a nomination to serve as Chairperson for 2022. Mr. Ritardi called for a motion to re-elect Ms. Berg Tabakin as Chairperson. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

- Mr. Caruso called for a nomination to serve as Secretary for 2022. Ms. Berg Tabakin called for a motion to re-elect Mr. Ritardi as Vice Chair/Secretary. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

III. 2022 Proposed Council Meeting Dates – Final Review

- Mr. Caruso listed the proposed meeting dates for 2022. Mr. Ritardi made a motion, seconded by Ms. Trish, to approve the 2022 meeting dates. The motion passed by a unanimous vote.

IV. Executive Director’s Report

Current Statistics

- Since OPRA’s inception in July 2002, the GRC has received 5,923 Denial of Access Complaints. That averages about 304 annual complaints per 19 1/2 program years. So far in the current program year (FY2022), the GRC has received 188 Denial of Access Complaints.
- 415 of the 5,923 complaints remain open and active (7.0%). Of those open cases:
 - 6 complaints are on appeal with the Appellate Division (1.4%);
 - 38 complaints are currently in mediation (9.2%);
 - 4 complaints are proposed for the Office of Administrative Law (1.0%);
 - 31 complaints await adjudication by the Office of Administrative Law (7.5%);
 - 66 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (15.9%);
 - 270 complaints are work in progress (65.0%); and
 - 0 complaints are being held in abeyance (0.0%).
- Since Program Year 2004, the GRC has received and responded to 34,946 total inquiries, averaging about 1,889 annual inquiries per 18 1/2 tracked program years (the GRC did not track inquiries in the agency’s first year). So far in the current program year (FY2022), the GRC has received 756 inquiries (6.8 inquiries per workday).

GRC Regulations

- At its November 9, 2021 meeting, the Council went into closed session to discuss multiple proposed rule changes and to obtain legal advice on those changes. Discussion included amendments to better clarify the GRC’s process and make it more efficient. The goal is to begin the promulgation process well in advance of the April 2022 expiration; the GRC is currently in a terrific position to achieve that goal.

V. Approval of Minutes of Previous Meetings:

November 9, 2021 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the November 9, 2021 meeting. Ms. Simons confirmed the accuracy of the draft minutes with Salma Chand. Ms. Trish made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

November 9, 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. Simons confirmed the accuracy of the draft minutes with Ms. Chand. Ms. Trish made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

VI. 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. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Beach Haven Police Department (Ocean) (2021-267)**
 - Duplicate Complaint Filed.
2. **Ronald Brown v. East Brunswick Police Department (Middlesex) (2021-297)**
 - All Records Responsive Provided in a Timely Manner.
3. **Peter Gartner v. Middlesex Board of Education (2021-303)**
 - All Records Responsive Provided in a Timely Manner.
4. **Peter Gartner v. Borough of Middlesex (Middlesex) (2021-316)**
 - Unripe Cause of Action.

Ms. Berg Tabakin called for a motion to accept the recommendations as written in all the above Administrative Complaint Dispositions. Ms. Simons 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. **Antonia Matera-Vignola v. Hasbrouck Heights Board of Education (Bergen) (2021-101)**
 - Complaint Settled in Mediation.
2. **James Stoldt v. Rutgers University (2021-203)**
 - Complaint Settled in Mediation.
3. **Bernard Josefsberg (o/b/o Northern NJ Sanctuary Coalition) v. Bergen County Sheriff's Office (2021-278)**
 - Complaint Voluntarily Withdrawn.
4. **Anna D. Lichnowski v. Ocean County Board of Elections (2021-307)**
 - Complaint Voluntarily Withdrawn.
5. **Debra E. Press-Costello v. County of Gloucester (2021-310)**
 - Complaint Voluntarily Withdrawn.
6. **Arthur Lang v. Lakewood Board of Education (Ocean) (2021-317)**
 - Complaint Voluntarily Withdrawn.

V. 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:

Ms. Berg Tabakin noted that Mr. Ritardi would be muted for Agenda items No. 1 and 2 to ensure his non-participation in the items from which he was recused. Mr. Caruso confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda items.

1. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-134) (SR Recusal)**
 - The Council should determine the reasonable fee amount to which the Complainant's Co-Counsel is entitled.
 - The Council should find that Mr. John Bermingham, Esq. is entitled to an adjusted fee award of \$3,240.00 representing 10.8 hours of service at \$300.00 per hour.
 - The Council should find that Mr. Walter M. Luers, Esq. is entitled to a fee award of \$4,724.94 representing 12.5 hours of service at \$350.00 per hour, 4 hours of paralegal service at \$75.00 per hour, and \$49.94 in expense reimbursements.
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg-Tabakin questioned the reduction of entries from 0.2 to 0.1 arguing that the standard of "usual and customary" should prevail. Mr. Caruso noted that the reduction was consistent with the Council's prior actions in GRC 2015-133. Ms. Simons concurred to the decrease. 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. Simons seconded the motion. The motion passed by a majority vote; Ms. Berg-Tabakin voted no, and Mr. Ritardi recused.

2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Paterson (Passaic) (2020-16) (SR Recusal)**

- The Council should dismiss this complaint because the Complainant withdrew it on November 19, 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. Trish made a motion and Ms. Simons 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.

Ms. Berg Tabakin noted that Ms. Trish would be muted for Agenda item No. 3 to ensure her non-participation in the item from which she was recused. Ms. Berg Tabakin confirmed to the public that Ms. Trish was muted prior to addressing the below agenda item.

3. **Goutam U. Jois (o/b/o Gustavo Martinez) v. Monmouth County Prosecutor's Office (2020-171) (GT Recusal)**

- The Custodian lawfully denied access to the requested witness statements, which are exempt from disclosure under the Internal Affairs Policy and Procedures ("IAPP") and no waiver applies. N.J.S.A. 47:1A-6; IAPP § 9.6.1; Rivera v. Union Cnty. Prosecutor's Office, 2020 N.J. Super. Unpub. LEXIS 1192 (App. Div. 2020); Camarata v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2014-127 (June 2015).
- The Custodian did not unlawfully deny access to any remaining nonexempt records because she certified, and the record reflects, that all were disclosed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, et seq. (Interim Order dated April 28, 2010).
- 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. Simons seconded the motion. The motion passed by a unanimous vote; Ms. Trish recused.

Ms. Berg Tabakin notified the public that Ms. Trish would rejoin the meeting by unmuting herself. Ms. Trish rejoined the meeting at that time.

B. Individual Complaint Adjudications with no Recusals:

1. **Edwin Sheppard v. NJ Department of Law and Public Safety, Division of Law (2017-181)**
 - The Custodian timely responded based on a warranted and substantiated extension. Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014); Libertarians for Transparent Gov't v. Summit Pub. Sch. (Union), GRC Complaint No. 2016-193 (March 2018).
 - The requested "disciplinary actions" are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); N.J.S.A. 47:1A-10; N.J.A.C. 13:1E-3.2(a)(4); N. Jersey Media Grp. v. Bergen Cnty. Prosecutor's Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014). Thus, no unlawful denial of access occurred. 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. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
2. **Edwin Sheppard v. NJ Department of Law and Public Safety, Division of Law (2018-75)**
 - The Custodian lawfully denied access to the Complainant's OPRA request because she certified, and the record reflects, that no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
 - 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.
3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Old Bridge Township (Middlesex) (2018-79)**
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
 - 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. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Red Bank (Monmouth) (2018-175)**
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.

- 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. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Long Branch (Monmouth) (2018-178)**
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
 - 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
 6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Lacey (Ocean) (2018-193)**
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
 - 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. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
 7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of West Cape May (Cape May) (2018-197)**
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
 - 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. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
 8. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Simmons) v. Audubon Park Borough (Camden) (2018-290)**
 - The Custodian did not comply with the Council's November 10, 2020 Interim Order. However, no further action is necessary because the Custodian eventually disclosed responsive records on March 2, 2021.
 - 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.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

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

- The Custodian complied with the Council's March 30, 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.
- 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. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Union (Union) (2020-15)**

- The Custodian complied 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.
- 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.

11. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Lacey (Ocean) (2020-44)**

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
- 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. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

12. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Montclair Police Department (Essex) (2020-45)**

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
- 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

13. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Lincoln Park (Morris) (2020-49)**

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
- 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. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

14. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Town of Morristown (Morris) (2020-50)**

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
- 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. Simons seconded the motion. The motion passed by a unanimous vote.

15. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Edison Police Department (Middlesex) (2020-55)**

- The Custodian complied 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.
- 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. Simons seconded the motion. The motion passed by a unanimous vote.

16. **Paul Brennan v. Borough of Bay Head (Ocean) (2020-166)**

- The Complainant's request for reconsideration should be denied.
- The Custodian complied with the Council's September 28, 2021 Interim Order.
- There is no knowing and willful violation.
- 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. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

17. **Vanessa Gottesfeld v. Greenwich Township School District (Cumberland) (2020-169)**

- No unlawful denial occurred because the Custodian timely and reasonably sought clarification of the subject OPRA request, but the Complainant failed to provide same. N.J.S.A. 47:1A-6; Liebel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order dated March 22, 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. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

18. **Victoria del Campo v. NJ Department of Law & Public Safety, Division on Civil Rights (2021-254)**

- This complaint should be tabled for additional review and legal advice.
- Ms. Tabakin called for a motion to table the above matter. Ms. Simons made a motion, and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

VI. Court Decisions of GRC Complaints on Appeal: None

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

VIII. Public Comment:

- Edwin Sheppard (GRC Complaint Nos. 2017-181 and 2018-75): Mr. Sheppard asserted that Mr. Caruso was recused from his complaints in 2019 and that he sent a "cease and desist" e-mail the week prior. Mr. Sheppard called for Mr. Caruso's termination due to

past conduct and that he filed ethics complaints with the State Ethics Commission against Ms. Berg-Tabakin, Mr. Caruso, and Mr. Rosado.

Mr. Sheppard noted that he sought updates on GRC 2016-170 and 2017-179 and received none, but that Mr. Rosado should be removed from those complaints because he changed addresses in other complaints and filed motions on behalf without his consent. Mr. Sheppard also alleged that Mr. Caruso “trash[ed]” submissions. Mr. Sheppard finally asked Mr. Ritardi when he would receive the “forum” promised to him at a prior meeting, which Mr. Ritardi declined to answer and deferred to Ms. Berg-Tabakin. Mr. Sheppard asked that the Council re-evaluate their nomination of Ms. Berg-Tabakin as Chairperson in 2022.

X. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Ms. Simons made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote. The meeting adjourned at 2:19 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: January 25, 2022