Government
Records Council

Minutes of the Government Records Council
March 29, 2022 Public Meeting – Open Session

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:32 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 24, 2022.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Killough-Herrera, 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

II. Executive Director's Report:

GRC Staffing

- On March 15, 2022, DCA posted for vacancy notice for one of the GRC's two (2) open positions. It should be noted that the functional job title, previously identified as a "case

manager," has been changed to "complaint manager." This is to avoid confusion amongst potential candidates as to the nature of the position.

GRC Invited to Speak to OGIS

- On March 4, 2022, the GRC was invited to meet with the Office of Government Information Services ("OGIS") Working Group, a subcommittee of the Federal Freedom of Information Act ("FOIA") Advisory Commission. That group was put together for the purpose of exploring the addition of an administrative adjudication process to OGIS, which currently operates under FOIA. At this virtually held meeting, committee members received information from both the GRC and Pennsylvania's Office of Open Records regarding the administrative process for settling public records disputes in each State. The GRC is appreciative of the opportunity to assist in advancing OGIS's future operations.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 6,036 Denial of Access Complaints. That averages about 308 annual complaints per a little more than 19 2/3 program years. So far in the current program year (FY2022), the GRC has received 301 Denial of Access Complaints.

- 451 of the 6,036 complaints remain open and active (7.5%). Of those open cases:
    - 7 complaints are on appeal with the Appellate Division (1.6%);
    - 17 complaints are currently in mediation (3.8%);
    - 4 complaints are proposed for the Office of Administrative Law (0.9%);
    - 30 complaints await adjudication by the Office of Administrative Law (6.7%);
    - 65 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (14.4%);
    - 328 complaints are work in progress (72.7%); and
    - 0 complaints are being held in abeyance (0.0%).

  The GRC notes that the significant uptick in complaints both filed in FY2022 and awaiting adjudication is due largely to one individual, who has filed 135 complaints in the current fiscal year. 104 of those complaints have been filed since October 13, 2021 and the individual now accounts for 30% of all complaints filed this fiscal year.

- Since Program Year 2004, the GRC has received and responded to 35,352 total inquiries, averaging about 1,900 annual inquiries per a little more than 18 2/3 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 1,230 inquiries (6.7 inquiries per workday).

GRC Regulations

- The GRC continues to move through the process of preparing amended regulations for submission to the Office of Administrative Law prior to the April 5, 2022 expiration.

III. Closed Session:

IV. Approval of Minutes of Previous Meetings:

February 22, 2022 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the February 22, 2022 meeting. Mr. Ritardi made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote.

February 22, 2022 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the February 22, 2022 meeting. 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. **Reginald William Lindsey v. NJ State Parole Board (2020-158)**
   - No Records Responsive to the Request Exist.
2. **William R. Capers v. Mahwah Police Department (Bergen) (2021-171)**
   - No Records Responsive to the Request Exist.
3. **Dale M. Weaver v. NJ Department of Transportation (2021-235)**
   - No Correspondence Received by the Custodian.
4. **Jose M. Cortes v. NJ Civil Service Commission (2021-276)**
   - No Records Responsive to the Request Exist.

5. **Vincent Lepore v. City of Long Branch (Monmouth) (2022-33)**
    - 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. Trish made a motion, which was seconded by Ms. Killough-Herrera. The motion passed by a unanimous vote.

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

1. **Jacoby & Meyers, LLP (o/b/o Estate of Ketrina L. Morrow) v. Essex County Prosecutor's Office (2020-122)**
    - Complaint Voluntarily Withdrawn.
2. **Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Harrison Police Department (Hudson) (2021-156)**
    - Complaint Voluntarily Withdrawn.
3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Union Police Department (Union) (2021-200)**
    - Complaint Voluntarily Withdrawn.
4. **Scott Madlinger v. Berkeley Township (Ocean) (2022-34)**
    - Complaint Voluntarily Withdrawn.
5. **Nicholas Sodano v. Township of Mount Holly (Burlington) (2022-41)**
    - 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:

Ms. Berg Tabakin noted that Mr. Ritardi would be muted for Agenda items No. 1 and 4 to ensure his non-participation in the 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.

1. **Elie C. Jones v. Township of Teaneck (Bergen) (2019-2) (SR Recusal)**
    - The Council should determine the reasonable fee amount to which the Complainant's Counsel is entitled.
    - The Council should find that Complainant's Counsel is entitled to a fee award of $5,860.00 representing 13.0 hours of service at $450.00 per hour, 0.1 hours of paralegal services at $100.00 per hour, and $0.20 for expenses.
    - 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. Killough-Herrera made a motion and Ms.

Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

2. **Michael P. Rubas (o/b/o Anonymous) v. Hudson County Prosecutor's Office (2020-78) (SR Recusal)**
3. **Michael P. Rubas (o/b/o Anonymous) v. Hudson County Prosecutor's Office (2020-91) (SR Recusal) Consolidated**
    - The Custodian lawfully denied access to item Nos. 1 through 3 of each OPRA request because the information sought is not disclosable within the exceptions set forth in N.J.S.A. 47:1A-10.
    - The Custodian lawfully denied access to the Complainant's February 6, 2020 OPRA request item No. 4 because he certified, and the record reflects, that no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
    - 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. Killough-Herrera made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

4. **Anonymous v. City of Clifton (Passaic) (2021-66) (SR Recusal)**
    - The Complainant's February 14, 2021 e-mail was not a valid OPRA request. Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009). However, the City converted the e-mail into a valid OPRA request by addressing it under the provisions of OPRA.
    - The responsive 911 call is exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); Executive Order No. 26 (Gov. McGreevey, 2002) ("EO 26"); Rivera v. Town of West New York (Hudson), GRC Complaint No. 2010-208 (Interim Order dated January 29, 2013). Thus, the Custodian lawfully denied access to the responsive recording. 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. Killough-Herrera made a motion and Ms. Trish 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. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Somerdale Police Department (Camden) (2019-33)**
    - The Custodian did not fully comply with the Council's February 22, 2022 Interim Order. However, no further action is necessary because the Complainant took no action.
    - The Council declines to address the knowing and willful issue because no violation of OPRA occurred.
    - The Complainant is not a prevailing party.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Stockton Borough (Hunterdon) (2019-35)**
    - 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. 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. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

3. **Judith Sullivan v. Ramapo Indian Hills Regional High School District (Bergen) (2019-94)**
    - The Council should dismiss this complaint because the Complainant voluntarily withdrew it in writing via e-mail on March 16, 2022. Thus, no further adjudication is necessary.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

4. **Robert C. Scutro v. City of Linden (Union) (2019-180)**
    - The Council should reconsider its February 23, 2021 Interim Order of its own volition because the Order did not include a compliance time frame by which the Custodian must adhere. N.J.A.C. 5:105-2.10(a).
    - The Council should amend its Interim Order to add as conclusion No. 2 a five (5) business day compliance time frame. The Custodian shall comply with the Order accordingly.

- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. 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. **Ryan E. Melsky v. Township of Clinton (Hunterdon) (2019-186)**
    - The Custodian complied with the Council's February 22, 2022 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. 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. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Union City (Union) (2020-19)**
    - The current Custodian complied with the Council's February 22, 2022 Interim Order.
    - The proposed special service charge of $6,000.00 for each requested month of responsive records is reasonable and warranted. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 202 (October 28, 2002); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Thus, the current Custodian shall disclose responsive records upon payment of the fee. Should the amount of time expended for each month be less than 60 hours, the Custodian shall notify the Complainant accordingly.
    - 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. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

7. **Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-90)**
    - The Custodian complied with the Council's February 22, 2022 Interim Order.
    - This complaint should be referred to the Office of Administrative Law for a hearing to determine whether Communications Supervisor Vanessa Rosetti's actions were knowing and willful. N.J.S.A. 47:1A-11.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. 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.

8. **Elizabeth M. Konkle v. Clinton Township Sewerage Authority (Hunterdon) (2020-100)**
    - The Custodian's response, which fell beyond the seven (7) business days, was nonetheless reasonable and does not result in a violation of OPRA due to adverse working conditions. N.J.S.A. 47:1A-5(g), P.L. 2020, c.10.
    - No unlawful denial of access to OPRA request item Nos. 1 (partial), 4, and 5 occurred because the Custodian responded disclosing responsive records within the enlarged response time frame.
    - The Custodian lawfully denied access to OPRA request item Nos. 1 (partial), 2, and 3 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
    - The Complainant's request item Nos. 6 and 7 were invalid because they required research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2013-43, *et seq.* (Interim Order dated September 24, 2013).
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. 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.

9. **Thomas M. Riche (o/b/o Extel Communications, Inc.) v. Franklin Township Housing Authority (Somerset) (2020-134)**
    - Executive Director Clarke's failure to send a response to the Complainant's correct e-mail address resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); See also Owoh, Esq. (on behalf of African American Data and Research Institute) v. Borough of Helmetta (Middlesex), GRC Complaint No. 2018-65 (February 2020).
    - The Complainant's OPRA request was invalid because it failed to seek identifiable "government records." MAG, 375 N.J. Super. 534; Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015). Thus, no unlawful denial of access occurred.
    - There is no knowing and willful violation.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Clayton Police Department (Gloucester) (2020-137)**
    - The Custodian complied with the Council's February 22, 2022 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. 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. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

11. **Andrew Glazer v. NJ Department of Human Services, Office of the Public Guardian for Elderly Adults (2020-140)**
    - Acting Public Guardian Helen Dodick violated N.J.S.A. 47:1A-5(h) by failing to either forward the Complainant's OPRA request to the Custodian or returning it and providing proper contact information.
    - The Custodian may have unlawfully denied access to the subject OPRA request and shall either provide responsive records, deny access citing a specific lawful basis, or certify if no records exist.
    - The knowing and willful analysis is deferred.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

12. **Marcia A. Kleinz v. Atlantic Cape Community College (2020-161)**
    - The current Custodian did not fully comply with the Council's January 25, 2022 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. 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.

13. **Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Hopatcong Police Department (Sussex) (2020-162)**
    - The Custodian may have unlawfully denied access to redacted portions of the responsive Use of Force Reports ("UFR"). N.J.S.A. 47:1A-6. Thus, the Custodian shall review the UFRs again and disclose those where arrests were made without redactions. N.J.S.A. 47:1A-3(b); EO 26.
    - 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. 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.

14. **Mark Slawson v. Borough of Tenafly (Bergen) (2020-165)**
    - The Custodian's response, which fell beyond the seven (7) business days, was nonetheless reasonable and does not result in a violation of OPRA due to adverse working conditions. N.J.S.A. 47:1A-5(g), P.L. 2020, c.10.
    - No unlawful denial of access occurred here because the Custodian disclosed all records responsive to the OPRA request on October 23, 2020. N.J.S.A. 47:1A-6. Further, the Custodian was not obligated to disclose records coming into existence after the filing of the subject OPRA request. See Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 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. 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. Jennifer Killough Herrera seconded the motion. The motion passed by a unanimous vote.

15. **Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-190)**
    - The Custodian did not bear her burden of proving that the extensions were warranted and substantiated. 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). Thus, the subject OPRA request was "deemed" denied.
    - The Custodian lawfully denied access to internal affairs reports and public synopses for 2017 and 2019 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
    - No unlawful denial of access to the internal affairs report and synopsis for 2018 occurred because the Custodian disclosed them to the Complainant. N.J.S.A. 47:1A-6.
    - There is no knowing and willful violation.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

16. **Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-8)**
    - The Complainant's request for reconsideration of the Council's January 25, 2022 Final Decision should be denied.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. 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.

17. **Julie Akers v. City of Estell Manor (Atlantic) (2021-354)**
    - 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 Custodian may have unlawfully denied access to the responsive Restoration/Agriculture Plan. N.J.S.A. 47:1A-6. Thus, the Custodian shall either disclose the Plan, certify (with supporting documentation) if the Plan was already disclosed, or certify if the Plan did not exist or came into existence after the filing of the subject OPRA request.
    - The knowing and willful analysis is deferred.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Ritardi 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:

- Mears v. Borough of Lawnside, 2022 N.J. Super. Unpub. LEXIS 195 (App. Div. 2022): In an OPRA request for attorney invoices, the Appellate Division reversed the trial court's finding that the records were properly redacted under OPRA's attorney-client privilege exemption. Upon review of the unredacted records, the court held that none of the redacted lines and descriptions contained privileged information. The court also held that the plaintiff was a prevailing party entitled to an attorney fee award.

- Dentist Doe v. N.J. State Bd. of Dentistry, 2022 N.J. Super. Unpub. LEXIS 259 (App. Div. 2022): Plaintiff alleged that the New Jersey State Board of Dentistry ("Board") continued to post information regarding disciplinary actions against them on its website in violation of OPRA and Executive Order No. 26 (McGreevy, 2002). The Appellate Division held that since the Plaintiff never attempted to exhaust his administrative remedies by reaching out to the Board or the Office of the Attorney General, the matter should be dismissed.

- McMorrow v. Borough of Englewood Cliffs, 2022 N.J. Super. Unpub. LEXIS 295 (App. Div. 2022): In a request for communications and other records, the trial court held that the Defendant unlawfully denied access and committed a knowing and willful violation. The Defendant appealed the decision on the issue of a knowing and willful violation. The Appellate Court found that the trial judge improperly imposed her personal opinion regarding the custodian's knowledge

and access to the municipality's computer systems in assessing the knowing and willful determination. Therefore, the court reversed and vacated the civil penalty imposed on the Defendant.

- Libertarians for Transparent Gov't v. Cumberland Cty., 2022 N.J. LEXIS 187 (2022): The Plaintiff requested a settlement agreement between a former corrections officer and his employer, the Defendant. The Plaintiff also sought employee information required to be disclosed under N.J.S.A. 47:1A-10, in particular the "date of separation and the reason therefor." The Defendant provided the requested information, and stated that the corrections officer was "charged with a disciplinary infraction and was terminated", but denied access to the settlement agreement. The trial court ordered the Defendant to produce a heavily redacted form of the settlement agreement; the Appellate Division reversed. The Court found that a plain reading of N.J.S.A. 47:1A-10 calls for the disclosure of a settlement agreement containing such information once the remaining personnel information is redacted. The Court reversed the Appellate Division and ordered disclosure of the redacted agreement.

- Rivera v. Union Cty. Prosecutor's Office, 2022 N.J. LEXIS 190 (2022): The Plaintiff requested internal affairs reports regarding a civilian head of a police department under OPRA and the common law. The Defendant's denied access, arguing that the records were exempt based on the witnesses' expectations of privacy and the need to preserve the ability to gather facts in similar investigations. The Court held that internal affairs reports were not subject to disclosure under pursuant to N.J.S.A. 47:1A-9(b) and the confidentiality granted under the Attorney General's Internal Affairs Police and Procedures. However, the Court held that internal affairs reports may be subject to disclosure under the common law, and provided additional factors to consider when determining disclosure. The Court therefore reversed the judgment of the Appellate Division and ordered the trial court to review the internal affairs report *in camera* utilizing the balancing test described.

IX. Complaints Adjudicated in U.S. District Court:

- Doe v. Rutgers, 2022 U.S. Dist. LEXIS 36489 (D.N.J. Mar. 2, 2022): Regarding a request for communications and student records, the Defendant denied in part, responded in part, and imposed a special service charge for the remainder. The Plaintiff filed the instant action asserting that imposing the special service charge violated the Family Educational Rights and Privacy Act ("FERPA") rather than OPRA. The court found that the Plaintiff properly based his claim on federal law, and therefore had jurisdiction over the matter.

X. Public Comment:

- Mr. Vincent Lepore (GRC Complaint No. 2022-33): Mr. Lepore wanted an explanation as to what the Administration Disposition was about, and Ms. Tabakin explained to him that the Council determined the complaint was

unripe for adjudication. Mr. Lepore identified specific issues relevant to his complaint filing. Mr. Caruso explained how the agenda was composed, and noted that speakers were not permitted to make oral testimony regarding scheduled adjudications. Mr. Caruso further stated that Mr. Lepore could contact his case manager if he had any questions regarding the Council's decision. Mr. Lepore stated that he did not know the identity of his case manager; Mr. Caruso agreed to direct the case manager (Mr. Stewart) to contact him after the meeting.

XI. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Ritardi made a motion, which was seconded by Ms. Killough-Herrera. The motion passed by a unanimous vote.
The meeting adjourned at 2:13 p.m.

Respectfully submitted,

_____
Robin Berg Tabakin, Esq., Chair

Date Approved: April 26, 2022