



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
May 31, 2022

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, May 31, 2022 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

- Shirley Brown v. NJ Department of Treasury, Division of Lottery (2018-293) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Joseph McDevitt v. Cape May County Bridge Commission (2019-189) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-79) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

April 26, 2022 Open Session Meeting Minutes
April 26, 2022 Closed 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):

1. John Doe v. Township of Irvington (Essex) (2022-143) **(SR Recusal)**
 - Unripe Cause of Action.
2. John Doe v. Township of Irvington (Essex) (2022-147) **(SR Recusal)**
 - Unripe Cause of Action.
3. John Doe v. Township of Irvington (Essex) (2022-150) **(SR Recusal)**
 - No Records Responsive to the Request Exist.
4. John Doe v. Township of Irvington (Essex) (2022-162) **(SR Recusal)**
 - Unripe Cause of Action.
5. John Doe v. Township of Irvington (Essex) (2022-165) **(SR Recusal)**
 - Duplicate Complaint Filed With the GRC.

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda):

1. John Mark Zdepski v. Township of Verona (Essex) (2022-134)
 - No Records Responsive to the Request Exist.

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

1. Jeffrey Goodwin v. Borough of Woodlynne (Camden) (2020-176)
 - Complaint Voluntarily Withdrawn.
2. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Greenwich Township Police Department (Gloucester) (2021-192)
 - Complaint Voluntarily Withdrawn.
3. Bernard Josefsberg (o/b/o Northern NJ Sanctuary Coalition) v. Bergen County Sheriff’s Office (2021-223)
 - Complaint Settled in Mediation.
4. Shana Beiger v. NJ Department of Environmental Protection (2022-62)
 - Complaint Voluntarily Withdrawn.
5. John Doe v. Township of Irvington (Essex) (2022-144)
 - Complaint Voluntarily Withdrawn.
6. John Doe v. Township of Irvington (Essex) (2022-156)
 - Complaint Voluntarily Withdrawn.
7. John Doe v. Township of Irvington (Essex) (2022-160)
 - Complaint Voluntarily Withdrawn.
8. Julie Akers v. City of Estell Manor (Atlantic) (2022-180)
 - 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. Jonathan L. Leitman, Esq. v. Borough of Paramus (Bergen) (2019-127) (**SR Recusal**)
 - This complaint should be dismissed because the Complainant withdrew it from the Office of Administrative Law (“OAL”) via e-mail on April 27, 2022. No further adjudication is required.
2. John R. Lanza, Esq. (o/b/o Wayne Klein) v. Essex County Prosecutor's Office (2020-159) (**SR Recusal**)
 - The Complainant's OPRA request seeking “arrest reports,” “blotter entries,” and “security videos” pertaining to N.J. v. Rashawn Williams, Indictment No. 19-11-03177-1 is valid. Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007).
 - The Custodian may have unlawfully denied access to “arrest reports” pertaining to Williams and must either disclose them or certify if none exist. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008).
 - The Custodian may have unlawfully denied access to “blotter entries” pertaining to Williams and must either disclose them or certify if none exist. N.J.S.A. 47:1A-6; Perino v. Borough of Haddon Heights, GRC Complaint No. 2004-128 (November 2004).
 - The Custodian may have unlawfully denied access to the “security videos” pertaining to Williams because victims are entitled to records regarding their victimization. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. The Custodian must either disclose the responsive records or certify if none exist.
 - The knowing and willful and prevailing party analyses are deferred.
3. Perrault Jean-Paul v. City of Jersey City (Hudson) (2020-209) (**SR Recusal**)
 - Based on inadequate and conflicting evidence, this complaint should be referred to the OAL for a hearing to resolve the facts. Semprevivo v. Pinelands Reg'l Sch. Dist. Bd. of Educ. (Burlington), GRC Complaint No. 2007-135 (October 2008). The OAL should also determine whether the Custodian knowingly and willfully violated OPRA.
4. Alex Hecht v. NJ Transit (2021-36) (**SR Recusal**)
 - The Custodian lawfully denied access to the requested respondent bidder list under the “advantage to competitors and bidders” exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; O'Neill Elec. Co., Inc. v. Bd. of Chosen Freeholders of Cnty. of Warren, 297 N.J. Super. 473 (App. Div. 1997).
 - The Complainant is not a prevailing party.

B. Individual Complaint Adjudications with no Recusals:

1. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-101)
 - This complaint should be dismissed because the Complainant, through Counsel, withdrew it from the OAL via letter on April 18, 2022. No further adjudication is required.
2. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-140)
 - This complaint should be dismissed because the Complainant, through Counsel, withdrew it from the OAL via letter on April 18, 2022. No further adjudication is required.
3. Shirley A. Brown v. NJ Department of Treasury, Division of Lottery (2018-293)
 - The Custodian complied with the Council’s September 29, 2020 Interim Order.
 - The Custodian shall comply with the *In Camera* Examination findings.
 - The current Custodian must disclose all portions of the responsive e-mails not otherwise exempt. Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).
 - The knowing and willful analysis is deferred.
4. Joseph McDevitt v. Cape May County Bridge Commission (2019-189)
 - The Custodian complied with the Council’s January 26, 2021 Interim Order.
 - The *In Camera* Examination reveals that the Custodian lawfully denied access to the withheld plans under the “inter-agency or intra-agency advisory, consultative, or deliberative [“(ACD”)”] material” exemption. N.J.S.A. 47:1A-1.1.
 - The Council declines to address the knowing and willful issue because no violation of OPRA occurred.
5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Hoboken (Hudson) (2020-51)
 - 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.
6. Joseph Maddaloni, Jr., Esq. (o/b/o Renaissance School Services, LLC.) v. The Kingdom Charter School of Leadership (Camden) (2020-66)
 - The Council should adopt the Administrative Law Judge’s (“ALJ”) May 10, 2022 Initial Decision approving the “Consent Order” and determining that the proceedings be concluded.
7. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Kenilworth (Union) (2020-67)
 - 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.

8. S.V. (o/b/o S.V.) v. Morris School District (Morris) (2020-74)
 - This complaint should be dismissed because Complainant's Counsel failed to submit a fee application within the prescribed time frame. N.J.A.C. 5:105-2.13(b).
9. Tom Maciejewski v. Berkeley Heights Board of Education (Union) (2020-110)
 - The GRC must conduct an *in camera* review of the redacted invoices to determine the validity of the Custodian's assertion that same were lawfully denied based on several exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; L.R. v. Camden City Pub. Sch., 238 N.J. 547 (2019); Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
 - The knowing and willful and prevailing party analyses are deferred.
10. Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Clayton Police Department (Gloucester) (2020-137)
 - 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.
11. Marcia A. Kleinz v. Atlantic Cape Community College (2020-161)
 - 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.
12. Jeffrey Goodwin v. Borough of Woodlynne (Camden) (2020-172)
 - The Council should dismiss this complaint because the Complainant voluntarily withdrew it via e-mail on May 2, 2022. No further adjudication is required.
13. Jeffrey Goodwin v. Borough of Woodlynne (Camden) (2020-174)
 - The Council should dismiss this complaint because the Complainant voluntarily withdrew it via e-mail on May 2, 2022. No further adjudication is required.
14. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-188)
 - The Council should dismiss this complaint because the Complainant voluntarily withdrew it via e-mail on May 6, 2022. No further adjudication is required.
15. Linda Ann Evans v. Monmouth County Division of Social Services (2020-189)
 - The Custodian did not unlawfully deny access to the subject OPRA request because she never received it. N.J.S.A. 47:1A-6; Valdes v. N.J. Dep't of Educ., GRC Complaint No. 2012-19 (April 2013).
16. Peter Antonucci v. City of Long Branch (Monmouth) (2020-207)
 - The original Custodian's response was insufficient because she failed to fully respond to each request item or assert whether such records existed. 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).

- The GRC has no authority over common law requests or issues. N.J.S.A. 47:1A-7(b); Rowan, Jr. v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013).
 - The requested video surveillance footage is exempt from disclosure under OPRA. N.J.S.A. 47:1A-6; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-77 (2016).
 - The original Custodian may have unlawfully denied access to the Complainant's OPRA request item No. 2. N.J.S.A. 47:1A-6; O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009). Thus, the Custodian shall locate and disclose responsive records or assert if they are exempt under the internal affairs or other exemptions.
 - The knowing and willful and prevailing party analyses are deferred.
17. George R. Melendez v. NJ Department of Corrections (2020-210)
- The Custodian lawfully denied access to the requested CUS-139 form, which constituted a "grievance filed by or against an individual . . ." N.J.S.A. 47:1A-1.1; Yannone v. N.J. Dep't of Corr., GRC Complaint No. 2016-73 (October 2017).
18. Brian F. McBride v. Township of Washington (Gloucester) (2020-231)
- The Custodian lawfully denied access to the subject 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).
19. Brian F. McBride v. Township of Washington (Gloucester) (2020-236)
- 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 Council should decline to order the Custodian to respond because she did so on March 11, 2021 stating that no records existed.
 - There is no knowing and willful violation.
20. Harry Michael Uhrig v. Borough of Roselle Park (Union) (2020-239)
- The Custodian's failure to timely respond to the Complainant's "immediate" access OPRA request items resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(e); N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian lawfully denied access to the first OPRA request because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - Notwithstanding the "deemed" denial, the Custodian certified that he disclosed those records responsive to the second OPRA request on December 31, 2020.
 - There is no knowing and willful violation.
21. Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-61)
- The Custodian appropriately adhered to N.J.S.A. 47:1A-5(i)(2) and no "deemed" denial occurred.
 - This complaint is unripe for adjudication. Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).

22. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-79)
- The current Custodian complied with the Council's April 26, 2022 Interim Order.
 - The *In Camera* Examination reveals that the Custodian lawfully denied access to the redacted portions of the October 15, 2020 e-mail under the ACD exemption. N.J.S.A. 47:1A-1.1.
 - The Council declines to address the knowing and willful issue because no violation of OPRA occurred.
23. Diane K. Schubach v. Somerset County Prosecutor's Office (2021-91)
- The Custodian complied with the Council's April 26, 2022 Interim Order.
 - There is no knowing and willful violation.
24. Luis F. Rodriguez v. Kean University (2021-99)
- The Custodian lawfully denied access to the requested outside activity questionnaires. N.J.S.A. 47:1A-10; N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Office, 405 N.J. Super. 386, 389 (App. Div. 2009).
25. Kafele K. Bomani v. Atlantic County Prosecutor's Office (2021-119)
- The Complainant's request is invalid because it was a blanket request that failed to identify specific records sought. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to the request. N.J.S.A. 47:1A-6.
26. Walter H. Barger, Sr. & Judy L. Gantz v. County of Burlington (2021-215)
- The Council should dismiss this complaint because Complainants abandoned it. Siddeeq v. N.J. Dep't of Corr., GRC Complaint No. 2009-182, *et seq.* (November 2009).
27. Julie Akers v. City of Estell Manor (Atlantic) (2021-354)
- The Custodian did not comply with the Council's March 29, 2022 Interim Order based on his failure to meet the prescribed time frames.
 - There is no knowing and willful violation.

VII. Court Decisions of GRC Complaints on Appeal:

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

- Malanga v. Twp. of W. Orange, 2022 N.J. Super. Unpub. LEXIS 730 (App. Div. 2022)
- C.E. v. Elizabeth Pub. Sch. Dist., 2022 N.J. Super. LEXIS 68 (App. Div. 2022) (Approved for Publication)
- African Am. Data & Research Inst. "AADARI" v. Franchetta, 2022 N.J. Super. Unpub. LEXIS 879 (App. Div. 2022)

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

- Doe v. State Univ. of N.J., 2022 U.S. Dist. LEXIS 91897 (D.N.J. May 20, 2022)

X. 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.*

XI. 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.