



**Minutes of the Government Records Council
May 31, 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 May 26, 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:

Current Statistics

- Since OPRA’s inception in July 2002, the GRC has received 6,180 Denial of Access Complaints. That averages about 312 annual complaints per more than 19 3/4

program years. So far in the current program year (FY2022), the GRC has received 445 Denial of Access Complaints.

- 548 of the 6,180 complaints remain open and active (8.9%). Of those open cases:
 - 8 complaints are on appeal with the Appellate Division (1.5%);
 - 28 complaints are currently in mediation (5.1%);
 - 4 complaints are proposed for the Office of Administrative Law (0.7%);
 - 27 complaints await adjudication by the Office of Administrative Law (4.9%);
 - 73 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (13.3%);
 - 408 complaints are work in progress (74.5%); and
 - 0 complaints are being held in abeyance (0.0%).

The GRC notes that FY2022 complaint filings to date represent a program year high. In the last two (2) months alone, the GRC has received 137 complaints that have been assigned to a complaint manager, with a few more likely adding to that before the month is closed out.

As reported in previous months, the significant uptick in complaints both filed in FY2022 and awaiting adjudication is due to largely to one individual, who has filed 199 complaints in the current fiscal year (45% of all filed FY22 complaints and 63% percent of the annual FY average). 99 complaints have been filed since January 1, 2022 (nearly 1 per working day). 63 complaints have been filed since April 1, 2022 (1.5 per working day). Currently, this individual's complaints account for 192 of the 408 complaints considered WIP (47.1%).

- Since Program Year 2004, the GRC has received and responded to 35,665 total inquiries, averaging about 1,897 annual inquiries per more than 18 3/4 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 1,543 inquiries (6.8 inquiries per workday).

GRC Regulations

- The GRC's proposed rules with amendments were published in the New Jersey Register on May 16, 2022 as 54 N.J.R. 809(a) and the expiration date for the current rules is extended to October 2, 2022. The public comments period, which began at the time of publication, runs for sixty (60) days. The GRC has received one comment to date.

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)).

Ms. Berg Tabakin called for a motion to go into closed session. Mr. Ritardi made a motion, and Ms. Trish seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:41 p.m. until 1:54 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Ms. Killough-Herrera made a motion, which was seconded by Trish. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:55 p.m., and Ms. Bordzoe called roll.

- Present: Robin Berg Tabakin, Jennifer Killough-Herrera, Gina Trish, and Steven Ritardi.

IV. Approval of Minutes of Previous Meetings:

April 26, 2022 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the April 26, 2022 meeting. Mr. Ritardi made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote; Ms. Berg-Tabakin abstained.

April 26, 2022 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the April 26, 2022 meeting. Ms. Trish made a motion, which was seconded by Ms. Killough-Herrera. The motion passed by a unanimous vote; Ms. Berg-Tabakin abstained.

Prior to moving forward, Ms. Berg-Tabakin identified a change in the agenda based on the recent identification of a recusal by Mr. Ritardi. Specifically, Ms. Berg-Tabakin stated that Perrault Jean-Paul v. City of Jersey City (Hudson) (2020-209) was moving from Item VI(A)(3) to Item VI(B)(17). Mr. Ritardi announced to the public that a conflict check alerted him to the need to recuse GRC 2020-209 and that he had not reviewed any of the materials associated with it.

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):

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.

Ms. Berg Tabakin called for a motion to accept the recommendations as written in all the above Administrative Complaint Dispositions. Ms. Killough-Herrera made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote; Mr. Ritardi recused.

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.
 - Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Ms. Killough-Herrera 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. **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

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. Mr. Caruso confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda items.

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.
- 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. **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.

- 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.

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.
- 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. **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.
- 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. **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.
- 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.

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.
- 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.

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.
- 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. **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.
- 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.

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.

- 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.
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.
 - 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.
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.
 - 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. **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).
 - 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. **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.

- 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.

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.
- 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.

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.
- 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 Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

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.
- 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. **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.
- 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.

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.
- 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.

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).
- 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. **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.
- Prior to calling for a vote, Ms. Berg-Tabakin was inadvertently disconnected from the meeting. Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote; Ms. Berg-Tabakin could not vote due to a technological issue.

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).
- Ms. Berg-Tabakin rejoined the meeting. 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.

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).
- 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.

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.
- 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.

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.

- 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 Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

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).
- 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.

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.
- 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.

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.
- 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.

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).
- 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.

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.
- 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.

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).
- 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.

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.
- 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.

VII. Court Decisions of GRC Complaints on Appeal: None

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): Plaintiff challenged the withholding of thirty-three (33) e-mails under the attorney-client privilege and advisory, consultative, and deliberative ("ACD") material OPRA exemptions. Granting summary judgment, the trial court held that the records were protected under both exemptions since they involved communications between the

Township's counsel and a "necessary intermediary" involved in the underlying matter. The Appellate Division reversed, finding that the record did not support that the e-mails fell under the privilege since the e-mails were between counsel and a third party and not the client. However, the Court found that some of the e-mails were properly withheld under the ACD exemption since the third party was hired by the Township to be an agent and expert on the matter. Affirmed in part; vacated in part; and remanded for further proceedings.

- C.E. v. Elizabeth Pub. Sch. Dist., 2022 N.J. Super. LEXIS 68 (App. Div. 2022) (Approved for Publication): Plaintiff requested settlements stemming from litigation docketed with the Office of Administrative Law ("OAL"), but thereafter settled and terminated from formal OAL litigation. Defendant denied access as seeking confidential student records, relying on L.R. v. Camden City Public Sch. Dist., 452 N.J. Super. 56 (App. Div. 2017) ("LR 1"). The Appellate Division held that neither LR 1 nor the Supreme Court's decision in L.R. v. Camden City Public Sch. Dist., 238 N.J. 547 (2019) were applicable, and under federal law the settlement agreements were required to be made public. Affirmed.
- African Am. Data & Research Inst. "AADARI" v. Franchetta, 2022 N.J. Super. Unpub. LEXIS 879 (App. Div. 2022): Plaintiff requested in part "requests for documents or records that were sent to Chief Rudy by the civilian authorities at Vineland" and the "date of separation and reason for separation" of employees with the Vineland Police Department. Defendant denied the former request as referencing an "ongoing investigation" and responded to the latter request by providing "other" as the reason for termination for several officers. The Appellate Division held that while the former request was lawfully denied under OPRA, the records may be released under the common law right of access. On the latter request, the court held that Libertarians for Transparent Gov't v. Cumberland Cnty., 250 N.J. 46 (2022) supported Plaintiff's right to review documents containing the reason why an employee was separated from employment. Affirmed in part; vacated in part; and remanded for further proceedings.

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): Plaintiff submitted two (2) OPRA requests to the Defendant, both seeking in part Plaintiff's own academic records, disciplinary records, and e-mail communications related to Plaintiff. Defendant imposed a special service charge to process the e-mail communications of both requests which the Plaintiff challenged. The court held that challenging the response to the first OPRA request was time-barred as litigation was filed after the forty-five (45) day statute of limitations. Regarding the second OPRA request, the court held that e-mail communications were not "education records" as defined under the Family Educational Rights and Privacy Act, and Defendant was therefore permitted to impose a special service charge. Thus, Defendant's motion to dismiss was granted.

X. Public Comment:

- Mr. John Mark Zdepski (GRC Complaint No. 2022-134): Mr. Zdepski complimented the GRC, and specifically Mr. John Stewart, for quickly returning his call and answering his questions. However, Mr. Zdepski believed OPRA has slowed access to records and Denial of Access Complaint reviews. Mr. Zdepski further asserted that he believed the GRC would conduct an on-site investigation at the agency, but this did not occur. Mr. Zdepski named multiple Essex County officials he believed engaged in misdeeds and that the GRC should have been able to investigate them on-site. Mr. Zdepski suggested that funding sources, such as recreational cannabis tax money, should be allotted to the GRC in furtherance of more on-site investigations.

XI. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Ms. Trish made a motion, which was seconded by Ms. Killough-Herrera. The motion passed by a unanimous vote. The meeting adjourned at 2:40 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: June 28, 2022