



**Minutes of the Government Records Council
June 28, 2022 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 June 23, 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), Deputy Attorney General Debra Allen, and Andrew Bernstein, Division of Law Intern.

II. Executive Director’s Report:

OPRA At 20

On July 7, 2022, OPRA and the GRC will turn 20. As an agency, the GRC has come a long way from those early days. Many individuals have had significant impacts on the GRC, such as prior Directors Marc Pfeiffer, Paul Dice, Catherine Starghill, and Joseph Glover, as well as long-

standing Council members like Vincent Maltese and, of course, Chairperson Berg-Tabakin and Secretary Ritardi. The GRC has also been graced with many talented employees over these last 20 years and has established a core group of staff that have been with the GRC for the last 9 or more years. The GRC reflects fondly on the past but also looks to innovate going forward in order better meet the growing demands of transparency in the State.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 6,241 Denial of Access Complaints. That averages about 314 annual complaints per more than 19 3/4 program years. So far in the current program year (FY2022), the GRC has received 506 Denial of Access Complaints, a program year record.
- 569 of the 6,241 complaints remain open and active (9.1%). Of those open cases:
 - 8 complaints are on appeal with the Appellate Division (1.4%);
 - 33 complaints are currently in mediation (5.8%);
 - 4 complaints are proposed for the Office of Administrative Law (0.7%);
 - 27 complaints await adjudication by the Office of Administrative Law (4.7%);
 - 61 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (10.7%);
 - 436 complaints are work in progress (76.6%); 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 three (3) months alone, the GRC has received 198 complaints that have been assigned to a complaint manager, with more adding to that total before the month is closed out. The GRC is also currently on pace to receive 600 Denial of Access Complaints in this calendar-year.

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 209 complaints in the current fiscal year (41% of all filed FY22 complaints and 67% percent of the annual FY average). 106 complaints have been filed since January 1, 2022 (nearly 1 per working day). Currently, this individual's complaints account for 202 of the 436 complaints considered WIP (46.3%).

- Since Program Year 2004, the GRC has received and responded to 35,845 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 1,723 inquiries (7 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, expires on July 15, 2022. The GRC has received one comment to date.

III. Closed Session:

- Edwin Sheppard v. NJ Department of Law and Public Safety, Division of Law (2017-180) *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. Killough-Herrera seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:42 p.m. until 2:01 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Ms. Killough-Herrera made a motion, which was seconded by Mr. Ritardi. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:04 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:

May 31, 2022 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the May 31, 2022 meeting. Ms. Killough-Herrera made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote.

May 31, 2022 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the May 31, 2022 meeting. Ms. Killough-Herrera 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):

1. **John Doe v. Township of Irvington (Essex) (2022-231) (SR Recusal)**

- Duplicate Complaint Filed with the GRC.
- 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; Mr. Ritardi recused.

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

1. **James Theckston v. Camden County Prosecutor's Office (2021-302)**

- 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. **Doreen Fritzsche v. City of Linden (Union) (2021-239)**

- Complaint Settled in Mediation.

2. **John Doe v. Township of Irvington (Essex) (2022-131)**

- Complaint Voluntarily Withdrawn.

3. **John Doe v. Township of Irvington (Essex) (2022-163)**

- Complaint Voluntarily Withdrawn.

4. **Paul E. Paray, Esq. (o/b/o Younsoo Shin) v. Township of Weehawken (Hudson) (2022-170)**

- Complaint Voluntarily Withdrawn.

5. **John Doe v. Township of Irvington (Essex) (2022-172)**

- Complaint Voluntarily Withdrawn.

6. **John Doe v. Township of Irvington (Essex) (2022-182)**

- Complaint Voluntarily Withdrawn.

7. **John Doe v. Township of Irvington (Essex) (2022-183)**

- Complaint Voluntarily Withdrawn.

8. **Scott Madlinger v. Berkeley Township Police Department (Ocean) (2022-184)**

- Complaint Voluntarily Withdrawn.

9. **John Doe v. Township of Irvington (Essex) (2022-202)**

- Complaint Voluntarily Withdrawn.

10. **John Doe v. Township of Irvington (Essex) (2022-207)**

- Complaint Voluntarily Withdrawn.

11. **John Doe v. Township of Irvington (Essex) (2022-221)**

- 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 through 3 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. Harvey Roseff v. County of Sussex (2019-110) (SR Recusal)

- The Custodian's response was insufficient because she failed to provide a date certain on which she would respond to the subject OPRA request. N.J.S.A. 47:1A-5(i). Papiez v. Cnty. of Mercer, Office of Cnty. Counsel, GRC Complaint No. 2012-59 (March 2013).
- The Complainant's OPRA request is valid because it contained the appropriate criteria required by Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian unlawfully denied access to the OPRA request based on this assertion. N.J.S.A. 47:1A-6. However, the GRC declines to order additional searches because the evidence supports that the Custodian located responsive records.
- The GRC must conduct an *in camera* review of the e-mails responsive to the subject OPRA request to determine the validity of the Custodian's assertion that same were lawfully denied under the attorney-client privilege. N.J.S.A. 47:1A-1.1; Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005). The Custodian shall include a completed Vaughn index for clarity.
- 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.

2. Rotimi Owoh, Esq. (African American Data & Research Institute) v. City of Hoboken (Hudson) (2020-80) (SR Recusal)

- The current Custodian did not fully comply with the Council's June 29, 2021 Interim Order.
- The Custodian did not unlawfully deny access to the Complainant's request item No. 1 because he had no obligation to perform research to generate or compile a list containing the requested information. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012).

- 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. Killough-Herrera made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

3. **John R. Lanza, Esq. (o/b/o Wayne Klein) v. Essex County Prosecutor's Office (2020-159) (SR Recusal)**

- The Custodian complied with the Council's May 31, 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. 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.

Ms. Berg Tabakin noted that Ms. Trish would be muted for Agenda item No. 4 to ensure her non-participation in the item from which she was recused. Berg Tabakin confirmed to the public that Ms. Trish was muted prior to addressing the below agenda items.

4. **Vesselin Dittrich v. NJ Department of Community Affairs, Bureau of Homeowner Protection (2021-10) (GT Recusal)**

- The Custodian's failure to timely respond with a "reasonable effort" resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(i)(2). However, the GRC declines to order disclosure because the Custodian did so on January 15, 2021.
- There is no knowing and willful violation.
- 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 Mr. Ritardi 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 (2017-180)**
 - This complaint should be tabled for one month with the expectation of receiving advice from Counsel.
 - Ms. Berg Tabakin called for a motion to table the above matter. Ms. Killough-Herrera made a motion, and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

2. **Micaela P. Bennett v. West Orange Board of Education (Essex) (2018-265)**
 - The Custodian lawfully denied access to two (2) sets of unapproved, draft executive session minutes. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Libertarians for Transparent Gov't v. Ocean Cnty. Prosecutor's Office, 453 N.J. Super. 83 (App. Div. 2018).
 - The responsive Chiesa, Shahinian, & Giontomasi report is exempt from disclosure as a personnel record. N.J.S.A. 47:1A-10; Bennett v. West Orange Bd. of Educ. (Essex), GRC Complaint No. 2018-265 (August 2021). Thus, the Custodian lawfully denied access to the report. N.J.S.A. 47:1A-6.
 - The Custodian properly responded to the Complainant's OPRA request item seeking Superintendent Rutsky's "date of separation and reason therefor" and was under no obligation to include circumstances, motivations, or causes beyond that existent in disclosable "government records." Libertarians for Transparent Gov't v. Ocean Cnty. Prosecutor's Office, 2018 N.J. Super. Unpub. LEXIS 25, 12, 14 (App. Div. 2018).
 - 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.

3. **Edwin Sheppard v. County of Cape May (Cape May) (2019-3)**
 - The Council should adopt the Administrative Law Judge's June 2, 2022 Initial Decision concluding that the matter be dismissed because the Complainant abandoned this complaint.
 - 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.

4. **Kathleen Ma v. Port Authority of NY & NJ (2019-212)**
 - The Custodian did not comply with the Council's April 27, 2021 Interim

Order.

- The Council's Order is enforceable in Superior Court. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).
- The Custodian's actions may have been knowing and willful. Thus, this complaint should be referred to the Office of Administrative Law ("OAL") for a knowing and willful hearing.
- The Complainant is a prevailing party. For administrative ease, the OAL should determine the total amount of the fee award.
- 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. **M.N. and E.N. (o/b/o A.N.) v. Gloucester Township Board of Education (Camden) (2020-124)**

- The original Custodian's failure to timely respond with a "reasonable effort" resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(i)(2). However, the GRC declines to order disclosure in the May 18, 2020 OPRA request item Nos. 1a, 1c, and 2, as well as the May 19, 2020 OPRA request item Nos. 1a-1e because the original Custodian did so.
- The May 18, 2020 OPRA request item No. 1d and May 19, 2020 OPRA request item No. 1f are valid because they contained the appropriate criteria required by Elcavage, GRC 2009-07. Thus, the original Custodian unlawfully denied access to these items based on this assertion. N.J.S.A. 47:1A-6. The Custodian must perform a search and disclose all records located, with redactions where applicable, or certify if none exist.
- The original Custodian may have unlawfully denied access to the May 18, 2020 OPRA request item No. 1b because Complainants qualified as excepted persons under N.J.A.C. 6A:32-7.5(e)(14) and (g). N.J.S.A. 47:1A-6; L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56, 86-87 (2017). The Custodian must either disclose those records withheld as "student records" or certify if no additional records beyond those previously disclosed existed.
- 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. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

6. **Brian F. McBride v. Township of Washington (Gloucester) (2020-206)**

- The Council should deny the Complainant's request for reconsideration.
- 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. **Kevin Alexander v. Somerset County Board of Chosen Freeholders (2020-211)**

- The Custodian unlawfully denied access to the Complainant's September 1, 2020 OPRA request seeking specific personnel information and records. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010); Mella v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-217 (August 2018). The Custodian shall thus locate and disclose those records to the Complainant or certify if none exist.
- The Custodian lawfully denied access to the Complainant's September 7, 2020 OPRA request because the information sought was exempt from disclosure as information related to a grievance. N.J.S.A. 47:1A-1.1; Yannone v. N.J. Dep't of Corr., GRC Complaint No. 2016-73 (October 2017).
- 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. Mr. Ritardi made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

8. **Brian F. McBride v. Township of Washington (Gloucester) (2020-212)**

- The original Custodian did not unlawfully deny access to the responsive body-worn camera ("BWC") footage because the Custodian certified, and the record reflects, that the Complainant received the responsive record. N.J.S.A. 47:1A-6; Danis, GRC 2009-156. Further, the GRC has no authority over the accuracy of provided footage. Gillespie v. Newark Pub. Sch., GRC Complaint No. 2004-105 (November 2004).
- The original Custodian lawfully denied access to the subject OPRA request seeking Officer Tarasevich's BWC footage because the Custodian 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

9. **Robert J. Fogg, Esq. (o/b/o Henry J. Austin Health Center) v. NJ Department of Human Services (2020-216)**

- The Custodian lawfully denied access to the Complainant's OPRA request because it sought medical information of individuals. N.J.S.A. 47:1A-9(a); Executive Order No. 26 (Gov. McGreevey, 2002). Based on this, the GRC declines to address the Custodian's other raised defenses.
- 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.

10. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-218)

- The Custodian’s response was insufficient because she disclosed an incorrectly formatted record and failed to provide a specific lawful basis for redactions at the time of her response. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette (Ocean), GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008); Wolosky v. Twp. of Sparta (Sussex), GRC Complaint No. 2008-219 (Interim Order dated September 30, 2009). However, the GRC declines to order any further action because the Custodian corrected both issues on October 22, and 27, 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. Mr. Ritardi made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

11. Lynn Petrovich v. NJ Department of Health, Office of Population Health (2020-223)

- The Custodian’s failure to respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). However, the GRC need not order disclosure because the Custodian did so on November 25, 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.

12. Scott Madlinger v. Berkeley Township (Ocean) (2020-228)

- The Complainant’s request, to the extent it was for the Custodian, was valid. However, the request, to the extent it included some other recipients, was invalid. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-5(g).
- The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the GRC need not order disclosure because the Custodian did so on November 17, 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. Mr. Ritardi made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

13. **Brian F. McBride v. Township of Washington (Gloucester) (2020-232)**

- This complaint should be dismissed as unripe because the Complainant filed it before the statutory time frame, as extended, expired. Sallie v. N.J. Dep't of Banking & Ins., GRC Complaint No. 2007-226 (April 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 Ms. Ritardi seconded the motion. The motion passed by a unanimous vote.

14. **Brian F. McBride v. Township of Washington (Gloucester) (2020-240)**

- The Custodian's failure to timely respond with a "reasonable effort" resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(i)(2). However, the GRC declines to order the Custodian to respond because she did so on March 12, 2021.
- The Complainant's request item Nos. 4 and 5 seeking "records" and "letters" respectively were invalid. MAG, 375 N.J. Super. 534; Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Elcavage, GRC 2009-07.
- The Custodian lawfully denied access to OPRA request item Nos. 1, 3, and 6 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- The Custodian did not unlawfully deny access to OPRA request item No. 2 because she certified, and the record reflects, that the Complainant received the responsive record. N.J.S.A. 47:1A-6; Danis, GRC 2009-156.
- 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.

15. **Leigh Lesniak v. NJ Department of Labor & Workforce Development, Division of Unemployment Insurance (2020-245)**

- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the GRC declines to order disclosure because the Custodian did so on December 30, 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. Killough-Herrera made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

16. **Brian McBride v. NJ Office of Homeland Security & Preparedness (2020-250)**

- The Custodian lawfully denied access to the Complainant's OPRA request item No. 1 under the security information exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 13:1E-3.2(a)(2); Kasko v. Town of Westfield (Union), GRC Complaint No. 2014-389 (Interim Order dated June 28, 2016).
- The Custodian lawfully denied access to the Complainant's OPRA request item No. 2 because he and Laurie Doran certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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.

17. **Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-65)**

- The Custodian's response, which fell beyond the "immediate" response time frame, does not constitute a "deemed" denial of access due to her reasonable efforts to respond. N.J.S.A. 47:1A-5(i)(2).
- The Custodian unlawfully denied access to the portion of OPRA request No. 1 seeking Custodian Counsel's January 2021 invoices and OPRA request No. 2 seeking the January and February 2021 invoices from McManimon, Scotland & Baumann, LLC. The Custodian shall disclose said invoices to the Complainant.
- The Custodian lawfully denied access to the portion of OPRA request No. 1 seeking Custodian Counsel's February 2021 invoice because it did not exist in the Village's possession at the time of the OPRA request. Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013).
- 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.

18. **Kenneth S. Goodkind v. NJ Civil Service Commission (2021-84)**

- The Custodian may have unlawfully denied access to the Complainant's OPRA request because the evidence of record does not support that no responsive records exist. Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). Thus, the Custodian shall search for, locate, and disclose any additional records or certify if none existed.
- 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. Mr. Ritardi made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

19. Ryan Lawrence Johnson v. NJ State Police (2021-130)

- The GRC does not have the authority to adjudicate the Complainant’s common law issues. N.J.S.A. 47:1A-7(b); Ciesla v. N.J. Dep’t of Health & Senior Servs., 429 N.J. Super. 127, 148 (App. Div. 2012).
- The Custodian lawfully denied access to the Complainant’s OPRA request seeking internal affairs records that are expressly exempt from disclosure under the Internal Affairs Policies and Procedures. N.J.S.A. 47:1A-6; Gannett Satellite Info. Net., LLC v. Twp. of Neptune, 467 N.J. Super. 385 (App. Div. 2021).
- 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.

20. Vvekanand Baliya v. Sussex County Technical School (2021-139)

- The Custodian’s response extending the time frame was insufficient because he failed to provide a date certain on which he would respond. N.J.S.A. 47:1A-5(i); Papiez, GRC 2012-59. However, the GRC declines to order disclosure because the Custodian did so on July 6, 2021.
- 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.

VII. Court Decisions of GRC Complaints on Appeal: None

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

- S.W. & J.W. v. Elizabeth Bd. of Educ., 2022 N.J. Super. Unpub. LEXIS 1092 (App. Div. 2022): During litigation before the Office of Administrative Law, Plaintiffs submitted an OPRA request seeking student records that were not provided during discovery. Defendant did not respond and argued that the OPRA request was submitted to counsel rather than the custodian or other officer/employee/office of the Defendant. Plaintiffs argued that Rule of Professional Conduct (“RPC”) 4.2 prohibited them from directly communicating with the Defendant, and therefore it was appropriate to submit the OPRA request to counsel. The Appellate Division found that Defendant’s counsel was not a “custodian” within the meaning of OPRA and was not authorized to receive OPRA

requests. N.J.S.A. 47:1A-1.1. The court further held that RPC 4.2 did not prohibit Plaintiffs or their counsel from filing an OPRA request directly to Defendant’s custodian as it included an explicit exception permitting contact with a represented party when “authorized by law.” Id. Affirmed.

IX. Complaints Adjudicated in U.S. District Court: None

X. Public Comment: None

XI. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Ritardi made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote. The meeting adjourned at 2:38 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: July 26, 2022