



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
April 25, 2023

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, April 25, 2023 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

- Dan Riordan v. Borough of Red Bank (Monmouth) (2021-3) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

March 28, 2023 Open 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. Mark Lamar Tompkins v. Essex County Prosecutor's Office (2022-286) **(SR Recusal)**
 - All Records Responsive Provided in a Timely Manner.
2. Victor Malyar v. Township of Ocean (Ocean) (2023-19) **(SR Recusal)**
 - No Records Responsive to the Request Exist.

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

1. Victor Malyar v. Ocean County Board of Elections (2022-647)
 - No Records Responsive to the Request Exist.

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

1. Richard DeLuccia v. Borough of Lavallette (Ocean) (2021-155)
 - Complaint Voluntarily Withdrawn.
2. Raymond J. Lesniak (o/b/o The Lesniak Institute) v. NJ Department of Environmental Protection, Fish and Game Council (2022-660)
 - Complaint Settled in Mediation.
3. David Mineer v. Borough of East Rutherford (Bergen) (2022-676)
 - Complaint Voluntarily Withdrawn.
4. Juan Mendoza v. Hudson County Sheriff's Office (2022-677)
 - Complaint Settled in Mediation.
5. Susan E. Romeo v. Buena Borough Fire District No. 2 (Atlantic) (2023-9)
 - Complaint Voluntarily Withdrawn.
6. Susan E. Romeo v. Buena Borough Fire District No. 2 (Atlantic) (2023-10)
 - Complaint Voluntarily Withdrawn.
7. Christopher Welch v. County of Burlington (2023-37)
 - Complaint Settled in Mediation.
8. John Paff v. City of Brigantine (Atlantic) (2023-40)
 - Complaint Settled in Mediation.
9. Linda A. Evans v. NJ Department of Labor, Asbestos Control & Licensing (2023-51)
 - Complaint Voluntarily Withdrawn.
10. Linda A. Evans v. NJ Department of Health, Division of Epidemiology, Environmental & Occupational Health (2023-52)
 - Complaint Voluntarily Withdrawn.
11. John Nance v. City of Jersey City (Hudson) (2023-54)
 - Complaint Voluntarily Withdrawn.
12. James M. Janone v. Borough of Victory Gardens (Morris) (2023-83)
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Consent Agenda Administrative Order

An “Administrative order” means an order issued by the Council requiring the records custodian or the complainant to perform a specific action in furtherance of the adjudication of a pending denial of access complaint or taking other actions deemed appropriate to adjudicate a complaint in an expedited manner. The Executive Director’s recommended reason for the Administrative Order is under each complaint below.

A. Administrative Orders with Recusals (Consent Agenda):

1. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Bayonne (Hudson) (2021-214) **(SR Recusal)**
 - *In Camera* Review.

B. Administrative Orders with No Recusals (Consent Agenda):

VII. 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. Denise Whiteside v. Township of Little Falls (Passaic) (2021-89) **(SR Recusal)**
 - The Custodian complied with the Council’s February 28, 2023 Interim Order.
 - There is no knowing and willful violation.
2. Thomas Hauser v. NJ Office of the Attorney General (2021-167) **(SR Recusal)**
 - This complaint should be tabled for additional review.
3. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Bayonne (Hudson) (2021-213) **(SR Recusal)**
 - The Custodian unlawfully denied access to the Complainant’s OPRA request and must either obtain responsive records from the New Jersey Intergovernmental Insurance Fund and disclose them or certify if no records exist. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010); Libertarians for Transparent Gov’t v. Borough of Westwood (Bergen), GRC Complaint No. 2016-214 (Interim Order dated October 30, 2018).
 - This complaint should be referred to the Office of Administrative Law (“OAL”) for a fact-finding hearing to determine the relationship between the Complainant and African American Data & Research Institute (“AADARI”) based on the standard set forth in Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011), as well as AADARI’s legitimacy. Should the OAL conclude that the Complainant is representing a legitimate client, the OAL shall determine whether the Complainant is a prevailing party and the reasonable fee amount.

4. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Fair Lawn Borough Police Department (Bergen) (2021-246) **(SR Recusal)**
 - The Custodian’s September 7, 2021 response was consistent with prevailing case law and the Council’s prior decisions. Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020), rev’d 247 N.J. 24 (2021). Thus, the Council should decline to find that an unlawful denial of access occurred. Moore v. N.J. Dep’t of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010).
 - The Complainant is not a prevailing party.

5. Tisha Adams, Esq. (o/b/o Maurice Bullock) v. City of Newark (Essex) (2021-262) **(SR Recusal)**
 - Ms. Cintron’s failure to adhere to N.J.S.A. 47:1A-5(h) resulted in a violation of OPRA. Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007).
 - The Complainant’s request was invalid in its entirety: item Nos. 1 and 3 required research and item Nos. 2 and 4 through 8 failed to identify specific records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. 2019); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
 - The Complainant is not a prevailing party.

B. Individual Complaint Adjudications with no Recusals:

1. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Union City (Union) (2020-19)
 - The Council should grant the current Custodian’s request for reconsideration based on illegality.
 - The Council should rescind its April 22, 2022 Interim Order conclusion No. 4, find that the Complainant was not a prevailing party, and close this matter because no additional outstanding issues exist.

2. Dan Riordan v. Borough of Red Bank (Monmouth) (2021-3)
 - The Custodian did not fully comply with the Council’s January 25, 2022 Interim Order.
 - The Custodian’s method of deleting sentences, paragraphs, and pages from the proposals was not an appropriate form of redaction. N.J.S.A. 47:1A-5(g); Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015).
 - The Custodian shall comply with the Council’s *In Camera* Examination Findings.
 - The knowing and willful analysis is deferred.

3. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2021-169)
 - 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 lawfully denied access to the Complainant's OPRA request because she certified, and the record reflects, that no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
4. Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. City of Passaic Police Department (Passaic) (2021-182)
- The Complainant's request item Nos. 4 in part and 5 are invalid because they require research. MAG, 375 N.J. Super. 534; Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2013-43, *et seq.* (Interim Order dated September 24, 2013).
 - The Custodian unlawfully denied access to the complaints and summonses responsive to OPRA request item Nos. 1 through 3. Simmons v. Mercado, 247 N.J. 24, 42 (2021). The Custodian shall conduct a search and either disclose the responsive records or certify if none exist.
 - The Custodian lawfully denied access to OPRA request item No. 4 in part under the grievance and personnel exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).
 - 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.
5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Lakehurst Police Department (Ocean) (2021-202)
- The Complainant's request item Nos. 1 and 2 were invalid because they did not identify specific records and sought information. MAG, 375 N.J. Super. 534; Feiler-Jampel, GRC 2007-190; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2007-233 (August 2009).
 - The Complainant's request items Nos. 3 and 4 in part are invalid because they would require research. MAG, 375 N.J. Super. 534; Carter, 2019 N.J. Super. Unpub LEXIS 2510; Verry, GRC 2013-43, *et seq.*
 - The Custodian lawfully denied access to OPRA request item No. 4 in part under the grievance and personnel exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Merino, GRC 2003-110.
 - The Custodian unlawfully denied access to the complaints and summonses responsive to OPRA request item Nos. 5 and 6. Simmons, 247 N.J. 24. The Custodian shall conduct a search and either disclose the responsive records or certify if none exist.
 - 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.
6. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Lodi (Bergen) (2021-240)
- The Complainant's request item Nos. 7 and 8 are valid because they are not overly broad and would not require research. MAG, 375 N.J. Super. 534;

- Burnett, 415 N.J. Super. 506. The Custodian shall conduct a search and either disclose the responsive records or certify if none exist.
- The Custodian lawfully denied access to the Complainant’s OPRA request Nos. 1 through 6 because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - 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.
7. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Alpine (Bergen) (2021-241)
- The Custodian did not unlawfully deny access to the subject OPRA request because she certified, and the record reflects, that all responsive records were disclosed to the Complainant. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
 - The Complainant is not a prevailing party.
8. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Somerville Police Department (Somerset) (2021-243)
- The Custodian did not unlawfully deny access to the subject OPRA request because he certified, and the record reflects, that all responsive records were disclosed to the Complainant. Danis, GRC 2009-156, *et seq.*
 - The Complainant is not a prevailing party.
9. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Cresskill Police Department (Bergen) (2021-245)
- The Custodian’s September 1, 2021 response was consistent with prevailing case law and the Council’s prior decisions. Libertarians for Transparent Gov’t v. Cumberland Cnty., 465 N.J. Super. 11 (App. Div. 2020), *rev’d* 250 N.J. 46 (2022). Thus, the Council should decline to find that an unlawful denial of access occurred. Moore, GRC 2009-144.
 - The Complainant is not a prevailing party.
10. John R. Carty, Esq. v. Florence Township (Burlington) (2021-248)
- The responsive appraisal was exempt from disclosure under the advantage exemption. N.J.S.A. 47:1A-1.1. Thus, the Custodian lawfully denied access to the Complainant’s OPRA request.
 - The Complainant, an attorney representing himself, is not eligible for attorney’s fees. Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006).
11. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Harvey Cedars Police Department (Ocean) (2021-249)
- The Custodian did not unlawfully deny access to the subject OPRA request because she certified, and the record reflects, that all responsive records were disclosed to the Complainant. Danis, GRC 2009-156, *et seq.*
 - The Complainant is not a prevailing party.

12. Jennifer Grana v. Sparta Township School District (Sussex) (2021-298)
 - The Custodian performed an insufficient search. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). Thus, the Custodian shall perform a new search and either disclose the additional e-mails located, advise if a specific lawful basis applies to any located, or certify if no additional e-mails exist. The Custodian is not required to disclose the ten (10) e-mail chain already in the Complainant's possession. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008).
 - The Custodian unlawfully denied access to the redacted e-mails on the basis that same were not responsive to the subject OPRA request. N.J.S.A. 47:1A-6; ACLU v. N.J. Div. of Criminal Justice, 435 N.J. Super. 533 (App. Div. 2014). Thus, the Custodian shall disclose those e-mails without redaction.

13. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-318)
 - The Custodian lawfully denied access to the redacted personal e-mail address contained within the responsive e-mail. N.J.S.A. 47:1A-1; Gettler v. Twp. of Wantage (Sussex), GRC Complaint No. 2009-73, *et seq.* (Interim Order dated June 25, 2013).

14. Jared Toppin v. Carteret Police Department (Middlesex) (2021-322)
 - Although the requested record was exempt under the criminal investigatory exemption, the Complainant was nonetheless entitled to a copy thereof as the victim of the alleged incident. N.J.S.A. 47:1A-1.1. Thus, the Custodian unlawfully denied access to the record. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure of the record because same was provided on July 12, 2022 and again on January 10, 2023.

15. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-358)
 - The Custodian lawfully denied access to the requested draft maps under the "inter-agency, or intra-agency advisory, consultative or deliberative material" exemption. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div. 2018).

16. Rufus A. Williams, Jr. v. County of Burlington (2022-88)
 - The requested security videos are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(14); Huysers v. N.J. Dep't of Corr., GRC Complaint No. 2018-38 (January 2020). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

17. Przemyslaw Ryba v. Township of Toms River (Ocean) (2022-648)
 - The Custodian's failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(g).
 - The Custodian shall disclose those records sought in the three (3) subject OPRA requests, advise of the specific lawful basis for withholding said records, or certify if none exist.

VIII. Court Decisions of GRC Complaints on Appeal:

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

- Rise Against Hate v. Cherry Hill Twp., 2023 N.J. Super. Unpub. LEXIS 471 (App. Div. 2023)
- Brooks v. Kennedy, 2023 N.J. Super. Unpub. LEXIS 468 (App. Div. 2023)

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

- Corcoran v. Cauwels, 2023 U.S. Dist. LEXIS 59813 (D.N.J. Apr. 5, 2023)

XI. 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.*

XII. 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.