



Minutes of the Government Records Council June 27, 2023 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 June 22, 2023.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Michael Hahn, Esq. (designee of Department of Education Acting Commissioner Dr. Angelica Allen-McMillan), Jason Martucci, Esq. (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 Steven Gleeson.

II. Executive Director’s Report:

Current Statistics

- Since OPRA’s inception in July 2002, the GRC has received 6,777 Denial of Access Complaints. That averages about 324 annual complaints nearly 21 tracked program

years. So far in the current program year (FY2023), the GRC has received 522 Denial of Access Complaints, a program year high eclipsing last year's high by 2 complaints.

- 758 of the 6,777 complaints remain open and active (11.2%). Of those open cases:
 - 12 complaints are on appeal with the Appellate Division (1.6%);
 - 46 complaints are currently in mediation (6.1%);
 - 4 complaints are proposed for the Office of Administrative Law (0.5%);
 - 24 complaints await adjudication by the Office of Administrative Law (3.2%);
 - 31 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (4.1%);
 - 641 complaints are work in progress (84.6%); and
 - 0 complaints are being held in abeyance (0.0%).

The GRC's excessive backlog, mostly due to receipt of 1,042 complaints in the last two (2) program years largely predicated on filings by two (2) individuals, has shown positive signs of decrease. That progress will grow significantly as one of the aforementioned individuals very recently withdrew 162 open and active complaints. Those complaints are in addition to roughly 53 complaints already adjudicated by the Council in past months. The complaints will be addressed at the July 2023 meeting.

- Since Program Year 2004, the GRC has received and responded to 37,470 total inquiries, averaging about 1,883 annual inquiries per almost 20 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2023), the GRC has received 1,610 inquiries (6.6 inquiries per workday).

Proposed Legislation Impacting the GRC

- On June 15, 2023, the State Assembly introduced A5613, A5614, A5615, and A5616. These bills make multiple changes to OPRA, the GRC's process, and composition of the Council. The GRC's review of these bills continue and they will be tracked.

III. Closed Session: None

IV. Approval of Minutes of Previous Meetings:

May 30, 2023 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the May 30, 2023 meeting. Mr. Martucci noted that he confirmed the accuracy of the minutes with Mr. Alexy. Mr. Hahn made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

V. New Business – Cases Scheduled for Adjudication

Ms. Berg Tabakin stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural, or other defects of the complaint. The reason for the Administrative Disposition is under each complaint below:

A. Administrative Disposition Adjudications with Recusals (Consent Agenda): None

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda): None

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

1. **John Doe v. Township of Irvington (Essex) (2022-464)**
 - Complaint Voluntarily Withdrawn.
2. **John Doe v. Township of Irvington (Essex) (2022-550)**
 - Complaint Voluntarily Withdrawn.
3. **John Doe v. Township of Irvington (Essex) (2022-551)**
 - Complaint Voluntarily Withdrawn.
4. **John Doe v. Township of Irvington (Essex) (2022-552)**
 - Complaint Voluntarily Withdrawn.
5. **John Doe v. Township of Irvington (Essex) (2022-562)**
 - Complaint Voluntarily Withdrawn.
6. **John Doe v. Township of Irvington (Essex) (2022-563)**
 - Complaint Voluntarily Withdrawn.
7. **John Doe v. Township of Irvington (Essex) (2022-564)**
 - Complaint Voluntarily Withdrawn.
8. **John Doe v. Township of Irvington (Essex) (2022-568)**
 - Complaint Voluntarily Withdrawn.
9. **John Doe v. Township of Irvington (Essex) (2022-570)**
 - Complaint Voluntarily Withdrawn.
10. **John Doe v. Township of Irvington (Essex) (2022-571)**
 - Complaint Voluntarily Withdrawn.
11. **John Doe v. Township of Irvington (Essex) (2022-573)**
 - Complaint Voluntarily Withdrawn.
12. **John Doe v. Township of Irvington (Essex) (2022-574)**
 - Complaint Voluntarily Withdrawn.
13. **John Doe v. Township of Irvington (Essex) (2022-575)**
 - Complaint Voluntarily Withdrawn.
14. **John Doe v. Township of Irvington (Essex) (2022-576)**
 - Complaint Voluntarily Withdrawn.
15. **John Doe v. Township of Irvington (Essex) (2022-578)**
 - Complaint Voluntarily Withdrawn.
16. **Nicole Neily v. Cumberland Regional High School (Cumberland) (2022-606)**
 - Complaint Settled in Mediation.

17. **Yehuda Miller v. Bergen County Board of Elections (2022-653)**
 - Complaint Settled in Mediation.
18. **Patrick Bender v. Camden County (2022-658)**
 - Complaint Voluntarily Withdrawn.
19. **Patrick Bender v. Burlington County (2022-659)**
 - Complaint Voluntarily Withdrawn.
20. **Emily Paulus (o/b/o Big Smoke, LLC) v. Township of West Milford (Passaic) (2023-11)**
 - Complaint Settled in Mediation.
21. **Ryan O'Connor v. Township of Irvington (Essex) (2023-23)**
 - Complaint Voluntarily Withdrawn.
22. **Ryan O'Connor v. Township of Irvington (Essex) (2023-65)**
 - Complaint Voluntarily Withdrawn.
23. **Ryan O'Connor v. Irvington Board of Education (Essex) (2023-68)**
 - Complaint Voluntarily Withdrawn.
24. **Ryan O'Connor v. Township of Irvington (Essex) (2023-82)**
 - Complaint Voluntarily Withdrawn.
25. **Ryan O'Connor v. Township of Irvington (Essex) (2023-84)**
 - Complaint Voluntarily Withdrawn.
26. **Bruce H. Zamost, Esq. (o/b/o Robert J. Zieniuk) v. Moorestown Police Department (Burlington) (2023-99)**
 - Complaint Voluntarily Withdrawn.
27. **Ryan O'Connor v. Township of Irvington (Essex) (2023-112)**
 - Complaint Voluntarily Withdrawn.
28. **Scott Madlinger v. Township of Saddle Brook (Bergen) (2023-116)**
 - 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): None

B. Administrative Orders with No Recusals (Consent Agenda): None

VII. 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 item No. 1 to ensure his non-participation in the item from which he was recused. Ms. Berg Tabakin confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda item.

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Bayonne (Hudson) (2021-213) (SR Recusal)**
 - The Custodian did not fully comply with the Council’s April 25, 2023 Interim Order.
 - The Complainant’s request for reconsideration should be denied. Conclusion No. 3 of the Council’s Interim Order remains in effect.
 - 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. Mr. Hahn made a motion and Mr. Martucci 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. **Alec Ferretti v. NJ Department of Health (2021-127)**
 - The Custodian lawfully denied access to Mr. Arrisi’s calendar, which comprised of internal information. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(b); Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205 (2005); McDonald v. City of Jersey City (Hudson), GRC Complaint No. 2015-274 (January 2017).
 - 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
2. **The Edison Reporter v. Edison Public School District (Middlesex) (2021-177)**
 - This complaint should be dismissed because the Complainant withdrew it in writing via e-mail on June 12, 2023. 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
3. **Scott Madlinger v. Berkeley Township Police Department (Ocean) (2021-207)**
 - The Custodian’s failure to disclose one of the five (5) responsive records resulted in a violation of OPRA. N.J.S.A. 47:1A-6. However, the Council

should decline to order disclosure of records because same were provided on September 9, 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. Mr. Hahn made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute, Baffi Simmons, and Delores Simmons) v. Borough of Elmwood Park Police Department (Bergen) (2021-251)**

- The Custodian's September 17, 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 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.
- 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. Hahn made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute, Baffi Simmons, and Delores Simmons) v. Oakland Police Department (Bergen) (2021-252)**

- The Custodian's October 13, 2021 response was consistent with prevailing case law and the Council's prior decisions. Libertarians, 465 N.J. Super. 11, 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.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute, Baffi Simmons, and Delores Simmons) v. Old Tappan Police Department (Bergen) (2021-253)**

- The Custodian's September 27, 2021 response was consistent with prevailing case law and the Council's prior decisions. Libertarians, 465 N.J. Super. 11, 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.

- 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. Hahn 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, Baffi Simmons, and Delores Simmons) v. Beach Haven Police Department (Ocean) (2021-255)**
- The Custodian's October 14, 2021 response was insufficient. DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
 - The Custodian's October 14, 2021 response was consistent with prevailing case law and the Council's prior decisions. Libertarians, 465 N.J. Super. 11, 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.
 - 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
8. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Garfield Police Department (Bergen) (2021-263)**
- The Custodian's September 27, 2021 response was consistent with prevailing case law and the Council's prior decisions. Libertarians, 465 N.J. Super. 11, 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.
 - 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
9. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Audubon Police Department (Camden) (2021-266)**
- The Custodian did not unlawfully deny access to records responsive to the Complainant's OPRA request because all records were previously provided. 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.
 - 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **Anonymous v. Borough of Haledon (Passaic) (2022-192)**

11. **Anonymous v. Borough of Haledon (Passaic) (2022-193) Consolidated**

- The Custodian’s failure to timely respond resulted in a “deemed” denial of both OPRA requests. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the Council should decline to order disclosure of records because same were provided on May 24, 2022.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

VIII. Court Decisions of GRC Complaints on Appeal: None

IX. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None

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

XI. Public Comment: None

XII. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Hahn made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote. The meeting adjourned at 1:55 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: July 25, 2023