



**Minutes of the Government Records Council
November 8, 2023 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:34 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 November 2, 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), and John Alexy (designee of Department of Community Affairs Acting Commissioner, Jacquelyn A. Suarez), and Steven Ritardi, Esq., Public Member.

GRC Staff in Attendance: Frank F. Caruso (Executive Director), Rosemond Bordzoe (Secretary), 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 6,902 Denial of Access Complaints. That averages about 324 annual complaints per 21 1/3 tracked program years. So far in the current program year (FY2023), the GRC has received 117 Denial of Access Complaints.

- 606 of the 6,902 complaints remain open and active (8.7%). Of those open cases:
 - 14 complaints are on appeal with the Appellate Division (2.3%);
 - 36 complaints are currently in mediation (5.9%);
 - 4 complaints are proposed for the Office of Administrative Law (0.7%);
 - 28 complaints await adjudication by the Office of Administrative Law (4.6%);
 - 36 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (5.9%);
 - 488 complaints are work in progress (80.5%); and
 - 0 complaints are being held in abeyance (0.0%).

- Since Program Year 2004, the GRC has received and responded to 38,080 total inquiries, averaging about 1,873 annual inquiries per 20 1/3 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 590 inquiries (6.8 inquiries per workday).

GRC Outreaches

- The next outreach will be on November 15, 2023 at the Annual New Jersey League of Municipalities Conference in Atlantic City, NJ.
- The GRC's Annual Seminar is set for Thursday, December 7, 2023 and will be virtual again this year. The all-day event will feature presentations on OPRA, the Daniel's Law Portal, and Records Retention. Registration will begin shortly.

III. Closed Session: None

IV. Approval of Minutes of Previous Meetings:

October 3, 2023 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the October 3, 2023 meeting. Mr. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote.

V. New Business – Cases Scheduled for Adjudication

Ms. Berg Tabakin stated that she would be muted for this portion of the agenda to ensure her non-participation in the item from which she was recused. Mr. Ritardi confirmed to the public that Ms. Berg Tabakin was muted prior to addressing the below agenda item.

Mr. Ritardi 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. **Diana L. Ling v. NJ Board of Public Utilities (2023-237) (RBT Recusal)**
 - Motion to File Within Time Denied.
 - Mr. Ritardi called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Mr. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote; Ms. Berg Tabakin recused.

Mr. Caruso notified the public that Ms. Berg Tabakin would rejoin the meeting by unmuting himself. Ms. Berg Tabakin rejoined the meeting at that time.

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

1. **Scott Madlinger v. Lacey Township Police Department (Ocean) (2022-572)**
 - No Record Responsive to the Request Exists.
2. **Klarida Papajani v. Saddle Brook Police Department (Bergen) (2023-103)**
 - No Correspondence Received by the Custodian.
3. **Rashir Abner v. City of Plainfield Police Department (Union) (2023-179)**
 - No Records Responsive to the Request Exist.
4. **Tyree Deshawn Mims v. City of Gloucester City (Camden) (2023-205)**
 - No Correspondence Received by the Custodian.

Ms. Berg Tabakin called for a motion to accept the recommendations as written in all the above Administrative Complaint Dispositions. Mr. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote.

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

1. **David Weiner v. County of Essex (2022-547)**
 - Complaint Settled in Mediation.
2. **Nancy Gomes v. City of Linden (Union) (2023-77)**
 - Complaint Settled in Mediation.
3. **Kevin Kearns v. Shrewsbury Borough Police Department (Monmouth) (2023-186)**
 - Complaint Voluntarily Withdrawn.
4. **Kevin Kearns v. Borough of West Long Branch Police Department (Monmouth) (2023-192)**
 - Complaint Voluntarily Withdrawn.
5. **Brian F. McBride v. Borough of Collingswood (Camden) (2023-198)**
 - Complaint Voluntarily Withdrawn.
6. **Kevin Alexander v. Somerville Police Department (Somerset) (2023-225)**
 - Complaint Voluntarily Withdrawn.

7. **Mark Boyles v. City of Jersey City (Hudson) (2023-236)**

- 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):

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. North Bergen Police Department (Hudson) (2021-304)**

- *In Camera* Review.
- Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Order. Mr. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote.

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

Ms. Berg Tabakin noted that Mr. Ritardi would be muted for this portion of the agenda 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.

A. Individual Complaint Adjudications with Recusals:

1. **Stephen Schnitzer, Esq. (o/b/o Vito’s Trattoria, Inc.) v. NJ Transit (2016-140) (SR Recusal)**

- The portion of the Complainant’s request seeking “documents” and “all discussed bid issues” is invalid because it fails to identify specific government records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). Further, the portion of the request seeking “communications” is invalid because it fails to include the necessary criteria. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
- The Custodian lawfully denied access to the requested draft “Requests for Proposal” and contracts under the “inter-agency, or intra-agency advisory, consultative, or deliberative [(“ACD”)] material” exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Libertarians for Transparent Gov’t v. Gov’t Records Council, 453 N.J. Super. 83 (App. Div. 2018).
- The GRC must conduct an *in camera* review of the redacted records to determine the validity of the Custodian’s assertion that same was lawfully denied under the competitive advantage; trade secret and proprietary; and

privacy interest exemptions. N.J.S.A. 47:1A-1; 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 knowing and willful is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Rosado noted that a conclusion was added to defer the prevailing party fee issue. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Alexy made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

2. **Rashon Barkley v. Essex County Prosecutor's Office (2022-258) (SR Recusal)**

- The GRC has no authority to address the Complainant's common law right of access arguments. N.J.S.A. 47:1A-7(b); Ciesla v. N.J. Dep't of Health and Senior Servs., 429 N.J. Super. 127, 148 (App. Div. 2012); Rowan, Jr. v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013).
- The Custodian lawfully denied access to the portion of the OPRA request seeking disciplinary records and internal affairs reports. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Internal Affairs Policy & Procedures; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004). See also Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124 (2022). The Custodian also lawfully denied access to the portion of the OPRA request seeking separation and settlement agreements because he 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. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Alexy made a motion and Mr. Hahn 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.

A brief summary of the Executive Director's recommended action is under each complaint:

B. Individual Complaint Adjudications with no Recusals:

1. **MN and EN (o/b/o AN) v. Gloucester Township Board of Education (Camden) (2020-124)**

- The Council should reopen its August 29, 2023 Final Decision to address Complainant Counsel's September 12, 2022 motion for leave to file a response to Custodian Counsel's objections to the prevailing party fee application. N.J. State Parole Bd. v. Mannson, 220 N.J. Super. 566, 570 (App. Div. 1987).

- The Council should deny Complainant Counsel's motion because it failed to raise issues supporting the granting of such. Thus, the Council's August 29, 2023 Final Decision remains in effect.
- 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 Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

2. **Brett Coulter v. NJ State Police (2021-87)**

- Custodian Counsel's request for reconsideration should be denied. The Council's December 13, 2022 Final Decision remains in effect and the Custodian must comply accordingly.
- 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 Mr. Hahn seconded the motion. The motion passed by a unanimous vote.
- 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 Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

3. **Alec Ferretti v. NJ Department of Health (2021-227)**

- Regarding OPRA requests W169010 and W169102, the State Registrar 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). However, the GRC declines to order disclosure because the Custodian did so on October 28, 2021.
- Regarding OPRA request W169011, the Custodian lawfully denied access because he 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. Mr. Ritardi made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Fort Lee Police Department (Bergen) (2021-281)**

- The Custodian complied with the Council's August 29, 2023 Interim Order.
- 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. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Ritardi made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Medford Police Department (Burlington) (2021-294)**

- The Custodian’s November 9, 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 did not unlawfully deny access to the personnel information 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 Custodian lawfully denied access to the requested “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Ritardi made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Lambertville Police Department (Hunterdon) (2021-295)**

- The Custodian did not unlawfully deny access to the personnel information responsive to the Complainant’s OPRA request because all records were previously provided. Danis, GRC 2009-156, *et seq.*
- The Custodian lawfully denied access to the requested “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Ritardi made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Berkeley Township Police Department (Ocean) (2021-296)**

- The Custodian did not unlawfully deny access to the personnel information responsive to the Complainant’s OPRA request because all records were previously provided. Danis, GRC 2009-156, *et seq.*

- The Custodian lawfully denied access to the requested “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Ritardi made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

8. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Mount Holly Police Department (Burlington) (2021-299)**

- The Custodian’s November 8, 2021 response was insufficient. Paff, GRC 2007-272.
- The Custodian did not unlawfully deny access to the personnel information responsive to the Complainant’s OPRA request because all records were previously provided. Danis, GRC 2009-156, *et seq.*
- The Custodian lawfully denied access to the requested “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Ritardi made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

9. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. River Vale Police Department (Bergen) (2021-301)**

- The Custodian did not unlawfully deny access to the personnel information responsive to the Complainant’s OPRA request because all records were previously provided. Danis, GRC 2009-156, *et seq.*
- The Custodian lawfully denied access to the requested “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Ritardi made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

10. **Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-327)**

- The original 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 original Custodian unlawfully denied access to the data sought in OPRA request item No. 1 under the ACD exemption. However, the GRC declines to order disclosure because the Custodian did so on January 7, 2022.
- The original Custodian lawfully denied access to the requested draft traffic study sought in OPRA request item No. 2 under the ACD exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Libertarians, 453 N.J. Super. 83.
- The Custodian lawfully denied access to OPRA request item No. 3 because she 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. Mr. Ritardi made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

11. **Anonymous v. Englishtown Police Department (Monmouth) (2022-439)**

- The current Custodian failed to comply with the Council’s August 29, 2023 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, Chief Cooke, Ms. Robbins, and/or the current 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 and may be entitled to attorney’s fees. For administrative ease, the OAL should determine whether a fee should be awarded and, if so, the amount.
- 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 Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

12. **John Paff v. City of Trenton (Mercer) (2023-155)**

- The Custodian’s failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).
- 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 portion of the Complainant’s request seeking “other forms of criminal process” is invalid because it fails to seek an identifiable government record. MAG, 375 N.J. Super. 534.
- The Custodian may have unlawfully denied access to the portion of the Complainant’s OPRA request seeking a “CDR-1, CDR-2, [and/or] Special Form of Complaint” for five (5) specific matters. N.J.S.A. 47:1A-6. The Custodian shall locate and disclose the responsive records, certify if same are exempt from disclosure, 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. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Hahn 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:

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

XI. Public Comment:

XII. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Ritardi made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote. The meeting adjourned at 2:03 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: December 12, 2023