



**Minutes of the Government Records Council
February 27, 2024 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:31 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 February 22, 2024.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Michael Hahn, Esq. (designee of Department of Education Acting Commissioner Kevin Dehmer), 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 6,995 Denial of Access Complaints. That averages about 325 annual complaints per 21 1/2 tracked program

years. So far in the current program year (FY2023), the GRC has received 210 Denial of Access Complaints.

- 592 of the 6,995 complaints remain open and active (8.5%). Of those open cases:
 - 14 complaints are on appeal with the Appellate Division (2.4%);
 - 29 complaints are currently in mediation (4.9%);
 - 2 complaints are proposed for the Office of Administrative Law (0.3%);
 - 27 complaints await adjudication by the Office of Administrative Law (4.6%);
 - 58 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (9.8%);
 - 462 complaints are work in progress (78.0%); and
 - 0 complaints are being held in abeyance (0.0%).

- Since Program Year 2004, the GRC has received and responded to 38,606 total inquiries, averaging about 1,883 annual inquiries per 20 1/2 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 1,116 inquiries (6.9 inquiries per workday).

GRC Outreaches

- The GRC's next outreach will be on February 28, 2024 held virtually and hosted by the Institute for Professional Development.

III. Closed Session:

- Marc Liebeskind v. NJ Department of Transportation (2022-339) 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. Alexy made a motion, and Mr. Hahn seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:37 p.m. until 1:43 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:44 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Mr. Hahn, and Mr. Alexy, and Mr. Ritardi.

IV. Approval of Minutes of Previous Meetings:

January 30, 2024 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the January

30, 2024 meeting. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote.

January 30, 2024 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the January 30, 2024 meeting. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote; Mr. Ritardi abstained due to recusal.

V. New Business – Cases Scheduled for Adjudication

Ms. Berg Tabakin stated 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 item.

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. **David Weiner v. County of Essex (2022-444) (SR Recusal)**
 - Unripe Cause of Action.
2. **David Weiner v. County of Essex (2022-456) (SR Recusal)**
 - Unripe Cause of Action.
3. **David Weiner v. County of Essex (2023-75) (SR Recusal)**
 - No Records Responsive to the Request Exist.
4. **David Weiner v. County of Essex (2023-76) (SR Recusal)**
 - No Records Responsive to the Request Exist

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

Ms. Berg notified the public that Mr. Ritardi would rejoin the meeting by unmuting herself. Mr. Ritardi rejoined the meeting at that time.

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

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Bedminster Township Police Department (Somerset) (2022-14)**
 - All Records Responsive Provided in a Timely Manner.
2. **Yoshuabel Lamboy v. Town of Newton (Sussex) (2024-38)**
 - Motion to File Within Time Denied.

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

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

1. **Sasha Wolf v. NJ Department of Health, Epidemiology, Environmental & Occupational Health (EEOH) (2023-146)**
 - Complaint Settled in Mediation.
2. **Ethan Millar (o/b/o Walt Disney Co.) v. NJ Department of Treasury (2023-183)**
 - Complaint Settled in Mediation.
3. **Ciarra Bianculli, Esq. v. NJ Department of Transportation (2023-266)**
 - Complaint Settled in Mediation.
4. **Rianna S. Kirchof v. NJ Department of Transportation (2024-20)**
 - Complaint Voluntarily Withdrawn.
5. **Kevin Kearns v. Borough of Deal (Monmouth) (2024-21)**
 - Complaint Voluntarily Withdrawn.
6. **Kevin Kearns v. City of Long Branch (Monmouth) (2024-39)**
 - Complaint Voluntarily Withdrawn

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

Ms. Berg Tabakin stated that 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. **Lisa Andreula-Porto v. Cape May County (2020-62)**
 - *In Camera* Review.
2. **Marc Liebeskind v. Borough of Highland Park (Middlesex) (2022-51)**
 - *In Camera* Review.
3. **Anonymous v. Pattenburg Volunteer Fire Company (Hunterdon) (2023-267)**
 - Request to Proceed Anonymously Denied.

Ms. Berg Tabakin called for a motion to accept the recommendations as written in all the above Administrative Orders. Mr. Alexy made a motion, which was seconded by Mr. Hahn. 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. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Hackensack Police Department (Bergen) (2021-283) (SR Recusal)**
 - The Custodian’s response to the portion of the request seeking settlements 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). 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. 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.

2. **David Weiner v. County of Essex (2022-442) (SR Recusal)**
 - 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).
 - 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.

3. **David Weiner v. County of Essex (2022-443) (SR Recusal)**
 - 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, GRC 2005-49.
 - 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.

4. **David Weiner v. County of Essex (2022-455) (SR Recusal)**

- The Custodian lawfully denied access to the Complainant's OPRA request 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. 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.

5. **David Weiner v. County of Essex (2022-465) (SR Recusal)**

- 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, GRC 2005-49.
- 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. **Steven G. Mlenak, Esq. (o/b/o SJ 660 LLC) v. Borough of Edgewater (Bergen) (2021-90)**

- This complaint should be dismissed because the Complainant withdrew it via e-mail on December 7, 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

2. **Jacques J. Guire III v. West Long Branch Fire Company No. 2 (Monmouth) (2021-306)**
 - The Custodian may have unlawfully denied access to meeting minutes responsive to OPRA request item No. 1. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff's Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Thus, the Custodian shall, in cooperation with Ms. Baldanza, search for and disclose those minutes from 2001 through November 2018 that exist. If no additional minutes exist, the Custodian and Ms. Baldanza must provide certifications to the Complainant stating such.
 - Ms. Beg 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. Alexy seconded the motion. The motion passed by a unanimous vote.

3. **Yanming Xiao v. NJ State Police (2021-324)**
 - The Custodian may have unlawfully denied access to the responsive investigation report because he was the victim of the incident addressed therein. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. Thus, the Custodian shall disclose the report to the Complainant.
 - Ms. Beg 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. Alexy seconded the motion. The motion passed by a unanimous vote.

4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Pine Beach Police Department (Ocean) (2021-334)**
 - 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 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 must search for and certify whether any responsive settlement agreements exist.
 - The Custodian may have unlawfully denied access to the "salary" and "payroll" records sought by the Complainant. Kovalcik v. Somerset Cty. Prosecutor's Office, 206 N.J. 581 (2011). Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). The Custodian shall either locate and disclose the requested information or certify if no responsive records exist.
 - The prevailing party analysis is deferred.
 - Ms. Beg 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. Alexy seconded the motion. The motion passed by a unanimous vote.

5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Woodlynne Police Department (Camden) (2021-336)**

- The Custodian's response was insufficient. Paff, GRC 2007-272.
- The Custodian did not unlawfully deny access to the portion of the Complainant's OPRA request seeking personnel information because all was disclosed. 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 portion of the Complainant's OPRA request seeking "agreements" because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- The Complainant is not a prevailing party.
- Ms. Beg 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. Alexy seconded the motion. The motion passed by a unanimous vote.

6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Hasbrouck Heights Police Department (Bergen) (2021-344)**

- The Custodian did not unlawfully deny access to the portion of the Complainant's OPRA request seeking certain personnel information because all was disclosed. Danis, GRC 2009-156, *et seq.*
- The Custodian lawfully denied access to the portion of the Complainant's OPRA request seeking certain other personnel information and "agreements" because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- The Complainant is not a prevailing party.
- Ms. Beg 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. Alexy seconded the motion. The motion passed by a unanimous vote.

7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Bergen County Police Department (2021-347)**

- The Custodian's two (2) responses were insufficient. Paff, GRC 2007-272.
- The Custodian did not unlawfully deny access to the portion of the Complainant's OPRA request seeking certain personnel information because all was disclosed. Danis, GRC 2009-156, *et seq.*
- The Custodian lawfully denied access to the portion of the Complainant's OPRA request seeking certain other personnel information and "agreements" because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.

- The Complainant is not a prevailing party.
- Ms. Beg 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. Alexy seconded the motion. The motion passed by a unanimous vote.

8. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Franklin Police Department (Sussex) (2022-11)**

- The Custodian did not unlawfully deny access to the portion of the Complainant's OPRA request seeking personnel information for three (3) officers and agreements pertaining to two of them because all were disclosed. Danis, GRC 2009-156, *et seq.*
- The Custodian lawfully denied access to the portion of the Complainant's OPRA request seeking an "agreement" for the third officer because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- The Complainant is not a prevailing party.
- Ms. Beg 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. Alexy seconded the motion. The motion passed by a unanimous vote.

9. **Paul Bishop v. NJ Department of Labor & Workforce Development, Division of Unemployment (2022-16)**

- The Complainant's request assigned W180375 was invalid because it failed to specify records and required research. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015).
- The Custodian lawfully denied access to the Complainant's OPRA request assigned W180376 because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- Ms. Beg 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. Alexy seconded the motion. The motion passed by a unanimous vote.

10. **Jeton Merko v. Montville Township Board of Education (Essex) (2022-45)**

- The Complainant's request was invalid because it sought information that required research. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Lagerkvist, 443 N.J. Super. at 236-237; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

- The Complainant’s allegation that he was unlawfully denied access to oaths of office is without reasonable factual basis because he did not request them. Alexander v. Middlesex Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2021-17 (March 2021).
- Ms. Beg 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. Alexy seconded the motion. The motion passed by a unanimous vote.

11. **Marc Liebeskind v. NJ Department of Transportation (2022-339)**

- The *In Camera* Examination reveals that the Custodian lawfully denied access to the redacted body of the May 17, 2022 e-mail. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6.
- Ms. Beg 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. Alexy seconded the motion. The motion passed by a unanimous vote.

12. **Peter Gartner v. Borough of Middlesex (Middlesex) (2022-359)**

- This complaint should be dismissed because it was moot at the time of the filing thereof. Stop & Shop Supermarket Co., LLC v. Cnty. of Bergen, 450 N.J. Super. 286, 291 (App. Div. 2017).
- Ms. Beg 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. Alexy 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:

- Doe v. Rutgers, 2024 N.J. Super. Unpub. LEXIS 129 (App. Div. 2024): In Doe v. Rutgers, 466 N.J. Super. 14 (App. Div. 2021) (“Doe I”), the Appellate Division held that Plaintiff was entitled his own student records, ordered Defendant to produce same, and remanded back to the trial court. Thereafter, Plaintiff submitted new OPRA requests seeking additional records to which he was entitled under Doe I. Plaintiff then filed a second, separate action challenging Defendant’s imposition of a special service charge to process the new OPRA requests.

A month after filing the second action, Plaintiff filed an action with the Doe I trial court to enforce litigant’s rights. Defendant later removed the second action to federal court.

The trial court denied Plaintiff's motions and granted Defendant's motion in part, leading to this appeal. Meanwhile, the federal District court dismissed Plaintiff's second action. The 3rd Circuit affirmed in Doe v. Rutgers, 2023 U.S. App. LEXIS 4626 (3d Cir. Feb. 27, 2023) ("Doe II"), rejecting Plaintiff's claim that imposing a special service charge was unlawful under the Family Educational Rights and Privacy Act ("FERPA"), or unreasonable under OPRA.

In this appeal, the Appellate Division found that Plaintiff raised the same arguments on the legality of the special service charge as he did in Doe II. The court therefore held that Plaintiff's appeal was collaterally estopped by Doe II. Dismissed.

XI. Public Comment:

Yoshuabel Lamboy (GRC Complaint No. 2024-38): Mr. Lamboy noted out that the Town of Newton is in Sussex County and not Essex, which was the county listed on the agenda. Mr. Caruso thanked Mr. Lamboy for making the GRC aware of the error and assured him that the correction will be made.

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 2:12 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: March 26, 2024