



**Minutes of the Government Records Council
February 23, 2016 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:40 p.m. by Ms. Robin Tabakin at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Ms. 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 (fax number out of service), Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on February 18, 2016.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Tabakin, Esq. (Chairwoman) Dominic Rota, Esq. (designee of Department of Education Commissioner David C. Hespe), and Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member).

GRC Staff in Attendance: Joseph Glover (Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Communications Specialist/Resource Manager), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Ernest Bongiovanni (Staff Attorney), Husna Kazmir (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Tabakin informed the public that copies of the agenda with complaint summaries are available by the conference room door.

II. Executive Director's Report:

Current Statistics

- Since OPRA's inception in calendar year 2002, the GRC has received 4,251 Denial of Access Complaints. That averages about 311 complaints per a bit over 13^{2/3} program years.
- In the current program year, the GRC has so far received 284 Denial of Access Complaints. At approximately this point last year, the GRC had received 233 complaints. That reflects a 22% increase in the agency's intake from one year to the next.
- 463 of the 4,251 complaints remain open and active. Of those open cases,
 - 15 complaints are on appeal with the Appellate Division (3.2%);
 - 29 complaints are currently in mediation (6.3%);
 - 39 complaints await adjudication by the Office of Administrative Law (8.4%);
 - 108 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the February 2016 meeting (23%); and,
 - 272 complaints are work in progress (59%).
- Since 2004, the GRC has received 24,390 total inquiries. That is an average of about 1,926 inquiries per a bit over 12^{2/3} tracked program years. So far in the current program year, the GRC has received 1,269 inquiries.

III. Closed Session:

Ms. Tabakin read the Closed Session Resolution to go into closed session pursuant to N.J.S.A. 10:4-12(b)(7) to receive legal advice in the following matters:

- Dudley Burdge v. NJ Civil Service Commission (2014-168)
- Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-59)
- Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-1) (**RBT Recusal**)
- Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10) (**RBT Recusal**)
- Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) (**RBT and SR Recusals**) Consolidated

Mr. Rota made a motion to go into closed session, and Mr. Ritardi seconded the motion. The Council adopted the motion by a unanimous vote.

The Council met in closed session from 1:43 p.m. until 2:42 p.m.

Mr. Rota made a motion to end the closed session, which was seconded by Mr. Ritardi. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:49 p.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Mr. Rota, Mr. Martucci and Mr. Ritardi.

IV. Approval of Minutes of Previous Meetings:

• **January 26, 2016 Open Session Meeting Minutes**

Mr. Martucci made a motion, seconded by Mr. Rota, to approve the open session minutes of the January 26, 2016 meeting. The motion passed by a majority vote; Mr. Ritardi abstained.

• **January 26, 2016 Closed Session Meeting Minutes**

Mr. Martucci made a motion, seconded by Mr. Rota, to approve the closed session minutes of the January 26, 2016 meeting. The motion passed by a majority vote; Mr. Ritardi abstained.

V. New Business – Cases Scheduled for Adjudication

Ms. 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. **Anthony Walker v. Essex County Correctional Facility (2016-5) (SR Recusal)**

- The Custodian did not receive a records request from the Complainant.
- Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Disposition. Mr. Rota made a motion, which was seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi recused.

2. **Beverly McCall, Esq. (o/b/o The American Legion Morvay-Miley) v. NJ Department of Community Affairs (2016-10) (JM Recusal)**

- The complainant has a pending action in Superior Court.
- Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Disposition. Mr. Rota made a motion, which was seconded by Mr. Ritardi. The motion passed by a majority vote; Mr. Martucci recused.

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

1. **Richard B. Kahn v. Township of East Brunswick (Middlesex) (2015-327)**

- The parties settled the matter through mediation.

2. **Richard Bosi v. Township of Rochelle Park (Bergen) (2015-328)**

- The parties settled the matter through mediation.

3. **Ronald Horton v. Franklin Township Police Department (Somerset) (2015-393)**
 - The parties settled the matter through mediation.

Ms. Tabakin called for a motion to accept the recommendations as written in all of the above Administrative Complaint Dispositions. Mr. Rota made a motion, which was seconded by Mr. Martucci. The motion passed unanimously.

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

1. **Harry B. Scheeler, Jr. v. NJ Department of Children and Families (2015-47)**
2. **Harry B. Scheeler, Jr. v. NJ Department of Children and Families (2015-180)**
3. **Harry B. Scheeler, Jr. v. NJ Department of Children and Families, Division of Child Protection and Permanency (2015-382)**
4. **Harry B. Scheeler, Jr. v. NJ Department of Children and Families, Division of Child Protection and Permanency (2015-383)**
5. **Harry B. Scheeler, Jr. v. NJ Department of Children and Families (2015-392)**
6. **Harry B. Scheeler, Jr. v. NJ Department of Children and Families (2015-412)**
7. **Beverly McCall, Esq. (o/b/o The American Legion Morvay Miley) v. City of Ocean City (Cape May) (2016-11)**
8. **Harry B. Scheeler, Jr. v. NJ Department of Children and Families (2016-15)**

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

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

1. **Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-1) (RBT Recusal)**
2. **Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10) (RBT Recusal)**
3. **Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) (RBT and SR Recusals) Consolidated**
 - Ms. Tabakin noted that the Council might not be able to achieve a quorum on the matter resulting from recusal issues and suggested tabling this complaint based on legal advice obtain in closed session under doctrine of necessity.
 - Ms. Tabakin called for a motion to table the above case. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed by a doctrine of necessity.
4. **Thomas Caggiano v. Township of Green (Sussex) (2014-418) (RBT Recusal)**
 - On the advice of legal counsel, the GRC should table the matter.
 - Mr. Ritardi called for a motion to table the above case. Mr. Rota made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Ms. Tabakin recused.
5. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-56) (SR Recusal)**
 - On the advice of legal counsel, the GRC should table the matter.

- Ms. Tabakin called for a motion to table the above case. Mr. Rota made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
6. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-59) (SR Recusal)**
 - On the advice of legal counsel, the GRC should table the matter.
 - Ms. Tabakin called for a motion to table the above case. Mr. Rota made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
 7. **Bruce Shapiro v. City of Newark (Essex) (2015-79) (SR Recusal)**
 - Based on the evidence provided, the GRC cannot determine whom, if anyone, might have violated N.J.S.A. 47:1A-5(h).
 - The request was invalid, because it is overly broad, fails to identify government records, and would require the Custodian to conduct research.
 - There is no knowing and willful violation.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Rota seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
 8. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-123) (DR Recusal)**
 - The original Custodian properly requested an extension of time and provided a specific deadline by which the requested records would be made available.
 - The Custodian's second request was proper because he responded prior to the expiration of the first extended time frame and provided a new date by which he would respond.
 - The complaint is materially defective and must be dismissed because the Complainant verified the complaint prior to the expiration of the second extension.
 - Mr. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Rota recused.
 9. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-423) (DR Recusal)**
 - On the advice of legal counsel, the GRC should table the matter.
 - Ms. Tabakin called for a motion to table the above case. Mr. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Rota recused.

B. Individual Complaint Adjudications with no Recusals:

1. Harry B. Scheeler, Jr. v. NJ Office of the Governor (2014-67)

- The Custodian's response was insufficient because the Custodian failed to sign and date the response, which is inconsistent with N.J.S.A. 47:1A-5(f).
- The GRC should hold the matter in abeyance until the Appellate Division rules in Scheeler v. Office of the Governor, et al, Docket No. A-1236-14T3.
- The knowing and willful analysis is deferred pending the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

2. Dudley Burdge v. NJ Civil Service Commission (2014-168)

- The Custodian complied with the Council's May 26, 2015 Interim Order.
- The IT Title Consolidation Committee is a "public agency" subject to OPRA.
- The Custodian must comply with the Council's Findings of the *In Camera* Examination and simultaneously provide certified confirmation of compliance to the Executive Director.
- The knowing and willful analysis is deferred pending the Custodian's compliance.
- Mr. Glover was recused from this complaint.
- Ms. Tabakin called for any discussion on the amended Executive Director's findings and recommendations. Ms. Kazmir advised the Council that the complaint was amended to move a paragraph from page 3 to page 5 and included a new footnote limiting the scope of the decision. DAG Allen noted that it would not be necessary to table this complaint.
- Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Martucci made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

3. Paul R. Rizzo (On behalf of Borough of South Plainfield) v. Middlesex County Prosecutor's Office (2014-284)

- Despite the agency's mistake, the Custodian lawfully denied access to the records sought to be copied. As criminal investigative records, the documents are nonetheless exempt from disclosure.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as edited. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

4. David Marc Drukaroff v. NJ State Parole Board (2014-379)

- The requested records are exempt pursuant to N.J.A.C. 10A:71-2.2(a)(7).
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

5. **Gregory W. Kasko v. Town of Westfield (Union) (2014-389)**
 - On the advice of legal counsel, the GRC should table the matter.
 - Ms. Tabakin called for a motion to table the above case. Mr. Ritardi made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
6. **Agustin Garcia v. NJ Office of the Public Defender (2015-75)**
 - The requested records are exempt pursuant to N.J.S.A. 47:1A-5(k).
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.
7. **Harry B. Scheeler, Jr. v. NJ State Police (2015-80)**
 - On the advice of legal counsel, the GRC should table the matter.
 - DAG Allen suggested that, for ease of process, this complaint be combined with all other complaints being tabled (GRC Nos. 2015-91, 2015-170, 2015-218, and 2015-369) and that the Council take one vote.
 - Ms. Tabakin called for a motion to table the above case. Mr. Martucci made a motion and Mr. Rota seconded the motion. The motion passed by a unanimous vote.
8. **Harry B. Scheeler, Jr. v. City of Cape May (Cape May) (2015-91)**
 - On the advice of legal counsel, the GRC should table the matter.
 - Ms. Tabakin called for a motion to table the above case. Mr. Martucci made a motion and Mr. Rota seconded the motion. The motion passed by a unanimous vote.
9. **Richard Spillane v. NJ Department of Corrections (2015-129)**
10. **Richard Spillane v. NJ Department of Corrections (2015-267) Consolidated**
 - The Custodian lawfully denied access, because disclosure would be contrary to regulations that prohibit inmates from obtaining records concerning other inmates and could jeopardize the safety and security of any person or a correctional facility.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.
11. **Abdiel F. Avila v. NJ State Parole Board (2015-153)**
 - There is no unlawful denial of access, because the requested records are exempt from disclosure pursuant to Executive Order No. 9 (Hughes, 1963).
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

12. **Abdiel F. Avila v. NJ Department of Corrections (2015-154)**

- The Custodian certified that no responsive records exist, and the Complainant provides no competent, credible evidence to refute the Custodian's certification.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

13. **Robert Kovacs v. Manchester Township (Ocean) (2015-170)**

- On the advice of legal counsel, the GRC should table the matter.
- Ms. Tabakin called for a motion to table the above case. Mr. Martucci made a motion and Mr. Rota seconded the motion. The motion passed by a unanimous vote.

14. **Kojo Muata v. NJ Division on Civil Rights (2015-211)**

- Based on the evidence provided, the GRC cannot determine who might have violated N.J.S.A. 47:1A-5(h).
- The Custodian certified that no responsive records exist, and the Complainant provides no competent, credible evidence to refute the Custodian's certification.
- The Complainant's second records request was an invalid request for information and not a valid request for identifiable government records.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

15. **Robert Kovacs v. Town of Kearny Police Department (Hudson) (2015-218)**

- On the advice of legal counsel, the GRC should table the matter.
- Ms. Tabakin called for a motion to table the above case. Mr. Martucci made a motion and Mr. Rota seconded the motion. The motion passed by a unanimous vote.

16. **Carol Thompson v. Township of Mansfield (Warren) (2015-309)**

- The Custodian's failure to respond within the extended deadline results in a "deemed" denial.
- The Custodian must disclose all responsive records, if any, and provide a document index showing any redactions.
- Should there be no responsive records, the Custodian must certify to that fact.
- The knowing and willful analysis is deferred pending the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

17. **Luis F. Rodriguez v. Kean University (2015-331)**

- The Custodian did not respond immediately to immediate access documents, thus resulting in a “deemed” denial.
- There is no need for the GRC to order disclosure, as the Custodian released all responsive documents to the Complainant.
- There is no knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Rota made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

18. **Harry B. Scheeler, Jr. v. NJ State Police (2015-369)**

- On the advice of legal counsel, the GRC should table the matter.
- Ms. Tabakin called for a motion to table the above case. Mr. Martucci made a motion and Mr. Rota seconded the motion. The motion passed by a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal: None

VIII. Complaints Adjudicated in US Supreme Court: None

IX. Public Comment (Second Session):

- Mala, Asm. Danielsen’s aide, thanked the Council on behalf of Asm. Danielsen for resolving noise issues he brought to the Council’s attention at the last meeting.

X. Adjournment:

Mr. Martucci made a motion to end the Council’s meeting, which was seconded by Mr. Rota. The motion passed unanimously.

The meeting adjourned at 3:09 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: April 26, 2016