



**Minutes of the Government Records Council  
December 19, 2017 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:30 p.m. by Ms. Robin Berg 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. 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 December 14, 2017.”

Ms. Berg Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Christopher Huber, Esq. (designee of Department of Education Acting Commissioner Kimberley Harrington), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member).

GRC Staff in Attendance: Frank F. Caruso (Communications Specialist/Resource Manager), Rosemond Bordzoe (Secretary), John Stewart (Mediator), Samuel Rosado (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Berg Tabakin advised that copies of the agenda are available by the conference room door.

## **II. Executive Director's Report:**

### **Moving on**

- Executive Director Glover remains grateful for the privilege and honor of serving as the GRC's Executive Director. The past three (3) years have been an amazing and gratifying professional experience. The members and current staff of the GRC are of the highest quality, and it has been a pleasure to work with each of them.

### **OPRA Trainings**

- The Executive Director conducted an OPRA seminar during the annual conference of the New Jersey League of Municipalities in Atlantic City on Wednesday, November 15, 2017.
- Within the limitations of reduced staff, the GRC will now begin scheduling 2018 seminars. The GRC has already received two (2) presentation requests. It is currently reviewing the feasibility of accepting these requests.

### **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 4,761 Denial of Access Complaints. That averages about 317 annual complaints per slightly less than 15½ program years. So far in the current program year, the GRC has received 98 Denial of Access Complaints.
- 477 of the 4,761 complaints remain open and active (10%). Of those open cases:
  - 21 complaints are on appeal with the Appellate Division (4.4%);
  - 15 complaints are currently in mediation (3.1%);
  - 39 complaints await adjudication by the Office of Administrative Law (8.2%);
  - 50 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (10.5%); and,
  - 346 complaints are work in progress (72.5%).
  - 2 complaints are proposed for the Office of Administrative Law (.4%) and 4 complaints are being held in abeyance (1%).
- Since Program Year 2004, the GRC has received 27,919 total inquiries, averaging about 1,920 annual inquiries per slightly less than 14½ tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year, the GRC has received 824 inquiries.
- From January 1, 2015, until present:
  - The GRC has received 986 Denial of Access Complaints, which equals 21% of all complaints filed in the agency's history. That means that the GRC has received somewhat less than 1.4 complaints on average for every business day (allowing for public holidays) during that period.

- The GRC has adjudicated 1,228 cases (some cases require multiple adjudications). That number does not include today's adjudications.
- The GRC has received and addressed 5,875 inquiries, which equals 21% of all inquiries received in the agency's history. That averages approximately 8 inquiries per every business day during that period.
- The GRC has been successfully able to mediate 90 of 191 referred cases (47.1%), with 8 of those 191 cases currently in active mediation.

### **III. Closed Session:**

- Charles R. Cohen v. City of Englewood (Bergen) (2016-253)

Ms. Berg Tabakin called for a motion to go into closed session. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The Council adopted the motion by a unanimous vote.

The Council met in closed session from 1:39 p.m. until 2:12 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Martucci made a motion, which was seconded by Mr. Huber. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:22 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Mr. Huber, Mr. Martucci, and Mr. Ritardi.

### **IV. Approval of Minutes of Previous Meetings:**

- **November 14, 2017 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the November 14, 2017 meeting. Mr. Martucci noted that he confirmed the accuracy of the draft minutes with Mr. Urbish. Mr. Ritardi made a motion, which was seconded by Mr. Huber. 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):**

##### **1. Al Khidr Tulu v. Atlantic County Justice Facility (2016-118)**

- No correspondence received by the Custodian

2. **Brian Keith Bragg v. Mercer County Correctional Center (2016-151)**
  - No correspondence received by the Custodian
3. **Shaun Clifton-Short v. NJ Civil Service Commission (2017-193)**
  - No correspondence received by the Custodian

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

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

1. **William Budesheim v. NJ Department of Banking and Insurance (2017-171)**
  - The parties settled this matter through mediation.
2. **Rahgeam Jenkins v. Ocean County Sheriff's Office (2017-175)**
  - The parties settled this matter through mediation.
3. **Luis F. Rodriguez v. Kean University (2017-205)**
  - The Complainant voluntarily withdrew this complaint.
4. **Toni Cilli v. Vernon Public School District (Sussex) (2017-213)**
  - The Complainant voluntarily withdrew this complaint.
5. **Amanda Thomas v. City of Ventnor City (Atlantic) (2017-214)**
  - The Complainant voluntarily withdrew this complaint.

**VI. 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:

1. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-133) (SR Recusal)**
  - The Custodian complied with the Council's October 31, 2017 Interim Order.
  - There is no knowing and willful violation.
  - The Complainant is a prevailing party, who is entitled to an award of reasonable attorney's fees. The parties shall confer in an effort to decide the amount of reasonable attorney's fees and promptly notify the GRC in writing if a fee agreement is reached. Otherwise, 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. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

2. **Katalin Gordon v. City of Orange Township (Essex) (2016-127) (SR Recusal)**

- The Custodian complied with the Council's November 14, 2017 Interim Order.
- There is no knowing and willful violation.
- 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. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

**B. Individual Complaint Adjudications with no Recusals:**

1. **Shawn G. Hopkins v. Colts Neck Township (Monmouth) (2014-21)**

- The current Custodian did not fully comply with the Council's October 31, 2017 Interim Order.
- There is no knowing and willful violation.
- The Complainant is a prevailing party, who is entitled to an award of reasonable attorney's fees. The parties shall confer in an effort to decide the amount of reasonable attorney's fees and promptly notify the GRC in writing if a fee agreement is reached. Otherwise, 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. Hearing none, 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. Huber seconded the motion. The motion passed by a unanimous vote.

2. **Shawn G. Hopkins v. Borough of Deal (Monmouth) (2014-22)**

- Both the original and current Custodians complied with the Council's October 31, 2017 Interim Order.
- There is no knowing and willful violation.
- 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. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by unanimous vote.

3. **Shawn G. Hopkins v. Borough of Rumson (Monmouth) (2014-29)**

- Both the original and current Custodians complied with the Council's October 31, 2017 Interim Order.
- There is no knowing and willful violation.
- 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. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

4. **Shawn G. Hopkins v. Loch Arbour Village (Monmouth) (2014-48)**
  - The current Custodian failed to fully comply with the Council's July 25, 2017 Interim Order.
  - The original Custodian unlawfully denied access to the responsive records.
  - Given the facts of this specific case, the Council is giving the current Custodian a final opportunity to comply with the Council's Order. The current Custodian shall 1) disclose all responsive CAMA data; 2) provide an explanation of how any existing disclosure issues were remedied; and 3) provide the Complainant a copy of the photograph DVD by regular mail.
  - The knowing and willful analysis is deferred pending the current Custodian's compliance.
  - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations. Mr. Caruso noted that the proposed findings were amended for the sake of clarity. Mr. Caruso noted that no substantive changes were made as part of this amendment. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Ritardi made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
  
5. **Harry B. Scheeler, Jr. v. Galloway Township (Atlantic) (2015-01)**
6. **Harry B. Scheeler, Jr. v. Galloway Township (Atlantic) (2015-22) Consolidated**
  - This consolidated complaint should be dismissed because the parties reached a settlement on the remaining issues.
  - No further adjudication is required.
  - 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. Ritardi made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
  
7. **Christina Moreira v. Elizabeth Board of Education (Union) (2015-313)**
  - This complaint should be tabled based on advice of Counsel.
  - Ms. Berg Tabakin called for called for a motion to the above matter tabled. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
  
8. **Talbot B. Kramer, Jr., Esq. (o/b/o William Juliana) v. Township of Washington (Gloucester) (2016-107)**
9. **Talbot B. Kramer, Jr., Esq. (o/b/o William Juliana) v. Township of Washington (Gloucester) (2016-108) Consolidated**
  - The Custodian's failure to timely respond to the subject OPRA requests resulted in a "deemed" denial.
  - There is no knowing and willful violation.
  - The Complainant is not a prevailing party and is not entitled to an award of reasonable attorney's fees.

- 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. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

10. **Art Rittenhouse v. Middlesex County (2016-142)**

- The Custodian complied with the Council's November 14, 2017 Interim Order.
- There is no knowing and willful violation.
- 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. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

11. **Brian Hoffman v. NJ Department of Corrections (2016-154)**

- The Custodian lawfully denied access to the Complainant's OPRA request by timely responding that no records existed and referring the Complainant to the Atlantic County Justice Facility.
- 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. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

12. **Charles R. Cohen v. City of Englewood (Bergen) (2016-253)**

- This complaint should be tabled based on the Council's closed session review.
- Ms. Berg Tabakin called for called for a motion to the above matter tabled. Mr. Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

13. **Stacie Percella v. City of Bayonne (Hudson) (2017-70)**

- The Custodian failed to comply with the Council's October 31, 2017 Interim Order and is therefore in violation of said Order.
- The Interim Order is enforceable in the Superior Court if the Complainant chooses that option.
- This complaint should be referred to the Office of Administrative Law for a proof hearing on whether the Custodian and/or any other municipal official knowingly and willfully violated OPRA.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations. Mr. Stewart noted that a few minor amendments were made that did not affect the outcome of the proposed findings. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

## **VII. Court Decisions of GRC Complaints on Appeal:**

- Scheeler v. Galloway Twp., 2017 N.J. Super. Unpub. LEXIS 2847 (App. Div. 2017): Here, the Appellate Division reversed and remanded regarding access to a purported settlement agreement between Galloway Township and its mayor, and a former Township manager.

The Appellate Division reversed the GRC's ruling, finding that the document entitled "Release and Settlement Agreement" should have been released to the complainant. The Court held that even though the document hadn't been signed by the Mayor, for all intents and purposes the matter in question was settled by the parties and took actions effectuating agreement to the terms prior to the Complainant's request.

- Carter v. Franklin Fire Dist. No. 1, 2017 N.J. Super. Unpub. LEXIS 2892 (App. Div. 2017): The Appellate Division upheld the Office of Administrative Law and the GRC's finding that there was insufficient evidence to determine that the Custodian knowingly and willfully violated OPRA.
- Carter v. Franklin Fire Dist. No. 2, 2017 N.J. Super. Unpub. LEXIS 2918 (App. Div. 2017): The Appellate Division upheld the GRC's finding that the Complainant's request was invalid as it failed to contain a date or range of dates, a clear subject matter, or recognizable parties. Additionally, the Court upheld the GRC's determination notwithstanding the Custodian's initial failure to provide a Statement of Information ("SOI"). The Court disagreed with the Complainant's contention that the GRC shifted the burden of proof from the Custodian to himself. Lastly, the Court held that the GRC's Interim Order directing the Custodian to provide an SOI did not make him a prevailing party under OPRA.

## **VIII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:**

- Wolosky v. Borough of Washington, 2017 N.J. Super. Unpub. LEXIS 2868 (App. Div. 2017): The Appellate Division upheld the trial court's ruling that the Plaintiff was not entitled to a public employee's health insurance payments and pension contributions in a request for payroll records. The Court upheld the trial court's reliance on New Jersey Department of Labor and Workforce Development's definition of "payroll record," which did not require showing an employee's pension contributions and health insurance payments.
- Kennedy v. Montclair Ctr. Corp. Bus. Improvement Dist., 2017 N.J. Super. Unpub. LEXIS 2927 (App. Div. 2017): Here, the Plaintiff received the requested records upon filing a complaint under OPRA, however the Defendant maintained that it was not a public agency subject to OPRA. Notwithstanding receiving the records, the Plaintiff decided to continue the lawsuit until the Appellate Division determined that the Defendant was a public agency subject to OPRA. Thereafter, the Plaintiff sought attorney's fees related to both seeking access and determining the Defendant's status. The

Court rejected plaintiff's assertion that OPRA authorizes an award for attorney's fees in proceedings beyond those seeking access to records. When the Plaintiff decided to continue the suit, the Court held that he ceased to be a "requestor" under OPRA. That said, the trial court's fee determination without explanation is vacated.

- Wronko v. Twp. of Jackson & Ann Marie Eden, 2017 N.J. Super. Unpub. LEXIS 3058 (December 12, 2017): The Appellate Division found for the Plaintiff and reversed and remanded the trial court's determination that the request was invalid. Plaintiff requested "[c]opies of all attorney invoices for Jackson Township from January 1, 2015 through December 31, 2015," and "[c]opies of all litigation settlement agreements from January 1, 2010 through December 19, 2015 for [Jackson] Township." The Court found that the request contained sufficient identifying information in accordance with Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) and Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012).

**IX. Public Comment: None**

**X. Adjournment:**

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Huber made a motion, which was seconded by Mr. Ritardi. The motion passed unanimously.

The meeting adjourned at 2:48 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: January 30, 2018