



**Minutes of the Government Records Council
June 25, 2013 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 10:40 a.m. 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**

Mr. Ritardi 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 20, 2013.”

Mr. Ritardi read the fire emergency procedure.

- **Roll Call**

Ms. Lillie called the roll:

Present: Denise Parkinson Vetti, Esq. (designee of Department of Education Commissioner Chris Cerf), Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III) and Steven Ritardi, Esq. (public member).¹

GRC Staff in Attendance: Brandon D. Minde, Esq. (Executive Director), Brigitte Lillie (Secretary), Dawn R. SanFilippo, Esq. (Senior Staff Attorney), Dara L. Barry (Communications Manager), Frank F. Caruso (Senior Case Manager), John Stewart, Esq. (Mediator), and Debra Allen, Esq. (Deputy Attorney General).

Ms. Ritardi informed the public that a complaint synopsis is available with the agenda by the conference room door.

¹ Robin Berg Tabakin was absent.

II. Executive Director's Report:

Mr. Minde informed the Council of the following:

1. New Meeting Structure and Agenda Format

- In keeping with my efforts of increasing transparency and openness in government, today you will notice a few changes to our meeting structure and agenda format.
- First, you will notice that our agenda now contains two "New Business" sections (Roman numerals VI and VII). The first "New Business" section is reserved for Administrative Complaint Adjudications. Before we begin this section the Chairperson will provide a brief definition of Administrative Complaint Adjudications. The second section is for Individual Complaint Adjudications. In the past we were grouping both types of cases under one section called "New Business." This new bifurcation of cases should make it easier for individuals to follow the Council's actions.
- Secondly, we want individuals to be informed as to what specific action the Council is considering during the meeting. Therefore, you will notice that the new agenda format is longer and more detailed. For Administrative Complaint Disposition Adjudications, the reason for the disposition is now listed under the case name. Although these reasons will not be read aloud during the meeting, due to the Council considering these types of cases on a consent agenda basis, the information will be available prior to, during, and after the meeting when posted to our website.
- Further, for Individual Complaint Adjudications, the recommended action of the Council is now listed under the case name. These recommendations will be read aloud by the Executive Director during the meeting as each case is called for consideration. As these summaries have been pared down to the basic recommendation, this new format should not add a significant amount of time to our meetings, but it will add a significant amount of substance.
- Again, these changes are being made to benefit the public and those who wish to follow the actions of the Council. This new information will be available and posted prior to, during, and after the meeting. It is my hope that this is one more step in the direction of increasing transparency and openness of the Government Records Council.

2. OPRA Training

- On June 18, 2013 I presented "A Review of the Open Public Records Act" at an OPRA Seminar hosted by the League of Municipalities
 - There were over 70 attendees and we received many positive reviews about the program

- Next training date:
 - July 12, 2013 – OPRA for Law Enforcement Agencies (Monmouth County Police Academy, Freehold – Monmouth County Prosecutor’s Office)
- August 13, 2013 – GRC’s Annual OPRA Seminar (State Museum Auditorium)

3. Current Statistics

- Since OPRA’s inception in 2002, the GRC has received 3,150 Denial of Access Complaints
- Current fiscal year (July 1, 2012 – June 30, 2013), the GRC has received 314 complaints to date
- 2,824 of the 3,150 complaints have been closed (90%)
- 326 of the 3,150 complaints filed remain open and active (10%)
 - 4 complaints are on appeal with the Appellate Division (1%)
 - 5 complaints are currently in mediation (2%)
 - 62 complaints are awaiting adjudication by the Office of Administrative Law (19%)
 - 121 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including June 25) (37%)
 - 134 complaints await GRC adjudication (41%)

4. Farewell – Brigitte Lillie

Finally, it is with sadness that I report that today is the last GRC meeting for Brigitte Lillie. Brigitte is retiring this Friday and will be leaving NJ for greener pastures in Ohio. Brigitte has been with the GRC since the beginning, and so we are truly losing a GRC treasure with tremendous institutional knowledge and know-how. She is the Intake Specialist and Secretary, but she is really so much more. She is capable of doing every one of our jobs in the GRC, and that is a very tough person to be losing. While we may ultimately replace the position, we will never be able to replace Brigitte. We wish her only the best in retirement.

III. Public Comment: None.

IV. Closed Session: None.

V. Approval of Minutes of Previous Meetings:

- **May 28, 2013 Open Session Meeting Minutes**

Ms. Vetti made a motion and Mr. Ritardi seconded the motion to approve the open session minutes of the May 28, 2013 meeting. The motion passed unanimously.

VI. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

- 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 Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals: None.

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

1. Gregory J. Levitzki v. Borough of Cresskill (Bergen) (2012-229)
 - No Correspondence Received by the Custodian Regarding This Request
2. Thomas Schroeder (On behalf of PBA Local #186) v. Borough of Paramus (Bergen) (2012-332)
 - Complaint Settled in Mediation
3. Kevin F. McCourt v. City of Hoboken (Hudson) (2012-331)
 - Complaint Voluntarily Withdrawn
4. Thomas Schroeder (On behalf of PBA Local #186) v. Borough of Paramus Police Department (2013-8)
 - Complaint Settled in Mediation
5. Jeffrey L. Olshansky (On behalf of Daryl T. Bowen) v. NJ Department of Corrections (2013-24)
 - Complaint Settled in Mediation
6. Thomas Schroeder (On behalf of PBA Local #186) v. Borough of Paramus Police Department (2013-51)
 - Complaint Settled in Mediation
7. Mary E. Calvano v. Franklin Lakes Public Schools (Bergen) (2013-94)
 - No Records Responsive to the Request Exist
8. Katie Aptsiauri v. Bernards Township Health Department (2013-96)
 - Complaint Voluntarily Withdrawn
9. Emily Koval v. NJ Department of Treasury, Division of Purchase & Property (2013-103)
 - Complaint Settled in Mediation
10. Jeannie Swint (On behalf of Construction Journal) v. Rowan University (2013-125)
 - Complaint Voluntarily Withdrawn
11. Craig A. Cataldo v. NJ Commission for the Blind & Visually Impaired (2013-132)
 - Not a Valid OPRA Request
12. Dr. Ernest Zirkle v. Township of Fairfield (Cumberland) (2013-137)
 - Complaint Voluntarily Withdrawn
13. Mark L. Tompkins v. Veterans Court House (Essex) (2013-160)
 - Not Within Council’s Jurisdiction - Request Made to the Judiciary

Mr. Ritardi called for a motion to accept the Executive Director’s recommendations as written in all of the above Administrative Complaint Dispositions. Ms. Vetti made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals: None

B. Individual Complaint Adjudications with no Recusals:

14. William Gettler v. Township of Wantage (Sussex) (2009-73)

15. William Gettler v. Township of Wantage (Sussex) (2009-74) **Consolidated**

Mr. Minde stated that the Council should accept the Administrative Law Judge's May 28, 2013 Initial Decision ordering a decision be entered in favor of the Custodian. As to redacted e-mail addresses where no name is displayed, the Custodian should provide the name of the individual "sender" or recipient."

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

16. Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-196)

Mr. Minde stated that this complaint should be dismissed as part of a stipulation of settlement signed by the parties. No further adjudication is required.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

17. Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-197)

Mr. Minde stated that this complaint should be dismissed as part of a stipulation of settlement signed by the parties. No further adjudication is required.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

18. Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-199)

Mr. Minde stated that this complaint should be dismissed as part of a stipulation of settlement signed by the parties. No further adjudication is required.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's

findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

19. Lynn Markarian v. NJ Dep't of Law & Public Safety, Div. of Consumer Affairs (2011-312)

Mr. Minde stated that the Custodian has complied with the terms of the Council's May 28, 2013 Interim Order because the Custodian provided the responsive regulations and certified confirmation of same to the Executive Director. Although the Custodian's prior actions resulted in a "deemed" denial and a partial unlawful denial of access, and the Custodian failed to fully comply with the Council's March 22, 2013 Interim Order, the Custodian lawfully denied access to all remaining OPRA request items and fully complied with the Council's May 28, 2013 Interim Order. There is no evidence that the Custodian's OPRA violations had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the "deemed" denial did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

20. Charles F. Hendricks v. City of Cape May (Cape May) (2011-338)

Mr. Minde stated that this complaint should be dismissed because the Complainant withdrew the complaint via letter dated May 24, 2013. No further adjudication is required.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

21. Bonnie L. Riley v. Oxford Township (Warren) (2012-120)

Mr. Minde stated that no records responsive to the OPRA requests exist since the Custodian initially responded that no records responsive exist and further certified to that fact in the Statement of Information. The Complainant did not submit any evidence to refute the Custodian's certifications. Therefore, the Custodian did not unlawfully deny access to the requested records.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

22. Lauren J. Eastwood v. Borough of Englewood Cliffs (Bergen) (2012-121)

Mr. Minde stated that the responsive drawings are exempt from access as “inter-agency or intra-agency advisory, consultative or deliberative” material. Thus, the Custodian did not unlawfully deny access to the responsive records.

Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

23. Jon Frey v. Delaware Valley Regional Planning Commission (2012-139)

Mr. Minde state that no unlawful denial of access occurred because the Delaware Valley Regional Planning Commission is a bi-state agency that is not subject to the provisions of OPRA.

Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

24. John Coffey v. NJ Department of Health & Senior Services (2012-140)

Mr. Minde stated that the Custodian did not prove that she timely responded to the Complainant’s OPRA request. As such, the Custodian’s failure to respond in writing to the OPRA request within the statutorily mandated seven (7) business days results in a “deemed” denial. However, the Custodian has proved that she provided all records not otherwise exempt from access under OPRA and there is no evidence to refute the Custodian’s Statement of Information certification. Additionally, the Custodian lawfully denied access to those records otherwise exempt from access under OPRA and Executive Order No. 26. There is no evidence that the “deemed” denial had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the “deemed” denial did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi stated that medical information is not protected under HIPAA here. It is other type of information. Mr. Minde said yes it has its own exemption. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

25. Stephen B. Levitt v. Montclair Parking Authority (Essex) (2012-150)

Mr. Minde state that the potential for unsolicited contact of a certain group of individuals registered with the Township for overnight parking warrants non-disclosure of the responsive full addresses. However, this potential does not extend to limited disclosure of just the names and town of residence. Thus, the Custodian has failed to prove that disclosure of the names and town of residence would violate the reasonable expectation of privacy of permit holders in the

Township. The Custodian should disclose the responsive record or records, if any exist, containing names and town of residence but redacting home addresses for all parking permit holders. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Interim Order.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Ms. Vetti stated that permit holders may have an expectation of privacy to names and addresses. Mr. Ritardi agrees. Mr. Minde stated that past rulings of the court played into this decision. Using the balancing test is not an affront to privacy. It is hard to find a knowing and willful violation when the council has to conduct an in depth balancing test. Ms. Allen stated this is consistent with appellate law. Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

26. Anthony F. Argento v. Township of Bloomfield (Essex) (2012-165)

Mr. Minde state that the Custodian unlawfully denied access to the requested attendance records because said records are considered payroll records, which are available for public access. As such, the Custodian should disclose the 12 pages of responsive attendance records to the Complainant. The Custodian lawfully denied access to the requested training records because they are exempt from public access as personnel records. The Custodian has proved that said records do not demonstrate compliance with specific experiential, educational or medical qualifications required for public employment. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Interim Order.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

27. William Borkowski v. Borough of Allentown (Monmouth) (2012-166)

Mr. Minde stated that the Custodian did not prove that she timely responded to request item no. 6 of the Complainant's March 28, 2012 OPRA request. Although the Custodian timely responded to the OPRA request in writing advising that she needed an extension until April 19, 2012, to respond to same, the Custodian's failure to respond in writing within the extended time frame results in a "deemed" denial. The Custodian did not unlawfully deny access to the February 14, 2012 OPRA request because said request seeks information rather than specifically identifiable government records. The Custodian did not unlawfully deny access to request item nos. 1-4 of the March 28, 2012 OPRA request because the Custodian proved that she provided the Complainant with all records responsive, or that the responsive record does not exist. The Custodian has failed to prove a lawful denial of access to request item no. 6 and must disclose the record responsive. The Council should decline to determine whether the Custodian unlawfully denied access to the Complainant's request for Executive Session minutes for the

2011 calendar year because the Complaint is devoid of any evidence that any such OPRA request was submitted. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Interim Order.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

28. Sabbir Rangwala v. Borough of Point Pleasant Beach (Ocean) (2012-171)

Mr. Minde stated that the Custodian did not prove that she timely responded to the OPRA request. The Custodian's failure to respond in writing to the OPRA request within the statutorily mandated seven (7) business days results in a "deemed" denial. The Custodian lawfully denied access to request item nos. 1-7 because said requests seek information rather than specifically identifiable government records. Further, the records responsive to request item nos. 5-7 do not exist.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

29. Sabino Valdes v. Township of Belleville (Essex) (2012-181)

Mr. Minde stated that the Council has no authority over the content of the record provided. Further, the Custodian did not unlawfully deny access to the requested OPRA request form since the evidence of record supports that she provided same to the Complainant in a timely manner.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

30. Ricky Kurt Wassenaar v. NJ Department of Corrections (2012-187)

31. Ricky Kurt Wassenaar v. NJ Department of Corrections (2012-192) **Consolidated**

Mr. Minde stated that the Complainant's April 29, 2012 OPRA request items are valid because request item Nos. 1, 2 and 3 contained information that may allow the Custodian to identify responsive e-mails and memoranda. Thus, the Custodian shall provide those readily identifiable records that existed at the time of the OPRA request, if any. If the Custodian believes certain records are exempt from disclosure or that no records exist, the Custodian must legally certify to these facts. The Custodian has proved that the records responsive to the April 29, 2012 OPRA request item No. 4 are exempt from disclosure as "... emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein." Where the Custodian has granted access to records

responsive to the May 11, 2012 OPRA request item Nos. 1, 2 and 3 that he is unable to inspect, the Custodian should offer copies of the responsive records to the Complainant upon payment of applicable copying fees. However, the Custodian did not unlawfully deny access to these records as he granted inspection prior to the Complainant's departure from NJSP. The Custodian proved a lawful denial of access to the video images responsive to the May 11, 2012 OPRA request item Nos. 4, 5 and 6 under OPRA and the Department of Corrections' regulations. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Interim Order.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

32. Michael Vance v. County of Sussex, Sheriff's Office (2012-188)

Mr. Minde stated that the Complainant's request is an invalid request for information that fails to seek identifiable government records. Thus, the Custodian did not unlawfully deny access to the request.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

33. Clevin A. Pittman v. Springfield Township Police Department (Union) (2012-196)

Mr. Minde stated that regarding OPRA request item Nos. 1 and 2, since the Custodian initially responded and further certified in the Statement of Information (SOI) that no records responsive to these OPRA request items exist, and because there is no evidence in the record to refute the Custodian's certifications, the Custodian did not unlawfully deny access. Since the Custodian attached to the SOI records that may be responsive to OPRA request item No. 3, the Custodian failed to bear her burden of proving a lawful denial of access to those records. Thus, the Custodian must disclose these records to the Complainant and further disclose any other records that exist, if any. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Interim Order.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

34. Harry B. Scheeler, Jr. v. County of Atlantic (2012-197)

Mr. Minde stated that the Custodian lawfully denied access to the requested 1,300 e-mail addresses because the Custodian proved that the disclosure of approximately 1,300 County e-mail addresses at once, in one document, constitutes administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security.” The Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee.

Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi stated that the exemption applies because the release of email addresses all at once would put the network at risk. Mr. Minde agreed stating this is a very narrow holding. The complainant did not argue any technical information. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

35. Michael Lamanteer v. County of Gloucester (2012-198)

Mr. Minde stated that the Custodian’s request for reconsideration of the Council’s May 28, 2013 Interim Order should be granted. The Custodian has established that 1) the GRC’s decision is based upon a “palpably incorrect or irrational basis” and 2) it is obvious that the GRC did not consider the significance of probative, competent evidence; to wit, the GRC did not consider the Custodian’s SOI submission when rendering its decision. The Council rescinds paragraphs 1-4 of its Interim Order and finds that the Complainant’s cause of action was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian provided a response to the OPRA request within the statutorily mandated seven (7) business days and properly sought a two-week extension of time to respond to said request. Further, the extension was reasonable based on the volume of the request and the fact that the records responsive were in storage. Also, the Council notes that the Custodian has already provided the requested records to the Complainant. Thus, this instant complaint is materially defective and should be dismissed.

Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Minde stated that the GRC was in receipt of the SOI but the case manager assigned is no longer employed here to discuss why the SOI was not in the case file. Mr. Ritardi suggests amending the decision to remove “irrational basis” from the decision. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as amended. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

36. Peter J. DeRobertis v. Township of Montclair (Essex) (2012-199)

Mr. Minde stated that the Custodian failed to prove a lawful denial of access to the responsive invoices on the basis that the Township was not in possession of any records. The Custodian had an obligation to obtain and provide the responsive invoices to the Complainant. Thus, the Custodian should obtain and disclose the responsive invoices. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied

access under the totality of the circumstances pending the Custodian's compliance with the Interim Order.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

37. Stephen B. Levitt v. Township of Montclair (Essex) (2012-201)

Mr. Minde stated that the Custodian did not prove that she timely responded to the OPRA request. As such, the Custodian's failure to respond in writing to the OPRA request results in a "deemed" denial. However, the Council should decline to order disclosure of any records since the evidence of record shows that no records exist. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's unlawful denial of access did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

38. Walter A. Tormasi v. NJ Department of Corrections (2012-203)

39. Walter A. Tormasi v. NJ Department of Corrections (2012-204)

40. Walter A. Tormasi v. NJ Department of Corrections (2012-205) **Consolidated**

Mr. Minde stated that since the Custodian made the records responsive to the May 6, 2012 OPRA request No. 1, item No. 1, available upon payment of the appropriate copying costs, his response is appropriate. Moreover, the Custodian is not required to provide the requested records until receipt of payment of \$2.10. Thus, the Custodian lawfully denied access to the responsive records. Because OPRA does not require custodians to research files, correlate and compile data to create a record that may be responsive to an OPRA request, the Custodian had no legal duty to create a record containing the information which the Complainant specifically requested. Thus, the Custodian has proved that access to any responsive records was not unlawfully denied. Additionally, because the Custodian certified in the SOI that no records responsive to the request item existed, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. The Custodian lawfully denied access to any records responsive to the May 6, 2012 OPRA request No. 1, item No. 3, because same do not fall within the excepted material allowed for disclosure under OPRA. Because the May 6, 2012 request No. 2 and May 18, 2012 request failed to identify the specific government records sought and would have forced the Custodian to research his records in order to locate any documents meeting the criterion set forth in said requests, the requests are overly

broad and invalid under OPRA. Thus, the Custodian did not unlawfully deny access to any records.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

41. Walter A. Tormasi v. NJ Department of Corrections (2012-206)

42. Walter A. Tormasi v. NJ Department of Corrections (2012-207) **Consolidated**

Mr. Minde stated that the Custodian's response to request item Nos. 2, 3 and 4, advising that he would not address same since access to the responsive record was previously granted, implicated the Council's holding in Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006). However, because the Custodian further advised that he would disclose the responsive record upon payment of the appropriate copy costs, the Custodian did not unlawfully deny access to said record because he is not required to disclose same until receipt of payment. The Custodian initially responded in writing advising that no records responsive to request item Nos. 6, 7 and 8 existed. The Custodian also certified in the SOI that the OPRA Liaison for NJSP could not locate any records, thus no records responsive exist. Moreover, since there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. Because request item No. 9 failed to identify the specific government records sought and would have forced the Custodian to research his records in order to locate any documents meeting the criterion set forth in said requests, the request item is overly broad and invalid under OPRA. Thus, the Custodian did not unlawfully deny access to any records. The Custodian proved that the records responsive to the May 11, May 12 and May 13 OPRA requests (item Nos. 1 and 5) and the May 18, 2012 OPRA request, are exempt from disclosure as "... emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein." The Council need not determine whether the other exemptions cited by the Custodian apply since the records are exempt under OPRA.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

43. Misael Cordero v. NJ Department of Corrections (2012-209)

Mr. Minde stated that the Custodian has proved that the release of the requested record would jeopardize the security of the New Jersey State Prison or the persons therein and that the record is exempt from public access. As such, the Custodian lawfully denied access to the requested record.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's

findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

44. Brandon Melvin v. NJ Department of Law & Public Safety, NJ State Police (2012-212)

Mr. Minde stated that the Custodian has complied with the terms of the Council's May 28, 2013 Interim Order because the Custodian disclosed the record responsive to request item number 1 and provided certified confirmation of same. Although the Custodian failed to prove that the Complainant withdrew his OPRA request before the Custodian responded to the request granting or denying access, the Custodian fully complied with the Council's May 28, 2013 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's actions contained a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

45. Robert C. Scutro v. City of Linden (Union) (2012-219)

Mr. Minde stated that the Custodian did not unlawfully deny access to the requested police reports because at the time of the July 11, 2012 OPRA request, the Complainant was already in possession of the requested records, as confirmed by the Complainant in his Denial of Access Complaint. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

46. Helen Arnold v. Morristown Housing Authority (Morris) (2012-220)

Mr. Minde stated that the Custodian did not prove that she timely responded to the OPRA request. As such, the Custodian's failure to respond in writing to the OPRA request within the statutorily mandated seven (7) business days results in a "deemed" denial. Additionally, the Custodian violated OPRA by failing to provide immediate access to the requested budgets. The Custodian did not unlawfully deny access to request item no. 4 because the Custodian made the records available for the Complainant's onsite review and subsequent copying upon payment of the per page copy fee.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's

findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

47. Donna A. Fleming v. Town of Phillipsburg (Warren) (2012-222)

Mr. Minde stated that the Custodian committed a “deemed” denial of the OPRA request because she failed to provide a written response within the extended time period. Notwithstanding the “deemed” denial, the Custodian has not unlawfully denied access to the records the Complainant asserts were withheld because the OPRA request is overly broad and invalid. As such, the Custodian’s actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

48. Joyce Blay v. Ocean County Health Department (2012-223)

Mr. Minde stated that the Custodian proved that she timely responded to the OPRA request because the Custodian responded in writing within the statutorily mandated seven (7) business days. The Custodian did not violate OPRA by failing to provide the Complainant with a copy of the OPRA request form dated July 18, 2012, because nothing in the evidence of record reveals the Complainant submitted an OPRA request for said request form and the Custodian is not otherwise obligated to provide a copy of the document. The Custodian did not unlawfully deny the Complainant access to the records responsive to request item number 1 because the Custodian properly informed the Complainant in a timely manner that said records were available for inspection, which was the Complainant’s preferred method of disclosure. The Custodian did not unlawfully deny the Complainant access to the records responsive to request item number 2 because the Complainant provided proof in her Denial of Access Complaint that copies of the requested records were in her possession at the time she filed the request for said records. Therefore, the Complainant could not have been denied access to the requested records because she already had in her possession at the time of the request the records she sought pursuant to OPRA. The Complainant’s request item number 3 is an invalid request that fails to seek identifiable government records.

Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

49. Eugene Seabrooks v. County of Essex (2012-230)

Mr. Minde stated that the Custodian failed to prove a lawful basis for a denial of access to the records responsive to request item number 1. As such, the Custodian must disclose the requested records to the Complainant. The records responsive to request item number 2 meet the criteria for criminal investigatory records; therefore, they are not government records as defined under

OPRA and are not subject to public access. Thus, the Custodian did not unlawfully deny access to said records. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Interim Order.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi disclosed that his office represents the prosecutor's office but not the county. Therefore, Mr. Ritardi is not conflicted from voting on this complaint. Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

50. Jane Gasparik v. Township of Middletown (Monmouth) (2012-234)

Mr. Minde stated that the GRC should conduct an *in camera* review of the e-mail sent by Anthony Mercantante to Richard DeBenedetto regarding "Jane – personnel" on July 10, 2012, at approximately 10:00 a.m., being the record identified by the Custodian as a single page e-mail from the Township Administrator to a department head, to determine the validity of the Custodian's assertion that the record is exempt from disclosure because it is a personnel record and is also exempt from disclosure as ACD material. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

51. Stephen Perry v. NJ Department of Corrections (2012-237)

Mr. Minde stated that the Custodian properly denied the Complainant access to the four (4) Special Custody Reports because the Custodian certified that disclosure of said reports would compromise the safety and security of Northern State Prison and "emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein" does not constitute a government record subject to disclosure. The Custodian did not unlawfully deny access to the requested video surveillance footage because the Custodian certified that no responsive record exists and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

52. Michael S. Janowski v. NJ Department of Corrections (2012-240)

Mr. Minde stated that the Custodian did not unlawfully deny the Complainant access to his medical records for the period of time which he was at the Steps Program. The Custodian properly concluded that the Complainant's records request, related to "medical, psychiatric or psychological history, diagnosis, treatment or evaluation," and thus were exempt from production pursuant to OPRA.

Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Vetti made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

VII. Court Decisions of GRC Complaints on Appeal: None.

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

- Paff v. New Jersey State Firemen's Association, 2013 N.J. Super. Lexis 90 (June 13, 2013).
Mr. Minde stated the court held the state fireman's association is a public agency under OPRA.
- Paff v. Borough of Gibbsboro, 2013 N.J. Super. LEXIS 1468 (June 17, 2013).
Mr. Minde stated this decision discusses the interplay between OPRA and the expungement statute.

IX. Public Comment (Second Session): None.

Mr. Ritardi stated that it is unfortunate Ms. Tabakin is absent for Ms. Lillie's last meeting. Mr. Ritardi stated it has been a pleasure to work with Ms. Lillie and wishes her good luck in her retirement.

X. Adjournment:

Ms. Vetti made a motion to end the Council's meeting and Ms. Lane seconded the motion. The motion passed unanimously.

Meeting adjourned at 11:35 am.

Respectfully submitted,

Steven Ritardi, Esq., Secretary

Date Approved: July 23, 2013