



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

NOTICE OF MEETING
Government Records Council
February 25, 2014

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 10:30 a.m., Tuesday, February 25, 2014, at the Department of Community Affairs ("DCA") offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 10:30 a.m. in Room 129 of the DCA.

I. Public Session:

- Call to Order
- Pledge of Allegiance
- Meeting Notice
- Roll Call

II. Executive Director's Report

III. Public Comment (First Session):

- This first session of public comment is reserved solely for suggestions, views and comments relevant to proposed actions on the agenda. A second session of public comment will occur at the end of the meeting to provide an opportunity to present suggestions, views and comments relevant to the Council's functions and responsibilities.

IV. Closed Session

- Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-228)
- Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-262)
- Joseph Galligan v. Township of West Deptford (Gloucester) (2013-163)

V. Approval of Minutes of Previous Meetings:

- January 28, 2014 Open Session Meeting Minutes
- January 28, 2014 Closed Session Meeting Minutes



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 (Consent Agenda): None

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

1. John Glaser v. Borough of Woodcliff Lake (Bergen) (2013-186)
 - Complaint Voluntarily Withdrawn
2. Rachel Axon v. Rutgers University (2013-230)
 - Complaint Settled in Mediation
3. Carver L. Washburn v. Wayne Township Public Schools (Passaic) (2013-284)
 - Complaint Settled in Mediation
4. Cynthia A. McBride v. Township of Middletown Sewerage Authority (Monmouth) (2013-325)
 - Complaint Settled in Mediation
5. Milton Durham v. NJ Department of Corrections (2013-341)
 - Complaint Settled in Mediation
6. Jeannie Swint v. Somerset County Education Services Commission (2013-369)
 - Complaint Voluntarily Withdrawn
7. Shawn G. Hopkins v. Borough of Brielle (Monmouth) (2014-19)
 - Complaint Voluntarily Withdrawn

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

- The Executive Director’s recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Harry B. Scheeler, Jr. v. NJ Department of Education (2013-191) (DP Recusal) (*Pulled from Agenda*)
2. Renata Wooden v. City of Newark (Essex) (2013-235) (SR Recusal)
 - The Executive director recommends that: the Custodian did not prove that he timely responded to the Complainant’s OPRA request. Furthermore, he only partially lawfully denied access to Request No. 1 because the Complainant did not submit sufficient evidence to show that her client, the “individual in interest,” authorized her to obtain the requested confidential personnel records. The Custodian, however, unlawfully denied access to, and therefore must disclose, the portions of the requested City PD Special Police Officer employment file that contains the information required to be disclosed under OPRA. The Complainant’s Request No. 2 is valid because it contains the subject of the communications, sets a specific range of dates during which the requested communications were exchanged, and identifies by name the recipients of the documents sought. The Complainant has identified with

sufficient particularity the government records sought. The Custodian unlawfully denied access to Request No. 2, and thus shall disclose the requested communications to the Complainant. The Council should defer the knowing and willful and prevailing party fees analyses pending compliance with the Council's Order.

B. Individual Complaint Adjudications with no Recusals:

1. Jesse Wolosky v. City of Paterson (Passaic) (2011-134)
 - The Complainant withdrew his complaint from the Office of Administrative Law because it settled. The Executive Director recommends dismissal.
2. Richard & Dawn Sabik v. Borough of Dunellen (Middlesex) (2011-222)
 - The Complainants withdrew their complaint from the Office of Administrative Law because it was apparent that the records at issue were provided to the Complainant before or at the time the Complaint was filed. The Executive Director recommends dismissal.
3. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-228) (*Pulled from Agenda*)
4. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2011-234)
 - The Executive Director recommends that the Council dismiss the complaint because the Complainant withdrew his complaint because the parties having agreed to settle the matter.
5. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-262) (*Pulled from Agenda*)
6. John Paff v. City of Bayonne (Hudson) (2012-245)
 - The Executive Director recommends the Council dismiss the complaint because the Complainant withdrew same.
7. Stephanie Maureen Nevin v. NJ Department of Health & Senior Services (2013-18)
 - The Executive directors recommends that the Council find that Counsel's fee application, conforms with the requirements of the Administrative Code provides sufficient information from which to conduct its analysis; the Custodian did not object to the fees requested; and Mr. Luers, Counsel to the Complainant, should be awarded the full amount requested namely, \$1,470, representing 4.9 hours of service at \$300 per hour; finally that counsel did not request a lodestar adjustment, and thus no enhancement should be awarded.
8. Anthony Russomano v. Township of Edison (Middlesex) (2013-74)
 - The Executive Director recommends the Council dismiss the complaint because the Complainant withdrew same.
9. Larry A. Kohn v. Township of Livingston (Essex) (2013-123)
 - The Executive Director recommends that the Council find that the Complainant has failed to establish that the Council's October 29, 2013 Final Decision was either 1) based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be

reconsidered based on extraordinary circumstances or that the Council acted arbitrarily, capriciously or unreasonably. The Council already factored into the totality of the circumstances those issues raised by the Complainant in support of his argument that the Custodian unlawfully denied him access to the “budget binder.” A township’s budget is an immediate access record, the “budget binder” however is not such a record, but rather constituted ACD material. Further, the record indicates that the “budget binder” became available for review on May 13, 2013, subsequent to the filing of the instant complaint. Thus, the Complainant’s request for reconsideration should be denied.

10. Luis F. Rodriguez v. Kean University (2013-130)

- The Executive Director recommends the Council find that the Custodian complied with the Council’s December 20, 2013 Interim Order because she responded in the required time frame by providing a redacted copy of the requested record, with a corresponding redaction index, and simultaneously provided certified confirmation of compliance to the Executive Director. Although the Custodian initially failed to bear her burden of proving that she lawfully denied access to the requested record she subsequently provided the Complainant with a the record and a redaction index describing the location of and statutory basis for each redaction. 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 actions do not rise to the level of a knowing and willful violation of OPRA.

11. David J. Roundtree v. NJ Department of State, Division of Elections (2013-133)

- The Executive Director recommends that the Council find that the GRC must conduct an *in camera* review of the 28 e-mails and “draft” documents to determine the validity of the Custodian’s assertion that the records constitute attorney-client privileged material and draft documents which are exempt from disclosure. In addition, because the Complainant’s supplemental April 26, 2013 request item Nos. 1 through 3 and 5 through 7 sought non-specific records and information based on a number of questions and item No. 4 failed to seek identifiable government records, the request is invalid under OPRA. Finally, the Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access pending the Custodian’s compliance with the Council’s Order.

12. Joseph Galligan v. Township of West Deptford (Gloucester) (2013-163) (*Pulled from Agenda*)

13. Robert Szuszkowski v. West Milford Board of Education (Passaic) (2013-167)

- The Executive Director recommends that the Council find that the Custodian complied with the Council’s January 28, 2014 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director. Although the Custodian’s response was legally insufficient because she failed to respond to each request item contained in the request individually and provide a specific reason for denial, and failed to bear her burden of proving that the denial of access to Diane Wauchek’s requested driving and motor vehicle records which reflect compliance with experiential qualifications for

employment was authorized by law, she did disclose Ms. Wauchek's the records pursuant to the terms of the Council's January 28, 2014 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had 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.

14. Charles G. Lovallo v. Essex County College (2013-185)

- The Custodian complied with the Council's January 28, 2014 Interim Order because the Custodian in a timely manner delivered to the Council in a sealed envelope nine (9) copies of the requested unredacted records and a legal certification in accordance with R. 1:4-4, that the records provided are the records requested by the Council for the in camera inspection. The in camera examination set forth in the above table reveals the Custodian has lawfully denied access to the requested record pursuant to N.J.S.A. 47:1A-6. Because the results of the in camera examination revealed that the Custodian lawfully denied access to the requested record as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not knowingly and willfully violate OPRA and unreasonably deny access under the totality of the circumstances.

15. Michael Palkowitz v. Hasbrouck Heights (Bergen) (2013-199)

- The Executive Director recommends that Council find that the Custodian has unlawfully denied access to the requested sick, vacation and personal days for all employees of Hasbrouck Heights. Thus, the Custodian must disclose this information to the Complainant. Although "all matters related to the coverage of individual participants and their families, mailing addresses of active and retired participants and individual files related to claims" are confidential the sum total amount of money that Hasbrouck spends to provide its employees with health benefits is not exempt from disclosure. The Custodian must therefore disclose the amount of money the Township spent to provide its employees with health benefits in 2013. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA pending compliance with the Council's Order.

16. Ysaias S. Lantigua v. New Brunswick Police Department (Middlesex) (2013-223)

- The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it fails to specify identifiable government records. Thus, the Custodian has thus borne his burden of proving that he lawfully denied access to the Complainant's request.

17. Robert D. Yackel v. Township of Edison (Middlesex) (2013-227)

- The Executive Director respectfully recommends the Council find that the GRC must conduct an *in camera* review of the responsive July 15, 2013 correspondence from Mayor Antonio Ricigiliano to Councilman Alvero Gomez to determine the validity of the Custodian's assertion that the record constitutes ACD material and/or involves a grievance and collective bargaining negotiations which is exempt from disclosure. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access pending the Custodian's compliance with the Council's Order.

18. Ramona G. Owens v. Mt. Holly Township (Burlington) (2013-233)

- The Executive Director respectfully recommends the Council find that the Custodian's failure to respond in writing to the Complainant's OPRA request within the statutorily mandated time period results in a "deemed" denial of the Complainant's OPRA request. Notwithstanding the Custodian's failure to respond in a timely manner, because she certified in the Statement of Information that the Township provided access to all responsive records in the Township's possession, the Custodian did not unlawfully deny access to any requested records. The Custodian's untimely response did not rise to the level of a knowing and willful violation.

19. Chamberlin Robinson v. NJ Department of Corrections (2013-234)

- The Executive Director respectfully recommends the Council find that the Custodian's failure to respond in writing to the Complainant's OPRA request within the statutorily mandated time period results in a "deemed" denial of the Complainant's OPRA request. The Custodian has borne his burden of proof that he lawfully denied access to the requested record because no such record exists. The Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

20. Siddique S. Bey v. NJ Office of Homeland Security & Preparedness (2013-237)

- The Executive Director recommends the Council find that the evidence of record supports that the Custodian never received the subject OPRA request and there is no credible evidence in the record to contradict the Custodian's Statement of Information certification. Thus, the Custodian did not unlawfully deny access to the Complainant's OPRA request.

VIII. Court Decisions of GRC Complaints on Appeal:

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

X. Public Comment (Second Session):

- This second session of public comment is an opportunity to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**.

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XI. Adjournment

***Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.**