



**Minutes of the Government Records Council
June 24, 2014 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 11:40 a.m. by Chairwoman 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, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on June 19, 2014.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Denise Parkinson, 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).

GRC Staff in Attendance: Dawn R. SanFilippo, Esq. (Acting Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Senior Case Manager), John Stewart, Esq. (Mediator), Robert T. Sharkey, Esq. (Staff Attorney), Samuel Rosado, Esq. (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:

1. OPRA Training

- 2014 Training Schedule – in the process of being completed. To date we have held three outreach trainings, and have an additional 11 scheduled.
- April 9, 2014: OPRA for Law Enforcement Officers - over 50 participants. Was organized by the Union County Prosecutors Office and held at John H. Stamler Police Academy in Union. In addition to Union County, law enforcement officers from Monmouth and Hudson County attended.
- Although the PowerPoint presented was created specifically for law enforcement, the materials covered were too basic. Most of those in attendance were records custodians and were well aware of OPRA. They were more interested in discussion of practical issues, such as disclosure of private information, and changes in the law. We need a power point presentation which is tailored to experienced law custodians.
- April 11, 2014: Middletown/Monmouth County Clerks Assoc. This presentation was well attended and well received by approximately 80. The PowerPoint presented at the seminar was created for presentation to the public. The materials it covers are basic and do not meet the needs of a targeted group such as a clerk's association. The audience I presented to was well aware of OPRA and need more in depth education and materials targeted to the daily issues that arise such as when to redact a document. We need a presentation that is tailored to experienced custodians.
- May 9, 2014 (8:30 am-12:30 pm) New Jersey State League of Municipalities—Northern Regional Seminar, Kenilworth, NJ— approximately 50 participants. The group I presented to was primarily Municipal and Court clerks, as well as Custodians of other Municipal Departments and attorneys. The vast majority of the audience was experienced. I anticipated that this audience would be familiar with OPRA. Thus, I adjusted the seminar to provide review of OPRA fundamentals and a greater focus on updates in the law. In addition, I afforded significantly more time for questions and facilitated a discussion and exchange between the participants.
- May 12, 2014 (6:00 pm) New Jersey Labor and Employment Relations Association—Raritan Center Parkway. This seminar was presented in panel format with three panelists and a moderator. I opened the seminar with a brief overview of OPRA. This group of forty plus, included attorneys representing labor and management as well as arbitrators. This group was unfamiliar with OPRA. Also on the panel were a labor attorney and a Professor David W. Opderbeck from Seton Hall University who challenged Midland Park's denial of access pursuant to OPRA. Professor Opderbeck brought his case in Superior Court because he asserted violations of OPMA and the common law right to access.
- May 13, 2014—New Jersey State Bar Association, Update on School Law, Atlantic City. This also was a panel discussion. A number of participants were Custodians for Boards of Education. There were approximately 20 to 30

participants. I presented, in discussion form, the GRC's OPRA seminar specific to school law.

- June 12, 2014—New Jersey Department of Health. Well attended. Although many of the participants were Custodians, the audience also included newly assigned Custodians and alternate Custodians. As to subject this was a uniquely specialized audience because of the many privacy issues which arise.
- June 20, 2014—New Jersey League of Municipalities—Southern Regional Outreach. This is the South Jersey group of the League. Presentation was similar to the one presented to the Northern group.
- June 27, 2014—Scheduled for the Burlington County Law Enforcement Training Center.
- July 7, 2014— Scheduled Gloucester County Prosecutor's Office.
- August 14, 2014— Scheduled GRC's Annual Outreach in Trenton.

2. Current Statistics

- Since OPRA's inception in 2002, the GRC has received approximately 3,580 Denial of Access Complaints.
- Fiscal year 2013 (July 1, 2012 – June 30, 2013), the GRC received 323 complaints.
- Current fiscal year (July 1, 2013 – June 30, 2014), the GRC has received 419 complaints to date. In April, I predicted that at the then current rate of filings the GRC would be just shy of 400 complaints for fiscal year 2014.
- 3,194 of the 3194 complaints have been closed (89.4%)
- 367 of the 3,520 complaints filed remain open and active
 - 9 complaints are on appeal with the Appellate Division (2 %)
 - 18 complaints are currently in mediation (5%)
 - 28 complaints are awaiting adjudication by the Office of Administrative Law (7%)
 - 16 complaints are proposed for OAL (4.%)
 - 117 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including August, 2014) (31 %)
 - 194 complaints are "work in progress" matters (51%)
- Few Cases short of 21,00 public inquiries via toll-free hotline since 2004

III. Public Comment:

- Mr. Jeff Nielsen, OPRA Custodian for Greystone Park Psychiatric Hospital: First asked if there was a specific reason why Delbury v. Greystone Park Psychiatric Hospital (Morris), GRC Complaint No. 2013-240 was underlined on the agenda. The Council advised that the underlining was an error and was not significant. Second, Mr. Nielsen took issue with the Delbury, GRC 2013-240 (April 29, 2014 Interim Order). The Council advised Mr. Nielsen to contact the case manager to discuss specifics of that complaint.

IV. 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 and/or discuss anticipated litigation in which the public body may become a party in the following matters:

- John Hyland v. Township of Lebanon (Hunterdon) (2012-227)
- John Hyland v. Township of Tewksbury (Hunterdon) (2012-228) **Consolidated**
- Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-66)
- Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-67) **Consolidated** *Pulled from Closed Session*
- David J. Roundtree v. NJ Department of State, Division of Elections (2013-133). *Pulled from Closed Session*
- Edwin J. Skidmore v. Lebanon Township (Hunterdon) (2013-194)
- Quddoos Farrad v. State Parole Board (2013-215). *Pulled from Closed Session*
- Dr. Alan Bell

Ms. Parkinson made a motion to go into closed session and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. Ms. Parkinson made a motion to end the closed session and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 11:55 a.m. until 1:03 p.m.

Open Session reconvened at 1:15 p.m. and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Ms. Parkinson, Ms. Lane and Mr. Ritardi.

III. Approval of Minutes of Previous Meetings:

- **April 29, 2014 Open Session Meeting Minutes**

Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the open session minutes of the April 29, 2014 meeting. The motion passed by a majority vote, Mr. Ritardi abstained.

- **April 29, 2014 Closed Session Meeting Minutes.**

Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the closed session minutes of the April 29, 2014 meeting. The motion passed by a majority vote, Mr. Ritardi abstained.

IV. 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 Executive Director's recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda):

The following complaints were presented to the Council for summary administrative adjudication:

1. **David H. Weiner v. Newark Housing Authority (Essex) (2014-82) (SR Recusal)**
 - Complaint withdrawn.
 - Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in the above Administrative Complaint Disposition. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. **Frances Hall v. Township of Irvington (Essex) (2014-206) (SR Recusal)**
 - Complaint withdrawn.
 - Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in the above Administrative Complaint Disposition. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
3. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-124) (DP Recusal)**
 - Complaint withdrawn.
 - Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in the above Administrative Complaint Disposition. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

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

1. **Caren Matyckas v. State of NJ Department of Children and Families (2013-316)**
 - a. No correspondence received by the Custodian.
2. **Michael W. Boyle v. Board of Chosen Freeholders Somerset County (2013-349)**
 - a. Complaint withdrawn.
3. **Shawn G. Hopkins v. Borough of Avon-By-The-Sea (Monmouth) (2014-13)**
 - a. Complaint withdrawn.
4. **Harry B. Scheeler, Jr. v. Borough of Mantoloking (Ocean) (2014-98)**
 - a. Settled in Mediation.
5. **George A. Elliot v. State of NJ Department of Treasury – Division of Pensions & Benefits (2014-99)**
 - a. Complaint withdrawn.
6. **Ronald J. Simone v. Borough of Montvale (Bergen) (2014-113)**
 - a. Settled in Mediation.
7. **Keith A. Werner v. NJ Department of Law & Public Safety (2014-118)**

- a. Complaint withdrawn.
- 8. **Shawn G. Hopkins v. Town of Boonton (Morris) (2014-129)**
 - a. Complaint withdrawn.
- 9. **Shawn G. Hopkins v. Kinnelon Borough (Morris) (2014-130)**
 - a. Complaint withdrawn.
- 10. **Shawn G. Hopkins v. Borough of Mendham (Morris) (2014-131)**
 - a. Complaint withdrawn.
- 11. **Shawn G. Hopkins v. Township of Vernon (Sussex) (2014-133)**
 - a. Complaint withdrawn.
- 12. **Shawn G. Hopkins v. Hardyston Township (Sussex) (2014-136)**
 - a. Complaint withdrawn.
- 13. **Harry B. Scheeler, Jr. v. NJ Schools Insurance Group (2014-141)**
 - a. Complaint withdrawn.
- 14. **Shawn G. Hopkins v. Township of Parsippany-Troy Hills (Morris) (2014-147)**
 - a. Complaint withdrawn.
- 15. **Frances Hall v. Borough of Keansburg (Monmouth) (2014-150)**
 - a. Settled in Mediation.
- 16. **Kathleen Hernandez v. Kean University (2014-151)**
 - a. Complaint withdrawn.
- 17. **Brian J. Paladino v. Office of the Attorney General, Department of Law & Public Safety, Division on Civil Rights (2014-160)**
 - a. Settled in Mediation.
- 18. **Robert Kovacs v. Berkeley Township Police Department (Ocean) (2014-175)**
 - a. Settled in Mediation.
- 19. **Tim Reinking v. Lumberton Township Board of Education (Burlington) (2014-178)**
 - a. Settled in Mediation.
- 20. **James Usilton v. Atlantic Cape Community College (2014-180)**
 - a. Complaint withdrawn.
- 21. **Ari Jaffe v. County of Middlesex (2014-188)**
 - a. Complaint withdrawn.
- 22. **John T. Cokos v. Township of Deptford (Gloucester) (2014-198)**
 - a. Complaint withdrawn.
- 23. **Cynthia Zirkle v. Fairfield Township (Cumberland) (2014-210)**
 - a. Complaint withdrawn.
- 24. **Cynthia Zirkle v. Fairfield Township (Cumberland) (2014-211)**
 - a. Complaint withdrawn.
- 25. **Karen Miller v. County of Union (2014-222)**
 - a. Complaint withdrawn.
- 26. **Frank L. Cahill (On behalf of Parsippany Focus) v. Township of Parsippany-Troy Hills (Morris) (2014-226)**
 - a. Unripe Cause of Action.

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

C. Cases Withdrawn from Consideration (Consent Agenda): None

A. Individual Complaint Adjudications with Recusals:

Ms. SanFilippo stated that the Executive Directors' recommended action is under each complaint.

1. **Rene Garzon (On behalf of CWA 1031) v. City of Orange (Essex) (2013-131) (SR Recusal)**
 - The Custodian complied with the Council's Interim Order because the Custodian confirmation of compliance.
 - 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

2. **Rashaun Barkley v. Essex County Prosecutor's Office (2013-244) (SR Recusal)**
 - The Executive Director recommends the Council find that the Custodian complied with the Council's Interim Order because she responded in a timely manner certifying that the plea agreements requested for an *in camera* review and arrest report required to be disclosed did not exist.
 - Knowing and willful analysis declined.
 - 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

3. **Dad Je Dawara v. Office of the Essex County Administrator (2013-267) (SR Recusal)**
 - The Executive Director recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council's Final Decision that either 1) the Council's decision is 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, 3) The Complainant failed to establish that the complaint should be reconsidered based on mistake, extraordinary circumstances, fraud, new evidence, change in circumstances, and illegality, and 4) The Complainant also failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Complainant certified that he had not received the documents ordered disclosed by the Council. The Custodian, however, certified that he mailed redacted copies of the responsive documents to the Complainant.
 - 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

4. **Angel L. Vargas v. City of Newark (Essex) (2013-304) (SR Recusal)**

- The Executive Director recommends the Council find that the Complainant has proved that he did not unlawfully deny access to the requested documents because he provided all responsive documents to the Complainant.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

5. **Joyce Blay v. Lakewood Board of Education (Ocean) (2013-150) (DP Recusal)**

- Although Mr. Fink immediately responded in writing, his response was insufficient because he failed to provide a date certain upon which the Custodian would respond.
- The Custodian unlawfully denied access of transportation contracts, invoices, bills and purchase orders because the evidence that same were not part of the FBI's investigation and therefore were not exempt. The Custodian must make available those records that exist for inspection to the Complainant.
- Knowing and willful analysis deferred.
- 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 Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

6. **Harry B. Scheeler, Jr. v. NJ Department of Education (2013-191) (DP Recusal)**

- Although the Custodian timely responded to the Complainant's request, the Custodian's insufficient response to Request No. 1 resulted in a deemed denial of the Complainant's OPRA request. *See* N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008); Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
- The Custodian has not proved that she lawfully denied access to the Complainant's Request No. 1 for being overly broad or vague. The Custodian shall disclose copies of the requested records and make all appropriate redactions.
- The potential for harm stemming from non-consensual disclosure, coupled with Ms. Pikolycky's reasonable expectation of privacy, warrants non-disclosure of the full address. The Custodian shall disclose the responsive record, making all other appropriate redactions, but listing the town of residence.
- Knowing and willful analysis deferred
- 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 Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

7. **Sabino Valdes v. Government Records Council (2013-278) (DL Recusal)** *Pulled from Agenda.*
 - **To be carried to July 29, 2014 meeting.**

B. Individual Complaint Adjudications with no Recusals:

1. **Jesse Wolosky v. Township of East Hanover (Morris) (2010-185)**
 - The Executive Director recommends that the Council dismiss the Complaint based on Stipulation of Dismissal wherein the parties agreed to an award of prevailing party attorney's fees and to dismiss this complaint.
 - 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
2. **Mark Lagerkvist v. NJ Department of Treasury, Division of Pension & Benefits (2011-110)**
 - The Executive Director recommends that the Council adopt the Judge Kassekert's, Initial Decision in which the Judge approved the Settlement Agreement between the parties which ordered the parties to comply with the settlement terms and that these proceedings be concluded.
 - 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
3. **John Hyland v. Township of Lebanon (Hunterdon) (2012-227)**
 - The Custodian complied with the Interim Order requiring and *In Camera* Examination of the records. **The Custodian shall comply with the Council's Findings of the *In Camera* Examination, set forth in the table of the FR, by disclosing all other portions of the 31 requested e-mails to the Complainant as to the portions of the requested e-mails, that the Custodian unlawfully denied access. Knowing and willful analysis deferred.**
4. **John Hyland v. Township of Tewksbury (Hunterdon) (2012-228) Consolidated**
 - The Custodian complied with the Interim Order requiring and In Camera Examination of the records. **The Custodian shall comply with the Council's Findings of the *In Camera* Examination, set forth in the table of the FR disclosing all other portions of the requested e-mails to the Complainant as to those portions of the e-mails, the Custodian unlawfully denied access to. Knowing and willful analysis deferred.**

- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
5. **Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-66)**
 6. **Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-67) Consolidated** *Pulled from Agenda*
 7. **John F. Nelson v. NJ Department of Law & Public Safety, State Police (2013-124)**
 - The Custodian has failed to establish in his request for that either 1) the Council's decision is 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, 3) that the complaint should be reconsidered based on mistake, or 4) that the Custodian failed to show that the Council acted arbitrarily, capriciously or unreasonably. The request for reconsideration should be denied. **The Custodian must comply with the Council’s April 29, 2014 Interim Order.**
 - 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
 8. **David J. Roundtree v. NJ Department of State, Division of Elections (2013-133)** *Pulled from Agenda*
 9. **Kevin Lawrence Conley v. NJ Department of Corrections (2013-138)**
 - The Executive Director recommends the Council find that the Complainant has failed to establish that the complaint should be reconsidered based on a mistake or fraud. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably.
 - 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
 10. **James Kevin Barnes v. Trenton Public Schools (Mercer) (2013-187)**
 - The Complainant waived his award for reasonable attorney’s fees thus, there is no need to conduct an analysis and, the case should be dismissed.
 - 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. Ms.

Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

11. **Edwin J. Skidmore v. Lebanon Township (Hunterdon) (2013-194)**

- The Custodian complied with the Council's Interim Order.
- The Custodian lawfully denied access to portions of the requested records, but the Custodian must also disclose to the Complainant the not exempt material.
- Knowing and willful analysis deferred.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

12. **Jason Todd Alt v. City of Vineland (Cumberland) (2013-205)**

- The Custodian did not unlawfully deny access to the Complainant's request for all e-mails from former Vineland mayor because the request was overly broad and invalid.
- The Custodian did not unlawfully deny access to the Complainant's request for all text messages and Facebook messages from former Vineland mayor Robert Romano because request for text messages and Facebook messages was overly broad and invalid.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

13. **Quddoos Farrad v. State Parole Board (2013-215)** *Pulled from Agenda*

14. **Stacie Percella v. City of Bayonne (Hudson) (2013-217)**

- The Custodian did not timely responded to the Complainant's OPRA requests. The Custodian failed to provide immediate access to the Complainant's requests for timesheets, payroll, and/or overtime records resulting in a deemed denial.
- The Custodian provided all responsive documents to the Complainant's June 5, 2013 request and June 20, 2013 OPRA request No 2. The Custodian certified that no other responsive documents exist.
- Because the Custodian performed an inadequate search for all responsive records to the Complainant's June 20, 2013 Request No. 1, the Custodian unlawfully denied access to the additional records. However, since the Complainant already possesses said document, the Council declines to order production.
- 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. Ms.

Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

15. **Jaconda Wagner v. Township of Montclair Police Department (Essex) (2013-222)**

- The Custodian only partially complied with the Council's March 25, 2014 Interim Order. The Custodian initially did not provide a response to the Complainant in the prescribed frame. However, the Custodian ultimately provided an appropriate certification and supporting documentation to both the Complainant and the GRC, thus complying with the Council's March 25, 2014 Interim Order.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

16. **Brian Killion v. Hammonton Police Department (Atlantic) (2013-228)**

- The Custodian improperly required the Complainant to complete an official OPRA request form. Even if the Custodian failed to receive the Complainant's May 21, 2013 OPRA request, the Complainant's subsequent letter of June 14, 2013 invoked OPRA, and restated the nature of his original request.
- Notwithstanding the Custodian's "deemed" denial, the responsive documents to the Complainant's OPRA request are exempt from disclosure pursuant as the Complainant seeks records containing information regarding the victim of his crimes. The Custodian lawfully denied access to the responsive records.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

17. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2013-239)**

- The Executive Director recommends the Council find that as there are issues of contested facts and this complaint should be referred to OAL for a determination of whether the Custodian lawfully denied access to the requested documents. If necessary, OAL should make a knowing and willful determination.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

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18. **Raymond A. Delbury v. Greystone Park Psychiatric Hospital (Morris) (2013-240)**

- Mr. Nielsen complied with the Council's Interim Order.

- The GRC notes that the record indicates that Mr. Stern did not violate OPRA and thus his actions will not be analyzed here. Mr. Nielsen's initial response was insufficient because he failed to address the Complainant's preferred method of delivery and he unlawfully denied access to the fourth (4th) report based on an inspection conducted prior to the submission of the OPRA request. However, Mr. Nielsen properly requested extensions of time, did not unlawfully deny access to a majority of the Complainant's request and timely complied with the Council's Interim Order.
- No knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Caruso addressed Mr. Nielsen's concerns about the Council's April 29, 2014 Interim Order. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

19. **Maurice Torian v. NJ State Parole Board (2013-245)**

- The Executive Director recommends the Council find that because the Complainant's request seeks a class of various documents, rather than specifically named or identifiable records, the request is invalid.
- The Custodian is not required to conduct research.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

20. **David J. Roundtree v. NJ Department of State, Division of Elections (2013-257)**

21. **David J. Roundtree v. NJ Department of State, Division of Elections (2013-259)**

Consolidated

- Although the Division of Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must submit his OPRA requests using “. . . the proper form . . .” The Complainant's requests were appropriately filed and the Custodian should have responded to same advising of Elections' policy change regarding the methods by which the Complainant could submit a request.
- The Complainant's August 5, 2013 request No. 1 sought information. Further, the request No. 2 failed to identify, with reasonable clarity, the records sought. Thus, the two (2) requests are invalid under OPRA. The Custodian has not unlawfully denied access to the requests.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

22. **David J. Roundtree v. NJ Department of State, HAVA (2013-258)**

- Although the Division of Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must submit his OPRA request using “. . . the proper form . . .” The Complainant’s request was appropriately filed and the Custodian should have responded advising of Elections’ policy change regarding the methods by which the Complainant could submit a request.
- The Custodian has unlawfully denied access to the requested records and must disclose the search results of the names identified in the Complainant’s request from the relevant database electronically.
- Knowing and willful analysis deferred.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

23. **David J. Roundtree v. NJ Department of State (2013-260)**

- The Executive Director recommends the Council find that the New Jersey Department of State’s policy not to accept OPRA requests via e-mail does not impose an unreasonable obstacle to the transmission of a request because the Department accepts requests via mail, hand-delivery and OPRA Central. Further, the Council should decline to address the Complainant’s amended request and clarification because same did not comply with the Department’s transmittal methods.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

24. **David J. Roundtree v. Camden County Clerk’s Office (Camden) (2013-276)**

- The Custodian did not unlawfully deny access to request item No. 3 because no responsive records exist.
- The Complainant’s June 13, 2013 request item Nos. 2 and 4 through 8 and June 22, 2013 amended request sought non-specific records, information and verification of facts, thus the request is invalid under OPRA. The Custodian has not unlawfully denied access to the Complainant’s initial and amended requests.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

25. **David J. Roundtree v. Burlington County Clerk's Office (Burlington) (2013-277)**

- The Custodian did not timely responded to the Complainant's request resulting in a "deemed" denial.
- The Custodian did not unlawfully deny access to request item No. 3 because no responsive records exist.
- The Complainant's request item Nos. 2, 4 and 5 are invalid because they sought non-specific records, information and verification of facts.
- The Complainant's addition of "screen shot" in the clarified request did not cure these deficiencies. Thus, the Custodian has not unlawfully denied access to the Complainant's initial and amended requests.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

26. **Rafael L. Martinez v. NJ Shares (2013-286)**

- The Custodian lawfully denied access to the requested records because NJ Shares is not an instrumentality of the state, or a political subdivision thereof, and thus a "public agency" subject to OPRA.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

27. **Derek R. Fenton v. NJ State Parole Board (2013-289)**

- The potential for harm stemming from non-consensual disclosure, coupled with the parolees' and third-parties' reasonable expectations of privacy, warrants non-disclosure of the full residence plans. However, these concerns do not extend to the limited disclosure of each responsive parolee's name and town of residence. Thus, the Custodian has failed to bear her burden of proving that the entirety of the residence plans are exempt from disclosure and shall disclose the responsive records, making all other appropriate redactions.
- The Custodian has not borne her burden of proving that she lawfully denied access to the requested parole certificates. The Complainant's was limited to a type of government records, and the required search was narrowed by the inclusion of sufficient identifying information. The Custodian shall disclose all responsive parole certificates, making all necessary redactions.
- The Council defers 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.
- Knowing and willful analysis deferred.

- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

28. **Kathleen Galano v. Borough of Atlantic Highlands (Monmouth) (2013-293)**

- The Custodian complied with the Council’s Interim Order because he responded certifying that no responsive records exist.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

29. **Luis F. Rodriguez v. Kean University (2013-296)**

- The Executive Director recommends the Council find that, notwithstanding the existence of reimbursement payments made pursuant to a possible ethics violation, such records are not disclosable under OPRA because disciplinary actions are not identified as personnel information subject to disclosure. Thus, the Custodian lawfully denied access to the requested felony charges which may or may not exist. Because the requested records are exempt from disclosure as the Council should decline to hold on the asserted privacy interest and grievance exemptions advanced by the Custodian.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

30. **Robert Moss v. Ocean County College (2013-300)**

- The Executive Director recommends the Council find that the Custodian has met her burden of proof that she did not unlawfully deny access to request. The Custodian certified that no responsive records exist.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

31. **Larry A. Kohn v. Township of Livingston (Essex) (2013-308)**

- The Custodian did not bear his burden of proof that he timely responded to the request. The Custodian’s failure to respond to the Complainant’s request within the statutorily mandated time results in a “deemed” denial.

- The Custodian has lawfully denied access to the requested appraisal because disclosure of the appraisal would have provided a competitive advantage to bidders.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

32. **Edgardo Collazo v. Passaic County Superintendent of Elections (2013-319)**

- The Custodian lawfully denied access to the records because all responsive records were provided to the Complainant.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

33. **Lester S. Alford v. Union County Prosecutor's Office (2013-332)**

- The Custodian violated OPRA by initially denying access to the documents requested in Item No. 1. N.J.S.A. 47:1A-1. However, he proved that he lawfully denied access to Item No. 2, because the request for the trial file is both overly broad and the Custodian certified that he provided all responsive records. Thus, the Council should decline to order the disclosure of the documents responsive to Item No. 1 because the Custodian already provided same to the Complainant.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

34. **Edgardo Collazo v. Passaic County Superintendent of Elections (2013-336)**

- The Custodian proved that she lawfully denied access to the November 3, 2013 payroll records because no responsive documents exist.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

35. **Edgardo Collazo v. Passaic County Superintendent of Elections (2013-339)**

- The Executive Director recommends the Council find that there was no denial of access to the requested election records because the Custodian provided a proper response under OPRA. The Council should decline to order the disclosure of the

election records because, the records were not in existence at the time of the Complainant's OPRA request.

- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

36. Jose R. Gonzalez v. Hudson County Sherriff's Office (2013-370)

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. Thus Custodian's failure resulted in a "deemed" denial.
- Because the Custodian certified that the requested report contains a detailed analysis of the court buildings' security systems, and that disclosure of the report could jeopardize the safety workers and visitors to the buildings, the Custodian lawfully denied access to the report.
- 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

VIII. Court Decisions of GRC Complaints on Appeal: None

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

- Nummermacker v. City of Hackensack, 2014 N.J. Super. Unpub. LEXIS 1287 (May 27, 2014): Here, the Law Division determined that a custodian cannot pass the cost of having their solicitor review billing records for privileged information. The Court reasoned that:

No attorney review provision, nor provision for the cost thereof, was included by the Legislature anywhere in OPRA.

If the custodian, who is charged by OPRA with the authority to review and redact from public records privileged information embedded therein, is of the view that she needs the guidance of counsel to assist her in the discharge of her responsibilities under OPRA, she is clearly entitled to seek it. There are endless aspects of the evolving jurisprudence surrounding government's response to OPRA requests that might cause a custodian to seek advice of counsel. But the cost of that advice to the client should be borne by the client who requests it, not the requestor whose request prompts the custodian to seek advice of counsel, i.e., the advice should be the public expense of the City, not the private expense of the requestor. If citizens are to be made to bear the expense of the legal fees incurred by custodians or government entities in responding to their requests, that fee-shifting will need a legislative mandate. No such mandate is accommodated in OPRA.

Id. at 14-15.

The Court further held that an attorney reviewing a bill for privileged information does not rise to the level of an extraordinary amount of time and effort warranting the imposition of a special service charge. See also Courier Post v. Lenape, 360 N.J. Super. 191, 203-204 (Law Div. 2002).

- Bolkin v. Kwasniewski, 2014 N.J. Super. Unpub. LEXIS 1409 (App. Div. 2014): Here, the Appellate Division affirmed a Law Division decision substantially for the reasons set forth by the Law Division's opinion. Id. at 2012 N.J. Super. LEXIS 2641 (December 5, 2012).

As some background, this appeal was filed by defendants arguing that the Law Division's decision erred for allowing disclosure of names and addresses of pet owners. Defendants further argued that the license holders were denied their due process rights to be heard on the issue prior to the order of disclosure. The Appellate Division denied these arguments on both accounts.

X. Public Comment (Second Session): None.

XI. Adjournment:

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

Meeting adjourned at 1:55 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: July 29, 2014