



**Minutes of the Government Records Council
December 16, 2014 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 10:37 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 December 10, 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) and Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III)

Absent: 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), Samuel Rosado, Esq. (Staff Attorney), Ernest Bongiovanni, 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 –
 - November 18, 2014—New Jersey League of Municipalities; Atlantic City, Annual Convention. There were over 200 people in attendance.
 - We have scheduled a portion of the 2015 outreaches.

2. Current Statistics

- Since OPRA's inception in 2002, the GRC has received approximately 3,760 Denial of Access Complaints.
- In fiscal year 2014 (July 1, 2013 – June 30, 2014), the GRC received **419** complaints. This is 96 cases over the 323 filed in fiscal year 2013, representing a 30% increase.
- In the current fiscal year (July 1, 2014 – June 30, 2015), the GRC has received **182** complaints to date.
- 3,367 of the 3,694 complaints have been closed (90%)
- 345 of the 3,664 complaints filed remain open and active
 - 8 complaints are on appeal with the Appellate Division (2%)
 - 17 complaints are currently in mediation (5%)
 - 34 complaints are awaiting adjudication by the Office of Administrative Law (10%)
 - 8 complaints are proposed for OAL (2%)
 - 115 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including January, 2015) (31 %)
 - 186 complaints are “work in progress” matters (51%)
- Over 22,000 public inquiries have been received via the toll-free hotline since 2004. In FY 2015, approximately 1,000 have so far been received.

III. Public Comment:

- Mr. Jeff Sauter, Colts Neck Township
 - Mr. Sauter noted that he is the Complainant in Item No. 9 on the Agenda (GRC 2014-187). Mr. Sauter expressed his appreciation to Mr. Stewart for working diligently on the case.

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**
- Thomas E. Ciccarone v. NJ Department of Treasury (2013-280) (ICFR) (*Tabled for next meeting*)
- Michael Doss v. Borough of Paramus (Bergen) (2014-149)
- Advisory Opinion 2013-01

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. Said vote was subsequently withdrawn to amend the closed session resolution to omit GRC 2013-280 because outside counsel was not present. 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 10:44 a.m. to 11:41 a.m.

Open Session reconvened at 11:43 a.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Ms. Parkinson, Ms. Lane. Mr. Ritardi was absent

V. Minutes of Previous Meetings:

- The minutes from the November 18, 2014 Open and Closed Sessions were approved.
- The minutes from the July 29, 2014 Open and Closed Session Meetings, minutes from the September 30, 2014 Closed Session, and minutes from the October 28, 2014 Open Session were pulled due to lack of a quorum.

VI. 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. **Harrison R. Hogue v. Newark Public Schools (Essex) (2014-201) (SR Recusal)**
 - No correspondence received by the Custodian.
2. **G.H. Christian v. County of Essex (2014-392) (SR Recusal)**
 - Complaint Voluntarily Withdrawn.

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in 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 (2014-358) (DP Recusal)**
(*Pulled due to lack of quorum*)

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

1. **Anonymous v. NJ Department of Children and Families, Division of Child Protection and Permanency (2014-111)**
 - Complaint Voluntarily Withdrawn.
2. **Chris Ryan v. Monroe Township Board of Education (Middlesex) (2014-145)**
 - Complaint Voluntarily Withdrawn.
3. **Rocmon L. Sanders v. State Parole Board (2014-174)**
 - Unripe Cause of Action
4. **Deanna M. O'Connor v. Burlington Township School District (Burlington) (2014-237)**
 - Settled in Mediation.
5. **Thomas Sullivan v. Borough of Palmyra (Burlington), (2014-249)**
 - Complaint Voluntarily Withdrawn.
6. **Paul Nichols v. Housing Authority of Bergen County (2014-315)**
 - Complaint Voluntarily Withdrawn.
7. **Robert Kovacs v. Belleville Police Department (Essex) (2014-320)**
 - Settled in Mediation.
8. **Harry B. Scheeler, Jr. v. NJ Office of the Governor (2014-339)**
 - Settled in Mediation.
9. **Cynthia A. McBride v. City of Camden (Camden) (2014-352)**
 - Complaint Voluntarily Withdrawn.
10. **Henry Druschel v. Borough of Clayton (Gloucester) (2014-354)**
 - Settled in Mediation.
11. **Henry Druschel v. Township of Franklin (Gloucester) (2014-355)**
 - Settled in Mediation.
12. **Henry Druschel v. Borough of Glassboro (Gloucester) (2014-356)**

- Settled in Mediation.
13. **Harry B. Scheeler, Jr. v. Borough of Woodbine (Cape May) (2014-359)**
 - Complaint Voluntarily Withdrawn.
 14. **Jason Litowitz v. Tabernacle Fire District No. 1 (Burlington) (2014-371)**
 - Complaint Voluntarily Withdrawn.
 15. **Mark L. Tompkins v. New Jersey Courts (2014-398)**
 - Request not within the Council’s Jurisdiction to Adjudicate (Request Made to the Judiciary).
 16. **Mark L. Tompkins v. The Municipal Court, City of East Orange (Essex) (2014-400)**
 - Request not within the Council’s Jurisdiction to Adjudicate (Request Made to the Judiciary).
 17. **Mark L. Tompkins v. Superior Court of NJ – Essex Vicinage (2014-407)**
 - Request not within the Council’s Jurisdiction to Adjudicate (Request Made to the Judiciary).

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 Director’s recommended action is under each complaint.

1. **Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-01) (RBT Recusal)**
2. **Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10) (RBT Recusal)**
3. **Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) (SR & RBT Recusal) Consolidated**
(Pulled due to lack of quorum)
4. **David Roundtree v. Morris County (2014-177) (SR & RBT Recusal)**
(Pulled due to lack of quorum)
5. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-17) (DP Recusal)**
(Pulled due to lack of quorum)
6. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-59) (DP Recusal)**

- (Pulled due to lack of quorum)*
7. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-60)**
(DP Recusal)
(Pulled due to lack of quorum)
 8. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-125)** **(DP Recusal)**
(Pulled due to lack of quorum)
 9. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-172)** **(DP Recusal)**
(Pulled due to lack quorum)
 10. **Michael I. Inzelbuch, Esq. v. Lakewood Board of Education (Ocean) (2014-202)**
(DP Recusal)
(Pulled due to lack of quorum)
 11. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-204)**
(DP Recusal)
(Pulled due to lack of quorum)
 12. **Thomas Caggiano v. NJ Office of the Governor (2014-166)** **(RBT Recusal)**
(Pulled due to lack of quorum)

A. Individual Complaint Adjudications with no Recusals:

1. **Christopher T. Tasiopoulos v. Warren County Prosecutor's Office (2011-231)**
 - Complaint voluntarily withdrawn.
 - 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. **Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-382)**
 - Council is recommended to accept, with modifications, the decision of ALJ as follows:
 - i. that “. . . . [original] Custodian willfully and knowingly violated his obligations under OPRA . . .” and that “. . . [t]he [Complainant] is entitled to a total of \$14,598 in reasonable counsel fees, plus \$385.05 in costs . . .
 - ii. Because this is the original Custodian's second (2nd) knowing and willful violation within the last ten (10) years; the penalty is \$2,500
 - iii. Original Custodian must make payment from his own personal funds.
 - Ms. Tabakin first noted that the civil penalty for a second (2nd) violation is statutorily mandated and not subject to adjustment. Ms. Tabakin then called for any further 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)**
4. **John Hyland v. Township of Tewksbury (Hunterdon) (2012-228) Consolidated**
 - The Lebanon Custodian complied with the Council's June 24, 2014 Interim Order.
 - The Lebanon Custodian Counsel's request for reconsideration of eight (8) sets of meeting minutes is granted based on a change in circumstances,
 - The Custodian must provide the eight (8) sets of minutes in accordance with the Council's June 24, 2014 Interim Order and based on its *in camera* examination herein.
 - Knowing and willful analysis deferred.
 - The Tewksbury Custodian complied with the Council's June 24, 2014 Interim Order.
 - The Tewksbury Custodian did not knowingly and willfully violate 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.
5. **Thomas E. Ciccarone v. NJ Department of Treasury (2013-280)** (*Tabled for next meeting*)
6. **Harry B. Scheeler, Jr. v. NJ State Police (2014-57)**
7. **Harry B. Scheeler, Jr. v. NJ State Police (2014-74) Consolidated**
 - Council should reconsider its November Interim Order in light of new evidence that Custodian timely produced records and amend its findings to reflect that the Custodian supplied the records but failed to fully comply with the Council's October 2014 Interim Order; no unlawful denial of access.
 - 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. **Jeff Carter v. Franklin Township Fire District No. 1 (Somerset) (2014-120)**
 - Complainant should be referred to OAL to resolve conflicting statements as to the existence of records, for a knowing and willful analysis and, if necessary, to order disclosure of records which 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.

9. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2014-187)**

- No unlawful denial to the December 18th 2013 request.
- Custodian's failure to timely respond to the January 31, 2014 request resulted in a "deemed" denial; custodian shall disclose responsive records to the request.
- 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.

10. **Scott Madlinger v. Toms River Police Department (Ocean) (2014-191)**

- Custodian lawfully denied access to the requested reports because no 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.

11. **David Cavagnaro v. Borough of Point Pleasant Beach (Ocean) (2014-197)**

- GRC must conduct an in camera review of responsive Report.
- 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. **Matthew Cheng v. Town of West New York (Hudson) (2014-213)**

- GRC must conduct an in camera review of responsive e-mail.
- 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.

13. **Michael K. Sharp v. Fairfield Township (Cumberland) (2014-279)**

- Custodian failed to comply with Council's October 28, 2014 IO.
- Council's Interim Order is enforceable.
- Custodian violated OPRA, complaint referred to OAL for a knowing and willful analysis.

- 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.

14. **Sean Patrick Vandy v. Newfield Borough Board of Education (Gloucester) (2014-331)**

- Custodian failed to timely respond, resulting in a “deemed” denial.
- Custodian’s response was insufficient.
- Custodian failed to prove his denial of access was lawful, but Custodian ultimately disclosed 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.

VIII. Court Decisions of GRC Complaints on Appeal:

- Seabrooks v. Cnty. of Essex, 2014 N.J. Super. Unpub. LEXIS 2746 (App. Div. 2014): Here, the Appellate Division affirmed the GRC’s decision that the records at issue were properly withheld as criminal investigatory records. Further, the Court rejected appellant’s argument that the records were disclosable under common law because: 1) appellant never raised such issue prior to this appeal; and 2) the “GRC’s jurisdiction does not include hearing common law right of access claims.” Id. at 6.
- Rogers v. Essex Cnty. Prosecutor’s Office, 2014 N.J. Super. Unpub. LEXIS 2840 (App. Div. 2014): Here, the Appellate Division again affirmed the GRC’s decision that appellant did not provide sufficient information at the time of his request to allow the custodian to identify responsive records.

Previously, appellant provided the wrong indictment number in his initial OPRA request and thus the custodian did not have sufficient information to locate responsive records. However, following attempted mediation, appellant submitted an Amended Denial of Access Complaint including the right indictment number. Notwithstanding this change, the Council determined that there was no unlawful denial of access because the custodian has insufficient evidence at the time of the original request to locate records.

The Court agreed. However, in noting that the Council did not address the Amended Denial of Access Complaint, the Court also determined that it was satisfied that the responsive records were exempt as criminal investigatory records.

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

- Wenger v. Lakewood, 2014 N.J. Super. Unpub. LEXIS 2619 (October 30, 2014): Here the Law Division denied Lakewood Fire District's ("District") motion for summary judgment, required it to designate a custodian or record at its next regularly scheduled meeting and required the designated custodian to respond to plaintiff's OPRA request item No. 2.

In reaching its decision, the Court reasoned that the certification provided by two (2) commissioners of the District did not constitute a custodian's certification nor did it include an adequate description of the search undertaken to locate responsive records. Of more interest, the Court ordered the newly designated custodian to provide records responsive to item No. 2, even though it acknowledged that the request could be invalid:

Here, in plaintiff's July 8, 2013 OPRA request, the request No. 2 is for "[c]opies of written communication, including correspondence and emails, among or between the Fire Commissioners regarding Ms. Dowd since her retirement." This request fails to specify particular documents by date and author. Instead, it seeks all "written communication . . . among or between the Fire Commissioners regarding Ms. Dowd since her retirement." Arguably, the documents requested are not readily identifiable.

Id. at 7-8.

- 212 Marin Blvd. v. City of Jersey City, 2014 N.J. Super. Unpub. LEXIS 2692 (November 14, 2014): Here, the Law Division denied defendant's motion to impose sanctions pursuant to R. 1:4-8(a) and N.J.S.A. 2A:15-59.1, denied plaintiff's cross-motion to enforce litigants' rights and finds that all defendants in this action have fully complied with OPRA and, therefore, dismissed said complaint with prejudice.

When last the Council was briefed on this case, the Appellate Division has reversed and remanded a prior decision and avoided the larger implications of the Steering Committee's status as a public agency. See 212 Marin, 2014 N.J. Super. Unpub. LEXIS 382 (Lexis Alert March 10, 2014). Subsequent to that decision, the parties ultimately agreed to disclosure and compliance became the chief issue for the Law Division. From these compliance issues came motions for sanctions and litigants rights. The details are long and winding, so you may review at your leisure.

- N. Jersey Media Grp. v. Evelina, 2014 N.J. Super. Unpub. LEXIS 2747 (November 17, 2014): In Judge Doyne's return to the Lexis Alerts, he was tasked with determining whether the Township of Teaneck withheld responsive records relating to a high school prank gone wrong. He does not disappoint with a thorough and rather long accounting of the records and issues presented: let's just say that the Court had its hands full with this one. Included are issues of juvenile records, criminal investigatory records, security exemptions and Public School Safety Law.

In the interest of time, the decision is attached for review.

- Stop & Shop Supermarket Co. v. Cnty. of Bergen, 2014 N.J. Super. Unpub. LEXIS 2723 (November 18, 2014): Here, the Law Division dismissed plaintiff's complaint because it was filed three (3) years after the expiration of the statute of limitations. The Court noted that "[a]s the Supreme Court noted in [Mason v. City of Hoboken, 196 N.J. 51, 57 (2008)], governmental agencies are entitled to have disputes brought and addressed in a rapid manner. Ibid. Any other result would expose government entities to endless and/or frivolous litigation. Further, the utilization of a declaratory judgment action to seek a declaration of a violation of OPRA, for purposes other than the production of documents, is not authorized." Id. at 25-26.

X. Public Comment (Second Session):

- Ms. Miles from the Division of Law
 - Ms. Miles noted that she is representing the Counsel to the Custodian in Items Nos. 1, 2, and 3 on the Agenda. Ms. Miles asked the Council to explain what "lack of quorum" meant.

XI. Adjournment:

Ms. Parkinson made a motion to adjourn the Council's meeting, and Ms. Lane seconded the motion. The motion passed unanimously. The meeting adjourned at 12:05 a.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: January 30, 2015