



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

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Lt. Governor

CHARLES A. RICHMAN
Acting Commissioner

NOTICE OF MEETING
Government Records Council
April 28, 2015

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 1:30 p.m., Tuesday, April 28, 2015, 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 1:30 p.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. Closed Session

- Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281 *et seq.*) (ICFR)
- Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328 *et seq.*) (ICFR)
- Salvatore J. Sorce v. Stafford Township (Ocean) (2014-109) (ICFR)
- Legal advice concerning OPRA responses and the attorney-client privilege.

IV. Approval of Minutes of Previous Meetings:

March 31, 2015, Open Session Meeting Minutes – *Pulled due to lack of quorum*
March 31, 2015, Closed Session Meeting Minutes – *Pulled due to lack of quorum*

V. 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):

1. Joseph P. McGill v. Sussex County Board of Taxation (2014-378) **(RBT Recusal)**
 - The Complaint was settled through mediation.

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

1. Mark Demitroff v. Buena Vista Township (Atlantic) (2014-259)
 - Responsive records were timely provided.
2. Raymond R. Byron v. Borough of Oceanport (Monmouth) (2014-345)
 - The complaint was settled through mediation.
3. Richard Stolte v. NJ Motor Vehicle Commission (2015-32)
 - The request for documents was not a valid OPRA request.

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

1. Harry B. Scheeler, Jr. v. Burlington County Prosecutor's Office (2015-81)
2. Harry B. Scheeler, Jr. (On behalf of Anonymous) v. Burlington County Prosecutor's Office (2015-84)
3. Garry Annibal v. NJ Department of Environmental Protection (2015-62)
4. Alexander Anthony Mirsky v. Mount Olive Township School District (Morris) (2015-94)
5. Michael Kornblau v. Borough of Longport (Atlantic) (2015-109)

VI. 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. Woodbine Board of Education (Cape May) (2014-17) **(DP Recusal)**
 - The complaint is held from consideration due to lack of a quorum.
2. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-59) **(DP Recusal)**
 - The complaint is held from consideration due to lack of a quorum.
3. Denyce Carroll v. Trenton Public School District (Mercer) (2014-69) **(DP Recusal)**
 - The complaint is held from consideration due to lack of a quorum.
4. Harry B. Scheeler, Jr. NJ Department of Education (2014-90) **(DP Recusal)**
 - The complaint is held from consideration due to lack of a quorum.
5. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-205) **(DP Recusal)**
 - The complaint is held from consideration due to lack of a quorum.

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| <ol style="list-style-type: none">6. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2014-139) (SR Recusal)7. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2014-161) (SR Recusal)
Consolidated |
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- The complaint is held from consideration due to lack of a quorum.

8. Kevin M. Barry v. NJ Transit (2014-229) **(SR Recusal)**

- The complaint is held from consideration due to lack of a quorum.

9. Kevin M. Barry v. NJ Transit (2014-264) **(SR Recusal)**

- The complaint is held from consideration due to lack of a quorum.

10. Thomas Caggiano v. NJ Office of the Governor (2014-263) **(RBT Recusal)**

- The request is invalid because it fails to include the subject or content of the e-mails and letters sought.

11. Thomas Caggiano v. NJ Office of the Governor (2014-272) **(RBT Recusal)**

- Requests #1 and #2 are invalid because they fail to include the subject or content of the e-mails sought. Requests #3 and #4 are invalid for their failure to identify records with reasonable clarity.

B. Individual Complaint Adjudications with no Recusals:

1. Luis F. Rodriguez v. Kean University (2013-71)

- The complaint is tabled due to a need to obtain outside counsel.

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| <ol style="list-style-type: none">2. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281)3. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-282)4. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-283) Consolidated |
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- The Custodian complied with the January 2015 Interim Order.
- The Custodian lawfully denied access to the bodies of the records listed in the document index. However, the Custodian unlawfully denied access to all other portions of the 8 requested records and must disclose same to the Complainant.
- The Complainant fails to establish grounds for reconsideration.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Interim Order.

5. Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-287)

- Although the Custodian responded timely and provided both documents and an index, the Custodian nonetheless failed to comply fully with the July 2014 Interim Order because he failed to disclose all appropriate attachments.
- The Custodian therefore must disclose all appropriate attachments.
- The GRC must conduct an in camera review of the 8 responsive documents.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Interim Order.

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| 6. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328) |
| 7. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-329) |
| 8. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-330) |
| 9. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-331) Consolidated |

- The Custodian complied with the January 2015 Interim Order.
- The Custodian lawfully denied access to the bodies of the records listed in the document index. However, the Custodian unlawfully denied access to all other portions of the 8 requested records and must disclose same to the Complainant.
- The Complainant fails to establish grounds for reconsideration.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Interim Order.

10. Luis F. Rodriguez v. Kean University (2014-106)

- The Custodian complied with the January 2015 Interim Order
- There is no knowing and willful violation.

11. Harry B. Scheeler, Jr. v. Salem County Special Services School District (2014-108)

- The Custodian lawfully denied access to the requested records because exemption is warranted by N.J.A.C. 6A:32-7.5 and N.J.S.A. 47:1A-9(a).
- The Custodian lawfully denied access to request item #3 because the Custodian certified that such records do not exist and the Complainant provided no competent, credible evidence to refute the Custodian's certification.
- The Custodian must disclose all Rice notices with proper redactions.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.

12. Salvatore J. Sorce v. Stafford Township (Ocean) (2014-109)

- The Custodian complied with the January 2015 Interim Order.
- The Custodian must comply with the findings of the in camera examination.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.

13. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-137)
14. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-138) Consolidated

- The Custodian did not fully comply with the November 2014 Interim Order because he failed to provide one attachment. However, said record was ultimately disclosed.
- The Custodian's special service charge was not found to be reasonable or warranted.
- There is no knowing and willful violation.
- The Complainant found to be a prevailing party.

15. Harry B. Scheeler, Jr. v. Borough of West Cape May (Cape May) (2014-143)

- The Custodian's response was insufficient, as the explanations of the redactions failed to include adequate detail.
- The GRC must conduct an in camera review to determine whether documents are subject to the attorney-client privilege.

- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
16. James D'Andrea v. NJ Civil Service Commission (2014-153)
- The Custodian unlawfully denied access to the subject and date in the responsive record.
 - The Custodian ultimately provided the responsive document absent the improper redactions.
 - The Custodian lawfully denied access to the redacted e-mail addresses, consistent with GRC Complaint No. 2009-73.
 - There is no knowing and willful violation.
17. David Herron v. Montclair Public Schools (Essex) (2014-167)
- The Custodian did not timely respond, resulting in a "deemed" denial.
 - The request is invalid because it failed to include the subject or content of the e-mails sought.
 - There is no knowing and willful violation.
18. Michael L. Shelton v. Manasquan Public School District (Monmouth) (2014-183)
- The Custodian's response was insufficient because it failed to address the Complainant's preferred method of delivery.
 - While the Custodian might have violated the immediate access provision of OPRA by failing to respond immediately, the Custodian ultimately provided access to the responsive record.
 - The GRC must conduct an in camera review of various listed records to determine whether they are indeed ACD material.
 - The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
19. Clifford Wares v. Passaic County Sheriff's Office (2014-238)
- The Custodian lawfully denied access to the requested records because same are exempt from public access as personnel records pursuant to N.J.S.A. 47:1A-10.
20. Ronald Williams v. NJ Department of Corrections (2014-240)
- The request is invalid pursuant to OPRA because it fails to identify specific government records and constitutes an overbroad and unclear request.
21. Carolyn Schwebel v. Township of Middletown (Monmouth) (2014-251)
- The Custodian failed to provide a reasonable explanation or general nature description of the redacted information, thus resulting in an insufficient response.
 - The Custodian certified that she ultimately disclosed the entirety of the record, and the Complainant did not offer proof to contradict the Custodian's certification.

22. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)

23. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) **Consolidated**

- The special services charge is not found to be reasonable and warranted.
- The Custodian must disclose the responsive records, identify redactions, and state the reasons for same.
- The Custodian must provide a detailed explanation of the search conducted.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Interim Order.

24. Kevin Lawrence Conley v. NJ Department of Corrections (2014-269)

- The Custodian lawfully denied access because no responsive records exist.

25. Agustin Garcia v. NJ Department of Corrections (2014-306)

- The request is invalid because it fails to identify specific government records and instead seeks information.

26. Naeem Akhtar v. NJ Department of Law & Public Safety, Division of Criminal Justice (2014-344)

- The GRC must conduct an in camera review to determine whether the records are exempt under the Department's regulations.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.

27. Mary D'Arcy Bittner, Esq. v. NJ Department of Human Services (2014-364)

- The Custodian timely responded to the request.
- The request is invalid because it fails to identify specific government records.

28. T. Napieralski v. Township of Waterford (Camden) (2014-406)

- The Custodian lawfully denied access to request item number 1 because the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification that no responsive records exist.
- Request item number 2 is invalid because it fails to seek an identifiable government record.

VII. New Business – Re-adoption of the GRC's regulations (N.J.A.C. 5:105)

VIII. Court Decisions of GRC Complaints on Appeal:

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

- Ganzweig v. Twp. of Lakewood, 2015 N.J. Super. Unpub. LEXIS 681 (March 24, 2015)

X. Public Comment:

The public comment period is limited to providing an opportunity for speakers 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**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

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.