



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**NOTICE OF MEETING**  
**Government Records Council**  
**June 30, 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, June 30, 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**

- Luis Rodriguez v. Kean University (2013-71) - *Tabled pending legal review*
- Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2013-287)
- Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-75) - *Tabled pending legal review*

**IV. Approval of Minutes of Previous Meetings:**

March 31, 2015, Open Session Meeting Minutes  
March 31, 2015, Closed Session Meeting Minutes  
May 26, 2015, Open Session Meeting Minutes

**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. Robert Kovacs v. Irvington Police Department (Essex) (2014-261) **(SR Recusal)**
  - There is no reasonable factual basis to pursue the complaint. The Custodian certifies that he did not receive a records request, and the Complainant provides no evidence to contradict the Custodian's certification.

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

1. Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2014-375)
  - There is no reasonable factual basis to pursue the complaint. The Custodian certifies that he did not receive a records request, and the Complainant provides no evidence to contradict the Custodian's certification.
2. Susan Fleming v. Greenwich Township (Warren) (2015-36)
  - The complaint is a duplicate of GRC 2015-18.
3. Derrick Parreott v. Rutgers Police Department – New Brunswick (Middlesex) (2015-40)
  - The parties settled the matter through mediation.
4. Robert D. Castagna v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-111)
  - There is no reasonable factual basis to pursue the complaint. The Custodian certifies that he did not receive a records request, and the Complainant provides no evidence to contradict the Custodian's certification.
5. Aakash Dalal v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-121)
  - The Custodian certified that no responsive records exist, and the Complainant failed to provide any evidence to refute the Custodian.
6. Abdiel F. Avila v. Superior Court of New Jersey – Camden Vicinage (2015-144)
  - The request was made to the Judiciary and is therefore not within the Council's jurisdiction to adjudicate.
7. John Paff v. City of Trenton (Mercer) (2015-173)
  - There is no denial of access at issue.

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

1. Thomas Paul v. West Deptford Township Board of Education (Gloucester) (2015-119)
2. Derrick B. Parreott v. City of Asbury Park (Monmouth) (2015-128)
3. Harry B. Scheeler, Jr. v. Cape May County Prosecutor's Office (2015-136)
4. Harry B. Scheeler, Jr. v. Town of Hammonton (Atlantic) (2015-138)
5. Russell Chew v. City of Cape May (Cape May) (2015-142)
6. John Paff v. Sussex County Prosecutor's Office (2015-162)
7. Donna Ireland v. Borough of Englewood Cliffs (Bergen) (2015-188)

## VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A short synopsis of the Executive Director’s recommended action is under each complaint below:

### A. Individual Complaint Adjudications with Recusals:

1. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-280) **(SR Recusal)**
  - The GRC should adopt the decision of the Administrative Law Judge, who found on behalf of the Custodian, ruling that “[t]he mere use of a private cell phone at work to make private calls does not trigger the OPRA statute.”
2. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-311) **(SR Recusal)**
  - The Council should award prevailing party counsel fees of \$3,720.
3. Kathy L. Camarata v. Essex County Prosecutor’s Office (2014-127) **(SR Recusal)**
  - The Custodian lawfully denied access to the records because same are exempt from disclosure pursuant to the Attorney General’s Internal Affairs Policy and Procedure.

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| <ol style="list-style-type: none"><li>4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2014-139) <b>(SR Recusal)</b></li><li>5. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2014-161) <b>(SR Recusal) Consolidated</b></li></ol> |
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- The Custodian timely responded to the request from March 2, 2014.
  - The Custodian did not timely respond to the request from March 24, 2014, thus resulting in a “deemed” denial under OPRA.
  - The Custodian may have unlawfully denied access to the requested e-mails. Thus, the Custodian must grant the Complainant access to those records. If records do not exist, the Custodian must so certify.
  - The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance with the Interim Order.
6. Kevin M. Barry v. NJ Transit (2014-229) **(SR Recusal)**
    - The Custodian did not timely respond to the request, thus resulting in a “deemed” denial under OPRA.
    - The Custodian’s response is insufficient because it failed to provide a specific legal basis under OPRA for the denial.
    - The GRC must conduct an in camera review of the requested record to determine whether or not the document was lawfully withheld from disclosure.
    - The knowing and willful analysis is deferred pending the Custodian’s compliance with the Interim Order.

7. Kevin M. Barry v. NJ Transit (2014-264) **(SR Recusal)**
  - The Custodian certified that the record is a criminal investigatory record that is not subject to disclosure under OPRA, and the Complainant did not advance any competent, credible evidence to refute the Custodian's certification.
8. Shawn July v. Essex County Prosecutor's Office (2014-304) **(SR Recusal)**
  - The Custodian certified that certain requested records did not exist.
  - The Custodian otherwise provided all responsive records.
9. Kevin M. Barry v. NJ Transit (2014-309) **(SR Recusal)**
  - The Custodian did not timely respond to the request, thus resulting in a "deemed" denial under OPRA.
  - The Custodian lawfully denied access to the requested records because the Custodian certified that no responsive records exist, and the Complainant did not present any competent, credible evidence to refute the certification.
  - There is no knowing and willful violation.
10. Albert N. Sedges v. Morris County Prosecutor's Office (2014-312) **(SR Recusal)**
  - The Custodian's response is insufficient because she failed to provide a specific lawful basis for the denial.
  - No unlawful denial of access occurred, as the Custodian certified that no responsive records exist, and the Complainant submitted no competent, credible evidence to refute the certification.
11. Robert Kovacs v. Newark Police Department (Essex) (2014-316) **(SR Recusal)**
  - The Custodian failed to bear his burden of proving that he lawfully denied access to requested information.
  - The Custodian must conduct a search and provide all responsive records.
  - The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
12. Jarett Saccento v. Morris County Prosecutor's Office (2014-383) **(SR Recusal)**
  - The Custodian's response was insufficient, as it failed to provide a specific lawful basis for the denial.
  - The Custodian did not deny access to the records described in the Denial of Access Complaint, which describes records different than those in the original OPRA request.
  - The complaint is therefore without merit and should be dismissed.
13. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-17) **(DR Recusal)**
  - The Custodian complied with the Interim Order.
  - The Custodian ultimately disclosed the responsive documents.
  - There is no knowing and willful violation.

14. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-59) **(DR Recusal)**

- The Custodian did not fully comply with the Interim Order because he failed to submit certified confirmation of compliance to the GRC.
- The Custodian ultimately disclosed the responsive records.
- There is no knowing and willful violation.

15. Denyce Carroll v. Trenton Public School District (Mercer) (2014-69) **(DR Recusal)**

- The Custodian did not timely respond to the request, thus resulting in a “deemed” denial under OPRA.
- The Custodian’s failure to provide a date certain on which he would respond constitutes an insufficient response.
- The Custodian may have unlawfully denied access to responsive records. As a result, he must provide the GRC a detailed accounting of his search beyond the submission of the Statement of Information and must definitely state whether he was able to locate the student’s school records.
- The knowing and willful analysis is deferred pending the Custodian’s compliance with the Interim Order.

16. Harry B. Scheeler, Jr. v. NJ Department of Education (2014-90) **(DR Recusal)**

- The Custodian did not timely respond to the request, thus resulting in a “deemed” denial under OPRA.
- The request was invalid because it failed to seek an identifiable record and would have required the Custodian to research his files.

17. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-205) **(DR Recusal)**

- The Custodian performed an inadequate search and must therefore conduct another keyword search that includes the actual content of the e-mails.
- Following the search, the Custodian must disclose all responsive records to the Complainant and must certify to the GRC if he is unable to locate responsive records.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance with the Interim Order.

18. Harry Dunleavy v. Jefferson Township Board of Education (2014-372) **(DR Recusal)**

- The Custodian did not timely respond to the request, resulting in a deemed denial.
- The Custodian may have unlawfully denied access to certain personnel information and must either provide the records or certify that the records have already been disclosed.
- The Custodian lawfully denied a request for information.
- The Custodian may have unlawfully denied access to the requested certificates and must either disclose same or certify that the records do not exist.
- The knowing and willful analysis is deferred pending the Custodian’s compliance with the Interim Order.

## **A. Individual Complaint Adjudications with no Recusals:**

1. Jeff Carter v. Franklin Fire District No. 1 (Somerset)(2011-76)
  - The Office of Administrative law found that the Custodian did not knowingly and willfully violate OPRA and further found that attorney's fees and costs of \$7,828.95 should be awarded to the Complainant's Counsel as a prevailing party.
  - The Council should adopt the Administrative Law Judge's initial decision with modifications.
  - Those modifications include: (a) reducing the proposed attorney's fees down to \$1,320.45 and (b) various technical corrections.
2. Luis Rodriguez v. Kean University (2013-71)
  - The matter was tabled pending legal review.
3. John Paff v. City of Union City (Hudson) (2013-195)
  - The Council approved this matter back in April 2014, but the Findings and Recommendations at that time included a factual mistake: the document incorrectly indicated that the Custodian did not file an objection to the fee application. At the Custodian's request, the Council should approve this amendment, which corrects the mistake and otherwise makes minor cosmetic changes. The revision has no material impact on the merits of the case or the final results.
4. Frances Hall v. Township of Howell (Monmouth) (2013-209)
  - The Council should dismiss the matter because of the Complainant's failure to appear on May 20, 2015, for a scheduled hearing before the Office of Administrative Law.
5. Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-287)
  - The Custodian complied with the Interim Order.
  - The Custodian lawfully denied access to the body of the e-mails and the respective attachments. However, the Custodian must disclose all other portions of the eight (8) requested e-mails to the Complainant, to include the sender, recipients, date, time, subject, and salutations where applicable.
  - The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Council's Interim Order.
6. Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-75)
  - The matter was tabled pending legal review.
7. Luis F. Rodriguez v. Kean University (2014-106)
  - The Complainant failed to establish grounds for reconsideration.
8. Cliff Moore v. NJ State Police (2014-128)
  - The requests are invalid because they fail to seek identifiable government records.

9. Jeffrey C. Frett v. Camden County (2014-163)
    - The Custodian certified that her search produced no responsive records, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification.
  10. Shamsiddin Abdur-Raheem v. NJ Division of Criminal Justice (2014-171)
    - With one exception, the requests are invalid, as they are overly broad and do not seek identifiable government records.
  11. Rocmon L. Sanders v. NJ Department of Corrections (2014-173)
    - The requests are invalid as they fail to specify identifiable government records.
  12. Elmer F. Gould, Sr. v. Township of Fairfield (Cumberland) (2014-224)
    - The Custodian failed to respond in a timely manner, thus resulting in a “deemed” denial under OPRA.
    - The request was overly broad and sought information.
    - There is no knowing and willful violation.
  13. Brian J. Paladino v. NJ Department of Corrections (2014-241)
    - The Custodian lawfully denied access, as the Complainant did not pay for the requested copies in a lawful manner.
  14. Stanley George Janson, Sr. v. City of Burlington (Burlington) (2014-252)
    - The Custodian failed to respond in a timely manner, thus resulting in a “deemed” denial under OPRA.
    - The Custodian certified that some of the records sought did not exist at the time of the request and further certified that the remaining responsive records were provided to the Complainant.
    - There is no knowing and willful violation.
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| <ol style="list-style-type: none"> <li>15. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)</li> <li>16. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) <b>Consolidated</b> <ul style="list-style-type: none"> <li>• The Custodian did not fully comply with the Interim Order because he failed to provide a detailed explanation of his search for records. To become compliant, the Custodian must provide same.</li> <li>• The GRC must conduct an <u>in camera</u> review of the responsive e-mail.</li> <li>• The knowing and willful analysis is deferred pending the Custodian’s compliance with the Interim Order.</li> </ul> </li> </ol> |
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17. Kevin Alexander v. NJ Department of Corrections (2014-268)
    - The Custodian unlawfully denied access to certain personnel information as defined at N.J.S.A. 47:1A-10 and must provide responsive records to the Complainant.
    - The Custodian lawfully denied access to certain personnel records.
    - The knowing and willful analysis is deferred pending the Custodian’s compliance with the Interim Order.

18. Scott Coulson v. Town of Kearny Fire Department (Hudson) (2014-270)
  - The Custodian did not timely respond to the request, resulting in a “deemed” denial.
  - The Custodian performed an insufficient search and unlawfully denied access to records that were located subsequent to the initial response.
  - However, all responsive records were ultimately provided to the Complainant.
  - No knowing and willful violation occurred.
19. Michael Taylor v. County of Bergen (2014-271)
  - The Complainant failed to respond timely and properly to the Complainant, thus resulting in a “deemed” denial under OPRA.
  - The Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the certification.
  - There is no knowing and willful violation.
20. Joseph W. Bernisky v. NJ State Police (2014-275)
  - The Custodian lawfully denied access to criminal investigatory records, which are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
21. Rose D. Richardson v. NJ Office of the Attorney General (2014-277)
  - The Custodian complied with the Interim Order.
  - There is no knowing and willful violation.
22. Frances Hall v. Borough of Upper Saddle River (Bergen) (2014-278)
  - The Custodian did not timely respond, thus resulting in a “deemed” denial under OPRA.
  - The Custodian certified that he ultimately provided all responsive records to the Complainant, and the Complainant provided no credible evidence to refute the Custodian’s certification.
  - There is no knowing and willful violation.
23. Michael K. Sharp v. Fairfield Township (Cumberland) (2014-279)
  - The Complainant withdrew his complaint by letter to the Office of Administrative Law on April 16, 2015. The Council should therefore dismiss the complaint.
24. David J. Marck (On behalf of SAS Stressteel, Inc.) v. NJ Division of Consumer Affairs (2014-285)
  - The Custodian lawfully denied access, as the requested records are exempt by regulation.
  - The Complainant is not a prevailing party and is not eligible for an award of a reasonable attorney’s fee.
25. Michael Palkowitz v. Borough of Hasbrouck Heights (Bergen) (2014-302)
  - The Custodian did not fully comply with the Council’s Interim Order, as she responded one day late. The Custodian otherwise complied.



- There is no knowing and willful violation.
26. Aakash Dalal v. Camden County Prosecutor's Office (2014-308)
- There is no unlawful denial of access, as the Custodian has borne his burden of proving that no responsive records exist.
27. Darlene R. Esposito v. Township of Belleville (Essex) (2014-310)
- The Custodian failed to submit an SOI and certification within the allotted time to respond.
  - Because the evidence of record is inconclusive, the matter should be referred to the Office of Administrative Law for a hearing.
28. Elizabeth v. Macchiaverna v. NJ Department of Banking and Insurance (2014-324)
- Based on conflicting and inadequate evidence in the record, the matter should be referred to the Office of Administrative Law for a hearing.
29. Clifford Wares v. Passaic County Prosecutor's Office (2014-330)
- The Custodian lawfully denied access to various personnel records pursuant to N.J.S.A. 47:1A-10.
  - The Custodian lawfully denied access to certain records that are exempt from disclosure pursuant to the Attorney General's Internal Affairs Policy and Procedures, promulgated by the Division of Criminal Justice.
30. Charles Urban v. Clinton Township (Hunterdon) (2014-343)
- The GRC must conduct an in camera review of the undisclosed records.
  - The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
31. Michael Palkowitz v. Borough of Hasbrouck Heights (Bergen) (2014-346)
- The Custodian lawfully denied access, as the request failed to identify specific records.
32. June Maxam dba The North Country Gazette v. Bloomfield Township Department of Health & Human Services (Essex) (2014-350)
- Because of the commonality of parties, records, and questions of law, the matter should be referred to the Office of Administrative Law and consolidated with GRC 2013-285, which was transmitted to OAL in February 2015.
33. Kenelmn Eden v. Little Egg Harbor Township (Ocean) (2014-369)
- No responsive records exist that contain a compilation of the information specified by the Complainant, and there is no competent, credible evidence to refute the Custodian's certification.
34. George W. Schulz v. NJ State Police (2014-390)
- The Custodian lawfully denied part of the request, as it failed to identify specific government records and would have required the Custodian to research his files.

- The Custodian lawfully denied access to certain photographs, specimens, and criminal investigatory records.
- The Custodian may have unlawfully denied access to the autopsy reports and must provide same to the Complainant. If the records were already provided, the Custodian must certify to same.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.

35. Lisa Hurff v. Borough of Helmetta (Middlesex) (2014-416)

- The Custodian did not timely respond, thus resulting in a "deemed" denial under OPRA.
- Based on the inconclusive evidence in the record, the matter should be referred to the Office of Administrative Law for a hearing.

36. Anonymous v. Ocean City Historic Preservation Commission (Cape May) (2015-2)

- The Custodian lawfully denied access to a draft record, which is included under the definition of advisory, consultative, and deliberative material.

**VII. Court Decisions of GRC Complaints on Appeal:**

- None

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

- Kean Fedn. of Teachers v. Kean Univ., 2015 N.J. Super. Unpub. LEXIS 1249 (May 21, 2015)
- WNBC-TV v. Allendale Bd. of Educ., 2015 N.J. Super. Unpub. LEXIS 1330 (June 4, 2015)
- N. Jersey Media Group v. Twp. of Lyndhurst, 2015 N.J. Super. LEXIS 96 (App. Div. 2015)(Approved for Publication)
- 500 W57 Jv Llc v. Twp. of Lakewood, 2015 N.J. Super. Unpub. LEXIS 1389 (June 9, 2015)
- In re Sharlene Harris's Request, 2015 N.J. Super. Unpub. LEXIS 1395 (App. Div. 2015)

**IX. 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.\*

**X. 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