



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Commissioner

NOTICE OF MEETING
Government Records Council
October 27, 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, October 27, 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

- J. C. McCormack v. NJ Department of Treasury (2013-357)
- Michael A. King v. NJ Department of Corrections (2014-156)

IV. Approval of Minutes of Previous Meetings:

September 29, 2015, Open Session Meeting Minutes
September 29, 2015, Closed 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. A brief summary of the Executive Director's recommended reason for the Administrative Disposition is under each complaint below.



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

None.

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

1. Patricia Hart McGlone, Esq. McGovern Legal Services, LLC. (On behalf of Mill Pond at Eatontown Condominium Association, Inc.) v. Borough of Eatontown (Monmouth) (2015-92)
 - The parties settled the matter through mediation.
2. Ann Stockton v. County of Gloucester (2015-204)
 - The parties settled the matter through mediation.
3. Vito Sacco v. NJ State SPCA (2015-216)
 - The parties settled the matter through mediation.
4. Johnathan Robins v. Burlington County Surrogate's Court (2015-299)
 - The GRC has no jurisdiction over the Judicial Branch.

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

1. Andrew Lyubarsky (On behalf of NJ Advocates for Immigrant Detainees) v. Essex County Department of Corrections (2015-48)
2. Paul Edelstein (On behalf of Dana Corrar) v. NJ Department of Law & Public Safety, Alcoholic Beverage Control (2015-191)

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A brief summary of the Executive Director's recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Robert Kovacs v. Newark Police Department (Essex) (2014-316) **(SR Recusal)**
 - The Council should reconsider its decision, dated June 30, 2015, based on extraordinary circumstances.
 - Paragraphs 1-3 of the Interim Order should be rescinded, and the Council should find the request invalid for failure to provide adequate search terms.
2. Mark L. Tompkins v. City of Newark (Essex) (2014-399) **(SR Recusal)**
 - There is no unlawful denial of access, as the record evidences that no responsive records exist.

3. Mark Tompkins v. Essex County Prosecutor's Office (2014-404) (**SR Recusal**)
 - The request is invalid in part, as it seeks information rather than a specifically identifiable government record.
 - There is no unlawful denial of access, as the record evidences that no responsive records exist.
4. David H. Weiner v. County of Essex (2015-20) (**SR Recusal**)
 - The Custodian failed to comply fully with the Interim Order.
 - The Council should refer the Complaint to the Office of Administrative Law for a hearing to determine the facts.

B. Individual Complaint Adjudications with no Recusals:

1. Luis Rodriguez v. Kean University (2013-71)
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
2. June Maxam v. Bloomfield Township Department of Health & Human Services (Essex) (2013-285)
 - The Council should dismiss the Complaint, as the Complainant failed to appear for a scheduled hearing at the Office of Administrative Law.
3. J. C. McCormack v. NJ Department of Treasury (2013-357)
 - *On the advice of legal counsel, the Council chose to table the matter.*
4. Michael A. King v. NJ Department of Corrections (2014-156)
 - The Custodian complied with the Interim Order.
 - The Custodian's redactions were lawful because the records contained proprietary commercial and trade secret information and because the Complainant failed to certify as to his conviction status.
5. Robert C. Scutro v. City of Linden (Union) (2014-254)
 - The Custodian initially denied access unlawfully by not providing records under his control and custody.
 - The Custodian complied with the Interim Order and provided responsive records.
 - There is no knowing and willful violation.

6. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)
7. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) **Consolidated**
 - The Custodian complied with the Council's most recent Interim Order.
 - The Custodian did not bear his burden of proving that the special services charge was reasonable and warranted.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party, eligible for reasonable counsel fees.

8. Paul Nichols v. Housing Authority of Bergen County (2014-291)
 - The GRC takes judicial notice of Judge Doyne’s decision in Nichols v. Hous. Auth. of Bergen Cnty. and therefore finds that the Custodian did not unlawfully deny access to the requested record.
 9. Susan Barker v. Borough of Lakehurst (Ocean) (2014-318)
 - The Custodian lawfully denied access, as the requested records are exempt personnel records pursuant to N.J.S.A. 47:1A-10.
 10. Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2014-325)
 - The Complaint is materially defective and should be dismissed because the Complainant’s cause of action was not ripe at the time the Complaint was filed.
 - The Complainant is not a prevailing party eligible for reasonable attorneys’ fees.
 11. June Maxam dba The North Country Gazette v. Bloomfield Township Department of Health & Human Services (Essex) (2014-350)
 - The Complaint should be dismissed, as the Complainant failed to appear for a scheduled hearing at OAL.
 12. Gregory W. Kasko v. Town of Westfield (Union) (2014-389)
 - The GRC must conduct an in camera review.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.
 13. John Paff v. Harrison Township Fire District (Gloucester) (2014-402)
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party, eligible for reasonable counsel fees.
 14. Lisa Hurff v. Borough of Helmetta (Middlesex) (2014-416)
 - Following the Council’s referral of the matter to the Office of Administrative Law, the Complainant withdrew the complaint.
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| <ol style="list-style-type: none"> 15. Harry B. Scheeler, Jr. v. Galloway Township (Atlantic) (2015-1) 16. Harry B. Scheeler, Jr. v. Galloway Township (Atlantic) (2015-22) Consolidated <ul style="list-style-type: none"> • There is no unlawful denial of access because the evidence supports that the Township had not yet executed and finalized a settlement at the time of the OPRA request. • The Custodian ultimately disclosed the responsive record. |
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17. Klarida Papajani v. NJ Turnpike Authority (2015-9)
 - The Council should refer the matter to OAL for a hearing to resolve the facts and to determine whether any public official knowingly and willingly violated OPRA.

18. Milton Durham v. NJ Department of Corrections (2015-10)
- The Custodian's failure to grant access, deny access, seek clarification, or request a further extension of time within the extended time frame results in a "deemed" denial.
 - The Custodian made the records available for an on-site inspection, but the Complainant refused to participate.
 - The Custodian lawfully denied access to certain forms because the record shows that no responsive records exist.
 - There is no knowing and willful violation.
19. Law Offices of Walter Luers, LLC (On behalf of C.C.) v. Eastern Camden County Regional School District (2015-15)
- The Custodian failed to provide a specific lawful basis for his redactions.
 - The Custodian proved that the special services charge was both reasonable and warranted.
 - The Council must conduct an in camera review.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance.
20. Richard Stolte v. Burlington County Prosecutor's Office (2015-28)
- There is no unlawful denial of access because the Complainant did not provide the Custodian with adequate identifiers, thus making it impractical for the Custodian to locate responsive records.
21. Richard Stolte v. NJ Division on Civil Rights (2015-34)
- There is no unlawful denial of access because the record evidences that no responsive records exist.
22. Luigi Altomonte v. Branchburg Township School District (2015-39)
- The Custodian's redactions were lawful pursuant to N.J.A.C. 6A:32-7.1 et seq
23. Joseph Post v. NJ Office of the Attorney General (2015-51)
- The Custodian did not timely respond, thus resulting in a "deemed" denial.
 - There is no unlawful denial of access, as the Custodian certified that no responsive records exist.
 - There is no knowing and willful violation.
24. Keith Werner v. NJ Department of Treasury (2015-236)
- The Custodian's response was insufficient because it failed to respond immediately to a request for immediate access records as required by N.J.S.A. 47:1A-5e.
 - The Custodian must disclose all responsive documents, redacted as set forth in the Interim Order.
 - The Custodian lawfully denied access in part because the record evidences that no responsive records exist.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.

VII. Court Decisions of GRC Complaints on Appeal: None.

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

- Blaettler v. Twp. of Weehawken, 2015 N.J. Super. Unpub. LEXIS 2277 (September 29, 2015)
- Wilde v. Borough of W. Cape May, 2015 N.J. Super. Unpub. LEXIS 2313 (App. Div. 2015)
- Acad. Express, LLC v. Rutgers, 2015 N.J. Super. Unpub. LEXIS 2356, (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 during the adjudication.