



**Minutes of the Government Records Council
April 26, 2016 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:31 p.m. by Ms. 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 (fax number out of service), Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on April 21, 2016.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Tabakin, Esq. (Chairwoman), Christopher Huber, Esq. (designee of Department of Education Commissioner David C. Hespe), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member).

GRC Staff in Attendance: Joseph Glover (Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Communications Specialist/Resource Manager), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Ernest Bongiovanni (Staff Attorney), Husna Kazmir (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:

Current Statistics

- Since OPRA's inception in calendar year 2002, the GRC has received 4,328 Denial of Access Complaints. That averages about 313 complaints per a bit fewer than 14 program years.
- In the current program year, the GRC has so far received 355 Denial of Access Complaints. At approximately this point last year, the GRC had received 311 complaints. That reflects a roughly 14% increase in the agency's intake from one year to the next.
- 518 of the 4,328 complaints remain open and active. Of those open cases,
 - 14 complaints are on appeal with the Appellate Division;
 - 25 complaints are currently in mediation;
 - 36 complaints await adjudication by the Office of Administrative Law;
 - 175 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the April 2016 meeting; and,
 - 265 complaints are work in progress.
- Since 2004, the GRC has received 24,830 total inquiries. That is an average of about 1,934 inquiries per a bit fewer than 13 tracked program years. So far in the current program year, the GRC has received 1,709 inquiries.
- With about 10 weeks still remaining in FY 2016, the GRC has already received more denial of access complaints than it received in the entirety of FY 2013. Since January 1, 2015, the GRC's weekly intake of complaints has increased approximately 28% over its weekly average during the agency's entire history.

III. 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 in the following matters:

- Michael I. Inzelbuch v. Lakewood Board of Education (Ocean) (2013-145)
- Charles Urban v. Clinton Township (Hunterdon) (2014-343)
- Gregory W. Kasko v. Town of Westfield (Union) (2014-389)
- Legal Advice – Procedure for motions

Ms. Tabakin called for a motion to go into closed session. Mr. Ritardi made a motion and Mr. Martucci seconded the motion. The Council adopted the motion by a unanimous vote.

The Council met in closed session from 1:35 p.m. until 2:42 p.m.

Ms. Tabakin called for a motion to end the closed session minutes. Mr. Ritardi made a motion which was seconded by Mr. Martucci. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:44 p.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Mr. Huber, Mr. Martucci and Mr. Ritardi.

IV. Approval of Minutes of Previous Meetings:

- **February 23, 2016 Open Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the open session minutes of February 23, 2016 meeting. Mr. Ritardi made a motion, seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Huber abstained.

- **February 23, 2016 Closed Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the closed session minutes of February 23, 2016 meeting. Mr. Ritardi made a motion, seconded by Mr. Martucci, The motion passed by a majority vote; Mr. Huber abstained.

March Adjudications

V. 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 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. **Evan Anderson v. NJ Department of Agriculture (2015-318)**

- The parties settled the matter through mediation.

2. **Louis Marchuk v. Haddon Township (Camden) (2015-323)**

- The parties settled the matter through mediation.

3. **Michael P. Reilly v. Monmouth Beach Police Department (Monmouth) (2016-63)**

- All responsive records were timely provided

Ms. Tabakin called for a motion to accept the recommendations as written in all of the above Administrative Complaint Dispositions. Mr. Ritardi made a motion, which was seconded by Mr. Martucci. The motion passed unanimously.

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

1. **Harry B. Scheeler, Jr. v. NJ Department of Treasury (2015-344)**
2. **Mark Demitroff v. NJ Department of Law and Public Safety (2015-416)**
3. **Robert Hovan dba Hovan Investigation LLC v. Franklin Lakes Police Department (Bergen) (2016-46)**
4. **Howard T. Longman v. NJ Office of the Attorney General (2016-47)**
5. **Carol Thompson v. Township of Mansfield (Warren) (2016-67)**

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

A summary of the Executive Director’s recommended action is under each complaint:

1. **Thomas Caggiano v. Township of Green (Sussex) (2014-418) (RBT Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed a majority vote; Ms. Tabakin recused.
2. **Shawn July v. Essex County Prosecutor’s Office (2014-304) (SR Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
 - 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. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed a majority vote; Mr. Ritardi recused.
3. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-58) (SR Recusal)**
 - The Custodian’s failure to respond within the extended deadline results in a “deemed” denial.
 - The Custodian might have unlawfully denied access to responsive records. The Custodian must therefore conduct a thorough search, disclose responsive records, and certify to both the specific search undertaken and whether he was unable to locate additional records.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.
 - 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.

Martucci made a motion, and Mr. Huber seconded the motion. The motion passed a majority vote; Mr. Ritardi recused.

4. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-97) (SR Recusal)**
5. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-98) (SR Recusal)**
6. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-99) (SR Recusal)**
7. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-100) (SR Recusal)**
8. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-101) (SR Recusal)**
9. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-102) (SR Recusal)**
10. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-103) (SR Recusal) Consolidated**
 - The Custodian did not timely respond, thus resulting in a “deemed” denial.
 - Request Nos. 1 and 2 are valid, because the requests provide the Custodian with reasonably specific identifiers. The Custodian must therefore disclose responsive documents.
 - Request Nos. 3 through 8 are invalid because they fail to include a narrowly construed subject or content. Single, generic keywords do not sufficiently narrow the scope of the subject or content of records sought.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.
 - 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. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed a majority vote; Mr. Ritardi recused.
11. **Andre Herd v. Essex County Prosecutor’s Office (2016-49) (SR Recusal)**
 - The Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification.
 - 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. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed a majority vote; Mr. Ritardi recused.
12. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-423) (CH Recusal)**
 - The Custodian did not establish valid grounds for reconsideration.

- The Complainant failed to deliver a request for reconsideration within ten business days, as required by N.J.A.C. 5:105-2.10.
- 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 Mr. Martucci seconded the motion. The motion passed a majority vote; Mr. Huber recused.

13. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-218) (JM Recusal)**

14. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-219) (JM Recusal) Consolidated**

- The Custodian did not fully comply with the Council's Interim Order.
- The Custodian must disclose the responsive attachments and/or provide comprehensive arguments as to why the records are not subject to disclosure.
- The Council must conduct an *in camera* examination of all redacted e-mails to determine whether the records are exempt.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance.
- 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 Mr. Huber seconded the motion. The motion passed a majority vote; Mr. Martucci recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Glenn Katon (On behalf of Muslim Advocates) v. NJ Department of Law & Public Safety, Office of Attorney General (2012-267)**

- The Council should refer the matter to the Office of Administrative Law to determine: (1) whether the Custodian unlawfully denied access to responsive records, (2) whether to order disclosure, (3) whether the Custodian or any other employee of the agency knowingly and willingly violated OPRA, (4) whether the Complainant is a prevailing party, and (5) an attorney's fee award, as might be appropriate.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. DAG Allen noted that she did not provide any legal advice to the Council on this complaint. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.

2. **Michael I. Inzelbuch v. Lakewood Board of Education (Ocean) (2013-145)**

- The Custodian complied with the Council's Interim Order.
- With two exceptions, the Custodian properly redacted the documents.
- The Custodian must comply with the Council's *in camera* findings.
- The knowing and willful analysis is deferred pending the Custodian's compliance.

- 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 Mr. Martucci seconded the motion. The motion passed a unanimous vote.
3. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281)**
 4. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-282)**
 5. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-283) Consolidated**
 - The Council awards attorney’s fees in the amount of \$10,110.
 - 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. Huber made a motion, and Mr. Ritardi seconded the motion. The motion passed a unanimous vote.
 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 Council awards attorney’s fees in the amount of \$7,320.
 - 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. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.
10. **Dudley Burdge v. NJ Civil Service Commission (2014-168)**
 - The Custodian complied with the Council’s Interim Order.
 - There is no knowing and willful violation.
 - Mr. Glover was recused from the processing and adjudication of 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. Mr. Huber made a motion, and Mr. Ritardi seconded the motion. The motion passed a unanimous vote.
 11. **King Victorious v. NJ Department of Corrections (2014-334)**
 - The Council should refer the matter to the Office of Administrative Law for a hearing to determine whether the Custodian unlawfully denied access and whether the Custodian or any other employee of the custodial agency knowingly and willfully violated 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. Mr. Huber made a motion, and Mr. Ritardi seconded the motion. The motion passed a unanimous vote.

12. **Charles Urban v. Clinton Township (Hunterdon) (2014-343)**

- The Custodian complied with the Council's Interim Order.
- The Custodian must comply with the findings of the *in camera* review.
- The knowing and willful analysis is deferred pending the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as amended per closed session discussions. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Huber made a motion, and Mr. Ritardi seconded the motion. The motion passed a unanimous vote.

13. **Gregory W. Kasko v. Town of Westfield (Union) (2014-389)**

- The Council will issue an Interim Order, requesting a supplemental certification to be submitted *in camera* to the Council, outlining the need for exemption for each specific bullet point listed in the Technical Specifications.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as amended per closed session discussions. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Huber made a motion, and Mr. Ritardi seconded the motion. The motion passed a unanimous vote.

14. **Harry B. Scheeler, Jr. v. NJ State Police (2015-80)**

- The Custodian's initial response was sufficient.
- The Custodian unlawfully denied access to the date and time entries on the arrest report because OPRA explicitly states that the information is disclosable.
- The Custodian unlawfully denied access to the arrestee's address because the term "residence," as used in OPRA, requires disclosure of an arrestee's entire address.
- The Custodian provided no competent evidence to support that disclosing the entire address would jeopardize the safety of any person, any investigation in progress, or would be otherwise inappropriate.
- The Council need not order disclosure because the Custodian provided the address as part of the SOI.
- There is 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. Mr. Huber made a motion, and Mr. Ritardi seconded the motion. The motion passed a unanimous vote.

15. **Harry B. Scheeler, Jr. v. City of Cape May (Cape May) (2015-91)**

- The Custodian did not fully comply with the Council's Interim Order.
- The Custodian ultimately complied, albeit late.
- It should be stressed that the Custodian used an inappropriate method to redact exempt information but did not at any point unlawfully deny access. The Council therefore finds 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. Mr. Huber made a motion, and Mr. Ritardi seconded the motion. The motion passed a unanimous vote.
16. **Eric M. Aronowitz, Esq. (On behalf of Middlesex County Board of Social Services) v. NJ Department of Health Services, Division of Medical Assistance and Health Services (2015-113)**
- The Council must conduct an *in camera* review of only those vouchers containing redactions to validate the Custodian’s assertion that the records are exempt.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.
 - 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. Huber made a motion, and Mr. Ritardi seconded the motion. The motion passed a unanimous vote.
17. **Luis F. Rodriguez v. Kean University (2015-114)**
- The Custodian did not timely respond, thus resulting in a “deemed” denial.
 - The Complainant did not take issue with the Custodian’s denial of access but instead disputed the Custodian’s lengthy extensions.
 - The Custodian violated OPRA by unnecessarily extending the response time by over 100 business days, only to respond ultimately that no records exist.
 - There is 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. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.
18. **Darlene Esposito v. NJ Department of Law and Public Safety, Division on Civil Rights (2015-143)**
- The request was invalid because it did not specifically identify government records.
 - 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. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.
19. **Robert Kovacs v. Manchester Township (Ocean) (2015-170)**
- The Custodian provided all responsive records without redactions.

- Despite the Complainant’s assertion that the report he received did not include two addresses, the records actually do not contain any addresses. There was therefore no 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. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.
20. **Janell Bolden v. Black Horse Regional School District (Camden) (2015-181)**
- The Complainant’s cause of action was not ripe at the time she filed the Denial of Access Complaint.
 - The request is invalid because the Complainant failed to identify specifically the minutes sought. There is therefore 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. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.
21. **Gregory L. Pancza v. Township of Lacey (Ocean) (2015-182)**
- The Custodian failed to respond timely, resulting in a “deemed” denial.
 - The Custodian certified that the Complainant picked up all responsive records, and the Complainant provided no evidence to dispute the Custodian’s certification.
 - 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. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.
22. **Terri L. Howell v. Greenwich Township (Warren) (2015-194)**
- The Complainant asserted that she never received a response from the Custodian. Absent any comment from the Custodian to refute the Complainant’s allegation, the GRC finds a “deemed” denial.
 - The Custodian did not comply with the GRC’s two separate requests for a Statement of Information.
 - The Custodian’s failure to respond obstructed the GRC’s efforts to “receive, hear, review[,] and adjudicate a . . . denial of access [complaint].”
 - The GRC should refer the matter to the Office of Administrative Law for a hearing to determine the facts of the case. Also, the OAL should determine whether the Custodian or any other employee of the custodial agency knowingly and willfully violated 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. Mr.

Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.

23. **Charles Brown v. NJ Department of Corrections (2015-195)**

- The Custodian did not unlawfully deny access to “custody status reports” because the request is overly broad.
- The requested psychiatric reports are exempt from disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(4).
- 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. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.

24. **Robert Kovacs v. Town of Kearny Police Department (Hudson) (2015-218)**

- The Custodian did not respond timely, resulting in a “deemed” denial.
- With the exception of one questionable record, the Custodian did not unlawfully deny access to the Complainant’s request because no responsive records exist.
- The Custodian did not provide the GRC with adequate information as to the type or nature of the one “legally disclosable” record. Therefore, the GRC must conduct an *in camera* examination to determine whether the Custodian unlawfully denied access.
- The knowing and willful analysis is deferred pending the Custodian’s compliance.
- 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. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.

25. **Robert Cosme v. NJ Department of Corrections (2015-268)**

- The Custodian certified that all responsive records were provided, and the Complainant did not provide any competent, credible evidence to refute the Custodian’s certification.
- 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. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.

26. **Carol Thompson v. Township of Mansfield (Warren) (2015-309)**

- The Custodian complied with the Council’s Interim Order.
- There is 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. Mr.

Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.

27. Harry Scheeler, Jr. v. NJ State Police (2015-369)

- The Complainant did not establish valid grounds for reconsideration.
- 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. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.

28. Anthony Walker v. NJ Office of the Public Defender (2016-7)

- The requested records are exempt pursuant to N.J.S.A. 47:1A-5(k).
- 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 Mr. Martucci seconded the motion. The motion passed a unanimous vote.

29. Michael I. Inzelbuch v. Lakewood Board of Education (2016-35)

- The Custodian did not immediately respond to immediate access records, resulting in a “deemed” denial. However, responsive records were ultimately disclosed.
- With respect to requested items 1-3 and 5-21, the Complainant verified his complaint prior to the expiration of the statutory response time. As no denial of access had yet occurred, the complaint is materially defective and must be dismissed.
- There is 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. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.

April Adjudications

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 short 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):

1. **Rashaun Barkley v. Essex County Prosecutor's Office (2016-65) (SR Recusal)**
 - No responsive records exist.
 - Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Disposition. Mr. Huber made a motion which was seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi recused.

2. **Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-346) (SR Recusal)**
 - The parties settled the matter through mediation.
 - Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Disposition. Mr. Huber made a motion which was seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi recused.

3. **Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-347) (SR Recusal)**
 - The parties settled the matter through mediation.
 - Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Disposition. Mr. Huber made a motion which was seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi recused.

4. **Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-348) (SR Recusal)**
 - The parties settled the matter through mediation.
 - Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Disposition. Mr. Huber made a motion which was seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi recused.

5. **Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-360) (SR Recusal)**
 - The parties settled the matter through mediation.
 - Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Disposition. Mr. Huber made a motion which was seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi recused.

6. **Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-362) (SR Recusal)**
 - The parties settled the matter through mediation.
 - Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Disposition. Mr. Huber made a motion which was seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi recused.

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

1. **Jermaine Vaughn v. Mercer County Prosecutor's Office (2015-334)**
 - The Custodian did not receive a records request from the Complainant.

2. **Ronald Horton v. Franklin Township Police Department (Somerset) (2015-376)**
 - The parties settled the matter through mediation.
3. **Ronald Horton v. Franklin Township Police Department (Somerset) (2015-406)**
 - The parties settled the matter through mediation.

Ms. Tabakin called for a motion to accept the recommendations as written in all of the above Administrative Complaint Dispositions. Mr. Huber made a motion, which was seconded by Mr. Martucci. The motion passed unanimously.

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

1. **Charlie DiPierro v. Township of Monroe (Middlesex) (2015-124)**
2. **Harry B. Scheeler, Jr. v. NJ Department of Children and Families (2015-391)**
3. **Mark Hrywna (o/b/o RahwayRising.com, LLC) v. Rahway Arts District dba Rahway Arts & Biz Partnership (Union) (2016-69)**
4. **Michael J. Jones v. Deptford Township Police Department (Gloucester) (2016-72)**

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A short summary of the Executive Director’s recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. **Elie C. Jones v. Township of Teaneck (Bergen) (2014-321) (SR Recusal)**
2. **Elie C. Jones v. Township of Teaneck (Bergen) (2014-327) (SR Recusal)**
3. **Elie C. Jones v. Township of Teaneck (Bergen) (2014-328) (SR Recusal)**

Consolidated

- With respect to the security camera footage, the Complaint should be referred to the Office of Administrative Law for a determination of certain facts and a determination as to whether the Custodian knowingly and willingly violated OPRA.
- The Custodian’s redactions to the police reports were proper.
- The requested injury reports are not subject to disclosure under OPRA pursuant to N.J.S.A. 47:1A-10 and Executive Order 26.
- The Custodian did not unlawfully deny access to the request for “police cruiser video,” as the Custodian certified that no responsive records exist, and the Complainant submitted no competent, credible evidence to refute the Custodian’s certification.
- 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. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed a majority vote; Mr. Ritardi recused.

4. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-71) (SR Recusal)**
 - The Custodian did not bear the burden of proving that he timely responded to the OPRA request, thus resulting in a “deemed” denial.
 - The Custodian lawfully denied access to the time sheets because certifications evidence that no responsive records exist.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party and is therefore not eligible for Counsel fees.
 - 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. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed a majority vote; Mr. Ritardi recused.

5. **Susan Noto v. Essex County Register of Deeds and Mortgages (2015-95) (SR Recusal)**
 - The Complainant withdrew the complaint subsequent to the 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. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed a majority vote; Mr. Ritardi recused.

6. **Harry B. Scheeler, Jr. v. City of Jersey City (Hudson) (2015-141) (SR Recusal)**
 - The Custodian did not unlawfully deny access, as he informed the Complainant that the requested video was too large to send electronically, the Custodian offered an alternative method, and he certified to same.
 - The Complainant’s decision not to provide a mailing address prevented the Custodian from calculating the actual cost of postage to provide the requested records. Therefore, the Custodian did not unlawfully deny 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. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed a majority vote; Mr. Ritardi recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-141)**
 - The Council should reject the Administrative Law Judge’s Initial Decision. The parties’ agreement does not meet the requirements of N.J.A.C. 1:1-19.1, as the terms of the agreement are contrary to OPRA and not “consistent with law.”
 - The Council should refer the matter back to the Office of Administrative Law for a determination as to whether the Custodian committed a third knowing and willful violation of OPRA and a determination of prevailing party fees.

- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi asked whether the parties could resolve the complaint in another manner. DAG Allen confirmed that the parties could resolve the complaint in another manner. Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed a unanimous vote.
- 2. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-137)**
- 3. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-138) Consolidated**
 - The Council should award attorney’s fees in the amount of \$5,340.
 - 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 Mr. Martucci seconded the motion. The motion passed a unanimous vote.
- 4. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)**
- 5. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) Consolidated**
 - The Council should award attorney’s fees in the amount of \$6,090.
 - 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 Mr. Martucci seconded the motion. The motion passed a unanimous vote.
- 6. **J.C. McCormack v. NJ Department of Treasury (2014-336)**
 - The Custodian unlawfully denied access by redacting the employees’ names and must therefore disclose the names.
 - The GRC must conduct an *in camera* review of certain requested records to validate the Custodian’s redactions.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.
 - 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 Mr. Martucci seconded the motion. The motion passed a unanimous vote.
- 7. **Clifford Wares v. Passaic County Office of the Public Defender (2014-363)**
 - The Custodian did not timely respond, thus resulting in a “deemed” denial.
 - The GRC declines to order disclosure of requested records 1-4 and 6-12, as the records were provided to the Complainant.
 - The Custodian did not unlawfully deny access to the requested phone call records, as the Custodian certified that no records could be located, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification. There is 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. Mr. Ritardi made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.
8. **Frank Delli Santi v. Frankford Township (Sussex) (2015-72)**
- The Custodian’s response was timely and sufficient. Because the Custodian made the records available within the statutory period, contingent upon payment of copying fees, there is no unlawful denial of access.
 - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Glover noted that the complaint was amended to move a footnote on page 3 into the body of the proposed Findings & Recommendations. Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Mr. Ritardi made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.
9. **Harry B. Scheeler, Jr. v. Burlington Township (Burlington) (2015-93)**
- On the advice of legal counsel, the GRC should table the matter.
 - Ms. Tabakin called for a motion to table the matter. Mr. Ritardi made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
10. **Anonymous v. Burlington Township (Burlington) (2015-107)**
- On the advice of legal counsel, the GRC should table the matter.
 - Ms. Tabakin called for a motion to table the matter. Mr. Ritardi made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
11. **Harry B. Scheeler, Jr. v. Borough of Helmetta (Middlesex) (2015-139)**
- The Custodian did not bear the burden of proving a timely response to request item No. 1, thus resulting in a “deemed” denial.
 - There is no knowing and willful violation.
 - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Glover noted that the complaint was amended to move footnote No. 7 on page 3 into the body of the proposed Findings & Recommendations. Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Mr. Ritardi made a motion, and Mr. Martucci seconded the motion. The motion passed a unanimous vote.
12. **Edward J. Sakos, Jr. v. Township of Egg Harbor (Atlantic) (2015-158)**
- Although the Complainant’s letter was not an OPRA request, the Custodian nonetheless treated it like an OPRA request. Therefore, the GRC will recognize the letter as an OPRA request.

- No unlawful denial of access occurred because the Custodian provided all responsive records.
- 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 Mr. Martucci seconded the motion. The motion passed a unanimous vote.

13. **Aakash Dalal v. Borough of Paramus (Bergen) (2015-326)**

- The Borough Attorney’s response was legally insufficient because he failed to respond in writing to each request item individually.
- The Custodian did not unlawfully deny access to request items number 1 and 2 because those records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
- The Custodian did not unlawfully deny access to request item number 3 because the Custodian certified that no responsive records exist, and the Complainant submitted no competent, credible evidence to refute the certification.
- 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 Mr. Martucci seconded the motion. The motion passed a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal:

- Verry v. Franklin Fire Dist. No. 1, 2016 N.J. Super. Unpub. LEXIS 569 (App. Div. 2016): Here, the Appellate Division affirmed that GRC’s decision in Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2013-196 (Interim Order dated February 24, 2015). In Verry, GRC 2013-196, the Council held that the Millstone Valley Fire Department (“MVFD”) was a “public agency” for purposes of OPRA because it was a member of the Franklin Fire District. Defendants appealed this decision arguing that the GRC did not follow its own precedent in Carrow v. Borough of Newfield (Gloucester), GRC Complaint No. 2012-111 (February 2013)(holding that the Newfield Fire Company, a volunteer fire company not within a fire district, was not a “public agency” for purposes of OPRA).

In holding that it was not persuaded by Defendants’ argument, the Court reasoned that, unlike the contractual relationship in Carrow, “we have no hesitation in agreeing with the GRC that the Fire Department, at least since 1974, has become an instrumentality of the District and thus a public agency subject to OPRA.” Id. at 6. The Court did not address Defendants’ arguments that “only those records which relate to the governmental function it performs on behalf of the District should be available under OPRA,” noting that the appeal only contested MVFD’s “public agency” status. The GRC notes that Defendants recently filed for cert before the New Jersey Supreme Court.

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

- O'Boyle v. Borough of Longport, 2016 N.J. Super. Unpub. LEXIS 545, (App. Div. 2016): Here, the Appellate Division affirmed the Law Division's decision upholding Defendant's denial of access to Plaintiff's two (2) OPRA requests. Specifically, the trial court determined that Defendant's first (1st) request seeking communications between eight (8) parties over an eighteen (18) month period failed to identify the specific types of communications or a topic. The trial court found Plaintiff's second (2nd) request seeking address and property loss information to be overly broad; however, the trial judge also concluded that the responsive information was exempt under the privacy exemption. N.J.S.A. 47:1A-1; Federal Privacy Act of 1974 (5 U.S.C.A. § 552a).

The Court affirmed the trial court's decision on the first (1st) request, holding that "[w]e agree with the trial judge's analysis and conclusion that Longport was not required to provide documents in response to plaintiff's overbroad first request." Id. at 7.

The Court affirmed the trial court's decision on the second (2nd) request, holding that the Privacy Act only applied to federal agencies and requests made pursuant to the Freedom of Information Act. Further, the Court, citing to N.J.S.A. 47:1A-5(a), held that "[b]ecause the information sought . . . is clearly protected from disclosure under the applicable federal statute and [FEMA] regulation, the request was properly denied."

- Signature Info. Solutions v. Jersey City Mun. Utils. Auth., 2016 N.J. Super. Unpub. LEXIS 594 (App. Div. 2016): Here, the Appellate Division affirmed the Law Division's decision denying Plaintiff's request for attorney's fees under OPRA. Specifically, the trial court denied Plaintiff's request for attorney's fees, holding that Defendants made a good faith effort to comply with the subject OPRA request.

On appeal, Plaintiff argued that the trial court erroneously conducted a good faith test (as opposed to a prevailing party test) when determining the fee issue. The Court reviewed the issue *de novo* and determined that Plaintiff failed to establish a factual causal nexus between the litigation and the relief ultimately achieved. The Court supported its conclusion with the following reasons:

- Plaintiff rejected one report as not fully compliant with the subject OPRA request; however, Plaintiff did not actually request the report she rejected.
- Plaintiff's OPRA request was invalid because it requested all billing information for every property in Jersey City serviced by United Water and improperly required Defendants to compile data not readily available.
- Even had the request been valid, Defendants numerous attempts to accommodate Plaintiff represented a "reasonable solution[] that involve[d] brief delay." Spectraserv, Inc. v. Middlesex Cnty. Utils. Auth., 416 N.J. Super. 565, 582 (App. Div. 2010)
- Twp. of Wantage v. Caggiano, 2016 U.S. Dist. LEXIS 44586 (D.N.J., Mar. 9, 2016)(*Adopted Twp. of Wantage v. Caggiano*, 2016 U.S. Dist. LEXIS 44713 (D.N.J., Mar. 31, 2016): Here, the U.S. District Court granted Plaintiff's motion to remand and denied Defendant's cross-motion to transfer.

Specifically, in response to Plaintiff’s verified complaint seeking equitable relief, Defendant filed a notice of removal to the District Court. Plaintiff opposed the notice of removal, arguing that Defendant filed same untimely. The District Court agreed and ordered a remand back to NJ Superior Court, holding that Plaintiff introduced adequate proof, without contest, that Defendant failed to timely submit the notice of removal in District Court. The District Court also noted that even if Defendant timely submitted his notice, the case would still require remand because the District Court had no jurisdiction over the subject matter.

Defendant also filed a cross-motion to transfer the complaint to the “[U.S.] District Court for the District of Nevada.” Defendant based his motion on “the corruption of the Superior Court of New Jersey and its judges.” The District Court held that it did not reach this issue because the case required remand. However, the District Court noted that the action “bears no apparent relationship to . . . Nevada insofar as it relates entirely to Defendant’s conduct in New Jersey directed at a New Jersey township and its employees.” Id. at 6-7.

- Paff v. Galloway Twp., 2016 N.J. Super. LEXIS 54 (App. Div. 2016): Here, the Appellate Division reversed the Law Division’s decision requiring Defendants to disclose the requested list of e-mails (or e-mail log) showing sender, recipient, date, and time of e-mails.

Defendants appealed the trial court’s decision arguing that Plaintiff required them to create a record that did not exist at the time of the request. Plaintiff disagreed, arguing that the responsive logs were essentially “metadata.” The Court was not persuaded, holding that Defendants were not required to create the requested log, which Defendants did not previously create for employee use. The Court noted that Defendants would not be overly burdened to create such a log, but that redacting the finished product could prove to be a substantial effort.

IX. Public Comment: None

X. Adjournment:

Ms. Tabakin called for a motion to end the Council meeting. Mr. Martucci made a motion which was seconded by Mr. Ritardi. The motion passed unanimously.

The meeting adjourned at 3:27 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: May 24, 2016