



**Minutes of the Government Records Council  
September 29, 2016 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:35 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 September 26, 2016.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Tabakin, Esq. (Chairwoman), Tim Cunningham (designee of Department of Community Affairs Commissioner Charles A. Richman), and Christopher Huber, Esq. (designee of Department of Education Commissioner David C. Hespe)

Absent: 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), Husna Kazmir (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Tabakin informed the public that copies of the agenda 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 4,457 Denial of Access Complaints. That averages a bit fewer than 313 complaints per 14¼ program years.
- In the current program year, the GRC has so far received 87 complaints.
- 530 of the 4,457 complaints remain open and active. Of those open cases,
  - 18 complaints are on appeal with the Appellate Division (3.4%);
  - 19 complaints are currently in mediation (3.6%);
  - 38 complaints await adjudication by the Office of Administrative Law (7.2%);
  - 119 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the November 2015 meeting (22%) and
  - 329 complaints are work in progress (62%).
- Since Program Year (PY) 2004, the GRC has received 25,614 total inquiries. That is an average of about 1,933 inquiries per 13¼ tracked program years. So far in the current PY, the GRC has received 468 inquiries.
- PY 2016 represented the GRC's third highest year of intake in the agency's history. Of note, the past three PYs (not including the current PY) represent three of the GRC's four highest years. Intake during that period represents 28% of the agency's total intake since inception (not including the current PY). A linear intake rate would be a bit over 21%.
- In the preceding five program years (PYs 2012 to 2016 inclusive), the GRC received an average of about 378 annual complaints. Prior to that, the average was about 275. With respect to those two periods, the increase is 37%. In the preceding 3 program years alone, the GRC received an average of about 404 complaints per year, representing an increase of 27% over the GRC's yearly average since inception.
- In the first six months of calendar year 2016 (January to June 2016), the GRC's production was higher than the immediately preceding six months (July to December 2015). The GRC achieved the increase despite having less staff.
- Production during the first six months of calendar year 2015 (January to June 2015) was 21% higher than the immediately preceding six months (July to December 2014).

## Mediation Program

- The GRC's mediation program continues to thrive.
- In PY 2016, a total of 78 cases were referred to mediation. Of those 78 cases:
  - 41 were settled at mediation, obviating the need for adjudication (53%).
  - 13 were not mediated for various reasons: *e.g.*, the complainant withdrew the complaint, scheduling issues, etc. (17%).
  - 5 are still pending (6%).
- Of the 60 cases that actually went to mediation, the parties successfully resolved the matter 68% of the time (41 / (78-13-5)).
- On average in PY 2016, the GRC was able to mediate cases in 3.2 months.

Since the inception of the GRC's mediation program, 894 complaints have been referred to mediation with 503 of those being settled. That is an overall 56% success rate.

### III. Closed Session:

Ms. Tabakin read the 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:

- Naeem Akhtar v. NJ Department of Law and Public Safety, Division of Criminal Justice (2014-344)
- Eric M. Aronowitz, Esq. (o/b/o Middlesex County Board of Social Services) v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-113)
- Susan Noto v. Bergen County (2015-245)

Ms. Tabakin called for a motion to go into closed session. Mr. Cunningham made a motion, and Mr. Huber seconded the motion. The Council adopted the motion by a majority vote; Mr. Ritardi was absent.

The Council met in closed session from 1:44 p.m. until 2:32 p.m.

Ms. Tabakin called for a motion to end the closed session meeting. Mr. Cunningham made a motion, which was seconded by Mr. Huber. The Council adopted the motion by a majority vote; Mr. Ritardi was absent. Open Session reconvened at 2:34 p.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Mr. Cunningham, and Mr. Huber. Mr. Ritardi was absent.

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

- **July 26, 2016 Open Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the open session minutes of the July 26, 2016 meeting. Mr. Huber made a motion, seconded by Mr. Cunningham. Mr. Cunningham noted that he confirmed the accuracy of the minutes with Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi was absent.

- **July 26, 2016 Closed Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the closed session minutes of July 26, 2016 meeting. Mr. Huber made a motion, seconded by Mr. Cunningham. Mr. Cunningham noted that he confirmed the accuracy of the minutes with Mr. Martucci. The motion passed by a majority vote; Ritardi was absent.

#### **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. A short summary of the reason for the Administrative Disposition is under each complaint below:

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

1. **David Weiner v. County of Essex (2016-71) (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. Cunningham made a motion, which was seconded by Mr. Huber. The motion passed by a majority vote; Mr. Ritardi was absent.

2. **David Heasley Weiner v. County of Essex (2016-182) (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. Cunningham made a motion, which was seconded by Mr. Huber. The motion passed by a majority vote; Mr. Ritardi was absent.

3. **David Heasley Weiner v. County of Essex (2016-183) (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. Cunningham made a motion, which was seconded by Mr. Huber. The motion passed by a majority vote; Mr. Ritardi was absent.

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

1. **Louis J. Marchuk v. Borough of Stratford (Camden) (2015-397)**
  - The parties settled the matter through mediation.
2. **David Graves and Terri Slaughter-Cabbell v. Plainfield Board of Education (Union) (2016-37)**
  - The parties settled the matter through mediation.
3. **Judith DeHaven v. Red Bank Charter School (Monmouth) (2016-92)**
  - The parties settled the matter through mediation.
4. **Jesse Cohen v. NJ Civil Service Commission (2016-134)**
  - The parties settled the matter through mediation.
5. **Martin Moskovitz v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2016-146)**
  - The parties settled the matter through mediation.
6. **Steven Raymond Fritts v. NJ Department of Environmental Protection (2016-148)**
  - The parties settled the matter through mediation.
7. **Michael Alan King v. NJ Department of Corrections (2016-185)**
  - No correspondence was received by the Custodian.
8. **Anthony M. Fernandez v. Superior Court of NJ – Middlesex Vicinage (2016-203)**
  - The request is not within the Council's jurisdiction to adjudicate.

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

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

1. **James G. Savage, Jr. (o/b/o Lacey Township Board of Education) v. NJ Schools Insurance Group (2015-3)**
2. **Lou Hall v. Rowan University (2016-144)**
3. **Lou Hall v. Borough of Glassboro (Gloucester) (2016-145)**
4. **Libertarians for Transparent Government v. Pleasantville Board of Education (Atlantic) (2016-161)**
5. **Michael Inzelbuch, Esq. v. Elizabeth Board of Education (Union) (2016-164)**
6. **Libertarians for Transparent Government v. County of Salem (2016-173)**
7. **Joyce E. Boyle, Esq. (o/b/o M.K. and T.K.) v. Monroe Township Board of Education (Middlesex) (2016-179)**
8. **Carol Scutro v. City of Linden (Union) (2016-194)**

9. **Apu Mullick v. NJ State Police (2016-208)**
10. **Michael Oates v. Downe Township (Cumberland) (2016-221)**
11. **Michael Oates v. Downe Township (Cumberland) (2016-222)**
12. **Michael Oates v. Downe Township (Cumberland) (2016-223)**
13. **Kevin Redden v. Town of Westfield (Union) (2016-228)**
14. **Lina Dedulin (o/b/o County of Essex) v. Township of Irvington (Essex) (2016-246)**

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

### A. Individual Complaint Adjudications with Recusals:

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

1. **John F. Huegel v. County of Essex (2014-305) (SR Recusal)**
  - The Complainant withdrew the matter from the Office of Administrative Law.
  - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Mr. Huber made a motion, and Mr. Cunningham seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.
2. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-133) (SR Recusal)**
  - The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request, resulting in a “deemed” denial.
  - The Custodian might have unlawfully denied access to responsive records. The Custodian must therefore provide readily identifiable records, if any, that existed at the time of the OPRA request.
  - If the Custodian believes either that certain records are exempt or that no records exist, the Custodian must so certify.
  - 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. Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Mr. Cunningham made a motion, and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.
3. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-134) (SR Recusal)**
  - The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request, resulting in a “deemed” denial.
  - The issue of whether the Custodian properly disclosed responsive records should be held in abeyance, pending the Appellate Division’s ruling on Scheeler, Jr. v. Office of the Governor, et al, Docket A-1236-14T3.

- The knowing and willful and prevailing party analyses are deferred the removal of the standing abeyance and full adjudication of this complaint.
  - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Mr. Huber made a motion, and Mr. Cunningham seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.
4. **Larry S. Loigman, Esq. v. Lakewood Fire District No. 1 (Ocean) (2016-96) (TC Recusal)**
- The GRC must hold the case from consideration because a quorum cannot be achieved.

**B. Individual Complaint Adjudications with no Recusals:**

1. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2011-318)**
- The Council should accept the Administrative Law Judge’s Initial Decision, which held that “[t]he plain language of [OPRA] suggests that PAC money e-mails are not public records . . . and this matter is dismissed.”
  - 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
2. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-287)**
- Legal counsel needs more time to review the matter and has requested that the case be tabled.
3. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328)**
4. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-329)**
5. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-330)**
6. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-331) Consolidated**
- Legal counsel needs more time to review the matter and has requested that the case be tabled.
7. **Michael L. Shelton v. Manasquan Public School District (Monmouth) (2014-183)**
- Legal counsel needs more time to review the matter and has requested that the case be tabled.
8. **Naeem Akhtar v. NJ Department of Law and Public Safety, Division of Criminal Justice (2014-344)**
- The Custodian complied with the Interim Order by responding in the prescribed time frame.
  - The *in camera* inspection reveals that the Custodian lawfully denied access pursuant to N.J.S.A. 47:1A-6.

- 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 motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.
9. **Thomas Vandergrift v. Pennsauken Public Schools (Camden) (2014-373)**
- The Council should close the matter because the prevailing party failed to comply with the Interim Order. Neither the Complainant nor the counsel timely submitted an application for attorney’s 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
10. **Tyrone Maurice Jamison (Bey) v. North Brunswick Township (Middlesex) (2014-381)**
- The Custodian has borne her burden of proof that she lawfully denied access to the requested records because she certified, and the evidence reflects, that no responsive records exist.
  - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.
11. **John Paff v. Harrison Township Fire District (Gloucester) (2014-402)**
- Legal counsel needs more time to review the matter and has requested that the case be tabled.
12. **Clifford Wares v. Passaic County Prosecutor’s Office (2014-410)**
- The Custodian did not unlawfully deny access by directing the Complainant to the proper custodian in compliance with N.J.S.A. 47:1A-5(h).
  - The Custodian properly requested clarification of the OPRA request, but the Complainant did not respond.
  - 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
13. **Robert D. Castagna v. Gloucester Township Police Department (Camden) (2014-428)**
- The Custodian did not bear the burden of proof that she timely responded to the Complainant’s OPRA request, resulting in a “deemed” denial.



- The Custodian has borne her burden of proving that she did not unlawfully deny access because she certified, and the evidence reflects, that no responsive 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

14. **Regino De La Cruz v. City of Union City (Hudson) (2015-14)**

- Legal counsel needs more time to review the matter and has requested that the case be tabled.

15. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2015-61)**

- The Custodian did not unlawfully deny access because the Complainant already possessed the record in question at the time of the OPRA request.
- There is no knowing and willful violation.
- The Complainant is not a prevailing party and is not eligible for an award of reasonable attorney's 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 motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.

16. **Michael I. Inzelbuch, Esq. (o/b/o Center for Education) v. Lakewood Board of Education (Ocean) (2015-68)**

- Ms. Piasentini responded timely, but her response was insufficient because she did not provide a date certain by which she would respond.
- The GRC declines to order disclosure of requested item No. 3 because all responsive records were previously provided.
- Requested item Nos. 1, 2, and 7 are invalid because they failed to seek identifiable records and would have required the Custodian to conduct research. Requested Items No. 5 and 8 are invalid because they failed to contain all necessary criteria required to be valid requests for e-mails.
- Consistent with GRC 2013-69, Ms. Piasentini did not unlawfully deny access to requested item No. 4 because she provided the Complainant a link to the webpage where the responsive records are readily available.
- There is no knowing and willful violation.
- The Complainant is not a prevailing party and is not eligible for an award of reasonable attorney's 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.

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

17. **Joy DeSanctis v. Borough of Belmar (Monmouth) (2015-87)**

- There is no denial of access. To the contrary, the Custodian disclosed to the Complainant a record that is not disclosable to the public under 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 motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.

18. **Harry B. Scheeler, Jr. v. Burlington Township (Burlington) (2015-93)**

- The Custodian has met his burden of proof that he lawfully denied access to the Complainant's OPRA request. The Complainant may not request records under OPRA because he is not a citizen of New Jersey.
- 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

19. **Matthew R. Curran, Esq. (o/b/o Marlowe Botti) v. Borough of West Long Branch (Monmouth) (2015-110)**

- There was no unlawful denial of access to the "audio and video" because the Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the certification.
- The GRC declines to order disclosure because the evidence shows that all responsive records were provided.
- 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 motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.

20. **Eric M. Aronowitz, Esq. (o/b/o Middlesex County Board of Social Services) v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-113)**

- The Council chose to table the matter to seek further legal advice.

21. **Luis F. Rodriguez v. Kean University (2015-150)**

- Legal counsel needs more time to review the matter and has requested that the case be tabled.

22. **Richard B. Henry, Esq. v. Township of Hamilton Police Department (Atlantic) (2015-155)**
- Legal counsel needs more time to review the matter and has requested that the case be tabled.
23. **Robert A. Verry v. West Milford Board of Education (Passaic) (2015-156)**
- The Custodian did not bear her burden of proving that she timely responded to the OPRA request, resulting in a “deemed” denial.
  - The GRC has no need to order disclosure because the Custodian ultimately disclosed a responsive record.
  - There is no knowing and willful violation.
  - The Complainant is a prevailing party and is eligible for an award of reasonable attorney’s 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
24. **Melissa Bailey v. NJ Department of Children and Families (2015-159)**
- The Custodian properly denied access to records of child abuse because the requested records are statutorily exempt from disclosure pursuant to N.J.S.A. 9:6-8.10(a).
  - There was no unlawful denial of access to “court documents or newspaper articles” because 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. Huber made motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.
25. **Gregory B. Pasquale, Esq. (o/b/o Monroe Township Utilities Department) v. NJ Department Environmental Protection (2015-172)**
- The Custodian’s response was insufficient, but the denial of access was not unlawful in the instant case because the Custodian rectified the error.
  - There is no knowing and willful violation.
  - The Complainant is not a prevailing party and is not eligible for an award of reasonable 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 motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.

26. **Greg Bogert v. Borough of Riverdale (Morris) (2015-207)**

27. **Greg Bogert v. Borough of Riverdale (Morris) (2015-208) Consolidated**

- The original Custodian did not unlawfully deny access because the current Custodian certified that she provided responsive correspondence and the Complainant already possessed records in question at the time of the OPRA request.
- 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

28. **Luis F. Rodriguez v. Kean University (2015-209)**

- The Custodian's initial failure to locate responsive records constitutes an insufficient search and an unlawful denial of access.
- The Custodian did not unlawfully deny access to the requested 2012 contract because the Complainant possessed the contract and because the Complainant possessed the record at the time of the OPRA request.
- 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

29. **David Deegan v. Township of Franklin (Gloucester) (2015-233)**

- The GRC must conduct an *in camera* review of the undisclosed record in order to validate the Custodian's assertions that the withheld record is exempt from disclosure.
- 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 motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.

30. **Nancy A. Valentino, Esq. v. Camden County (2015-242)**

- The Custodian's response was insufficient because she failed to state definitively that the responsive records did not exist. However, the GRC declines to order disclosure because it is clear that the Custodian possesses no responsive records.
- 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

31. **Susan Noto v. Bergen County (2015-245)**

- The Council chose to table the matter in order to seek further legal advice.

32. **Lourdes E. Rodriguez v. City of Trenton (Mercer) (2015-248)**

- The Custodian lawfully denied access because he certified that no responsive records were located, and the Complainant failed to submit 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 motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.

33. **Terri Howell v. Township of Greenwich (Warren) (2015-249)**

- Legal counsel needs more time to review the matter and has requested that the case be tabled.

34. **Tammy Duffy v. Township of Hamilton (Mercer) (2015-279)**

- The request is invalid because it failed to identify specific governmental 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

35. **Charles Street v. North Arlington School District (Bergen) (2015-295)**

- The Complaint is materially defective and should be dismissed because the cause of action was not ripe at the time the Complainant filed the Denial of Access 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 motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.

36. **Michael Murphy v. NJ Department of Corrections (2015-335)**

- The Custodian's redactions from items No. 1 and 2 of the first OPRA request were lawful.
- The Custodian lawfully denied access to item No. 1 of the second OPRA request because he certified that no responsive records exist, and the Complainant offered no competent, credible evidence to refute the certification.
- The Custodian lawfully denied access to item No. 2 of the second OPRA request because the records are exempt from access.
- Because the Complainant did not pay the required copying fee, 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. Cunningham made motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

37. **Annette L. Steinhardt v. Somerset County Prosecutor’s Office (2015-414)**

- The Custodian lawfully denied access because the first OPRA request was invalidly overbroad, the requested records constitute criminal investigatory records that are exempt from disclosure, and no responsive records exist.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made motion, and Mr. Cunningham seconded the motion. The motion passed by a unanimous vote.

38. **Eric Warner, Esq. (o/b/o David Trotman) v. City of Trenton (Mercer) (2016-163)**

- Legal counsel needs more time to review the matter and has requested that the case be tabled.

**V. Court Decisions of GRC Complaints on Appeal: None**

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

- Doss v. Cook, 2016 N.J. Super. Unpub. LEXIS 1708 (July 13, 2016): Here, the Law Division held that: 1) defendants violated OPRA by failing to disclose certain Borough of Bogota issued cell phone billing records; 2) required another cohesive search for and disclosure of additional records; 3) required defendants to submit privileged records for an *in camera* review; and 4) deferred the prevailing party attorney’s fees issue until after the *in camera* review was completed.

Of interesting note, the case might be the first time a court has described an insufficient search in a manner very similar to the GRC’s insufficient search analysis.

- Branin v. Borough of Collingswood, 2016 N.J. Super. Unpub. LEXIS 1874 (App. Div. 2016): Here, the Appellate Division affirmed the trial court’s decision that defendants did not violate OPRA. This case featured a 2012 App. Div. decision remanding same back to the trial court for further proceedings as to whether defendants conducted a sufficient search and were able to identify responsive records. Plaintiff appealed the trial court’s decision, arguing that the court failed to address the factual issues that prompted the remand. The Appellate Division disagreed, holding that “[w]e affirm, substantially for the reasons set forth in the trial court’s comprehensive opinion.” Id. at 9.
- N. Jersey Media Group v. State Dep’t of Law & Pub. Safety, 2016 N.J. Super. Unpub. LEXIS 1881 (App. Div. 2016): In another of the annals of Bridge Gate-related OPRA requests, the Appellate Division affirmed in part and vacated in part. Specifically, the

trial court was tasked with determining whether defendants lawfully denied access to correspondence between the Attorney General's Office and various State agencies seeking indemnification in the wake of Bridge Gate. The trial court held that the responsive records were exempt under the attorney-client privilege exemption. However, the court also concluded that plaintiffs were a prevailing party because defendants disclosed redacted law firm retention letters to various media outlets, to include plaintiffs, two (2) weeks after the verified complaint. Both parties appealed.

The Appellate Division, reviewing this case *de novo*, first addressed redacted names of State employees that request indemnification. The Court was satisfied that said redactions were lawful under the attorney-client privilege exemption and RPC 1.6(a). Next, the Court addressed plaintiff's argument that the trial court failed to review denied records *in camera*. The Court held that, based on the record, it found "no basis to conclude the trial court abused its [\*20] discretion by not either reviewing the documents in camera or exercising its authority to compel the Division to produce a *Vaughn* index." *Id.*

The Appellate Division next turned to defendants' appeal and determined that the fee award had "no factual support in the record." *Id.* at 25. The Court noted that defendants disclosed records one week after plaintiff verified the trial court action but one week before they served notice to defendants. Further, the Court reasoned that defendants disclosed records to multiple media outlets, and not just to plaintiff. Finally, the Court noted that no evidence existed in the record proving that defendants knew about the action at the time that they disclosed responsive records.

- N. Jersey Media Group v. Puccio, 2016 N.J. Super. LEXIS 119 (App. Div. 2016)(Approved for Publication August 31, 2016): Here, the Appellate Division affirmed the trial court's decision upholding defendant's denial of access that he could "neither confirm nor deny" the existence of responsive records (also known as the "Glomar" response). Without focusing too much on the expansive back story: a "Glomar" response got its name from the seminal federal case Phillippi v. CIA, 546 F.2d 1009, 178 U.S. App. D.C. 243 (D.C. Cir. 1976). There, the CIA responded to a FOIA request in a non-committal way for records pertaining to the Hughes Glomar Explorer.

In what will no doubt be a long-debated issue, one that will likely go to the NJ Supreme Court, the Appellate Division took great care in setting forth years of federal case history on "Glomar" responses. Based on all prevailing case law, as well as the plain language of OPRA, the Court held that "we discern no impediment to the availability of a 'Glomar' response under OPRA's plain language." *Id.* at 21. The Court also rejected plaintiff's argument that a "Glomar" response is not one of the specifically identified exemptions in OPRA and that such a response is therefore unlawful.

## **VII. Complaints Adjudicated in U.S. District Court**

- Finnemen v. John Doe Camden Cnty. Police Officer, 2016 U.S. Dist. LEXIS 106128 (August 11, 2016): Here, the U.S. District Court (D.N.J.) addressed a few different issues, including plaintiff's assertion that defendants violated OPRA. The Court held that the alleged "[d]enial of access to OPRA records is not cognizable under federal law, so

Plaintiff's allegations against [defendants] fail to state a claim." The Court thus dismissed this portion of the action.

**VIII. Public Comment:** None

**X. Adjournment:**

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

The meeting adjourned at 3:03 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: October 25, 2016