



**Minutes of the Government Records Council  
November 14, 2017 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:34 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, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on November 9, 2017.”

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 Acting Commissioner Kimberley Harrington), Paul Urbish, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member), who participated by telephone.

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), and Deputy Attorney General Debra Allen.

Ms. Tabakin advised that copies of the agenda are available by the conference room door.

## **II. Executive Director's Report:**

### **OPRA Trainings**

- The Executive Director will conduct the next OPRA seminar during the annual conference of the New Jersey League of Municipalities in Atlantic City. For this year's event, the League of Municipalities has asked that the GRC provide a discussion of "Recent OPRA Decisions." The seminar will be held on Wednesday, November 15, at 2:00 p.m.

### **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 4,740 Denial of Access Complaints. That averages about 308 annual complaints per less than 15½ program years. So far in the current program year, the GRC has received 79 Denial of Access Complaints. At approximately this same time last year, the GRC had received approximately 119.
- 475 of the 4,740 complaints remain open and active (10%). Of those open cases,
  - 25 complaints are on appeal with the Appellate Division (5%);
  - 17 complaints are currently in mediation (4%);
  - 38 complaints await adjudication by the Office of Administrative Law (8%);
  - 49 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (10%); and,
  - 339 complaints are work in progress (71%).
- Since Program Year 2004, the GRC has received 27,688 total inquiries, averaging about 1,926 annual inquiries per less than 14½ tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year, the GRC has received 593 inquiries. At approximately this time last year, the GRC had received 755 inquiries. The year-over-year reduction in both inquiries and complaint filings (following huge spikes) is arguably correlated to the increased number of OPRA trainings over the past several years: better educated custodians make less mistakes and need to ask less questions.

### **Accomplishments**

- From January 1, 2015, until present:
  - The GRC has received 967 Denial of Access Complaints, which equals almost 21% of all complaints filed in the agency's history. That means that the GRC has received somewhat less than 1.4 complaints on average for every business day (allowing for public holidays) during that period.
  - The GRC has adjudicated 1,208 cases (some cases require multiple adjudications). That number does not include today's adjudications.
  - The GRC has received and addressed 5,644 inquiries, which equals a bit more than 20% of all inquiries received in the agency's history. That averages approximately 8 inquiries per every business day during that period.

- The GRC saw its second highest number of complaint filings in a calendar year (421 in CY 2015), which immediately followed its highest calendar year (433 in CY 2014).
- The GRC has been successfully able to mediate 88 of 189 referred cases (47%), with 11 of those 189 cases currently in active mediation.
- Despite a 38% reduction in staff in that timeframe, the GRC has been able to maintain production and whittle down the backlog caused by exceptionally high intake in calendar years 2014 and 2015.
- The GRC will have conducted or participated in 40 outreaches or OPRA trainings to various groups around the state (which includes the League of Municipalities' event in Atlantic City next week). In doing so, the GRC has cast a wide net around the state, having visited 14 of New Jersey's 21 counties ( $\frac{2}{3}$  of all counties in the state) during that period.
- The GRC successfully implemented phase one of an online filing system, which permits the public to file Denial of Access Complaints in an electronic, paperless format. Since implementation, approximately 50 Denial of Access Complaints have been received through the online portal. Certain browser compatibility issues have been identified and will be addressed in 2018.
- The GRC has ruled on significant issues of first impression, such as disclosure of police body camera videos, text messages, and ruled on the legal standing of out-of-state requestors.
- The GRC has averaged approximately 5.74 closures per week. Prior to January 1, 2015, the GRC averaged 5.25 closures per week and had more staff on average during that period.
- The Supreme Court affirmed the GRC on one (1) occasion.
- The Appellate Division affirmed the GRC nine (9) times.
- The GRC imposed one (1) knowing and willful violation and fined the custodian \$1,000.

### **III. Closed Session: None**

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

- **October 31, 2017 Open Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the draft open session minutes of the October 31, 2017 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Ms. Simons. Mr. Urbish also noted that he confirmed the accuracy of the draft minutes with Mr. Martucci. Mr. Huber made a motion, which was seconded by Mr. Urbish. The motion passed by a unanimous vote.

- **October 31, 2017 Closed Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the draft open session minutes of the October 31, 2017 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Ms. Simons. Mr. Urbish also noted that he confirmed the accuracy of the draft minutes with Mr.

Martucci. Mr. Huber made a motion, which was seconded by Mr. Urbish. The motion passed by a unanimous vote.

## **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)**

1. **Terri Howell v. Township of Greenwich (Warren) (2016-36) (SR Recusal)**
  - There is no denial of access at issue.
2. **Mark L. Tompkins v. City of Newark (Essex) (2017-186) (SR Recusal)**
  - The Custodian did not receive an OPRA request.

Ms. Tabakin called for a motion to accept all the recommendations as written in the above Administrative Complaint Dispositions. Mr. Urbish made a motion which was seconded by Huber. The motion pass by a majority vote; Mr. Ritardi recused.

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

1. **Oderi Caldwell v. Salem County Correctional Facility (2016-117)**
  - The Custodian did not receive an OPRA request.
2. **Zozo Moawad v. City of Bayonne Police Department (Hudson) (2017-162)**
  - The Custodian did not receive an OPRA request.

Ms. Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Mr. Huber made a motion, which was seconded by Mr. Urbish. The motion passed by a unanimous vote.

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

1. **Marc Liebeskind v. Highland Park Police Department (Middlesex) (2017-207)**
  - The Complainant withdrew the complaint.

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

### **A. Individual Complaint Adjudications with Recusals:**

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

1. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-370) (SR Recusal)**

- The Custodian did not timely respond, thus resulting in a “deemed” denial.
- Item Nos. 1 and 2 are invalid because they did not include a range of dates for the requested e-mails and merely sought records pertaining to “official Borough business,” which is an overly broad descriptor that lacks sufficient specificity.
- Item Nos. 3 and 4 are valid requests because they identify a sender or recipient, provide a specific range of dates, and identify the subject of the e-mails.
- The Custodian must disclose records responsive to requested item Nos. 3 and 4.
- 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. Urbish seconded the motion. The motion passed by a majority vote; Mr. Ritardi, recused.

2. **Katalin Gordon v. City of Orange Township (Essex) (2016-127) (SR Recusal)**

- The Custodian did not timely respond, thus resulting in a “deemed” denial.
- The Custodian may have unlawfully denied access to the responsive invoice. The Custodian must therefore search for and disclose a responsive invoice showing payments made for CD’s prior to March 17, 2016, or otherwise certify that no records exist.
- 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. Urbish made a motion, and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi, recused.

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

1. **Jesse Wolosky v. Borough of Washington (Warren) (2015-402)**

- The Council should dismiss the matter because the parties have agreed to a prevailing party fee amount, thereby obviating the need for further adjudication.
- 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. Urbish made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

2. **Vincent Mastropasqua v. Stafford Township Police Department (Ocean) (2016-4)**

- The Council has no authority over the content of records provided.
- 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. Huber made a motion and Mr. Urbish seconded the motion. The motion passed by a unanimous vote.
3. **Stuart Alterman, Esq. (o/b/o Police Benevolent Association Local 167 (Mercer County Corrections Officers)) v. County of Mercer (2016-57)**
- Requested item Nos. 1, 2, and 5 are invalid because the Complainant neglected to include a specific timeframe within which the Custodian could narrow his search.
  - The Custodian lawfully denied access to the inmate shared services agreements because no responsive records exist.
  - The Complainant is not a prevailing party and is therefore not entitled to 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. Urbish made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
4. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-89)**
- The Custodian did not timely respond, thus resulting in a “deemed” denial.
  - There is no need for the Council to order disclosure because the Custodian disclosed all 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. Huber made a motion and Mr. Urbish seconded the motion. The motion passed by a unanimous vote.
5. **John Paff v. City of Trenton (Mercer) (2016-95)**
- The Custodian did not timely respond, thus resulting in a “deemed” denial.
  - The agency’s collective response was sufficient to the extent that it addressed each requested item. However, the collective response was ultimately insufficient because the individual responses failed to provide a lawful basis for denying access to requested item Nos. 2 and 3.
  - The Custodian might have unlawfully denied access to certain records responsive to requested item Nos. 1, 2, and 3. The Custodian must either: 1) disclose all responsive records that have not yet been provided; 2) certify to the inability to adhere to the Supreme Court’s decision in Paff v. Galloway; or 3) certify that no responsive records exist.
  - Detective Durlacher shall provide a legal certification supporting the Custodian’s compliance.
  - 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. Urbish seconded the motion. The motion passed by a unanimous vote.
6. **Luis F. Rodriguez v. Kean University (2016-128)**
- The Custodian timely responded.
  - The Custodian did not unlawfully deny access because 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. Urbish made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
7. **Peter Gartner v. Borough of Middlesex (Middlesex) (2016-135)**
- There is no denial of access because 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. Urbish made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
8. **James L. Baxter v. Mercer County Prosecutor’s Office (2016-137)**
- The Custodian did not unlawfully deny access because the requested records are exempt from disclosure as criminal investigatory 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. Urbish seconded the motion. The motion passed by a unanimous vote.
9. **Josue Rodriguez v. NJ Department of Corrections (2016-139)**
- The requested records are exempt from disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(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. Huber made a motion and Mr. Urbish seconded the motion. The motion passed by a unanimous vote.
10. **Art Rittenhouse v. Middlesex County (2016-142)**
- The portion of the OPRA request that sought correspondence is valid because it identified a date or range of dates, parties, and content. The Custodian must therefore disclose all responsive records.

- The portions of the request that sought “meeting dates” is invalid because it sought information, not a specific government record.
- 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. Urbish made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

**11. Charles R. Cohen v. City of Englewood (Bergen) (2016-253)**

- The Custodian lawfully denied access to the requested memorandum because the record was in draft form at the time of the request.
- The GRC must conduct an *in camera* review of the responsive Daily Progress Reports to validate the Custodian’s assertion that the records were disclosed in unredacted form.
- In seeking “all other documents (descriptions currently unknown),” the Complainant failed to identify specific records. The request is therefore invalid.
- 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. Urbish seconded the motion. The motion passed by a unanimous vote.

**12. Shaquan Thompson v. NJ Department of Corrections (2016-300)**

- The requested record is exempt as advisory, consultative, and/or deliberative material.
- 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. Urbish seconded the motion. The motion passed by a unanimous vote.

**13. Tysheim Murphy v. Atlantic County Prosecutor’s Office (2017-25)**

- There is no unlawful denial of access because the Complainant seeks records that contain personal information pertaining to the victim of his offense.
- 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. Urbish made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

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

**VIII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None**

**IX. Public Comment:**

**X. Adjournment:**

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

Mr. Ritardi exited the meeting at 1:52 p.m.

The meeting adjourned at 1:55 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: December 19, 2017