



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
March 27, 2018

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 1:30 p.m., Tuesday, March 27, 2018, at the Department of Community Affairs (“DCA”) offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 1:30 p.m. in Room 129 of the DCA.

I. Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

II. Communications Specialist/Resource Manager’s Report

III. Closed Session

IV. Approval of Minutes of Previous Meetings:

February 27, 2018 Open Session Meeting Minutes
February 27, 2018 Closed Session Meeting Minutes

V. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

An “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural or other defects of the complaint. The Council Staff’s recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda): None

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

1. Brian Keith Bragg v. Mercer County Correctional Center (2016-160)
 - Unripe Cause of Action



2. Michael Phillips v. Florence Township Police Department (Burlington) (2018-13)
 - Not a Valid OPRA Request
3. Harry Dunleavy v. Equal Employment Opportunity Commission (EEOC) (2018-19)
 - Not Within the Council’s Jurisdiction to Adjudicate (Federal Agency)
4. Bruce M. Hall v. Burlington County Superior Court (2018-37)
 - Not Within the Council’s Jurisdiction to Adjudicate (Judiciary)

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

1. John Arthur Haberbusch v. Ocean County Department of Corrections (2017-245)
 - Settled in Mediation
2. Scott Madlinger v. Borough of Beachwood Police Department (Ocean) (2018-36)
 - Complaint Voluntarily Withdrawn

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

The Council Staff’s recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Olajuwon Herbert v. Essex County Prosecutor’s Office (2016-51) **(SR Recusal)**
 - The Custodian lawfully denied access to responsive records beyond those provided because same constituted criminal investigatory records.
2. Mary Sadrakula v. Clifton Board of Education (Passaic) (2016-60) **(SR Recusal)**
 - The Custodian’s timely response providing records resulted in no unlawful denial of access.
 - The Complainant is not a prevailing party and thus not entitled to a fee award.

B. Individual Complaint Adjudications with no Recusals:

1. Shawn G. Hopkins v. Borough of Englishtown (Monmouth) (2014-23)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby obviating the need for any further adjudication.
2. Shawn G. Hopkins v. Freehold Township (Monmouth) (2014-27)
 - Mr. Imbriaco unlawfully denied access to responsive CAMA data and must disclose it.
 - The Custodian and/or Mr. Imbriaco may have unlawfully denied access to responsive property photographs. The Custodian must either disclose the photographs or certify if no such records exist.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.

3. Shawn G. Hopkins v. Hazlet Township (Monmouth) (2014-28)
 - The Custodian unlawfully denied access to the responsive CAMA data and property photographs. However, the GRC declines to order disclosure because the Custodian provided those records to the Complainant.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
4. Harry B. Scheeler, Jr. v. State of NJ Office of the Governor (2014-67)
 - The Complainant withdrew this complaint; thus, no further adjudication is required.
5. Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2014-365)
 - The Council should lift the abeyance of this complaint and address whether the Custodian properly responded to the Complainant's OPRA request.
 - The Custodian may have unlawfully denied access to the responsive records. The Custodian must: 1) disclose all records; and/or 2) provide a document index explaining the specific lawful basis for any withheld or redacted records.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.
6. Galloway Township News v. City of Cape May (Cape May) (2015-419)
 - The initially assessed copy cost was unlawful under OPRA. Further, the GRC declines to address the special service charge issue because the Custodian did not assess one.
 - The Custodian may have unlawfully denied access to responsive records and must either disclose them or provide evidence supporting prior disclosure.
 - The knowing and willful analysis is deferred pending compliance.
7. Larry S. Loigman, Esq. v. Lakewood Fire Company No. 1 (Ocean) (2016-84)
 - The Council should lift the abeyance of this complaint and address whether Mr. Colangelo properly responded to the Complainant's OPRA request.
 - Mr. Colangelo lawfully denied access to the Complainant's OPRA request because Lakewood Fire Company No. 1 is not a "public agency" under OPRA. Verry v. Franklin Fire Dist. No. 1 (Somerset), 230 N.J. 285 (2017).
 - The Complainant is not a prevailing party and thus not entitled to a fee award.

8. William R. Juliana v. Township of Washington (Gloucester) (2016-106)

9. William R. Juliana v. Township of Washington (Gloucester) (2016-111)

10. William R. Juliana v. Township of Washington (Gloucester) (2016-112) **Consolidated**

- The Custodian's failure to timely respond to the September 24, 2014 OPRA request resulted in a "deemed" denial.
- The Custodian may have unlawfully denied access to records responsive to the Complainant's three (3) OPRA requests. The Custodian must conduct a search for additional records and certify to the results. Should the Custodian locate additional records, she must disclose them.

- The knowing and willful and prevailing party analyses are deferred pending compliance.
11. Jamel Lewis v. Union County Prosecutor’s Office (2016-131)
- The Custodian’s failure to timely respond resulted in a “deemed” denial.
 - The Custodian did not adequately prove that the Complainant possessed the records sought at the time of his OPRA request.
 - The Custodian may have unlawfully denied access to the requested arrest reports, warrants, and judgment of convictions. The Custodian shall either: 1) disclose those records; 2) certify to whether no records exists; and/or 3) provide additional certifications supporting that the Complainant possessed these records at the time of his OPRA request.
 - The Custodian lawfully denied access to any responsive pre-sentencing reports, investigative reports, and criminal rap sheets.
 - The knowing and willful analysis is deferred pending compliance.
12. Mark Demitroff v. Buena Vista Township (Atlantic) (2016-141)
- The Custodian’s March 23, 2016 response was insufficient because she failed to address the Complainant’s preferred method of delivery.
 - The Custodian did not unlawfully deny access to any records because she certified, and the record reflects, that she provided all that existed. The GRC also declines to address whether the Township was required to maintain original copies of the records due to lack of authority.
 - There is no knowing and willful violation.
13. Christopher Tirado v. Rutgers University (2016-165)
- The original Custodian’s failure to respond within the extended time frame resulted in a “deemed” denial.
 - The original Custodian’s action may have been knowing and willful; thus, this complaint shall be referred to the Office of Administrative Law for a proof hearing.
14. Waymon Chester v. NJ Department of Corrections (2016-167)
- The Custodian lawfully denied access to the responsive records based on the New Jersey Department of Corrections’ regulations.
15. Marc Mayer v. Borough of Point Pleasant (Ocean) (2016-186)
- The Custodian’s extension request was warranted and substantiated.
 - The Custodian lawfully denied access to records in connection with “complaints and concerns” raised about Office Kavanagh under the personnel exemption.
16. Raquel Horowitz v. City of Long Branch Housing Authority (Monmouth) (2016-189)
- The Custodian’s failure to timely respond resulted in a “deemed” denial.
 - The Complainant’s request item Nos. 1 through 8 were invalid because they sought information.
 - The Custodian lawfully denied access to the waiting list responsive to OPRA request item No. 9 under the Privacy Act of 1974.
 - There is no knowing and willful violation.

17. *Libertarians for Transparent Government v. Summit Public Schools (Union)* (2016-193)
 - The Custodian’s extension request was warranted and substantiated.
 - The Complainant is not a prevailing party and thus not entitled to a fee award.
18. *Boris Boretsky v. Middlesex County Prosecutor’s Office* (2016-220)
 - The Custodian lawfully denied access to all records sought in the Complainant’s OPRA request.
19. *Luis F. Rodriguez v. Kean University* (2016-236)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial. However, the GRC declines to order disclosure because the Custodian disclosed the record to the Complainant.
 - There is no knowing and willful violation.
20. *Alonzo Lugo v. NJ Department of Corrections* (2017-8)
 - The Custodian lawfully denied access to OPRA request item Nos. 1 and 2 because no records existed.
 - The Custodian lawfully denied access to OPRA request item No. 3 in accordance with the New Jersey Department of Corrections’ regulations.
21. *Eric Petr v. Town of Morristown (Morris)* (2017-95)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial.
 - The Complainant’s OPRA request is invalid because it failed to seek an identifiable record.
 - There is no knowing and willful violation.
22. *Robert McDonnell v. Hillsborough Township (Somerset)* (2017-107)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial.
 - This complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts as well as a determination of whether the Custodian knowingly and willfully violated OPRA.

VII. Court Decisions of GRC Complaints on Appeal:

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

- Middlesex Cty. Prosecutor's Office v. NJ Advance Media, LLC, 2018 N.J. Super. Unpub. LEXIS 486 (App. Div. 2018)
- Rivera v. Middlesex Cnty. Prosecutor's Office, 2018 N.J. Super. Unpub. LEXIS 628 (App. Div. 2018)

IX. Public Comment:

The public comment period is limited to providing an opportunity for speakers to present suggestions, views and comments relevant to the Council’s functions and responsibilities.

In the interest of time, speakers may be limited to **five (5) minutes**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

X. Adjournment

*Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.