



**Minutes of the Government Records Council
May 22, 2018 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:30 p.m. by Mr. Steven Ritardi 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**

Steven Ritardi 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 May 27, 2018.”

Steven Ritardi read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Christopher Huber, Esq. (designee of Department of Education Acting Commissioner Dr. Richard Lamont Repollet), and Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi (Public Member).

Absent: Robin Berg Tabakin, Esq. (Chairwoman)

GRC Staff in Attendance: Frank F. Caruso (Communications Specialist/Resource Manager) Rosemond Bordzoe (Secretary), John Stewart (Mediator), Samuel Rosado (Staff Attorney), and Deputy Attorney General Debra Allen.

Mr. Ritardi advised that copies of the agenda are available by the conference room door.

II. Communications Specialist/Resource Manager's Report:

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 4,860 Denial of Access Complaints. That averages about 308 annual complaints per a little more than 15¾ program years. So far in the current program year, the GRC has received 197 Denial of Access Complaints. The GRC received 24 complaints alone since its April 2018 meeting.
- 493 of the 4,860 complaints remain open and active (10.1%). Of those open cases:
 - 15 complaints are on appeal with the Appellate Division (3%);
 - 10 complaints are currently in mediation (2%);
 - 39 complaints await adjudication by the Office of Administrative Law (8%);
 - 60 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (12.2%);
 - 367 complaints are work in progress (74.4%);
 - 1 complaints are proposed for the Office of Administrative Law (.2%); and
 - 1 complaint is being held in abeyance (.2%).
- Since Program Year 2004, the GRC has received 28,778 total inquiries, averaging about 1,951 annual inquiries per a little more than 14¾ 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 1,612 inquiries.
- From January 1, 2015, until present:
 - The GRC has received 1,085 Denial of Access Complaints, which equals 22% of all complaints filed in the agency's history. That means that the GRC has received 1.3 complaints on average for every business day (allowing for public holidays) during that period.
 - The GRC has adjudicated 1,345 cases (some cases require multiple adjudications). That number does not include today's adjudications.
 - The GRC has received and addressed 6,652 inquiries, which equals 23% of all inquiries received in the agency's history. That averages approximately 8 inquiries per every business day during that period.
 - The GRC has been successfully able to mediate 101 of 215 referred cases (47%), with 12 of those 215 cases currently in active mediation.

III. Closed Session:

- Jason Marshall Litowitz v. NJ Department of Transportation (2015-301) (ICFR)
- Luis F. Rodriguez v. Kean University (2016-159) (ICFR)
- Scheeler v. Atlantic Cnty. Mun. Joint Ins. Fund, 2018 N.J. Super. LEXIS 79 (App. Div. 2018)

Mr. Ritardi called for a motion to go into closed session as amended to remove two (2) matters due to lack of quorum. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The Council adopted the motion by a unanimous vote.

The Council met in closed session from 1:36 p.m. until 2:02 p.m.

Mr. Ritardi called for a motion to end the closed session. Mr. Huber made a motion, which was seconded by Mr. Martucci. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:03 p.m., and Ms. Bordzoe called roll.

- Present: Mr. Ritardi, Mr. Huber and Mr. Martucci.

IV. Approval of Minutes of Previous Meetings:

- **April 24, 2018 Open Session Meeting Minutes**

Mr. Ritardi called for a motion to approve the draft open session minutes of the April 24, 2018 meeting. Mr. Huber made a motion, which was seconded by Mr. Martucci. The motion passed by a unanimous vote.

V. New Business – Cases Scheduled for Adjudication

Mr. Ritardi stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Council Staff’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): None

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

1. **William Rieth v. County of Somerset (2017-238)**
 - Complaint Voluntarily Withdrawn
2. **William Rieth v. Township of Montgomery (Somerset) (2017-239)**
 - Complaint Voluntarily Withdrawn
3. **Michael M. Testa v. NJ Motor Vehicle Commission (2018-39)**
 - Complaint Voluntarily Withdrawn
4. **Brian Riback v. Township of Mahwah (Bergen) (2018-42)**
 - Complaint Voluntarily Withdrawn
5. **William Rieth v. County of Somerset (2018-50)**
 - Complaint Voluntarily Withdrawn
6. **David Weiner v. Township of Ocean (Monmouth) (2018-60)**
 - Complaint Voluntarily Withdrawn

7. **Angelo Fichera v. Brick Township (Ocean) (2018-83)**
 - Complaint Voluntarily Withdrawn

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

1. **Nicole Dory, Esq. (o/b/o Shipyard Associates, L.P.) v. City of Hoboken (Hudson) (2014-200) (SR Recusal)**
 - This complaint must be tabled due to lack of quorum.
2. **Glenn Jones v. Rutgers, The State University of New Jersey (2015-202) (SR Recusal)**
 - This complaint must be tabled due to lack of quorum.
3. **Christopher Tirado v. Rutgers University (2016-165) (SR Recusal)**
 - This complaint must be tabled due to lack of quorum.
4. **Kenneth Duckett v. Essex County Prosecutor’s Office (2016-274) (SR Recusal)**
 - This complaint must be tabled due to lack of quorum.
5. **Sacha Pouliot v. NJ Department of Education (2015-281) (CH Recusal)**
 - This complaint must be tabled due to lack of quorum.

A brief summary of the Council Staff’s recommended action is under each complaint:

B. Individual Complaint Adjudications with no Recusals:

1. **Shawn G. Hopkins v. Freehold Township (Monmouth) (2014-27)**
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
 - Mr. Ritardi called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
2. **Shawn G. Hopkins v. Township of Holmdel (Monmouth) (2014-32)**
 - The Custodian unlawfully denied access to the subject OPRA request on the basis that it was invalid.
 - The Custodian unlawfully denied access to the requested CAMA data and property photographs; however, the GRC declines to order disclosure because the records were provided to the Complainant between April 18, and 25, 2018.
 - 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.

- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

3. **Shawn G. Hopkins v. Township of Howell (Monmouth) (2014-33)**

- The Custodian did not fully comply with the Council's April 24, 2018 Interim Order.
- 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.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

4. **Jason Marshall Litowitz v. NJ Department of Transportation (2015-301)**

- The Custodian complied with the Council's June 27, 2017 Interim Order.
- The original Custodian lawfully denied access to the redacted portions of certain responsive e-mails.
- The original Custodian lawfully denied access to the bodies of the remaining e-mails that she denied access to in whole. However, the original Custodian unlawfully denied access to basic e-mail information contained in each. Thus, the current Custodian must disclose those e-mails with redactions.
- The knowing and willful analysis is deferred pending compliance.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

5. **Galloway Township News v. City of Cape May (Cape May) (2015-419)**

- The Custodian failed to fully comply with the Council's March 27, 2018 Interim Order.
- There is no knowing and willful violation.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

6. **Michael Flom v. Allendale Board of Education (Bergen) (2016-25)**
 - The Custodian's extension requests were warranted and substantiated.
 - The Custodian lawfully denied access to OPRA request item No. 1 because no record existed.
 - Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

7. **Edward J. Sakos, Jr. v. Atlantic County Board of Taxation (2016-99)**
 - The Custodian's failure to timely respond resulted in a "deemed" denial.
 - The Custodian did not unlawfully deny access to the alleged "missing" records because the Complainant possessed them at the time of his OPRA requests.
 - There is no knowing and willful violation.
 - Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

8. **Robert Lefkowitz v. Montville Township Public Schools (Morris) (2016-138)**
 - The Custodian lawfully denied access to the requested quizzes, tests, and exams. N.J.S.A. 47:1A-9(a); Executive Order No. 9 (Gov. Hughes, 1963); N.J.A.C. 6A:8-3.1(c)(3)(iii).
 - Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

9. **Demetrius Minor v. Office of the Corrections Ombudsman (2016-152)**
 - The Custodian timely responded to the subject OPRA request.
 - The Complainant's request items seeking "logs," "letters," "actions," and "records" was invalid.
 - The Custodian lawfully denied access to OPRA request item No. 4 because no records existed.
 - Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

10. **Luis F. Rodriguez v. Kean University (2016-156)**
 - The Custodian's failure to respond immediately to the Complainant's OPRA request seeking "immediate access" records resulted in a violation of OPRA.

- The GRC declines to order disclosure of any records because the Custodian provided same to the Complainant on June 1, 2016.
- There is no knowing and willful violation.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

11. **Luis F. Rodriguez v. Kean University (2016-157)**

- The Custodian's extension requests were warranted and substantiated.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

12. **Luis F. Rodriguez v. Kean University (2016-158)**

- The Custodian's extension requests were warranted and substantiated.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations. Mr. Rosado advised the Council that a change was made to the analysis removing a table and changing a citation. Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as amended. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

13. **Luis F. Rodriguez v. Kean University (2016-159)**

- The Custodian complied with the Council's February 27, 2018 and April 24, 2018 Interim Orders.
- The *In Camera* Examination revealed that the Custodian lawfully denied access to the withheld record.
- There is no knowing and willful violation.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

14. **Waymon Chester v. NJ Department of Corrections (2016-167)**

- The Complainant failed to establish valid grounds for reconsideration based on illegality.
- The Council should rescind its March 27, 2018 Final Decision because it mistakenly applied a NJ Department of Corrections regulation retroactively.
- The Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3.

- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

15. **Adam M. Szura v. Bergen County Department of Health Services (2016-175)**

- The Council must conduct an *in camera* review of the responsive e-mail chain.
- The parties must submit balancing test questionnaires to the GRC.
- The knowing and willful analysis is deferred pending compliance.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

16. **Michael Inzelbuch (o/b/o T.V.) v. Marlboro Township Public School District (Monmouth) (2016-243)**

- The Custodian timely responded to the Complainant's OPRA request.
- The Complainant is not a prevailing party and thus not entitled to a fee award.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

17. **Libertarians for Transparent Government v. Town of Kearny (Hudson) (2016-261)**

- The Custodian's response was insufficient because she failed to provide a date certain on which she would respond to the Complainant.
- The Custodian lawfully denied access to the responsive executive session meeting minutes because they existed as handwritten notes at the time of the Complainant's two (2) OPRA requests.
- The Custodian unlawfully denied access to two (2) sets of the most recent, available closed session minutes and must disclose them.
- The knowing and willful and prevailing party analyses are deferred pending compliance.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci 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:

- Valentin v. Borough of Penns Grove, 2018 N.J. Super. Unpub. LEXIS 1033 (App. Div. 2018): The Appellate Division upheld the trial court's ruling that Plaintiff's lawyer be subject to sanctions under R. 1:4-8 for filing a frivolous suit pertaining to OPRA. Defendant responded to the Plaintiff's OPRA request and timely notified him by phone and writing that the records were ready to be picked up. Plaintiff filed suit, claiming that Defendant failed to respond, but subsequently after filing, he discovered Plaintiff's correspondence. However, Plaintiff and his lawyer continued to pursue the litigation. Additionally, the lawyer failed to appear at the scheduled hearing, requested to appear by phone "five minutes before" the hearing (but was declined), and failed to provide a reply brief until the trial judge was literally walking out to the bench. Moreover, the lawyer's request for reconsideration of the sanctions judgment was over a month outside the time limit, while his appeal of the judgement was nearly three months outside the time limit. The amount of the sanction was \$1,725 against the attorney and his firm.
- Scheeler v. Atl. Cty. Mun. Joint Ins. Fund, 2018 N.J. Super. LEXIS 79 (App. Div. 2018): The Appellate Division held that out-of-state requestors have standing under OPRA. The Court held that the usage of "citizen" in N.J.S.A. 47:1A-1 should not be interpreted as a restrictive term when taking in the surrounding context of OPRA. The court noted that the Right to Know Law, OPRA's precursor, used the term "citizen" throughout the statute, whereas under OPRA, "citizen" was largely replaced by "person" or "requestor", suggesting that the Legislature intended to broaden the right of access beyond residents of the State of New Jersey.

IX. Public Comment: None

X. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed by a majority vote

The meeting adjourned at 2:23 p.m.

Respectfully submitted,

Steven Ritardi, Esq., Secretary

Date Approved: June 26, 2018