



**Minutes of the Government Records Council  
June 26, 2018 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:36 p.m. by Ms. Robin Berg 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. Berg 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 June 21, 2018.”

Ms. Berg Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Simons, Esq. (designee of Department of Education Commissioner Dr. Richard Lamont Repollet), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq. (Public Member).

**\*\*\* Steven Ritardi participated telephonically until 2:19 p.m. \*\*\***

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.

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

## II. Communications Specialist/Resource Manager's Report:

### OPRA Trainings

Based on current staffing levels, the GRC has decided to suspend the scheduling of 2018 OPRA trainings until further notice. The GRC has received several requests to date and have alerted those potential hosts to this fact. Further, the GRC is still hoping to hold its 12<sup>th</sup> Annual OPRA Seminar, but will likely have to hold it in September 2018. Finally, the GRC will likely be a full participant at the NJ League of Municipalities Conference in November 2018.

- Ms. Berg Tabakin commented that trainings are part of the GRC's statutorily required duties. Ms. Berg Tabakin suggested some options for effectuating more training options for the annual seminar, including live streams, recordings, and webinars. Additionally, Ms. Berg Tabakin suggested exploring the option of regional seminars for the upcoming year.

### Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 4,883 Denial of Access Complaints. That averages about 305 annual complaints per 16 program years. So far in the current program year, the GRC has received 220 Denial of Access Complaints.
- 498 of the 4,883 complaints remain open and active (10.2%). Of those open cases:
  - 16 complaints are on appeal with the Appellate Division (3.2%);
  - 12 complaints are currently in mediation (2.4%);
  - 36 complaints await adjudication by the Office of Administrative Law (7.2%);
  - 97 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (19.5%);
  - 337 complaints are work in progress (67.7%);
  - 0 complaints are proposed for the Office of Administrative Law (0%); and
  - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received 28,931 total inquiries, averaging about 1,928 annual inquiries per 15 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 1,765 inquiries.
- From January 1, 2015, until present:
  - The GRC has received 1,108 Denial of Access Complaints, which equals 23% 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 1,369 cases (some cases require multiple adjudications). That number does not include today's adjudications.

- The GRC has received and addressed 6,805 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:**

- Nicole Dory (obo Shipyard Associates, L.P.) v. City of Hoboken (Hudson), (2014-200) (ICFR)(**SR Recusal**)
- Sacha Pouliot v. NJ Department of Education (2015-281) (ICFR)(**JS Recusal**)

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

The Council met in closed session from 1:54 p.m. until 2:12 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Martucci made a motion, which was seconded by Ms. Simons. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:13 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Ms. Simons, Mr. Martucci, and Mr. Ritardi.

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

- **May 22, 2018 Open Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the draft open session minutes of the May 22, 2018 meeting. Ms. Simons noted that she confirmed the accuracy of the draft minutes with Christopher Huber, Esq. Mr. Martucci made a motion, which was seconded by Ms. Simons. The motion passed by a unanimous vote.

- **May 22, 2018 Closed Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the draft closed session minutes of the May 22, 2018 meeting. Ms. Simons noted that she confirmed the accuracy of the draft minutes with Mr. Huber. Mr. Martucci made a motion, which was seconded by Ms. Simons. The motion passed by a unanimous vote.

**V. New Business – Cases Scheduled for Adjudication**

Ms. Berg Tabakin 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):**

1. **Michael Evans v. NJ Department of Corrections (2017-190)**
  - No Records Responsive to the Request Exist
2. **Yusuf Abdullah Muhammad v. NJ Department of Environmental Protection – Division of Water Quality (2018-67)**
  - No Correspondence Received by the Custodian
3. **Nicholas Curcio v. Wall Township Police Department (Monmouth) (2018-98)**
  - Unripe Cause of Action

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

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

1. **Harry B. Scheeler, Jr. v. Logan Township (Gloucester) (2015-244)**
  - Complaint Voluntarily Withdrawn
2. **Harry B. Scheeler, Jr. v. City of Cape May (Cape May) (2015-255)**
  - Complaint Voluntarily Withdrawn
3. **Harry B. Scheeler, Jr. v. City of East Orange (Middlesex) (2015-303)**
  - Complaint Voluntarily Withdrawn
4. **Harry B. Scheeler, Jr. v. NJ Department of Education (2015-317)**
  - Complaint Voluntarily Withdrawn
5. **Harry B. Scheeler, Jr. v. NJ Department of State (2015-351)**
  - Complaint Voluntarily Withdrawn
6. **Harry B. Scheeler, Jr. v. NJ Department of Agriculture (2015-352)**
  - Complaint Voluntarily Withdrawn
7. **Harry B. Scheeler, Jr. v. Gloucester Township (Camden) (2015-371)**
  - Complaint Voluntarily Withdrawn
8. **Harry B. Scheeler, Jr. v. NJ Office of the Attorney General, Division of Law (2015-372)**
  - Complaint Voluntarily Withdrawn
9. **Harry B. Scheeler, Jr. v. NJ Department of Children and Families (2015-394)**
  - Complaint Voluntarily Withdrawn
10. **Harry B. Scheeler, Jr. v. Atlantic County (2015-400)**
  - Complaint Voluntarily Withdrawn
11. **Harry B. Scheeler, Jr. v. NJ State SPCA (2015-409)**
  - Complaint Voluntarily Withdrawn
12. **Harry B. Scheeler, Jr. v. Galloway Township (Atlantic) (2015-417)**
  - Complaint Voluntarily Withdrawn
13. **Harry B. Scheeler, Jr. v. NJ Department of Education (2016-33)**
  - Complaint Voluntarily Withdrawn

14. **Harry B. Scheeler, Jr. v. NJ Department of Agriculture (2016-48)**
  - Complaint Voluntarily Withdrawn
15. **Harry B. Scheeler, Jr. v. NJ Office of the Attorney General (2016-53)**
  - Complaint Voluntarily Withdrawn
16. **Harry B. Scheeler, Jr. v. NJ Department of Education (2016-55)**
  - Complaint Voluntarily Withdrawn
17. **Anthony Esposito v. Roselle Board of Education (Union) (2017-228)**
  - Complaint Settled In Mediation
18. **Russell Smith v. Moorestown Township (Burlington) (2018-86)**
  - Complaint Voluntarily Withdrawn
19. **Anonymous v. Borough of Highland Park Police Department (Middlesex) (2018-102)**
  - Complaint Voluntarily Withdrawn

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

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

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

1. **Katalin Gordon v. City of Orange (Essex) (2013-255) (SR Recusal)**
  - The Complainant failed to establish valid grounds for reconsideration based on a mistake.
  - The Council, at its own discretion, should reconsider this complaint and send same to the Office of Administrative Law for a fact-finding hearing to identify any potential employee other than the Custodian that may be subject to a civil penalty.
  - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Mr. Stewart noted that he significantly shortened Footnote No. 8. Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as amended. Mr. Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. **Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-01)**
3. **Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10)**
4. **Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) (SR Recusal) Consolidated**
  - The Council should accept the Administrative Law Judge’s Initial Decision in which she approved a “Stipulation of Settlement.”
  - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

5. **Nicole Dory, Esq. (o/b/o Shipyard Associates, L.P.) v. City of Hoboken (Hudson) (2014-200) (SR Recusal)**
  - The Custodian did not fully comply with conclusion Nos. 4 and 6 of the Council's November 18, 2014 Interim Order.
  - The Custodian shall comply with the Council's Findings of the *In Camera* Examination.
  - The Council defers analysis of whether the Custodian complied with conclusion No. 8 of the Council's Order.
  - The knowing and willful and prevailing party analyses are deferred pending compliance.
  - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
6. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-57) (SR Recusal)**
7. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-60) (SR Recusal)**
8. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-70) (SR Recusal) Consolidated**
  - The Council should dismiss this consolidated complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
  - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
9. **Harry B. Scheeler, Jr. v. Greenwich Township (Warren) (2015-178) (SR Recusal)**
  - The Complainant withdrew his complaint via e-mail to the GRC on May 24, 2018. Thus, no further adjudication is required.
  - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
10. **Glenn Jones v. Rutgers, The State University of NJ (2015-202) (SR Recusal)**
  - The Custodian complied with the Council's September 26, 2017 Interim Order.
  - There is no knowing and willful violation.
  - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr.

Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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

- The Council should dismiss this complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

12. **Christopher Tirado v. Rutgers University (2016-165) (SR Recusal)**

- The Custodian's Counsel failed to establish valid grounds for reconsideration based on "new evidence."
- The Council's March 27, 2018 Interim Order remains in effect.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

13. **Jonathan Stevens v. Rutgers University (2016-249) (SR Recusal)**

- The Custodian lawfully denied access to Professor Liroy's research conducted on World Trade Center remnants pursuant to N.J.S.A. 47:1A-1.1. The Custodian thus lawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

14. **Kenneth Duckett v. Essex County Prosecutor's Office (2016-274) (SR Recusal)**

- The Complainant's request seeking access to records by retention schedule "Records Series" numbers was invalid.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

15. **Sacha Pouliot v. NJ Department of Education (2015-281) (CH Recusal)**

- The Custodian complied with the Council's January 31, 2017 Interim Order.

- The Custodian shall comply with the Council’s Findings of the *In Camera* Examination.
- The Custodian shall disclose certain non-exempt information from all responsive e-mails.
- The knowing and willful and prevailing party analyses are deferred pending compliance.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as amended based on the Council’s *in camera* review in closed session. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as amended. Mr. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Ms. Simons recused.

16. **Thomas J. Caggiano v. NJ State Police (2016-27) (RBT Recusal)**

- The Custodian’s failure to timely respond resulted in a “deemed” denial.
- The requested recording is exempt under N.J.S.A. 47:1A-9 and N.J.A.C. 13:1E-3.2(a)(4). The Custodian thus lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.
- There is no knowing and willful violation.
- Mr. Martucci called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Mr. Martucci called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Ms. Tabakin recused.

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

1. **Shawn G. Hopkins v. Township of Holmdel (Monmouth) (2014-32)**

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

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

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



3. **Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2014-365)**
  - The Custodian failed to comply with the Council's March 27, 2018 Interim Order.
  - The Custodian shall have a final opportunity to: 1) disclose all responsive records not already provided; and 2) provide a detailed explanation as to supervisory relationship between Franklin Fire District No. 1 and Millstone Valley Fire Department as it relates to financial oversight, if applicable.
  - The knowing and willful and prevailing party analyses are deferred pending compliance.
  - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
  
4. **Harry B. Scheeler, Jr. v. NJ Office of the Attorney General (2014-417)**
  - The Complainant withdrew his complaint via e-mail to the GRC on May 24, 2018. Thus, no further adjudication is required.
  - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.
  
5. **Robert Kovacs v. Union County (2015-169)**
  - The Custodian applied the appropriate cost of \$2.00 per page for disclosure of a property deed in physical form pursuant to N.J.S.A. 47:1A-5(b) and N.J.S.A. 22A:2-29.
  - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
  
6. **Matthew Drange v. City of Plainfield Police Department (Union) (2015-229)**
  - The Council must conduct an *in camera* review of those responsive records withheld from disclosure or redacted.
  - The knowing and willful analysis is deferred.
  - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

7. **Matthew Drange v. Camden County Office of Archives and Records Management (2015-265)**
  - The Custodian’s response was insufficient because she failed to respond to each request item individually.
  - The Custodian lawfully denied access to “accuracy verification of ShotSpotter’s incident data” because no record existed.
  - The Council must conduct an *in camera* review of those responsive records withheld from disclosure or redacted.
  - The knowing and willful analysis is deferred.
  - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
  
8. **Jason Marshall Litowitz v. NJ Department of Transportation (2015-301)**
  - Ms. Ferencevych failed to comply fully with the Council’s May 22, 2018 Interim Order.
  - There is no knowing and willful violation.
  - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr.. Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.
  
9. **Christina Moreira v. Elizabeth Board of Education (Union) (2015-313)**
  - The Custodian complied with the Council’s April 24, 2018 Interim Order.
  - There is no knowing and willful violation.
  - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
  
10. **William R. Juliana v. Township of Washington (Gloucester) (2016-106)**
11. **William R. Juliana v. Township of Washington (Gloucester) (2016-111)**
12. **William R. Juliana v. Township of Washington (Gloucester) (2016-112)**  
**Consolidated**
  - The current Custodian failed to comply fully with the Council’s March 27, 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.

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

13. **Shiretta McKinney v. Union County Prosecutor’s Office (2016-149)**

- The Custodian lawfully denied access to the responsive toxicology reports as criminal investigatory records. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Martucci made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.

14. **Hector Luis Guillen v. New Brunswick Police Department (Middlesex) (2016-155)**

- Ms. McMullan violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant’s OPRA request, or directing the Complainant, to the Custodian.
- The Custodian lawfully denied access to the OPRA request because no records existed.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

15. **Tremayne Durham v. NJ Department of Corrections (2016-258)**

- The Custodian lawfully denied access to the Internal Management Procedures that existed under N.J.S.A. 47:1A-1.1.
- The Custodian lawfully denied access to the remainder of the Complainant’s OPRA request because no records existed.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

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

- The Custodian failed to comply fully with the Council’s May 22, 2018 Interim Order.
- The Custodian shall have a final opportunity to provide the three (3) sets of closed session minutes available for disclosure at the time the Custodian received the Complainant’s June 6, 2016 OPRA request.
- The knowing and willful and prevailing party analyses are deferred pending compliance.

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

**17. Daniel Damigo v. Borough of Totowa (Passaic) (2017-124)**

- The Council should dismiss this complaint because the Complainant failed to appear at the Office of Administrative Law. N.J.A.C. 1:1-18.4(a).
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

**18. John Schmidt v. Borough of Penns Grove (Salem) (2018-54)**

- This complaint was tabled for further review.
- Ms. Berg Tabakin called for any discussion on the Council Staff's recommendation to table this complaint. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's recommendation to table this complaint. Ms. Simons made a motion and Mr. Martucci 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:**

- Brennan v. Bergen Cty. Prosecutor's Office, 2018 N.J. LEXIS 698 (2018)(Approved for Publication): The New Jersey Supreme Court held that courts are not required to analyze the factors in Doe v. Poritz, 142 N.J. 1, 88 (1995) each time a party asserts a privacy interest against disclosure of records. The Court held that the denying party must present a colorable claim that disclosure would invade a person's reasonable expectation of privacy. The Court found that in the current matter, it is not reasonable to expect that details about a public auction of government property will remain private. Therefore, the requested records are subjected to disclosure without redactions under OPRA.
- Benedetto v. Russo, 2018 N.J. Super. Unpub. LEXIS 1287 (App. Div. 2018): The Appellate Division held that Plaintiff's request for incident reports regarding suspicious deaths at the Camden County Correctional Facility are not protected under N.J.A.C. 10A:31-6.10, since there was no legally competent evidence in the record to show that the information within the reports qualify for the protection. The court noted that Defense counsel's brief claiming the protection was not supported by an affidavit or certification. Therefore, the court affirmed the trial court's ruling in compelling production of the requested records in accordance with OPRA.
- N.J. Second Amendment v. Div. of State Police of the N.J. Dep't of Law & Public Safety, 2018 N.J. Super. Unpub. LEXIS 1438 (App. Div. 2018): Plaintiff requested an

unredacted copy of New Jersey State Police’s (NJSP) “Firearms Applicant Investigation Guide” (Guide). Defendant redacted the following sections from the Guide: 1) a section entitled “Investigation” as well as five (5) sections titled “Investigation of the Applicant”; 2) a firearms investigation report form; and 3) Attachments A, B, and C, which consisted of two (2) letters and one (1) memorandum from the Attorney General’s office that contain general legal guidance on processing firearms permits. Relying on the evidence provided by NJSP, the Appellate Division held that the first and second redacted portions contain information that would be used to circumvent and manipulate the investigation process if disclosed. Therefore, the court found that those portions are protected under N.J.A.C. 13:1E-3.2(a)(2). As to the third portion, Defendant claimed that they are protected as containing attorney-client privileged material. While conceding to this claim, Plaintiff asserted that the privilege was waived when the documents were made into Attachments to the Guide and disseminated throughout the State to police departments. On this matter, the Appellate Division held that there is not enough information in the record to determine whether the privilege was waived, and remanded to the trial court as to this issue.

**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 Ms. Simons. The motion passed by a majority vote

The meeting adjourned at 2:41 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: July 31, 2018