



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
July 31, 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, July 31, 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

- Josephine V. Mella v. Passaic County Prosecutor’s Office (2016-217)

IV. Approval of Minutes of Previous Meetings:

June 26, 2018 Open Session Meeting Minutes
June 26, 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 Council Staff’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. Shamsiddin Abdur-Raheem v. NJ State Police (2016-207)
 - No Correspondence Received by the Custodian
2. Nathan Sanders v. Somerset County Superior Court of NJ (2018-137)
 - Not Within GRC Jurisdiction (Request to Superior Court)

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

1. Harry B. Scheeler, Jr. v. NJ State SPCA (2015-316)
 - Complaint Voluntarily Withdrawn
2. Harry B. Scheeler, Jr. v. NJ Office of the Attorney General, Division of Law (2015-373)
 - Complaint Voluntarily Withdrawn
3. Harry B. Scheeler, Jr. v. Galloway Township (Atlantic) (2015-380)
 - Complaint Voluntarily Withdrawn
4. Harry B. Scheeler, Jr. v. NJ Office of Information Technology (2015-418)
 - Complaint Voluntarily Withdrawn
5. Harry B. Scheeler, Jr. v. NJ Department of Children and Families (2016-16)
 - Complaint Voluntarily Withdrawn
6. Harry B. Scheeler, Jr. v. City of Cape May (Cape May) (2016-17)
 - Complaint Voluntarily Withdrawn
7. Harry B. Scheeler, Jr. v. Stockton University (2016-18)
 - Complaint Voluntarily Withdrawn
8. Harry B. Scheeler, Jr. v. NJ Department of Transportation (2016-31)
 - Complaint Voluntarily Withdrawn
9. Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2016-34)
 - Complaint Voluntarily Withdrawn
10. Harry B. Scheeler, Jr. v. NJ Department of Transportation (2016-42)
 - Complaint Voluntarily Withdrawn
11. Harry B. Scheeler, Jr. v. NJ Department of Transportation (2016-43)
 - Complaint Voluntarily Withdrawn
12. Harry B. Scheeler, Jr. v. NJ State Police (2016-44)
 - Complaint Voluntarily Withdrawn
13. Harry B. Scheeler, Jr. v. NJ State Police (2016-45)
 - Complaint Voluntarily Withdrawn
14. Harry B. Scheeler, Jr. v. NJ Department of Banking and Insurance (2016-52)
 - Complaint Voluntarily Withdrawn
15. Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2016-54)
 - Complaint Voluntarily Withdrawn
16. Steve Reilly v. Middlesex County Sheriff's Office (2016-232)
 - Complaint Voluntarily Withdrawn
17. Robert Moss v. NJ Department of Environmental Protection (2017-40)
 - Complaint Voluntarily Withdrawn
18. Wynter Willis v. College Achieve Charter School - Paterson Campus (Passaic) (2018-25)
 - Complaint Voluntarily Withdrawn
19. Cynthia A. McBride v. West Deptford Township (Gloucester) (2018-31)
 - Complaint Voluntarily Withdrawn

20. Mitchell A. Newmark (o/b/o Verizon Americas Inc., Verizon Holdings LLC) v. NJ Department of Treasury (2018-40)
 - Complaint Voluntarily Withdrawn
21. Carmelo Lio v. Borough of Fairview (Bergen) (2018-56)
 - Complaint Voluntarily Withdrawn
22. Michelle Paden Battle v. Essex County Department of Corrections (2018-84)
 - Complaint Settled in Mediation
23. Vicki Benedict v. Willingboro Public Schools (Burlington) (2018-91)
 - Complaint Voluntarily Withdrawn
24. Scott M. Welfel, Esq. v. Township of Irvington, Department of Public Safety, Division of Police (Essex) (2018-97)
 - Complaint Voluntarily Withdrawn
25. Scott Madlinger v. Hudson County Board of Taxation (2018-115)
 - Complaint Voluntarily Withdrawn
26. Scott Madlinger v. Berkeley Township (Ocean) (2018-129)
 - 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. Nicole Dory, Esq. (o/b/o Shipyard Associates, LP) v. City of Hoboken (Hudson) (2014-200) (**SR Recusal**)
 - The Custodian complied with the Council’s June 26, 2018 Interim Order.
 - The Custodian complied with Paragraph No. 8 of the Council’s November 18, 2014 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.
2. Russell Carollo v. Rutgers, The State University of NJ (2015-325) (**SR Recusal**)
 - The original Custodian’s response was insufficient because she failed to address each request item.
 - The portion of the request seeking “records,” “funding,” and communications was invalid.
 - The Custodian lawfully denied access to the portion of the request seeking third party OPRA requests because none existed.
 - There is no knowing and willful violation.
3. Gloria Brown & Jeffrey Oster v. City of Newark (Essex) (2016-289) (**SR Recusal**)
 - Both Custodians lawfully denied access to Complainants’ OPRA requests because no responsive records existed.

4. Thomas Caggiano v. Township of Wantage (Sussex) (2016-115) (**RBT Recusal**)
 - The Township erred by denying the Complainant's request on the basis that he was an out-of-state requestor. See Scheeler v. Atl. Cty. Mun. Joint Ins. Fund, ___ N.J. Super. ___ (App. Div. 2018).
 - The Custodian lawfully denied access to the OPRA request because disclosure would not advance the purpose of OPRA.
 - The Township's OPRA request form does not violate N.J.S.A. 47:1A-5(f).

B. Individual Complaint Adjudications with no Recusals:

1. Anonymous v. Burlington Township (Burlington) (2015-107)
 - The Council should lift the June 28, 2016 abeyance order and address whether the Custodian lawfully denied access to the subject OPRA request.
 - The Custodian erred by denying the Complainant's request on the basis that he was an out-of-state requestor. See Scheeler v. Atl. Cty. Mun. Joint Ins. Fund, ___ N.J. Super. ___ (App. Div. 2018).
 - There is no knowing and willful violation.
2. Robert Kovacs v. Toms River Police Department (Ocean) (2015-264)
 - This complaint should be tabled for additional review.
3. Jason Marshall Litowitz v. NJ Department of Transportation (2015-301)
 - This complaint should be tabled for additional review.
4. Damiano M. Fracasso, Esq. v. Township of Rockaway (Morris) (2015-310)
 - The Custodian failed to comply with the Council's Order because she failed to include certified confirmation of compliance to Council Staff as part of her response.
 - The proposed special service charge was unreasonable and unwarranted. Accordingly, the Custodian must issue a refund of \$129.60 to the Complainant.
 - The knowing and willful analysis is deferred.
5. Jesse Wolosky v. Borough of Washington (Warren) (2016-29)
 - 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.
6. Jesse Wolosky v. Borough of Washington (Warren) (2016-30)
 - 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.
7. Kevin Brasler v. NJ Department of Banking and Insurance (2016-56)
 - The Custodian did not unlawfully deny access to the Complainant's OPRA request item No. 1 because no record existed.
 - The Complainant's OPRA request item No. 2 is invalid because it lacks sufficient identifying information due to the fact that no records responsive to item No. 1 existed.

8. Matthew B. Tully v. Borough of Avon-By-The-Sea (Monmouth) (2016-101)
 - The Custodian bore his burden of proof that his response was timely in accordance with N.J.S.A. 47:1A-5(g), (i).
 - The Custodian lawfully denied access to the requested internal affairs report based on precedential case law.
9. Matthew B. Tully v. Borough of Avon-By-The-Sea (Monmouth) (2016-102)
 - The Custodian bore his burden of proof that his response was timely in accordance with N.J.S.A. 47:1A-5(g), (i).
 - The Complainant's request was invalid because it required research of ten (10) years of meeting minutes.
10. William R. Juliana v. Township of Washington (Gloucester) (2016-114)
 - The GRC cannot identify the Township employee who violated N.J.S.A. 47:1A-5(h), (i).
 - The Custodian may have unlawfully denied access to the responsive records. The Custodian shall certify to her response for each item, provide evidence regarding her response, and certify if records for a particular request item did not exist.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.
11. Josephine V. Mella v. Passaic County Prosecutor's Office (2016-217)
 - This complaint should be tabled for additional review.
12. Ronald W. Yarbrough (o/b/o Pro-Spec Corporation) v. East Windsor Municipal Utilities Authority (Mercer) (2016-234)
 - The Custodian bore his burden of proof that his response was timely in accordance with N.J.S.A. 47:1A-5(g), (i).
 - The proposed special service charge was warranted, but not reasonable. N.J.S.A. 47:1A-5(c). The Custodian must recalculate the charge and provide it to the Complainant. If the Complainant pays the new fee, the Custodian must disclose responsive records.
 - The knowing and willful analysis is deferred.
13. Tremayne Durham v. NJ Department of Corrections (2016-237)
 - The Complainant's request was invalid because it sought information and not identifiable government records.
14. Scott Madlinger v. Atlantic City Police Department (Atlantic) (2016-242)
 - The original Custodian's failure to timely respond resulted in a "deemed" denial.
 - Request Nos. 1 and 3 were invalid because they failed to include sufficient identifiers.
 - No unlawful denial of access to OPRA request No. 2 occurred because circumstances surrounding the Custodian's inability to comply were out of the City's control.
 - There is no knowing and willful violation.

15. Terry L. Nase v. Township of Middle (Cape May) (2016-273)
 - The Custodian lawfully denied access to the responsive building plans in accordance with OPRA and prevailing case law.
 - The Council does not have the authority to address common law issues. N.J.S.A. 47:1A-7(b); Rowan Jr. v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013).
16. Teddy John Rose v. NJ Department of Corrections (2016-302)
 - The Custodian lawfully denied access to the responsive presentence reports under N.J.S.A. 47:1A-1.1.
17. Luis Rodriguez v. Kean University (2016-309)
 - The Custodian's extension requests were warranted and substantiated.
18. Jackson Horowitz v. NJ Department of Banking and Insurance (2016-318)
 - The subject request is invalid because it sought information and not identifiable "government records."
19. Teddy John Rose v. NJ Department of Corrections (2016-325)
 - The Custodian lawfully denied access to the requested mental health notes under OPRA and Executive Order No. 26 (Gov. McGreevey, 2002).

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

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

- Paff v. Twp. of Moorestown, 2018 N.J. Super. Unpub. LEXIS 1641 (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.