



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
August 28, 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, August 28, 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

- Jason Marshall Litowitz v. New Jersey Department of Transportation (2015-301)
- Sean Patrick Vandy v. Newfield Police Department (Gloucester) (2016-166)

IV. Approval of Minutes of Previous Meetings:

July 31, 2018 Open Session Meeting Minutes
July 31, 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):

1. Mark L. Tompkins v. Newark Police Department (Essex) (2018-141) **(SR Recusal)**
 - Unripe Cause of Action

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda): None.

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

1. Jose M. Cortes v. Camden County Prosecutor's Office (2018-87)
 - Complaint Settled in Mediation
2. Christopher W. Hager, Esq. (O.B.O. Letizia Pantoliano) v. Bogota Board of Education (Bergen) (2018-125)
 - Complaint Voluntarily Withdrawn
3. Rotimi Owoh (O.B.O. AADARI) v. Marlboro Police Department (Monmouth) (2018-143)
 - Complaint Voluntarily Withdrawn
4. G. Harold Christian v. City of Jersey City (Hudson) (2018-149)
 - Complaint Voluntarily Withdrawn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. Jeff Carter v. New Jersey Department of Community Affairs, Division of Local Government Services (2016-262) **(JM Recusal)**
 - The Complainant's request was invalid because it required research.
 - The Complainant is not a prevailing party.
2. Elie C. Jones v. Township of Teaneck (Bergen) (2016-290) **(SR Recusal)**
 - The Custodian did not unlawfully deny access to OPRA request Nos. 3 and 4 because he never received said requests.
 - The Custodian timely responded to OPRA request Nos. 1 and 2.
 - The Complainant's request Nos. 1 and 2 were invalid.
3. Duggan L. Salley v. City of Newark (Essex) (2018-158) **(SR Recusal)**
 - The Custodian's failure to timely respond resulted in a "deemed" denial of access.
 - Portions of the Complainant's OPRA request item Nos. 1, 2, 4, 5, and 7 were invalid because they failed to seek specific records.
 - Notes sought in the Complainant's OPRA request item Nos. 1, 2, and 7 were exempt from disclosure. O'Shea v. West Milford Bd. Of Educ., 391 N.J. Super. 534 (App. Div. 2007).
 - The Custodian unlawfully denied access to the resume of the successful candidate relevant to the Complainant's OPRA request item No. 6 and must disclose same.

- The Complainant’s OPRA request item No. 6 seeking “salary range” was valid and the Custodian failed to bear her burden of a lawful denial. Thus, she must disclose the responsive record.
- The knowing and willful analysis is deferred.

B. Individual Complaint Adjudications with no Recusals:

1. Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2014-365)
 - The current Custodian and Chief McDonnell failed to comply with the Council’s June 26, 2018 Interim Order.
 - This complaint should be referred to the Office of Administrative Law for a fact-finding hearing. The Office of Administrative Law should also address the knowing willful and prevailing party attorney’s fees issues in the interest of efficacy.
2. Robert Kovacs v. Toms River Police Department (Ocean) (2015-264)
 - The Custodian’s response was insufficient because he failed to respond to each request item individually.
 - The Custodian lawfully denied access to a portion of the Complainant’s June 27, and July 19, 2015 OPRA requests because they were invalid.
 - The Custodian unlawfully denied access to the remainder of the Complainant’s June 27, and July 19, 2015 OPRA requests.
 - The Council shall perform an *in camera* review of responsive incident reports to determine if they are exempt as criminal investigatory records. N.J.S.A. 47:1A-1.1.
 - The knowing and willful analysis is deferred.
3. Jason Marshall Litowitz v. New Jersey Department of Transportation (2015-301)
 - This complaint was tabled for additional review.
4. Lisa D. Taylor, Esq. v. New Jersey Department of Treasury, Division of Purchase & Property (2015-395)
 - The Custodian’s extension request was warranted and substantiated.
 - The Custodian may have unlawfully denied access to multiple records and must supplement the record with additional information regarding the responsive records and his response.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.
5. Lisa D. Taylor, Esq. v. New Jersey Department of Treasury, Division of Purchase & Property (2016-62)
 - The Custodian’s response was insufficient because he failed to provide a specific lawful basis for redactions.
 - The Custodian did not unlawfully deny access to evaluation committee deliberations, evaluation sheets, and score sheets because they were exempt from disclosure as “inter-agency or intra-agency advisory, consultative, or deliberative material.” N.J.S.A. 47:1A-1.1.
 - The Custodian lawfully denied access to the identities of the evaluation committee members because no contract had been awarded. N.J.S.A. 47:1A-9(a); N.J.S.A. 52:34-10.3(c).

- There is no knowing and willful violation.
 - The Complainant is not a prevailing party.
6. Matthew B. Tully v. Borough of Avon-By-The-Sea (Monmouth) (2016-100)
- The Custodian timely responded to the Complainant's April 4, 2016 OPRA request.
 - The Custodian's response to the Complainant's April 18, 2016 OPRA request was insufficient because he failed to provide a lawful basis for redactions.
 - A portion of the Complainant's April 4, 2016 OPRA request was invalid because it sought information.
 - The Custodian unlawfully denied access to excepted personnel information. N.J.S.A. 47:1A-10. However, the Council need not order disclosure because such information was provided in response to a separate OPRA request.
 - The Custodian lawfully denied access to redacted personnel information not otherwise disclosable under OPRA. N.J.S.A. 47:1A-10.
 - There is no knowing and willful violation.
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| <p>7. William R. Juliana v. Township of Washington (Gloucester) (2016-106)</p> <p>8. William R. Juliana v. Township of Washington (Gloucester) (2016-111)</p> <p>9. William R. Juliana v. Township of Washington (Gloucester) (2016-112) Consolidated</p> <ul style="list-style-type: none"> • 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. |
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10. Sean Patrick Vandy v. Newfield Police Department (Gloucester) (2016-166)
- This complaint was tabled for additional review.
11. Mark Demitroff v. Buena Vista Township (Atlantic) (2016-180)
- The Custodian lawfully denied access to the requested records because none existed.
12. Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-190)
- The Custodian's response was insufficient because she failed to provide a specific lawful basis for redacting the responsive attorney invoices.
 - The Council must perform an *in camera* review of the invoices to confirm whether the Custodian properly redacted them.
 - The knowing and willful analysis is deferred.
13. Scott M. Halliwell & Anthony G. Pennant v. Borough of Brooklawn (Camden) (2016-201)
- The Custodian's response to OPRA request item No. 1 was sufficient.
 - The Council must conduct an *in camera* review of the responsive records to confirm whether the Custodian properly denied access to them.
 - The knowing and willful analysis is deferred.
14. Josephine V. Mella v. Passaic County Prosecutor's Office (2016-217)
- The Custodian lawfully denied access to the responsive investigative reports under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1.
 - The Custodian lawfully denied access to the request items seeking policies, procedures, and recordings because no records existed.

- The Custodian responded appropriately to OPRA request item No. 3 disclosing only those training certificates required to maintain government employment. N.J.S.A. 47:1A-10.
15. Charles R. Cohen v. City of Englewood (Bergen) (2016-253)
- The Custodian complied with the Council’s November 14, 2017 Interim Order.
 - Because of inadequate evidence, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. The Office of Administrative Law should also address any knowing and willful issues.
 - The Office of Administrative Law need not address the prevailing party fee issue. The Complainant, an attorney representing himself, is not entitled to such fees. Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006).
16. Libertarians for Transparent Government v. Town of Kearny (Hudson) (2016-261)
- The Custodian complied with the Council’s June 26, 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.
17. Doreen Janes v. Ramapo College (2016-295)
- The Custodian lawfully denied access to the draft report and redacted final report under the “inter-agency or intra-agency advisory, consultative, or deliberative material” exemption. N.J.S.A. 47:1A-1.1.
18. Anthony Franklin v. Passaic County Prosecutor’s Office (2016-308)
- The portion of the request seeking “Promis Gavel” is invalid because it failed to seek identifiable records.
 - The Custodian lawfully denied access to the requested “rap sheets.” N.J.S.A. 47:1A-9(a); Executive Order No. 9 (Gov. Hughes, 1963).
19. Robert Kovacs v. Union County Department of Corrections (2016-321)
- The Custodian did not unlawfully deny access to the Complainant’s OPRA request because he never received it.
 - The Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:31-6.10(b).
20. Joyce Blay v. Township of Lakewood (Ocean) (2017-2)
- The Custodian’s failure to timely respond resulted in a “deemed” denial of access.
 - There is no knowing and willful violation.
21. Raquel Horowitz v. City of Long Branch Housing Authority (Monmouth) (2017-4)
- The Custodian’s failure to timely respond resulted in a “deemed” denial of access.
 - The Complainant’s request was invalid because it sought information and not an identifiable government record.
 - There is no knowing and willful violation.

22. Stacie Percella v. City of Bayonne (Hudson) (2017-70)

- The Council should accept the Honorable Michael Antoniewicz's, Administrative Law Judge, June 15, 2018 Initial Decision finding that no knowing and willful violation occurred, and that the complaint should be dismissed.

VII. Court Decisions of GRC Complaints on Appeal

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

- Paff v. Ocean Cty. Prosecutor's Office, Nos. A-17, 078040, 2018 N.J. LEXIS 1002 (Aug. 13, 2018)
- N. Jersey Media Grp. Inc. v. Passaic Cty. Prosecutor's Office, No. A-2016-16T1, 2018 N.J. Super. Unpub. LEXIS 1949 (App. Div. Aug. 17, 2018)

IX. Complaints Adjudicated in Federal Court:

- Golden v. N.J. Inst. of Tech., Civil Action No. 15-8559, 2018 U.S. Dist. LEXIS 129699 (D.N.J. Aug. 2, 2018)

X. 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.*

XI. 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.