



**Minutes of the Government Records Council
November 13, 2018 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:32 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. A moment of silence was observed for the victims of the recent Pittsburgh shooting.

- **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 November 8, 2018.”

Ms. Berg Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

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

GRC Staff in Attendance: Frank F. Caruso (Communications Specialist/Resource Manager), Rosemond Bordzoe (Secretary), 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

The GRC will participate in a training session entitled "Recent OPRA Decisions" at the NJ League of Municipalities Conference on November 14, 2018 from 2:00 p.m. to 3:40 p.m.

GRC Staffing

The GRC has been given approval to post for its "Case Manager" vacancy previously held by Husna Kazmir. Human Resources posted the vacancy, HR18-0028, on October 29, 2018. The posting closed yesterday, and the position has received significant interest.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,031 Denial of Access Complaints. That averages about 308 annual complaints per more than 16 1/3 program years. So far in the current program year (2019), the GRC has received 141 Denial of Access Complaints.
- 486 of the 5,031 complaints remain open and active (9.7 %). Of those open cases:
 - 12 complaints are on appeal with the Appellate Division (2.5%);
 - 10 complaints are currently in mediation (2.0%);
 - 4 complaints are proposed for the Office of Administrative Law (0.8%);
 - 30 complaints await adjudication by the Office of Administrative Law (6.1%);
 - 55 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (11.3%);
 - 375 complaints are work in progress (77.2%); and
 - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 29,621 total inquiries, averaging about 1,929 annual inquiries per more than 15 1/3 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2019), the GRC has received 646 inquiries (7 inquiries per workday).
- Since the GRC brought mediation in house in FY2011, the GRC has sent 588 Denial of Access Complaints to mediation. Of those complaints, 272 were settled and 309 were returned to the GRC for adjudication for a variety of reasons. Currently, 7 complaints remain in mediation. Thus, the GRC's mediation success rate over this period is 47%.

III. Closed Session:

- Sean Patrick Vandy v. Newfield Police Department (Gloucester) (2016-166)

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

The Council met in closed session from 1:36 p.m. until 1:40 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Ritardi made a motion, which was seconded by Mr. Huber. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:41 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Mr. Huber, Mr. Palombi, and Mr. Ritardi.

IV. Approval of Minutes of Previous Meetings:

October 30, 2018 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the October 30, 2018 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Jennifer Simons, Esq. Mr. Palombi also noted that he confirmed the accuracy of the draft minutes with Jason Martucci, Esq. Mr. Ritardi made a motion, which was seconded by Mr. Palombi. The motion passed by a unanimous vote.

October 30, 2018 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the October 30, 2018 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Ms. Simons. Mr. Palombi also noted that he confirmed the accuracy of the draft minutes with Mr. Martucci. Mr. Ritardi made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

V. 2019 Proposed Council Meeting Dates – Preliminary Review

The Council was provided with prospective meeting dates for 2019 in two (2) options. The first option contained twelve (12) meeting dates. The second option contained eleven (11) meetings dates accounting for a combined October/November meeting. This option would allow GRC staff more sufficient time to prepare an adequate agenda for the November meeting by combining it with October. The Council was asked to review the two (2) options and determine which would be most preferred.

VI. 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):

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

1. **Max S. Sverdlove, Esq. (o/b/o Applied Development Company) v. County of Hudson (2016-248)**
 - Complaint Voluntarily Withdrawn.
2. **Max S. Sverdlove, Esq. (o/b/o Applied Development Company) v. County of Hudson (2016-250)**
 - Complaint Voluntarily Withdrawn.
3. **John Schmidt v. Borough of Penns Grove (Salem) (2018-54)**
 - Complaint Voluntarily Withdrawn.
4. **Raymond J. Went, Jr. v. NJ Department of Transportation (2018-228)**
 - Complaint Voluntarily Withdrawn.
5. **George Grant v. City of Trenton (Mercer) (2018-229)**
 - 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. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-134) (SR Recusal)**
 - The Council should accept the Honorable Sarah G. Crowley’s, Administrative Law Judge, September 13, 2018 Initial Decision.
 - 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. Mr. Huber

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

2. **John Doe v. Township of Toms River (Ocean) (2017-56) (SR Recusal)**

- The Custodian's failure to timely respond to the Complainant's two (2) OPRA requests resulted in a "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- 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. Palombi made a motion and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

3. **Shaun Clifton-Short v. Essex County Prosecutor's Office (2017-72) (SR Recusal)**

- The Custodian timely responded to the Complainant's OPRA request.
- 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. Huber made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

4. **Dewayne Roy Wilson v. Essex County Prosecutor's Office (2017-199) (SR Recusal)**

- The Custodian lawfully denied access to the subject 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. Mr. Palombi made a motion and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

5. **Thomas Caggiano v. NJ Office of the Governor (2015-276) (RBT Recusal)**

- A portion of OPRA request item No. 4 and all of item No. 7 were invalid.
- The Custodian lawfully denied access to OPRA request item No. 1 pursuant to Caggiano v. Office of the Governor, GRC Complaint No. 2014-408 (September 2015).
- The Custodian lawfully denied access to the OPRA request item Nos. 2, 5, and 6 because no records existed.
- The Custodian properly responded to OPRA request item No. 3 by directing the Complainant to the exact location on the internet where responsive records existed. Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014).
- 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. Palombi seconded the motion. The motion passed by a majority vote; Ms. Berg Tabakin recused.

6. **Thomas Caggiano v. NJ Office of the Governor (2016-83) (RBT Recusal)**

- The Custodian lawfully denied access to the subject OPRA request pursuant to Caggiano v. Office of the Governor, GRC Complaint No. 2014-408 (September 2015).
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Mr. Ritardi suggested a rewording of the last sentence of the fourth (4th) paragraph on page 4. Mr. Caruso acquiesced to changing the language in accordance with Mr. Ritardi's suggestion. Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as edited. Mr. Palombi made a motion and Mr. Huber seconded the motion. The motion passed by a majority vote; Ms. Berg Tabakin recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Michael J. Panter, Esq. v. Ocean County Board of Chosen Freeholders (2015-368)**

- The Custodian did not unlawfully deny access to the requested records because same were in control of a separate County agency. Thus, this complaint should be dismissed.
- The Complainant is not a prevailing party.
- 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. Palombi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

2. **William R. Juliana v. Township of Washington (Gloucester) (2016-114)**

- 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. Huber made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

3. **Sean Patrick Vandy v. Newfield Police Department (Gloucester) (2016-166)**

- The Custodian complied with the Council's September 25, 2018 Interim Order.
- Officer Conway unlawfully denied access to the request records. N.J.S.A. 47:1A-6.
- The Custodian shall comply with the Council's Finding of the *In Camera* Examination.
- The knowing and willful analysis is 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.

Ritardi made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

4. **Charles Hughes v. Township of Logan (Gloucester) (2016-187)**
 - The Custodian failed to comply fully with the Council's September 25, 2018 Interim Order.
 - The Custodian lawfully denied access to the Complainant's OPRA request because no records existed.
 - The GRC declines to address the knowing and willful analysis because no violations of OPRA occurred.
 - 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. Huber made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

5. **Daniel G. Nee v. Brick Township Board of Education (Ocean) (2016-209)**
 - The Custodian lawfully denied access to OPRA request item No. 1 because no records existed.
 - The Custodian lawfully denied access to OPRA request item No. 2 because draft documents are exempt from disclosure under the ACD exemption. N.J.S.A. 47:1A-1.1.
 - 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. Palombi made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

6. **Marie W. Collinson v. University Charter School (Morris) (2016-226)**
 - The Custodian lawfully denied access to the Complainant's OPRA request item Nos. 1 and 6 because no records existed.
 - The Council must conduct an *in camera* review of records responsive to OPRA request item Nos. 2, 3, and 4 to determine whether same are exempt under the personnel exemption. N.J.S.A. 47:1A-10.
 - The Custodian did not unlawfully deny access to OPRA request item No. 5 because all responsive records were provided.
 - The knowing and willful analysis is 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. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

7. **Lois Annette Lebbing v. Borough of Highland Park (Middlesex) (2016-251)**
 - The Custodian's failure to timely respond to the Complainant's two (2) OPRA requests resulted in a "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

Further, the Custodian's eventual response was insufficient because she failed to address the preferred method of delivery.

- The Custodian lawfully denied access to responsive unapproved meeting minutes because they are exempt from disclosure as draft documents. Parave-Fogg v. Lower Alloways Creek Twp., GRC Complaint No. 2006-51 (August 2006).
- 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. Ritardi made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

8. **Alan Arthur De Smet v. NJ Motor Vehicle Commission (2016-267)**

9. **Alan Arthur De Smet v. NJ Motor Vehicle Commission (2016-268) Consolidated**

- The Custodian lawfully denied access to the responsive algorithm information under OPRA, the Driver Privacy Protection Act, and N.J. Court Rules. Further, the requested information is also exempt under Executive Order No. 21 (Gov. McGreevey, 2002).
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Ms. Berg Tabakin noted that she was more confident with this iteration of the analysis. Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Palombi made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **Luis F. Rodriguez v. Kean University (2016-296)**

- Based on unwarranted and unsubstantiated extensions, the Custodian did not timely respond to the Complainant's OPRA request, thus resulting in a "deemed" denial.
- 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. Ritardi made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

11. **Susan M. Vandy v. Burlington County Board of Social Services (2016-319)**

- The Custodian lawfully denied access to the responsive interview score sheets, summaries, and bank questions with notations under the ACD exemption. N.J.S.A. 47:1A-1.1.
- The Custodian unlawfully denied access to the responsive time sheets and time summaries, which are considered "payroll records" subject to disclosure. N.J.S.A. 47:1A-10. Thus, the Custodian must disclose them to the Complainant.
- The Custodian lawfully denied access to the "Performance Evaluation Control Cards" because they contain performance evaluations not subject to disclosure. N.J.S.A. 47:1A-10.

- The Custodian unlawfully denied access to the responsive resumes of successful candidates. Executive Order No. 26 (Gov. McGreevey, 2002). However, the Council should decline to order disclosure because the Custodian provided them to the Complainant on January 18, 2017.
- The Custodian lawfully denied access to the responsive essays under Executive Order No. 26 (Gov. McGreevey, 2002).
- The Custodian lawfully denied access to the responsive disciplinary and corrective action records. N.J.S.A. 47:1A-10.
- The knowing and willful analysis is 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. Palombi made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

12. **Joseph Lamar Anglin v. NJ Office of Homeland Security and Preparedness (2017-45)**

- The Custodian lawfully denied access to the responsive records because they were held by the Domestic Preparedness Task Force and were expressly exempt under N.J.S.A. App.A:9-74(a). N.J.S.A. 47:1A-9.
- 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. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

13. **Keith Werner v. NJ Department of Corrections (2017-51)**

- The Complainant's request was invalid. Additionally, the Complainant's request item No. 1 sought communications with the Legislature that are exempt from disclosure under N.J.S.A. 47:1A-1.1.
- 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. Ritardi made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

14. **Nancy C. Ferro, Esq. (o/b/o Walli A. Williams) v. NJ Department of Corrections (2017-77)**

- The Custodian lawfully denied access to the responsive surveillance video in accordance with New Jersey Department of Corrections regulations. N.J.S.A. 47:1A-9; N.J.A.C. 10A:22-2.3(a)(14).
- The Complainant is not a prevailing party.
- 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. Huber

made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

15. Luis F. Rodriguez v. Kean University (2017-90)

- The Council must perform an *in camera* of the responsive e-mail chain to determine whether same was exempt under the attorney-client privilege and/or ACD exemptions.
- The knowing and willful analysis is 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. Palombi made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

16. Mortimer Hetsberger v. NJ Department of Corrections (2017-94)

- This complaint should be referred to the Office of Administrative Law for a hearing to determine whether the Custodian unlawfully denied access to any responsive records. Further, the OAL should determine whether the Custodian knowingly and willfully violated OPRA.
- 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. Huber made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

VIII. Court Decisions of GRC Complaints on Appeal: None

IX. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None

X. Complaints Adjudicated in Federal Court: None

XI. Public Comment: None

XII. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Ritardi made a motion, which was seconded by Mr. Palombi. The motion passed by a unanimous vote.

The meeting adjourned at 2:08 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: January 31, 2019