



**Minutes of the Government Records Council  
December 18, 2018 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:31 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**

Mr. 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 December 13, 2018.”

Mr. Ritardi read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Christopher Huber, 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).

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 Susan Scott.

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

## **II. 2019 Officer Elections:**

- Mr. Ritardi called for a motion to re-elect Ms. Berg Tabakin as Chairwoman. Mr. Martucci seconded the motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
- Mr. Martucci made a motion to re-elect Mr. Ritardi as Vice Chair/Secretary. Mr. Huber seconded the motion. The motion passed by a unanimous vote.

## **III. 2019 Proposed Council Meeting Dates – Final Review**

- Mr. Caruso stated that the Council was handed two (2) options for 2019 meetings. Option A represented a 12-month schedule. Option B represented an 11-month schedule consolidating the October and November meetings for ease of process. The Council discussed both options briefly. Mr. Caruso noted that the Council's By-Laws allow for flexibility in creating the yearly meeting schedule.
- Mr. Ritardi called for a motion to approve the 2019 Council Meeting Dates, Option B. Mr. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

## **IV. Communications Specialist/Resource Manager's Report:**

### **OPRA Trainings**

The GRC participated 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. The session was well attended.

### **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 has closed and the GRC has identified potential candidates. Interview scheduling will take place shortly.

### **Current Statistics**

Since OPRA's inception in July 2002, the GRC has received 5,077 Denial of Access Complaints. That averages about 307 annual complaints per 16 1/2 program years. So far in the current program year (FY2019), the GRC has received 187 Denial of Access Complaints.

- In terms of fiscal year filings, the GRC is on pace to receive 374 complaints in FY2019. If achieved, that total would be the fourth (4<sup>th</sup>) highest FY total in program history.
- In terms of calendar year filings, 308 complaint filings represent a 61 complaint increase over last year (247). However, 308 complaint filings are in line with the historic average.

- While the above seems counter-intuitive, consider that average monthly complaint filings went from 20.8 in the first six (6) months of 2019 (2<sup>nd</sup> half FY2018) to 31.2 over the last six (6) months (1<sup>st</sup> half FY2019).
- 511 of the 5,077 complaints remain open and active (10.1%). Of those open cases:
  - 12 complaints are on appeal with the Appellate Division (2.3%);
  - 15 complaints are currently in mediation (2.9%);
  - 3 complaints are proposed for the Office of Administrative Law (0.6%);
  - 30 complaints await adjudication by the Office of Administrative Law (5.9%);
  - 66 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (12.9%);
  - 385 complaints are work in progress (75.3%); and
  - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 29,795 total inquiries, averaging about 1,922 annual inquiries per 15 1/2 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 820 inquiries (3.4 inquiries per workday).

#### **V. Closed Session:**

- Matthew Drange v. Camden County Office of Archives and Records Management (2015-265)
- Luis Rodriguez v. Kean University (2017-90)

Mr. Ritardi called for a motion to go into closed session. 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 1:45 p.m. until 2:03 p.m.

Mr. Ritardi called for a motion to end the closed session. Mr. Huber made a motion, which was seconded by Mr. Huber. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:04 p.m., and Ms. Bordzoe called roll.

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

#### **VI. Approval of Minutes of Previous Meetings:**

##### **November 13, 2018 Open Session Meeting Minutes**

The November 13, 2018 Open Session minutes could not be approved due to lack of quorum.

## **November 13, 2018 Closed Session Meeting Minutes**

The November 13, 2018 Closed Session minutes could not be approved due to lack of quorum.

### **VII. 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:

#### **I. Administrative Disposition Adjudications with Recusals (Consent Agenda):**

1. **Scott Madlinger v. Township of Toms River (Ocean) (2018-284) (SR Recusal)**
  - This complaint cannot be adjudicated due to lack of quorum.

#### **II. Administrative Disposition Adjudications with no Recusals (Consent Agenda):**

1. **Charles P. McCoy v. Cumberland County Prosecutor’s Office (2016-266)**
  - No Correspondence Received by the Custodian.
2. **Luis F. Rodriguez v. Kean University (2016-279)**
  - Duplicate Complaint Filed With the GRC.
3. **Randall and Lynda Burns v. Atlantic/Cape May County Court (2018-301)**
  - Not Within Council’s Jurisdiction.
4. **Randall and Lynda Burns v. Somerset County Court (2018-302)**
  - Not Within Council’s Jurisdiction.
5. **Yusuf Abdullah Muhammad v. NJ Department of Corrections (2018-305)**
  - Not a Valid OPRA Request.

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

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

1. **Rebecca Coll v. Borough of Glen Rock (Bergen) (2016-297)**
  - Complaint Voluntarily Withdrawn.
2. **NJ Foundation for Open Government, Inc. v. Princeton Public Schools (Mercer) (2017-88)**
  - Complaint Voluntarily Withdrawn.
3. **Ed Lesser v. East Newark Board of Education (Hudson) (2018-118)**
  - Complaint Voluntarily Withdrawn.
4. **Fox Rothschild LLP (o/b/o CM3 Buildings Solutions, Inc.) v. NJ Department of Treasury (2018-230)**

- Complaint Voluntarily Withdrawn.
- 5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute (AADARI) and Baffi Simmons) v. Borough of Swedesboro (Gloucester) (2018-245)**
  - Complaint Voluntarily Withdrawn.
- 6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute (AADARI) and Baffi Simmons) v. Penns Grove Police Department (Salem) (2018-250)**
  - Complaint Voluntarily Withdrawn.
- 7. **Patrick Wall v. Newark Public Schools (Essex) (2018-258)**
  - Complaint Voluntarily Withdrawn.
- 8. **Joseph Sarno v. Township of Scotch Plains (Union) (2018-267)**
  - Complaint Voluntarily Withdrawn.

### **VIII. 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) (2011-323) (SR Recusal)**
  - This complaint cannot be adjudicated due to lack of quorum.
2. **Vesselin Dittrich v. Hudson County (2017-66) (SR Recusal)**
  - This complaint cannot be adjudicated due to lack of quorum.
3. **Duggan L. Salley v. City of Newark (Essex) (2018-158) (SR Recusal)**
  - This complaint cannot be adjudicated due to lack of quorum.
4. **Sacha Pouliot v. NJ Department of Education (2015-281) (CH Recusal)**
  - This complaint cannot be adjudicated due to lack of quorum.
5. **Arnav Sood v. West Windsor-Plainsboro Regional School District (Mercer) (2016-241) (JM Recusal)**
  - This complaint cannot be adjudicated due to lack of quorum.

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

1. **Richard Rivera v. Passaic County Sheriff's Office (2010-181)**
  - The Council should accept the Administrative Law Judge's November 23, 2018 Initial Decision dismissing this complaint with prejudice.
  - 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. **Matthew Drange v. Camden County Office of Archives and Records Management (2015-265)**
  - The Custodian complied with the Council's June 26, 2018 Interim Order.

- The Custodian unlawfully denied access to certain redacted information and must redisclose the responsive record to the Complainant based on the Council's *In Camera* Examination Findings.
  - 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.
3. **Luis F. Rodriguez v. Kean University (2015-338)**
- The Custodian complied with the Council's October 30, 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.
4. **Sean Patrick Vandy v. Newfield Police Department (Gloucester) (2016-166)**
- The Custodian complied with the Council's November 13, 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. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
5. **Libertarians for Transparent for Government v. Borough of Westwood (Bergen) (2016-214)**
- The Custodian complied with the Council's October 30, 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.
6. **Lewis J. DeEugenio, Jr. v. Borough of Glassboro (Gloucester) (2016-254)**
- The Council must conduct an *in camera* review of the seven (7) responsive records to determine whether their denial was proper under the ACD material exemption.

- 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. Mr. Rosado stated that a change was made on page 3 of the findings and recommendations. Mr. Rosado stated that he corrected an artifact misidentifying the records at issue in the complaint. 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.

7. **Kafele Bomani v. Atlantic County Prosecutor's Office (2016-257)**

- The Custodian timely sought clarification and the Complainant failed to provide same. Thus, no unlawful denial of access occurred.
- 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.

8. **Louis Hall v. Rowan University (2016-259)**

- The Custodian did not unlawfully deny access to the OPRA request because all responsive records were provided.
- 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.

9. **Louis Hall v. Borough of Glassboro (Gloucester) (2016-260)**

- The Custodian bore her burden of proof that she timely responded to the subject OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Custodian did not unlawfully deny access to the OPRA request because all responsive records were provided.
- 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. 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 (2016-264)**

- The Custodian's extensions 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. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

11. **Luis F. Rodriguez v. Kean University (2016-272)**

- The Custodian's extension was warranted and substantiated.
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Mr. Ritardi briefly commented on the extension issue. 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. **Scott DiRoma v. NJ State Parole Board (2016-278)**

- The Custodian's failure to timely respond within the statutory time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Custodian unlawfully denied access to the redacted portions of the e-mail responsive to OPRA request item No. 1. However, the GRC declines to order disclosure of the unredacted e-mail because the Custodian already provided it to the Complainant.
- The Council must conduct an *in camera* review of the unredacted record responsive to OPRA request item No. 2 to determine whether the redactions were proper under the security and surveillance exemption.
- 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.

13. **William A. Goode, Jr. v. Little Ferry Board of Education (Bergen) (2016-284)**

- The Custodian's search was insufficient.
- 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. **Susan M. Vandy v. Burlington County Board of Social Services (2016-319)**

- The Custodian complied with the Council's November 13, 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. Huber made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

15. **Ranjeet Singh v. Borough of Carteret (Middlesex) (2017-28)**

- The Complainant's request item Nos. 1, 2, 3, 5, and 6 were invalid because they required research or asked questions.

- 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. Mr. Martucci suggested an edit to change the word “miniscule” in the second paragraph on page 4 of the findings and recommendations. Mr. Martucci noted that he understood the distinction Council Staff was attempting to make about search and research. Mr. Martucci believed, however, that a different word may better convey the distinction. The Council discussed an appropriate term and ultimately directed Council Staff to change the word to “fact-sensitive.” Mr. Ritardi called for a motion to accept the Council Staff’s findings and recommendations as edited. Mr. Martucci made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

16. **Michael I. Inzelbuch, Esq. v. NJ Office Administrative Law (2017-53)**

- The Custodian bore his burden of proof that he timely responded to the subject OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- 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.

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

- The Custodian complied with the Council’s November 13, 2018 Interim Order.
- The *In Camera* Examination revealed that the Custodian lawfully denied access to the redacted portion of the responsive e-mail chain.
- The Council should decline to address the knowing and willful issue.
- 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.

18. **Eric Petr v. Town of Morristown (Morris) (2017-97)**

19. **Eric Petr v. Town of Morristown (Morris) (2017-98) Consolidated**

- The Custodian’s failure to respond to the April 6, 2017 OPRA request immediately resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(e).
- The Custodian’s failure to timely respond to the March 30, 2017 OPRA request within the statutory time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- 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.

20. **Edward Stevens v. New Horizons Community Charter School (Essex) (2018-166)**

- The Custodian complied with the Council's October 30, 2018 Interim Order advising that no record existed at the time that the Complainant submitted the subject OPRA request.
- There is no knowing and willful violation.
- The Complainant is not a prevailing party entitled to an award of reasonable attorney's fees.
- 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.

**IX. Court Decisions of GRC Complaints on Appeal:**

- Moawad v. City of Bayonne Police Dep't (Hudson), 2018 N.J. Super. Unpub. LEXIS 2487 (App. Div. 2018): The Appellate Division affirmed the GRC's determination to dismiss the complaint because Appellant's OPRA request was made to the Hudson County Prosecutor's Office, but filed a Denial of Access Complaint with the City of Bayonne Police Department.

**X. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None**

**XI. Complaints Adjudicated in Federal Court:**

- Edouard v. City of Long Branch, 2018 U.S. Dist. LEXIS 204884 (D.N.J. Dec. 4, 2018): In a federal lawsuit regarding the tax assessment of his property, the Plaintiff alleged that the Defendant violated OPRA by not responding to his request within the seven (7) business day deadline. The Plaintiff alleged that he contacted the Defendant to ask for an "explanation" on why his condominium's assessed value was increased. The Court asserted that the Plaintiff's request for an explanation was not a request for documents under OPRA. Additionally, the Court held that the Plaintiff was barred by the forty-five (45) day statute of limitations, as the request was made on December 27, 2016, but the Plaintiff filed the current suit on April 19, 2017.

**XII. Public Comment:**

- Mr. Edwin Sheppard spoke to the Council regarding several issues.
  - Mr. Sheppard alleged that Council Staff engaged in misconduct on the part of pending and previously adjudicated complaints. He read to the Council a November 26, 2018 e-mail he sent to Council Staff containing some of those allegations. Mr. Sheppard asserted that Council Staff was not responsive to that e-mail.
  - Mr. Sheppard also noted that Council Staff returned a recent Denial of Access Complaint filing submitted via e-mail and asked him to submit paper copy due to a size limit policy. Mr. Sheppard disputed the policy and stated that Mr. Caruso continuously refused to accept his complaint filing.

- Mr. Sheppard sought a status update on GRC 2016-195 and 2016-170. Mr. Sheppard noted that he sent a reconsideration to Council Staff for GRC 2016-195 and received no acknowledgement on whether it was received. Mr. Sheppard further stated that he resent the reconsideration via U.S. mail on December 14, 2018 and again received no acknowledgement on whether it was received.
- Mr. Sheppard provided to the Council a copy of the November 26, 2018 e-mail, as well as a copy of his mailed request for reconsideration dated December 14, 2018. Mr. Sheppard demanded the Council answer his questions and address his concerns
- Mr. Ritardi stated that discussion or testimony regarding individual complaints was not proper in the “Public Comment” section of the meeting. Mr. Ritardi thus declined to address Mr. Sheppard’s issues with pending complaints. Mr. Ritardi provided the submission to Ms. Bordzoe for dissemination to the Council. Mr. Ritardi finally stated that he could not speak to the allegations raised about Council Staff, but that the Council would address any deficiencies that it may identify.

**XIII. Adjournment:**

Mr. Ritardi called for a motion to end the Council meeting. Mr. Martucci made a motion, which was seconded by Huber. The motion passed by a unanimous vote

The meeting adjourned at 2:44 p.m.

Respectfully submitted,

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Steven Ritardi, Esq., Secretary

Date Approved: February 26, 2019