



**Minutes of the Government Records Council  
January 31, 2019 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:33 p.m. by Christopher Huber 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. Huber 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 January 29, 2019.”

Mr. Huber 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), Kimberly Holmes. (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver)

**\*\*\*Ms. Robin Berg Tabakin participated telephonically.\*\*\***

Absent: Steven Ritardi, Esq. (Public Member).

GRC Staff in Attendance: Frank F. Caruso (Acting Executive Director), Rosemond Bordzoe (Secretary), John Stewart (Mediator), and Deputy Attorney General Debra Allen.

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

## **II. Acting Executive Director's Report:**

### **OPRA Trainings**

The GRC is currently working on its 2019 training calendar. Currently, the GRC intends to hold its 13<sup>th</sup> Annual Seminar, likely in August 2019. Additionally, the GRC will certainly participate in the N.J. League of Municipalities Annual Conference in November if invited. Finally, the GRC currently has one scheduled outreach for 2019: the Office of Legislative Services for June 7, 2019.

### **GRC Staffing**

The GRC was recently notified that Frank F. Caruso will be transitioning into the position of Executive Director. This promotion is a testament to the hard work of GRC staff over the last year in the face of historically low staffing levels and an increased workload. Mr. Caruso looks forward to working with staff to effectuate the goals of the GRC as set forth in OPRA.

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. Interviews have taken place and the GRC is in the process of alerting candidates on their final decision.

### **Pending Legislation**

On January 17, 2019, Assemblyman Ronald S. Dancer (District 21) introduced A-4894. That bill proposes to create an eleven (11) member "Open Public Records Act Study Commission." The members would include a representative from the DCA Commissioner's Office, as well as the Executive Director of the GRC (or their designees). The goal of the Commission will be to examine OPRA, identify potential improvements and changes, and compose findings and recommendations for the Legislature and Governor.

### **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 5,103 Denial of Access Complaints. That averages about 309 annual complaints per 16 1/2 program years. So far in the current program year (FY2019), the GRC has received 213 Denial of Access Complaints.
- 504 of the 5,103 complaints remain open and active (10.1%). Of those open cases:
  - 8 complaints are on appeal with the Appellate Division (1.5%);
  - 20 complaints are currently in mediation (4.0%);
  - 0 complaints are proposed for the Office of Administrative Law (0.0%);
  - 30 complaints await adjudication by the Office of Administrative Law (6.0%);

- 66 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (13.1%);
  - 380 complaints are work in progress (75.4%); and
  - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 29,976 total inquiries, averaging about 1,934 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 1,001 inquiries (7 inquiries per workday).

### **III. Closed Session:**

- Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-190)
- Edwin Sheppard v. Cape May County (2016-195) (**FFC Recusal**)

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

The Council met in closed session from 1:40 p.m. until 2:10 p.m.

Mr. Huber called for a motion to end the closed session. Ms. Berg Tabakin made a motion, which was seconded by Ms. Holmes. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:10 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Mr. Huber, Ms. Holmes

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

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

Mr. Huber called for a motion to approve the draft open session minutes of the November 13, 2018 meeting. Mr. Caruso noted that a minor change to reflect the correct councilmember was made to the top of page 3. Ms. Holmes noted that she confirmed the accuracy of the draft minutes with Donald Palombi Esq. Ms. Berg Tabakin made a motion, which was seconded by Ms. Holmes. The motion passed by a unanimous vote.

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

Mr. Huber called for a motion to approve the draft closed session minutes of the November 13, 2018 meeting. Ms. Holmes noted that she confirmed the accuracy of the draft minutes with Mr. Palombi. Ms. Berg Takabin made a motion, which was seconded by Ms. Holmes. The motion passed by a unanimous vote.

### **December 18, 2018 Open Session Meeting Minutes**

The December 18, 2018 Open Session minutes could not be approved due to lack of quorum.

### **December 18, 2018 Closed Session Meeting Minutes**

The December 18, 2018 Closed Session minutes could not be approved due to lack of quorum

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

Mr. Huber 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):**

#### **1. Scott Madlinger v. Township of Toms River (Ocean) (2018-284) (SR Recusal)**

- All Records Provided in a Timely Manner.
- Mr. Huber called for a motion to accept the recommendations as written in the above Administrative Complaint Dispositions. Ms. Berg Tabakin made a motion, which was seconded by Ms. Holmes. The motion passed by a unanimous vote.

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

#### **1. Patrick Trainor v. NJ Office of the Attorney General (2018-273)**

- Unripe Cause of Action.

#### **2. Lonnie Britton v. Superior Court of New Jersey (2019-11)**

- Not Within the Council’s Jurisdiction.

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

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

#### **1. Michael I. Inzelbuch, Esq. v. Elizabeth Board of Education (Union) (2016-225)**

- Complaint Voluntarily Withdrawn.

#### **2. Paul Schulstad v. Borough of Saddle River (Bergen) (2018-164)**

- Complaint Settled in Mediation.

#### **3. Michael Mastanduno v. NJ Civil Service Commission (2018-196)**

- Complaint Settled in Mediation.

#### **4. John Hart v. Cherry Hill Township (Camden) (2018-272)**

- Complaint Voluntarily Withdrawn.

5. **Kyle Steven Kushner v. NJ State Police (2018-310)**
  - Complaint Voluntarily Withdrawn.
6. **Kyle Bagenstose v. NJ Department of Health (2018-316)**
  - Complaint Voluntarily Withdrawn.
7. **Steven J. Kossup, Esq. v. NJ State Police (2019-5)**
  - 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) (2011-323) (SR Recusal)**
  - This complaint should be dismissed because Complainant’s Counsel withdrew it in a letter to the Office of Administrative Law dated December 5, 2018 (based on a settlement agreement).
  - Mr. Huber called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. **Shawn G. Hopkins v. Borough of West Long Branch (Monmouth) (2014-40) (SR Recusal)**
  - The Custodian’s failure to respond in a timely manner resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g), (i). However, the Council should decline to order disclosure because the Custodian did so between July 29 and August 27, 2014.
  - 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. Huber called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
3. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-133) (SR Recusal)**
  - The Council should determine the reasonable fee amount to which the Complainant is entitled.
  - The Council should find that Complainant is entitled to a fee award of \$4,800.00 representing 16 hours at \$300.00 per hour, with no enhancement.

- Mr. Huber called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
4. **Art Rittenhouse v. Sayreville Economic Redevelopment Agency (Middlesex) (2016-276) (SR Recusal)**
- The Custodian failed to bear his burden of proof that he was not required to obtain responsive e-mails from a commissioner and councilman. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010). The Custodian must thus obtain and disclose responsive records.
  - The portion of the Complainant’s request seeking identities of those receiving a particular e-mail was an invalid request for information.
  - The knowing and willful analysis is deferred.
  - Mr. Huber called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
5. **Vesselin Dittrich v. Hudson County (2017-66) (SR Recusal)**
- The Custodian bore her burden of proving a lawful denial of access because no records existed. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
  - Mr. Huber called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
6. **Duggan L. Salley v. City of Newark (Essex) (2018-156) (SR Recusal)**
- The Custodian failed to comply with the Council’s August 28, 2018 Interim Order.
  - The Council’s Order is enforceable in Superior Court. N.J.A.C. 5:105-2.9(c); New Jersey Court Rules R. 4:67-6.
  - There is no knowing and willful violation.
  - The Complainant’s request for reconsideration should be denied.
  - Mr. Huber called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
7. **Sacha Pouliot v. NJ Department of Education (2015-281) (CH Recusal)**
- This complaint could not be adjudicated due to lack of quorum.

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

### **1. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-141)**

- This complaint should be dismissed because Complainant's Counsel withdrew it in a letter to the Office of Administrative Law dated December 13, 2018 (based on a settlement agreement).
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Mr. Caruso noted that the Council previously referred this complaint back to the Office of Administrative Law after the parties attempted to waive the knowing and willful penalty as part of a settlement agreement. Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

### **2. Shawn G. Hopkins v. Township of Manalapan (Monmouth) (2014-35)**

- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g), (i).
- The Custodian may have unlawfully denied to the requested CAMA data and property photographs. The Custodian must disclose the records that exist and identify if certain records do not exist.
- The knowing and willful and prevailing party analyses are deferred.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

### **3. Shawn G. Hopkins v. Borough of Manasquan (Monmouth) (2014-36)**

- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g), (i).
- Ms. Palughi unlawfully denied access to the responsive CAMA data. Thus, either her or the Custodian must disclose the responsive records to the Complainant.
- The Custodian may have unlawfully denied access to at least a portion of the responsive photographs. The Custodian must disclose those records that exist or provide an exemption for those records she is not disclosing.
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

### **4. Shawn G. Hopkins v. Borough of Monmouth Beach (Monmouth) (2014-37)**

- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g), (i). However, the Council should decline to order disclosure because the Custodian did so on March 4, 2014 via e-mail.

- The Custodian lawfully denied access to the requested property photographs because none exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- There is no knowing and willful violation.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

5. **Jeff Carter v. Borough of Paramus (Bergen) (2015-104)**

- The Administrative Law Judge's Initial Decision is "deemed" adopted because the GRC did not get unanimous consent from the parties for a second (2<sup>nd</sup>) extension of time to accept, reject, or modify same. N.J.S.A. 52:14B-10(c).
- There is no knowing and willful violation.
- The Complainant is not a prevailing party.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Mr. Huber asked how the Initial Decision became final by operation of law. Mr. Caruso stated that the GRC attempted to obtain unanimous consent from the parties on a second (2<sup>nd</sup>) extension of time, but the Custodian declined. Mr. Caruso stated that because the GRC failed to obtain unanimous consent, it was unable to obtain an extension and the action time frame expired. Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

6. **Matthew Drange v. Camden County Office of Archives and Records Management (2015-265)**

- The Custodian complied with the Council's December 18, 2018 Interim Order.
- There is no knowing and willful violation.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

7. **Rick Robinson v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-410)**

- The special service charge issue is moot because the Complainant paid same and was provided with responsive records.
- The Council must conduct an *in camera* review of responsive records.
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg



Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

8. **John Paff v. City of Trenton (Mercer) (2016-95)**

- Sgt. Durlacher and/or the current Custodian failed to comply with the Council's October 30, 2018 Interim Order.
- The Council's Order is enforceable in Superior Court. N.J.A.C. 5:105-2.9(c); New Jersey Court Rules R. 4:67-6.
- It is possible that a knowing and willful violation occurred. Thus, this complaint should be referred to the Office of Administrative Law for a determination.
- The Complainant is a prevailing party entitled to an award of reasonable attorney's fees. N.J.S.A. 47:1A-6. For administrative ease, the OAL should determine the total amount.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

9. **Aakash Dalal v. NJ Office of Homeland Security and Preparedness (2016-169)**

- The Custodian's June 9, 2016 response was insufficient because he failed to address the Complainant's preferred method of delivery and each request item.
- The Custodian may have unlawfully denied access to 2012 and 2013 press releases. The Custodian must perform a search and disclose those releases that exist.
- The Custodian lawfully denied access to request item Nos. 2 and 3 based on a "Glomar" response.
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

10. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-190)**

- The Custodian complied with the Council's August 28, 2018 Interim Order.
- The Custodian unlawfully denied access to certain redacted portions of the responsive billing records and must disclose same in accordance with the Council's *In Camera* Examination.
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

11. **Ronald W. Yarbrough (o/b/o Pro-Spec Corporation) v. City of Trenton (Mercer) (2016-230)**

- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g), (i). The Custodian's eventual response was insufficient because he failed to address the Complainant's preferred method of delivery and each request item.
- The Custodian may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The Custodian must certify to whether records were located and whether the Complainant was offered inspection of same.
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

12. **Arnav Sood v. West Windsor-Plainsboro Regional School District (Mercer) (2016-241)**

- The Council must conduct an *in camera* review of the redacted e-mail chain.
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Mr. Caruso noted that this case was on the "Recusal" list for the December 18, 2018 meeting because of Jason Martucci advised of a personal conflict. Mr. Caruso noted that the recusal was cured because Ms. Holmes, who did not have a personal recusal here, was representing DCA at this meeting. Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

13. **Charles R. Cohen v. City of Englewood (Bergen) (2016-253)**

- This complaint should be dismissed because the Complainant withdrew it in a letter to the Office of Administrative Law dated December 26, 2018.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

14. **Benny Cardona (o/b/o City of Newark Public Safety Department, Fire Division) v. NJ Department of Health, Division of Public Health Infrastructure Laboratories and Emergency Preparedness (2016-265)**

- The Custodian lawfully denied access to the Complainant's OPRA request because he provided all records that existed. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to

accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

15. **Frank Hubbard v. NJ State Parole Board (2016-270)**

- The Custodian lawfully denied access to the Complainant's OPRA request because no records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

16. **Jackson T. Horowitz v. NJ Office of the State Comptroller (2016-280)**

- The Custodian did not unlawfully deny access to the October 12, 2016 OPRA request because he never received it. Valdes v. N.J. Dep't of Educ., GRC Complaint No. 2012-19 (April 2013).
- A portion of the Complainant's OPRA request not identifying direct acting drugs was invalid because it required research.
- The portion of the OPRA request seeking information relevant to Harvoni was valid because it did not require research. The Custodian thus unlawfully denied access; however, the Council should decline to order disclosure because the Complainant received the responsive records from another agency.
- There is no knowing and willful violation.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

17. **William Galtieri v. County of Somerset (2016-286)**

- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g), (i).
- The Custodian's search was insufficient. Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the Council should decline to order disclosure because the Custodian did so on November 17, 2016.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

18. **William Galtieri v. County of Somerset (2016-287)**

- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g), (i).
- The Custodian's search was insufficient. Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008).
- The Custodian may have unlawfully denied access to additional e-mails. The Custodian must conduct a new search and certify to the results. Should any additional records exist, the Custodian must provide them to the Complainant.
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

19. **John Mandich v. NJ Department of Corrections (2016-326)**

- The Custodian lawfully denied access to a handwritten letter, but unlawfully denied access to the remaining "[p]arole [r]ecords" responsive to the Complainant's OPRA request. However, the Council should decline to order disclosure because the Custodian did so on January 15, 2019.
- The Custodian lawfully denied access to the remaining withheld records under multiple statutes, regulations, and case law.
- There is no knowing and willful violation.
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

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

- The Council should dismiss this complaint due to a failure to locate the Complainant. Taylor v. N.J. Dep't of Corr., GRC Complaint No. 2010-319 (May 2012).
- Mr. Huber called for any discussion on the Council Staff's findings and recommendations as written. Mr. Stewart noted that the proposed findings and recommendations was amended to remove a stand-alone conclusion regarding the Custodian's untimely request for reconsideration. Mr. Huber called for a motion to accept the Council Staff's findings and recommendations as amended. Ms. Berg Tabakin made a motion and Ms. Holmes seconded the motion. The motion passed by a unanimous vote.

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

- Moretti v. Bergen Cty. Prosecutor's Office, 2019 N.J. Super. Unpub. LEXIS 64 (App. Div. 2019): The Appellate Division affirms the GRC's determination upholding Respondent's denial of access to the Appellant's OPRA requests. The court found

that the Appellant's OPRA request seeking "records" held by the Respondent, and another request seeking "records for supporting materials so [he] does not become a victim of a municipal property seizure," were both overly broad and invalid. The court noted that even though the Appellant appeared to narrow the requests in his Denial of Access Complaint, they remained invalid under OPRA.

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

- Port Auth. Police Benevolent Ass'n v. Port Auth. of N.Y. & N.J., 2018 N.J. Super. Unpub. LEXIS 2785 (App. Div. 2018): The Appellate Division reversed in part the trial court's decision holding thirty-eight (38) of the Plaintiff's fifty-eight (58) OPRA requests as overly broad and invalid. The court held that request nos. 27-29, 31-34, 36, 52, and 58 were valid because they sought identifiable records within limited timespans, and nearly all of which provided a concrete subject matter. The court also noted that the trial judge should have analyzed each item as a separate OPRA request, rather than examine all fifty-eight (58) requests as a whole. The court remanded back to the trial judge to determine an award of attorney's fees related to the Plaintiff's success.

**IX. Complaints Adjudicated in Federal Court: None**

**X. Public Comment: None**

**XI. Adjournment:**

Mr. Huber called for a motion to end the Council meeting. Ms. Bergen Tabakin made a motion, which was seconded by Ms. Holmes. The motion passed by a unanimous vote.

The meeting adjourned at 2:39 p.m.

Respectfully submitted,

---

Robin Berg Tabakin, Esq., Chair

Date Approved: February 26, 2019