



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
April 30, 2019

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, April 30, 2019, 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. Acting Executive Director’s Report

III. Closed Session

- Jeff Carter v. Franklin Fire District No. 1, 2019, N.J. Super. Unpub. LEXIS 590 (App Div. 2019)
- Scott M. Halliwell and Anthony G. Pennant v. Borough of Brooklawn (Camden) (2016-201)
- Micaela P. Bennett v. West Orange Board of Education (2018-209)
- Edwin Gregory Sheppard v. County of Cape May (2019-3) (**FFC Recusal**)

IV. Approval of Minutes of Previous Meetings:

March 26, 2019 Open Session Meeting Minutes
March 26, 2019 Closed Session Meeting Minutes

V. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

An “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Council Staff’s recommendation of dismissal based on jurisdictional,



procedural or other defects of the complaint. The Council Staff's recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda): None

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

1. Aaron I. Lightner v. NJ Department of Treasury, Division of Lottery (2019-28)
 - No Records Responsive to the Request Exist.
2. Aaron I. Lightner v. NJ Department of Treasury, Unclaimed Property Administration (2019-29)
 - No Correspondence Received by the Custodian.
3. Michael Rinderle v. NJ Department of Corrections (2019-59)
 - Not a Valid OPRA Request.
4. Kory S. McClary v. Atlantic County Court Reporter's Office (2019-69)
 - Not Within the Council's Jurisdiction.

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

1. David Weiner v. Newark Parking Authority (Essex) (2018-189)
 - Complaint Settled in Mediation.
2. Scott Brelinisky v. Scotch Plains-Fanwood Public Schools (Union) (2018-254)
 - Complaint Settled in Mediation.
3. Elizabeth Perez v. Borough of Tinton Falls (Monmouth) (2018-271)
 - Complaint Settled in Mediation.
4. Scott Brelinisky v. Scotch Plains-Fanwood Public Schools (Union) (2018-295)
 - Complaint Settled in Mediation.
5. Sharon Racioppi v. Township of Mahwah (Bergen) (2018-307)
 - Complaint Settled in Mediation.
6. Rahgeam Jenkins v. NJ Department of Corrections (2019-12)
 - Complaint Settled in Mediation.
7. Victor Manuel Luna v. City of Trenton Police Department (Mercer) (2019-46)
 - Complaint Voluntarily Withdrawn.
8. Luis F. Rodriguez v. Kean University (2017-54)
 - Complaint Voluntarily Withdrawn.
9. Michael Doherty v. Edison Board of Education (Middlesex) (2019-60)
 - Complaint Voluntarily Withdrawn.
10. John Zurlo v. Borough of North Caldwell (Essex) (2019-66)
 - Complaint Voluntarily Withdrawn.
11. Dustin Racioppi v. NJ Schools Development Authority (2019-67)
 - Complaint Voluntarily Withdrawn.
12. Arthur H. Lang v. Lakewood Board of Education (Ocean) (2019-72)
 - 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:

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| <ol style="list-style-type: none">1. Michael Doss v. Borough of Bogota (Bergen) (2013-315) (SR Recusal)2. Michael Doss v. Borough of Bogota (Bergen) (2014-152) (SR Recusal) Consolidated<ul style="list-style-type: none">• The Custodian, or her designee, failed to comply with the Council's June 27, 2017 Interim Order.• These complaints should be remanded back to the OAL for a hearing in accordance with <u>N.J.S.A. 52:14B-9</u>. |
|---|
3. Matthew Drange v. Paterson Police Department (Passaic) (2015-252) **(SR Recusal)**
 - The Custodian complied with the Council's March 26, 2019 Interim Order.
 - There is no knowing and willful violation.
 4. Jameel Mikal Rollins v. Essex County Prosecutor's Office (2017-42) **(SR Recusal)**
 - The portion of the Complainant's request seeking "Promis Gavel" is invalid. Franklin v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-308 (August 2008).
 - The Custodian lawfully denied access to "rap sheets." Franklin, GRC 2016-308.
 5. Charlene Barth v. Rutgers University (2017-121) **(SR Recusal)**
 - The original Custodian unlawfully denied access to the responsive bids and must disclose same to the Complainant, with redactions where applicable.
 - The knowing and willful analysis is deferred.
 6. Stephen Schnitzer, Esq. (o/b/o Vito's Trattoria, Inc.) v. NJ Transit (2016-140) **(SR AND RBT Recusal)**
 - This case cannot be adjudicated due to lack of quorum.

B. Individual Complaint Adjudications with no Recusals:

1. Shawn G. Hopkins v. City of Long Branch (Monmouth) (2014-44)
 - The Custodian did not fully comply with the Council's February 26, 2019 Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
2. Shawn G. Hopkins v. Borough of Red Bank (Monmouth) (2014-46)
 - The Custodian complied with the Council's March 26, 2019 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.

3. Shawn G. Hopkins v. Borough of Sea Girt (Monmouth) (2014-47)
 - The Custodian complied with the Council's March 26, 2019 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.

4. Shawn G. Hopkins v. Borough of Spring Lake (Monmouth) (2014-50)
 - The Custodian's failure to timely respond resulted in a "deemed" denial. N.J.S.A. 47:1A-5(g); (i).
 - The Custodian unlawfully denied access to the Complainant's OPRA request on the basis that same was invalid. N.J.S.A. 47:1A-6.
 - The Custodian unlawfully denied access to the responsive CAMA data and photographs in accordance with the OAL's decision in Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). Thus, the Custodian must disclose the CAMA data and photographs that existed at the time of the OPRA request. If no photographs exist, the Custodian must certify to this fact.
 - The knowing and willful and prevailing party analyses are deferred.

5. Shawn G. Hopkins v. Township of Upper Freehold (Monmouth) (2014-65)
 - Mr. Walters unlawfully denied the Complainant's OPRA request based on pending litigation. Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014).
 - The Custodian unlawfully denied access to the responsive CAMA data and may have unlawfully denied access to the property photographs that existed at the time of the subject OPRA request. The Custodian must either disclose the responsive records or certify if none exist.
 - The knowing and willful analysis is deferred.

6. Shawn G. Hopkins v. Rockaway Township (Morris) (2014-146)
 - The current Custodian complied with the Council's March 26, 2019 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.

7. Matthew Drange v. City of Plainfield Police Department (Union) (2015-229)
 - The Custodian complied with the Council's March 26, 2019 Interim Order.
 - There is no knowing and willful violation.

8. William Mark Scott v. NJ Health Care Facilities Financing Authority (2015-256)
 - The Custodian’s response was sufficient. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
 - The Council should grant Deborah’s motion to intervene. N.J.A.C. 1:1-16.3(a).
 - The Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6; 26 U.S.C. § 6103.

9. Richard E. Wenger, Esq. (o/b/o David Pereira) v. Voorhees Fire District No. 3 (Camden) (2016-80)
 - The Council should dismiss this complaint because Complainant’s Counsel withdrew same from the OAL.

10. Scott M. Halliwell and Anthony Pennant v. Borough of Brooklawn (Camden) (2016-201)
 - The Custodian failed to comply fully with the Council’s August 28, 2018 Interim Order.
 - The Custodian shall comply with the Council’s *In Camera* Examination findings.
 - The Custodian shall disclose the portion of all e-mails containing “sender, recipient, date, time, subject, and salutations.” Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).
 - The knowing and willful analysis is deferred.

11. Libertarians for Transparent Government v. Cumberland Regional School District (2017-1)
 - The Council should dismiss this complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.

12. William A. Goode, Jr. v. Little Ferry Board of Education (Bergen) (2017-21)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial. N.J.S.A. 47:1A-5(g); (i). However, the GRC declines to order disclosure of responsive records because the Custodian provided them to the Complainant on January 27, 2017.
 - There is no knowing and willful violation.

13. Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2017-22)
 - The Custodian bore his burden of proving that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.

14. Betsy Cross v. Wall Township Board of Education (Monmouth) (2017-29)
 - The Custodian unlawfully denied access to the responsive record. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure because the Complainant has the requested record in her possession.
 - There is no knowing and willful violation.

15. Earl Hammond v. NJ Department of Corrections (2017-32)
 - The Custodian lawfully denied access to the Complainant’s OPRA request item No. 1 for a log book page. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(13).
 - The Complainant’s request item No. 2 was invalid. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

16. Rhonda Peters v. Township of Mansfield (Warren) (2017-33)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial. N.J.S.A. 47:1A-5(g); (i).
 - The Custodian may have unlawfully denied access to the responsive records. The Custodian must complete her search and either disclose those records located or certify if none existed.
 - The knowing and willful and prevailing party analyses are deferred.
17. Libertarians for Transparent Government v. Elizabeth Board of Education (Union) (2017-34)
 - The Custodian’s failure to timely respond to the Complainant’s November 15, 2016 OPRA request resulted in a “deemed” denial. N.J.S.A. 47:1A-5(g); (i).
 - The Custodian lawfully denied access to the subject settlement agreement because it was not finalized at the time of both OPRA requests. Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013).
 - The Custodian lawfully denied access to the portion of the October 25, 2016 request item No. 2 as invalid and for seeking draft documents.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party.
18. Regino De La Cruz, Esq. v. City of Union City (Hudson) (2017-35)
 - The Custodian’s response was insufficient because she failed to provide a specific lawful basis for denying access. N.J.S.A. 47:1A-5(g).
 - The Custodian lawfully denied access to the Complainant’s request because it was invalid. Love v. Spotswood Police Dep’t (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015).
 - There is no knowing and willful violation.
19. Askia J. Nash v. Newark Public School (Essex) (2017-37)
 - The Council should dismiss this complaint because the Complainant failed to state a claim. Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014).
20. Hamid Abdul-Shabazz v. Passaic County Prosecutor’s Office (2017-41)
 - The Custodian lawfully denied access to OPRA request item No. 1 because no records existed. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
 - The Custodian lawfully denied access to the requested criminal histories. N.J.S.A. 47:1A-6; Lewis v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018).
21. Henry Savelli v. Borough of Clayton (Gloucester) (2017-46)
 - The Custodian unlawfully denied access to the Complainant’s OPRA request on the basis that it was invalid. Paff v. Twp. of Galloway, 229 N.J. 340, 353 (2017). Thus, the Custodian must disclose the responsive records to the Complainant.
 - The knowing and willful analysis is deferred.

22. Ricky Roman v. NJ Department of Corrections (2017-47)
- The Custodian lawfully denied access to the requested phone records pursuant to the N.J. Dep't of Corrections' regulations. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(12). The GRC also declines to address whether the Custodian was required to convert the audio recording into a transcript because same is exempt.
23. Carey Cornett v. Borough of North Haledon (Passaic) (2017-50)
- 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).
24. Linda D. Walls v. Newark Public Schools (Essex) (2017-52)
- The Custodian bore her burden of proving that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6.
 - The requested information is exempt as a personnel record under OPRA. N.J.S.A. 47:1A-10. The Custodian thus lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.
25. James J. Capone v. Kean University (2017-60)
- The Custodian lawfully denied access to the Complainant's OPRA request seeking "Supervisory Conflicts of Interest Certification" forms under the personnel exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10.
26. Casey D. Terry v. NJ Department of Corrections (2017-147)
- The Custodian did not unlawfully deny access to the subject request because he never received it. Avila v. Camden Cnty. Prosecutor's Office, GRC Complaint No. 2007-287 (July 2008).
27. David Herron v. Paterson Board of Education (Passaic) (2018-160)
- The Custodian complied with the Council's March 26, 2019 Interim Order.
 - There is no knowing and willful violation.
28. Micaela P. Bennett v. West Orange Board of Education (Essex) (2018-209)
- This complaint should be referred to the OAL for a determination on the Complainant's objection to representation and appropriate action as applicable. N.J.A.C. 5:105-1 *et seq.*; N.J.A.C. 1:1-5.3.
 - The OAL should also determine the access issue, as well as the knowing and willful issue if an unlawful denial of access occurred.
29. Edwin Gregory Sheppard v. County of Cape May (2019-3)
- This complaint should be referred to the OAL for a determination on the Complainant's objection to representation and appropriate action as applicable.
 - The OAL should also determine the access issue, as well as the knowing and willful issue if an unlawful denial of access occurred.

VII. Court Decisions of GRC Complaints on Appeal:

- Gordon v. City of Orange Twp. Essex, 2019 N.J. Super. Unpub. LEXIS 909 (App. Div. 2019)

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

- Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (App. Div. 2019)

IX. Public Comment:

The public comment period is limited to providing an opportunity for speakers to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

X. Adjournment

*Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.