



**Minutes of the Government Records Council  
June 25, 2019 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:36 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.

- **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 June 20, 2019.”

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), Thurman Barnes (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver).

Absent: Steven Ritardi, Esq., Public Member

GRC Staff in Attendance: Frank F. Caruso (Acting Executive Director), Rosemond Bordzoe (Secretary), John Stewart (Mediator), 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. Acting Executive Director's Report:**

### **OPRA Trainings**

On June 7, 2019, the GRC conducted a training for the New Jersey Office of Legislative Services. The GRC provided an overview of OPRA and relevant case law. The GRC also provided answers to pre-submitted questions, which we were informed were very well received.

The GRC's next training will be its 13<sup>th</sup> Annual OPRA Seminar in August 2019.

### **Procedural Changes**

- The GRC recently made a change to its mediation process in the interest of furthering enforcing confidentiality. This change required the GRC to amend its administrative disposition language for cases settled in mediation. The change will be in effect beginning with the July meeting.
- In the last few months, the GRC have received criticism from a few complainants who questioned the following statement in our standard meeting notification e-mail: "Please note that the GRC will not accept any additional submissions beyond this date." In an attempt to clarify this language, some June meeting notifications went out with "today" in place of "this date," which further caused confusion. Based on this, staff will be crafting new language to ensure that parties understand that no submissions will be accepted as of the GRC's meeting notification. The agreed-upon language will go into effect beginning with the July meeting.

### **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 5,205 Denial of Access Complaints. That averages about 309 annual complaints per more than 16 3/4 program years. So far in the current program year (FY2019), the GRC has received 315 Denial of Access Complaints, which surpassed all FY2018 filings by 88 complaints.
- 475 of the 5,205 complaints remain open and active (9.1%). Of those open cases:
  - 4 complaints are on appeal with the Appellate Division (0.8%);
  - 18 complaints are currently in mediation (3.8%);
  - 3 complaints are proposed for the Office of Administrative Law (0.6%);
  - 29 complaints await adjudication by the Office of Administrative Law (6.1%);
  - 83 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (17.5%);
  - 338 complaints are work in progress (71.2%); and
  - 0 complaints are being held in abeyance (0%).

- Since Program Year 2004, the GRC has received and responded to 30,733 total inquiries, averaging about 1,939 annual inquiries per more than 15 3/4 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 1,774 inquiries (approximately 7 inquiries per workday).

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

- Lewis J. DeEugenio v. Borough of Glassboro (Gloucester) (2016-254) – In Camera Review (N.J.A.C. 5:105-2.8(g)).

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

The Council met in closed session from 1:45 p.m. until 1:52 p.m.

**\*\*\*Mr. Stewart exited the meeting at the conclusion of the closed session.\*\*\***

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Huber made a motion, which was seconded by Mr. Barnes. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:01 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Mr. Huber, and Mr. Barnes. Mr. Ritardi was absent.

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

#### **May 21, 2019 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the May 21, 2019 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Jennifer Simons, Esq. Mr. Barnes made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

#### **May 21, 2019 Closed Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the April 30, 2019 meeting. Mr. Huber noted that he confirmed the accuracy of the draft minutes with Ms. Simons. Mr. Barnes made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

### **V. 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):**

1. **Kafele K. Bomani v. Atlantic County Prosecutor's Office (2017-131)**

- No Correspondence Received by the Custodian.
- Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Mr. Barnes made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

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

1. **Cynthia A. McBride (o/b/o Charles Jones – A Data Trace Company) v. The North Hudson Sewerage Authority (Hudson) (2018-292)**

- Complaint Voluntarily Withdrawn.

2. **Timothy N. Glen v. Woodbury Police Department (Gloucester) (2019-37)**

- Complaint Settled in Mediation.

3. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-40)**

- Complaint Settled in Mediation.

4. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-48)**

- Complaint Settled in Mediation.

5. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-49)**

- Complaint Settled in Mediation.

6. **Clifford P. Yannone v. NJ Department of Corrections (2019-57)**

- Complaint Settled in Mediation.

7. **Franklin Buday v. Township of Franklin (Somerset) (2019-61)**

- Complaint Settled in Mediation.

8. **Clifford P. Yannone v. NJ Department of Corrections (2019-62)**

- Complaint Settled in Mediation.

9. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-77)**

- Complaint Settled in Mediation.

10. **Joseph Iko v. Township of Old Bridge (Middlesex) (2019-101)**

- 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. **Michael Doss v. Borough of Bogota (Bergen) (2013-315) (SR Recusal)**
2. **Michael Doss v. Borough of Bogota (Bergen) (2014-152) (SR Recusal) Consolidated**
  - The Custodian’s request for reconsideration should be denied.
  - The Council’s April 30, 2019 Interim Order remains in effect.
  - 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. Barnes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
3. **Christa L. Hayes v. City of Newark (Essex) (2017-65) (SR Recusal)**
  - The Custodian lawfully denied access to OPRA request item No.1 because no records existed at the time of the OPRA request. Goeckel v. Chatham Borough Police Dep’t (Morris). GRC Complaint No. 2013-356 (July 2014).
  - The Custodian lawfully denied access to OPRA request item No.2 because no records existed. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
  - 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. Barnes a motion and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
4. **Elouise McDaniel v. Township of Irvington (Essex) (2017-108) (SR Recusal)**
  - The Custodian violated OPRA by conducting an insufficient search for records responsive to the February 22, 2017 OPRA request. Schneble v. N.J. Dep’t of Env’tl. Prot., GRC Complaint No. 2007-220 (April 2008).
  - The Custodian’s failure to timely respond to the Complainant’s March 22, 2017 OPRA request resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); (i).
  - The Complainant’s March 22, 2017 OPRA request was invalid because it required research. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012).
  - 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. Huber made a motion and Mr. Barnes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
5. **David Weiner v. County of Essex (2017-189) (SR Recusal)**
  - The original Custodian may have unlawfully denied access to a complete listing of every Division of Family Assistance and Benefits employee. N.J.S.A. 47:1A-6. The Custodian must either produce a new list or certify that the record initially provided was complete.
  - The knowing and willful analysis is deferred.

- 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. Barnes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

6. **Ralph E. Marsh v. County of Essex (2017-198) (SR Recusal)**

- The original Custodian’s failure to respond to the Complainant’s August 23, 2017 OPRA request resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); (i).
- The Custodian lawfully denied access to OPRA request item No. 2 because no records existed. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
- 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. Barnes a motion and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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

- Complainant’s Counsel’s request for reconsideration should be denied.
- The Custodian knowingly and willfully violated OPRA and is subject to the civil penalty. N.J.S.A. 47:1A-11. Because this is his third violation in the last ten (10) years, the Custodian must remit from his own personal funds \$5,000 made payable to the Treasurer of the State of New Jersey within twenty (20) days from receipt of the Council’s Order.
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

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

- The Custodian did not fully comply with the Council’s January 31, 2019 Interim Order.
- The Council provides the Custodian a final opportunity to obtain and disclose the photographs responsive to the Complainant’s OPRA request. Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-218 *et seq.* (Interim Order dated April 26, 2016).
- The knowing and willful analysis is deferred.

- 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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
3. **Shawn G. Hopkins v. City of Long Branch (Monmouth) (2014-44)**
    - 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. Barnes seconded the motion. The motion passed by a unanimous vote.
  4. **Shawn G. Hopkins v. Borough of Red Bank (Monmouth) (2014-46)**
    - 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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
  5. **Shawn G. Hopkins v. Borough of Sea Girt (Monmouth) (2014-47)**
    - 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. Barnes seconded the motion. The motion passed by a unanimous vote.
  6. **Shawn G. Hopkins v. Borough of Spring Lake (Monmouth) (2014-50)**
    - The current Custodian complied with the Council’s April 30, 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.
    - 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.

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

7. **Shawn G. Hopkins v. Rockaway Township (Morris) (2014-146)**

- The Council should, based on a mistake, amend conclusion No. 2 to consider whether Assessor Burek knowingly and willfully violated OPRA. N.J.A.C. 5:105-2.10(a).
- The Custodian did not knowingly and willfully violate OPRA. However, Assessor Burek may have knowingly and willfully violated OPRA. Thus, this complaint should be referred to the Office of Administrative Law for a fact-finding hearing to determine this issue.
- The prevailing party fee analysis is deferred.
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

8. **Marie W. Collinson v. Unity Charter School (Morris) (2016-226)**

- The Custodian did not fully comply with the Council's May 21, 2019 Interim Order.
- 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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

9. **Lewis J. DeEugenio, Jr. v. Borough of Glassboro (Gloucester) (2016-254)**

- The Custodian complied with the Council's December 18, 2018 Interim Order.
- The *In Camera* Examination revealed that the Custodian lawfully denied access to all responsive records. N.J.S.A. 47:1A-6.
- The Council should decline to address the knowing and willful issue because of the lawful denial of access.
- The Complainant is not a prevailing party entitled to an award of attorney's fees.
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

10. **Christina Moreira v. Elizabeth Board of Education (Union) (2017-24)**

- The Custodian complied with the Council's May 21, 2019 Interim Order.
- 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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

11. **Henry Savelli v. Borough of Clayton (Gloucester) (2017-46)**

- This complaint should be dismissed because the Complainant withdrew it on May 14, 2019. No further adjudication is required.
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

12. **Serges Demefack (o/b/o American Friends Service Committee Newark Office) v. Monmouth County (2017-75)**

- The portion of the Complainant's OPRA request item No. 1 seeking "all records" and "aggregate data" is invalid because it failed to identify specific records. Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
- The portion of the Complainant's OPRA request item No. 1 seeking immigration detainer forms is a valid request.
- OPRA request item No. 2 seeking communications with United States Immigration and Customs Enforcement is valid; however, the Council should decline to order disclosure because responsive records were provided as part of the Statement of Information.
- The Custodian lawfully denied access to the immigration detainer forms. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); 8 C.F.R. 236.6.
- The Custodian did not deny access to records responsive to the Complainant's OPRA request item No. 3 because she disclosed all records that existed. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
- 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. Huber made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

13. **Robert Bell v. Hudson County Prosecutor's Office (2017-86)**

- The Custodian complied with the Council's May 21, 2019 Interim Order.
- 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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

14. **Eric Petr v. Town of Morristown (Morris) (2017-99)**

- The Custodian violated OPRA by failing to respond to the Complainant's OPRA request seeking overtime information "immediately." N.J.S.A. 47:1A-5(e).
- 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. Huber made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

15. **James Mullin v. Bergen County Sheriff's Office (2017-102)**

- The GRC must conduct an *in camera* review of the "2017 County Law Services Review Plan" to determine the validity of the Custodian's asserted exemption.
- The knowing and willful analysis is deferred.
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

16. **Charles Street v. North Arlington School District (Bergen) (2017-103)**

17. **Charles Street v. North Arlington School District (Bergen) (2017-104) Consolidated**

- The Custodian violated OPRA by conducting an insufficient search for records responsive to the April 13, 2017 OPRA request. Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008). However, the Council should decline to order disclosure because the Custodian did so on October 24, 2017.
- The requested lockdown footage is exempt from disclosure under OPRA's emergency and security exemptions. N.J.S.A. 47:1A-1.1; Gilleran v. Bloomfield, 227 N.J. 159 (2016).
- 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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

18. **Stacie Percella v. City of Bayonne (Hudson) (2017-111)**

- The Custodian did not unlawfully deny access to the Complainant's April 3, 2017 OPRA request because he disclosed all responsive records. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

19. **Robert McDonnell v. Hillsborough Township (Somerset) (2017-115)**

- The Custodian’s failure to timely respond to the Complainant’s OPRA request resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); (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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

20. **Nichalos Watson v. Passaic County Prosecutor’s Office (2017-116)**

- OPRA request item Nos. 1 and 2 seeking “criminal records” and “pre-trial discoveries” are blanket requests that are invalid under OPRA. Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
- The Custodian lawfully denied access to OPRA request item No. 3 because pre-sentence reports are considered “inter-agency, or intra-agency advisory, consultative, or deliberative material.” N.J.S.A. 47:1A-1.1; Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014).
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

21. **Misael Cordero v. New Jersey State Library (2017-117)**

- The Complainant’s OPRA request sought material from the State Library’s inventory, which are not “government records” under OPRA. Schwarz v. N.J. State Library, GRC Complaint No. 2004-123 (March 2005). Thus, the original Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.
- 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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

22. **Charlene Barth v. Rutgers University (2017-121)**

- The Custodian complied with the Council’s April 30, 2019 Interim Order.
- 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. Huber made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

23. **Larry Michael Welenc v. NJ State Police (2017-134)**

- Complainant's request for reconsideration should be denied.
- 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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

24. **Humberto Benitez v. NJ Department of Corrections (2017-137)**

- The Complainant's request was invalid as a blanket request for a class of various records. Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

25. **Rocco Maldonado v. Ocean County Prosecutor's Office (2017-146)**

- The Custodian complied with the Council's May 25, 2019 Interim Order.
- 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. Huber made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

26. **Pamela Macek v. Bergen County Sheriff's Office (2017-156)**

27. **Pamela Macek v. Bergen County Sheriff's Office (2017-157)**

28. **Pamela Macek v. Bergen County Sheriff's Office (2017-158) Consolidated**

- Handwritten communications are exempt from disclosure as "inter-agency, or intra-agency advisory, consultative, or deliberative material." N.J.S.A. 47:1A-1.1; O'Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534 (App. Div. 2007).
- The Custodian may have unlawfully denied access to e-mails responsive to the Complainant's three (3) OPRA requests. The Custodian must conduct a new search and either 1) disclose all new e-mails located, 2) provide a lawful basis for denial of any new e-mails to which he is denying access, or 3) certify if no additional e-mails were located.
- The Custodian lawfully denied access to the portions of the OPRA requests seeking texts, faxes and/or voicemail because none existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- The Custodian did not unlawfully deny access to the Complainant's June 1, 2017 OPRA request item No. 1 because he provided the record responsive to said request. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
- The knowing and willful analysis is deferred.

- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

29. **Edwin Sheppard v. Cape May County (2017-179)**

- 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 access and knowing and willful analyses are deferred.
- 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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

30. **Brian Keith Bragg v. Rutgers University (2017-185)**

- The Complainant’s request was invalid because it failed to sufficiently identify the records sought. Boslet v. Greenwich Twp. (Warren), GRC Complaint No. 2012-29 (March 2013).
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

31. **Stacie Percella v. City of Bayonne (Hudson) (2017-203)**

32. **Stacie Percella v. City of Bayonne (Hudson) (2017-204) Consolidated**

- The portion of the Complainant’s August 14, 2017 request asking multiple questions is invalid. Dunleavy v. Jefferson Twp. Bd. of Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015).
- The Custodian unlawfully denied access to the portion of the August 14, 2017 OPRA request seeking Ms. Servodio’s “step,” because it is part of a “payroll record.” N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004).
- The Custodian unlawfully denied access to comprehensive records responsive to the Complainant’s August 23, 2017 OPRA request seeking Ms. Davis’ raise history. Lotito v. N.J. Dep’t of Labor, Human Res., GRC Complaint No. 2013-65 (March 2014). However, the Council should decline to order disclosure because the Custodian disclosed same on November 28, 2017.
- 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. Huber

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

**33. Scott Madlinger v. Berkeley Township (Ocean) (2018-130)**

- The Complainant's OPRA request seeking a particular type of document for a specified time period is valid. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).
- The Custodian may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The Custodian must perform a sufficient search and disclose those responsive records located. Should the Custodian believe a special service charge is warranted, she must estimate same and notify the Complainant of the amount.
- The knowing and willful analysis is deferred.
- by a unanimous vote.
- 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. Barnes made a motion and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

**VI. Court Decisions of GRC Complaints on Appeal: None**

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

- 280 Erie St., LLC v. City of Jersey City, 2019 N.J. Super. Unpub. LEXIS 1128 (App. Div. 2019): Defendant challenges an attorney fee award imposed by the trial court. Defendant argued that the total amount of time Plaintiff's counsel spent securing relief was unreasonable, counsel's certification was inadequate, and the Plaintiff acted in bad faith. The Appellate Division disagreed, first noting that trial courts are granted significant deference in fee determinations since they are in the best position to weigh arguments by the parties. The Court noted that the trial court found that the Plaintiff obtained a high degree of success, and that the Defendant's actions prolonged the litigation, resulting in additional fees. The Court found no issue in the trial court's assessment. Affirmed.
- Garcia v. Bergen County Prosecutor's Office, 2019 N.J. Super. Unpub. LEXIS 1139 (App. Div. 2019): Plaintiff challenges the trial court's ruling which upheld Defendant's denial of access to a videotape, audiotape and written report detailing the Plaintiff's interrogation, all of which related to the Plaintiff's criminal matter. The trial court held that because the records were already provided via discovery, the Defendant was not obligated to provide the records again. The Appellate Division affirmed, agreeing substantially for the reasons set forth by the trial court.
- Libertarians for Transparent Gov't v. New Jersey State Police, 2019 N.J. Super. Unpub. LEXIS 1156 (App. Div. 2019): Plaintiff challenges the trial court's ruling which upheld Defendant's denial of access to the name of a New Jersey State

Trooper who was disciplined for misconduct described within the State Police's "Internal Investigation and Disciplinary Process" report for the year 2015. The trial court held that adhering to N.J.S.A. 47:1A-10's exception for a public employee's name in this instance would run afoul of OPRA's exemption against access to records pertaining "to any grievance filed by or against an individual." The Appellate Division agreed, holding that in this circumstance, disclosure of the trooper's name "would violate both the letter and spirit of the exemption itself." Affirmed.

**VIII. Public Comment: None**

**IX. Adjournment:**

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

The meeting adjourned at 2:28 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: July 30, 2019