



**Minutes of the Government Records Council
September 24, 2019 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:33 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 September 19, 2019.”

Mr. Ritardi read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Simons, 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), and Steven Ritardi, Esq., Public Member

****Ms. Berg Tabakin joined the meeting telephonically at 2:39 p.m. and exited at 2:47 p.m.****

GRC Staff in Attendance: Frank F. Caruso (Executive Director), Rosemond Bordzoe (Secretary), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Brandon Garcia (Case Manager), and Deputy Attorney General Debra Allen.

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

II. Executive Director's Report:

- The GRC officially introduced and welcomed Brandon Garcia to the staff.

OPRA Trainings

- The GRC's next scheduled training is October 10, 2019 for the Essex Cnty. Muni. Clerk's Assoc. Mini-Conference in Verona, NJ.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,283 Denial of Access Complaints. That averages about 306 annual complaints per 17 ¼ program years. So far in the current program year (FY2020), the GRC has received 78 Denial of Access Complaints.
 - The GRC is currently on pace to reduce its weekly open cases (approximately 430 after today) by nearly 100 complaints since the December 2018 meeting (511).
- 463 of the 5,283 complaints remain open and active (8.8%). Of those open cases:
 - 6 complaints are on appeal with the Appellate Division (1.3%);
 - 25 complaints are currently in mediation (5.4%);
 - 3 complaints are proposed for the Office of Administrative Law (0.6%);
 - 30 complaints await adjudication by the Office of Administrative Law (6.5%);
 - 96 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (20.7%);
 - 303 complaints are work in progress (65.4%); and
 - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 31,142 total inquiries, averaging about 1,916 annual inquiries per 16 ¼ tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2020), the GRC has received 368 inquiries (6.2 inquiries per workday).

III. Closed Session

- *Arnav Sood v. West Windsor-Plainsboro Regional School District (Mercer) (2016-241) In Camera Review (N.J.A.C. 5:105-2.8(g)).*
- *Scott DiRoma v. NJ State Parole Board (2016-278) In Camera Review (N.J.A.C. 5:105-2.8(g)).*

Mr. Ritardi called for a motion to go into closed session. Ms. Simons 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 1:39 p.m. until 2:14 p.m.

Mr. Ritardi called for a motion to end the closed session. Mr. Barnes made a motion, which was seconded by Ms. Simons. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:15 p.m., and Ms. Bordzoe called roll.

- Present: Mr. Ritardi, Ms. Simons, and Mr. Barnes were present. Ms. Berg Tabakin was absent.

IV. Approval of Minutes of Previous Meetings:

- **August 27, 2019 Open Session Meeting Minutes¹**

Mr. Ritardi called for a motion to approve the draft open session minutes of the August 27, 2019 meeting. Ms. Simons made a motion, which was seconded by Mr. Barnes. The motion passed by a majority vote. Mr. Ritardi voted to the extent that he participated in the August meeting.

V. New Business – Cases Scheduled for Adjudication

Mr. Ritardi stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’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):²

1. David Weiner v. County of Essex (2018-206) (SR Recusal)

- No Records Responsive to the Request Exist.
- Ms. Simons 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 Ms. Berg Tabakin. The motion passed by a majority vote; Mr. Ritardi recused.

2. Christopher A. Lombardi v. Paterson Police Department (Passaic) (2019-171) (SR Recusal)

- Duplicate Complaint Filed With the GRC.
- Ms. Simons 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 Ms. Berg Tabakin. The motion passed by a majority vote; Mr. Ritardi recused.

3. David Nash v. NJ Department of Community Affairs, Division of Fire Safety (2019-148) (TB Recusal)

- No Records Responsive to the Request Exist.

¹ This item was held for a vote until Ms. Berg Tabakin called in at 2:39 p.m.

² The recusal items were held for a vote until Ms. Berg Tabakin called in at 2:39 p.m.

- Mr. Ritardi called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Ms. Simons made a motion, which was seconded by Ms. Berg Tabakin. The motion passed by a majority vote; Mr. Barnes recused.

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

1. **Christopher Masi v. NJ Department of Corrections (2019-120)**
 - No Records Responsive to the Request Exist.
2. **David Nash v. Jackson Township Fire District No. 2 (Ocean) (2019-147)**
 - No Correspondence Received by the Custodian.

Mr. Ritardi called for a motion to accept the recommendations as written in all the above Administrative Complaint Disposition. Mr. Barnes made a motion, which was seconded by Ms. Simons. The motion passed by a unanimous vote.

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

1. **Dr. Kelly William Sundberg v. Stockton University (2018-259)**
 - Complaint Settled in Mediation.
2. **Chris Placitella, Esq. (o/b/o Estate of Brian Holland) v. NJ Transit (2019-107)**
 - Complaint Voluntarily Withdrawn.
3. **Thomas Dello Russo v. Millburn Police Department (Essex) (2019-136)**
 - Complaint Settled in Mediation.
4. **Luis F. Rodriguez v. Kean University (2019-144)**
 - Complaint Voluntarily Withdrawn.
5. **Tyshammie L. Cooper v. City of Orange Township (Essex) (2019-177)**
 - Complaint Voluntarily Withdrawn.
6. **Daniel W. Conard v. Borough of Runnemede (Camden) (2019-182)**
 - Complaint Voluntarily Withdraw.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:³

A brief summary of the Executive Director’s recommended action is under each complaint:

1. **Mark L. Tompkins v. Essex County Prosecutor’s Office (2017-182) (SR Recusal)**
 - The Complainant’s request is invalid because it seeks generic records supporting a claim and information rather than identifiable government records. MAG Entm’t, LLC. v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

³ The recusal items were held for a vote until Ms. Berg Tabakin called in at 2:39 p.m.

- Ms. Simons called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Simons called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. **Richard E. Salkin v. City of Hackensack (Bergen) (2017-191) (SR Recusal)**
- The GRC must conduct an *in camera* review to determine whether the redacted information is exempt as “inter-agency or intra-agency advisory, consultative, or deliberative [(“ACD”)] material.”
 - The knowing and willful analysis is deferred.
 - Ms. Simons called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Simons called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
3. **Michael Doss v. Borough of Bogota (Bergen) (2017-217) (SR Recusal)**
- The Custodian failed to prove that the assessed special service charge of \$53.25 was warranted and reasonable. N.J.S.A. 47:1A-5(c). The Custodian must refund the applicable payment to the Complainant.
 - The GRC must conduct an *in camera* review to determine whether the redacted information is exempt under the attorney-client privilege exemption.
 - The Custodian did not unlawfully deny access to the Complainant’s two (2) OPRA requests on the basis that she disclosed all responsive records. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint Nos. 2009-156, 2009-157, 2009-158 (Interim Order dated April 28, 2010).
 - The knowing and willful and prevailing party analyses are deferred.
 - Ms. Simons called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Simons called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
4. **Krzysztof Golas v. Essex County Department of Corrections (2018-12) (SR Recusal)**
- The GRC must conduct an *in camera* review to determine whether the redacted information is exempt as ACD material.
 - The knowing and willful analysis is deferred.
 - Ms. Simons called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Simons called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

5. **Steven 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. **Lisa D. Taylor, Esq. v. NJ Department of Treasury, Division of Purchase and Property (2015-395)**

- The Custodian complied with the Council's August 28, 2018 Interim Order.
- The Custodian lawfully denied access to the responsive Cmty. Access Unlimited bid submissions. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 619 (App. Div. 2008).
- The Custodian lawfully denied access to the bid evaluation records under the ACD exemption. N.J.S.A. 47:1A-1.1; Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2013-287 (Interim Order dated June 30, 2015).
- The GRC must conduct an *in camera* review to determine whether portions of the responsive proposals were exempt from access under OPRA.
- The Custodian did not unlawfully deny access to the remaining records at issue on the basis that he disclosed them to the Complainant between December 3, and 17, 2015. Danis, GRC 2009-156, *et seq.*
- The knowing and willful and prevailing party analyses are deferred.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

2. **Golda D. Harris v. NJ Department of Corrections (2016-172)**

- The Complainant's request item Nos. 1 through 4 and 6 are invalid. MAG, 375 N.J. Super. 534.
- The Custodian lawfully denied access to OPRA request item No. 5 seeking disciplinary reports. N.J.S.A. 47:1A-10; Alexander v. N.J. Dep't of Corr., GRC Complaint No. 2014-268 (June 2015).
- The Custodian lawfully denied access to OPRA request item No. 7 because no responsive records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- The Custodian lawfully denied access to OPRA request item Nos. 8 and 10 because he timely sought clarification and never received such. Herron v. N.J. Dep't of Educ., GRC Complaint No. 2011-363 (December 2012).
- The Custodian lawfully denied access to OPRA request item Nos. 11 through 14 and 16 because he disclosed the responsive records upon receipt of payment for copy costs. N.J.S.A. 47:1A-5(b); Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
- 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 Executive Director's findings and recommendations as written. Ms.

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

3. **Scott M. Halliwell and Anthony G. Pennant v. Borough of Brooklawn (Camden) (2016-201)**
 - The Custodian complied with the Council's August 27, 2019 Interim Order.
 - The Custodian bore his burden of proving a lawful denial of access to e-mail correspondence from 2013 and 2014. Pusterhofer, GRC 2005-49.
 - The Custodian complied with the Council's April 30, 2019 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

4. **Arnav Sood v. West Windsor-Plainsboro Regional School District (Mercer) (2016-241)**
 - Based on the Council's review in closed session, this complaint should be tabled for further review.
 - Mr. Ritardi called for a motion to have the above matter tabled. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

5. **Scott DiRoma v. NJ State Parole Board (2016-278)**
 - The Custodian did not comply fully with the Council's December 18, 2018 Interim Order.
 - The Custodian shall comply with the Council's *In Camera* Examination Findings.
 - The knowing and willful analysis is deferred.
 - 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

6. **Jeffrey J. Gural v. Cinnaminson Township (Burlington) (2016-282)**
 - The Custodian proved that a special service charge was warranted. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c).
 - The first component of the special service charge (\$96.00) was reasonable; however, the second component (\$175.00 an hour) was not. The Custodian must thus recalculate the total special service charge and provide the Complainant an opportunity to accept or reject it.
 - The knowing and willful and prevailing party analyses are deferred.
 - 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 Executive Director's findings and recommendations as written. Ms.

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

7. **Shamsiddin Abdur-Raheem v. NJ State Police (2016-291)**

- The Council should table this complaint for further review.
- Mr. Ritardi called for a motion to have the above matter tabled. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

8. **John Sexton v. Middlesex County (2016-293)**

- Both parties complied with the Council's March 26, 2019 Interim Order.
- The Custodian lawfully denied access to Symposium attendee contact information contained within the registration forms. N.J.S.A. 47:1A-1; Burnett v. Cnty. of Bergen, 198 N.J. 408, 422-23, 427 (2009); Schechter v. Thomas Edison State Coll., GRC Complaint No. 2013-174 (January 2014). The GRC thus declines to conduct an *in camera* on the responsive forms.
- The Council should decline to address the knowing and willful issue because no violation 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

9. **Jesse Wolosky v. Township of Jefferson (Morris) (2017-61)**

- The Custodian failed to prove that the assessed special service charge of \$94.10 was warranted and reasonable. N.J.S.A. 47:1A-5(c). The Custodian must disclose the responsive records without the imposition of a special service charge.
- The knowing and willful and prevailing party analyses are deferred.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

10. **Ronald Williams v. NJ Department of Corrections (2017-141)**

- The Custodian's failure to address each OPRA request item individually resulted in an insufficient response. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). However, the Council should decline to order disclosure of two (2) of the rosters because the Custodian disclosed them on August 1, 2017.
- The Custodian lawfully denied access to the New Jersey State Prison roster under the safety and security exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

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

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

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

- The Council should deny the Complainant's request for reconsideration.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

14. **Richard B. Costigan v. Cape May County Prosecutor's Office (2017-184)**

- The Custodian unlawfully denied access to the responsive autopsy report and must disclose same. N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Schulz v. N.J. State Police, GRC Complaint No. 2014-390 (Interim Order dated June 30, 2015).
- The Custodian lawfully denied access to the remaining reports under the criminal investigatory exemption.
- The Custodian lawfully denied access to the responsive photographs under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), and Executive Order No. 69 (Gov. Whitman, 1997). Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009).
- The knowing and willful analysis is deferred.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

15. **Shaun Clifton-Short v. East Orange Police Department (Essex) (2019-192)**

- The Custodian's failure to timely respond resulted in a "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Custodian lawfully denied access to the requested "charge(s)/complaint(s)." N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

16. **David Gerson v. Township of Springfield (Union) (2017-197)**

- The Complainant's request is invalid because it sought information to justify an action and asked questions. MAG, 375 N.J. Super. 534; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Vance v. Sussex Cnty. Sheriff's Office, GRC Complaint No. 2012-188 (June 2013).
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

17. **Tara Park v. Township of Monroe (Gloucester) (2017-200)**

- The Custodian timely responded to the Complainant's OPRA request based on reasonable extensions of time. Ciccarone v. N.J. Dep't of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).
- The Complainant's August 23, 2017 OPRA request item No. 2 was valid under Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian unlawfully denied access to responsive records and must either disclose them or calculate a special service charge.
- The knowing and willful analysis is deferred.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

18. **Stacie Percella v. City of Bayonne (Hudson) (2017-201)**

- The Custodian lawfully denied access to the Complainant's OPRA request because no responsive records exist. Pusterhofer, GRC 2005-49.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

19. **Stacie Percella v. City of Bayonne (Hudson) (2017-202)**

- The portion of the Complainant's request asking multiple questions was invalid. Percella v. City of Bayonne (Hudson), GRC Complaint No. 2017-203 & 2017-204 (June 2019).
- The Custodian unlawfully denied access to the portion of the August 14, 2017 OPRA request seeking Mr. Greaves' "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). However, the Council need not order disclosure because the Custodian did so on November 21, 2017.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

20. Milton P. Durham v. NJ Department of Corrections (2017-209)

- The Complainant's request item No. 1 seeking records, as well as the various amendments to it, were invalid. MAG, 375 N.J. Super. 534.
- The Custodian lawfully denied access to the Complainant's OPRA request item No. 2 because no records existed. Pusterhofer, GRC 2005-49.
- The Custodian did not unlawfully deny access to the Complainant's OPRA request item No. 3 on the basis that he disclosed all responsive records. Danis, GRC 2009-156, et seq.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

21. Stacie Percella v. City of Bayonne (Hudson) (2017-210)

- The Custodian's failure to provide a specific lawful basis for redactions resulted in an insufficient response. N.J.S.A.47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
- The Custodian lawfully denied access to the redacted portions of the Mayor's meeting calendar. N.J.S.A. 47:1A-9(b); Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 2017-18 (App. Div. 2005); McDonald v. City of Jersey City, GRC Complaint No. 2015-274 (January 2017).
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

22. Judy Faulkner v. Hillsborough Bureau of Fire Safety (Somerset) (2017-211)

- The Custodian lawfully denied access to the subject OPRA request because no records exist. Pusterhofer, GRC 2005-49.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

23. **Craig Thompson v. NJ Department of Corrections (2017-220)**

- The Complainant's request seeking a "classification file" was invalid. Bragg v. N.J. Dep't of Corr., GRC Complaint No. 2010-145 (March 2011).
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

24. **Scott Madlinger v. Berkeley Township (Ocean) (2017-224)**

- The Custodian's failure to provide a fully responsive e-mail log resulted in an insufficient response. N.J.S.A. 47:1A-5(g); Riley v. City of West Orange, GRC Complaint No. 2008-27 (April 2009). However, the Council should decline to order disclosure because the Custodian disclosed same on December 1, 2017.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

25. **Nicholas Patrick DiFelice v. Monroe Township Public Schools (Gloucester) (2017-232)**

- The Custodian complied with the Council's August 27, 2019 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

26. **Nicholas Patrick DiFelice v. Monroe Township Public Schools (Gloucester) (2017-233)**

- The Custodian failed to fully comply with the Council's August 27, 2019 Interim Order.
- In accordance with Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-218, *et seq.* (Interim Order dated April 26, 2016), the Custodian shall have a final opportunity to comply with the Council's Order.
- The knowing and willful analysis is deferred.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

27. **Scott Madlinger v. Berkeley Township Board of Education (Ocean) (2017-243)**

- The Complainant's non-form OPRA request was valid and the Custodian improperly required him to complete the official OPRA request form. Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009); Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013). However, the Council should decline to order disclosure because the Custodian did so on January 15, 2018.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

28. **Jennifer E. Lewis-Gallagher v. Monroe Township Public School District (Gloucester) (2018-8)**

- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Complainant's request seeking e-mails was invalid because it did not include senders and/or recipients. Elcavage, GRC 2009-07.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

29. **New Jersey Foundation for Open Government, Inc. v. Borough of Woodbine (Cape May) (2018-240)**

- The Council should dismiss this complaint because Complainant's Counsel withdrew the matter via letter to the GRC on September 4, 2019. No further adjudication is required.
- 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 Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

30. **NJ Foundation for Open Government, Inc. v. Pompton Lakes Board of Education (Passaic) (2018-263)**

- The Custodian's failure to submit a Statement of Information results in a violation of the GRC's regulations. N.J.A.C. 5:105-2.4(a); Alterman, Esq. v. Sussex Cnty. Sheriff's Office, GRC Complaint No. 2013-353 (September 2014).
- The Custodian's failure to provide a specific lawful basis for redactions resulted in an insufficient response. N.J.S.A. 47:1A-5(g); Morris v. Trenton Police Dep't, GRC Complaint No. 2007-160 (May 2008).

- The Custodian unlawfully denied access to the redacted portions of the responsive legal bills. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure because Custodian’s Counsel did so on August 5, 2019.
- 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 Executive Director’s findings and recommendations as written. Ms. Simons made a motion and Mr. Barnes 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:

- State v. Somick, 2019 N.J. Super. Unpub. LEXIS 1799 (App. Div. 2019): On appeal of the trial court’s ruling suppressing evidence obtained pursuant to a search warrant, the Appellate Division discussed whether the Defendants’ timesheets, a portion of the evidence at issue, should have been obtained by the State via OPRA instead of other means. Id. (slip op. at 16). The Court disagreed with the trial court, finding that the State was not duty-bound by any authority to make an OPRA request for the timesheets, notwithstanding that said records were subject to access under N.J.S.A. 47:1A-10. Id. The Court held that “law enforcement is not obligated to utilize OPRA before, during or after it utilizes a particular chose investigative path. Contrary to the judge’s finding . . . there is no evidence in the record that the State considered – or should have considered – an OPRA request as an option to receiving the time sheets” Id. (slip op at 16-17).

VIII. Public Comment: None

IX. Adjournment:

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

The meeting adjourned at 2:52 p.m.

Respectfully submitted,

Steven Ritardi, Esq., Acting Chair

Date Approved: November 12, 2019